

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.

Electronically Filed
Apr 27 2023 11:35 AM
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 V
P00703 – P00834**

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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

| DATE | DOCUMENT TITLE | VOL | BATES NOS. |
|-------------|---|------------|-------------------|
| 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.
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| 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.
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ALPHABETICAL INDEX

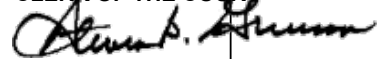
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RIS
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Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

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

**REPLY IN SUPPORT OF MOTION
FOR ADJUDICATION
FOLLOWING REMAND**

Date of Hearing: 3.21.23
Time of Hearing: 9:00 a.m.

Notice of Intent to Appear Via
Simultaneous Audio Visual
Transmission Equipment

I. Introduction

The Edgeworths' opposition continues their effort to punish Simon for his audacity to think that the massive amount of fantastic work performed by his firm to obtain his former friends over Six Million Dollars on a \$500,000.00 property damage case was worth a reasonable market rate fee.

1 Much of the time and documents provided to the Court in the moving
2 papers which provide support for a substantial *quantum meruit* award of
3 post discharge fees address events which occurred after the last date on
4 the superbill - and in part which occurred before this Court during
5 subsequent hearings. Accordingly, the argument that Simon cannot recover
6 for time not contained in the superbill clearly fails because the events
7 occurred after the last date of the bill, and the implied invitation for this
8 Court to forget that Simon appeared before this Court to assist the
9 Edgeworths, even after they had frivolously sued Simon, are without merit.
10 The remainder of the opposition consists of personal attacks and innuendo
11 that do not move the needle on the value of Simon's services.
12

13
14 Simon's work after discharge increased the value of the settlement
15 with Lange by \$75,000.00, removed confidentiality and non-disparagement
16 clauses, saved the Edgeworths the fees required to bring Vannah and
17 Greene up to speed at \$925.00 an hour each, and successfully resolved a
18 complex case for millions of dollars. There is a sound foundation for a
19 *quantum meruit* award of \$200,000.00 or more for the post discharge work
20 of Simon and his firm.
21
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1 II. The Record Supports Simon.

2 Simon performed excellent work for the Edgeworths. Far from the
3 Edgeworths' reliance being misplaced, Simon delivered. The record is clear
4 and incontrovertible regarding the outstanding legal services provided by
5 Simon.
6

- 7 • Defense counsel "Michael Nunez testified that Mr. Simon's work
8 on this case was extremely impressive". (4.19.2021, Third Am.
9 D & O on Mot., to Adj. at 19:8-14.)
- 10 • Defense attorney Ms. Pancoast wrote: "I just read the Motion to
11 Adjudicate the attorney lien. But for your determination,
12 Edgeworths would have significantly less in their pocket." (Ex. 2
13 to the motion.)
- 14 • Will Kemp, one of the best trial attorneys in the United States,
15 "testified that Mr. Simon's work product and results are
16 exceptional." (4.19.2021, Third Am. D & O on Mot., to Adj. at
17 19:8-14; and, at 19:16-24 ("the work was exceptional").)
- 18 • Mr. Kemp testified that the most important factor in obtaining
19 the result was Simon's work. Mr. Kemp also testified, "that he
20 has never heard of a \$6 million settlement with a \$500,000.00
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1 damage case.” (4.19.2021, Third Am. D & O on Mot., to Adj. at
2 20:8-17.)

- 3
- 4 • Finally, and most importantly, this Court found that Simon was
5 an “exceptional advocate for the Edgeworths, the character of
6 the work was complex, the work actually performed was
7 extremely significant, and the work yielded a phenomenal result
8 for the Edgeworths.” (4.19.2021, Third Am. D & O on Mot., to
9 Adj. at 21:15-22:2.)
- 10

11 The record supports Simon’s excellent work and cannot be
12 legitimately challenged. However, while the record is complimentary of
13 Simon, the same is not true of the Edgeworths.

- 14
- 15 • Angela Edgeworth testified before this Court that the
16 Edgeworths sued Simon to punish him. (Ex. 3 September 18,
17 2018 evidentiary hearing transcript at 145:17-19.)
 - 18 • The Edgeworth complaints and Brian Edgeworth’s affidavits
19 allege an oral contract was formed at the outset of the attorney
20 client relationship. (1.4.2018 Edgeworth complaint at ¶9,
21 3.15.18 Edgeworth amended complaint at ¶9, Ex. 4 at ¶6, Ex. 5
22 at ¶6.) When faced with the May 27 Simon email deferring on a
23 fee discussion at the outset of the relationship, Brian Edgeworth
24
25

1 changed the story and testified that the oral contract was
2 formed on June 10. Brian Edgeworth agreed there were no
3 emails or documents supporting his changed testimony. (Ex. 6
4 and 7.)

- 5 • On Appeal, the Edgeworths opening brief conceded - *six times* -
6 that the Edgeworths were not believed by the district court.
7 (August 8, 2019, opening brief at pp. 11, 12, 15, 18 & 28.)
8
- 9 • The Edgeworths complaint filed against Simon to punish him
10 contained a frivolous conversion claim which the Supreme
11 Court found was “legally impossible”. *Edgeworth Family Trust v.*
12 *Simon*, 477 P.3d 1129 (table) 2020 WL 7828800 (Nev. 2020)
13 (unpublished)(upholding this Court’s dismissal of A-18-767242-
14 C, award of sanctions, and the finding that the engagement
15 began between friends and an express written or oral contract
16 was not formed).
17
- 18 • The Supreme Court upheld the \$50,000 attorney fee award
19 assessed by this Court against the Edgeworths on the basis
20 that the Edgeworths litigation was “maintained without
21 reasonable ground or to harass the prevailing party”. (*Ibid.*)
22
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1 The record supports Simon's excellent work. The record does not support
2 the Edgeworths veracity or their innuendo. Rather, the record details an
3 extended effort by the Edgeworths to mount unsupported *post hoc* attacks
4 against Simon.

5 **III. Quantum Meruit**

6
7 The record reflects that Simon did substantial and valuable post
8 discharge work for the Edgeworths. Following the last day on the superbill
9 of January 8, the motion details extensive work including court
10 appearances. The contemporaneous statements of the Edgeworths and
11 defense counsel support the valuable nature of the post discharge work.
12

13 As detailed in the Simon motion at page 12-18, Simon made court
14 appearances and facilitated the resolution of this complex litigation. (*E.g.*,
15 2.6.2018 transcript at 6:15, "MS PANCOAST: -- Mr. Simon's facilitating
16 wrapping this up.") The value to the Edgeworths is clear and obvious.
17

18 In the past, the Edgeworths agreed Simon's work had obvious value.
19 (See, e.g., 2.20.2018 hearing transcript at 3:15-25 ("MR. VANNAH: *If you*
20 *take out the form and content, I don't know anything about the case, and I*
21 *want -- I don't know anything about the case -- I mean, we're not involved*
22 *in a case. You understand that, Teddy?*") (italics added).) The Edgeworths
23 valued Simon's work so much that they threatened Simon not to withdraw
24
25

1 after they filed their punishment lawsuit, in part because of the resulting
2 cost to the Edgeworths to bring Vannah up to speed. (Defendants'
3 evidentiary hearing exhibit 53.) The Edgeworths valued Simon so highly
4 that as late as 2019 the Edgeworths argued to the Supreme Court that
5 Simon was still their attorney. (Appellants' Opening Brief filed 8.8.2019 at
6 25-26.)

8 The Edgeworths *post hoc* attacks are exposed by their changing
9 positions. The Edgeworths argued that Simon's post discharge work was
10 so valuable that Simon had to continue working for the Edgeworths even
11 after they had frivolously sued Simon. That was until the narrative no longer
12 benefitted them. The Edgeworths then changed to their current narrative
13 that Simon's post discharge work was worth next to nothing.

16 Currently, the Edgeworths argue that Simon's work after January 8
17 should be ignored. However, no authority is provided for the proposition
18 that this Court should ignore an attorney's work when determining a
19 reasonable fee under quantum meruit. The omission of authority is glaring
20 because some of the work the Edgeworths want this Court to ignore
21 include appearances before Her Honor, therefore ignoring the work would
22 be contrary to Nevada law. See, e.g., *Leventhal v. Black & LoBello*, 129
23 Nev. 472, fn. 5, 305 P.3d 907, fn 5 (2013)(mentioning the court's familiarity
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1 with the relevant facts regarding the attorney's performance as a basis for
2 awarding attorney fees).

3 Simon always sought quantum meruit, and the superbill was
4 prepared to demonstrate time and effort, not to act as an actual bill. The
5 Edgeworths' current position is nothing more than an argument of
6 convenience and may be disregarded on that basis.
7

8 **IV. The Case File**

9 The current motion seeks adjudication of the value of Simon's post
10 discharge work under *quantum meruit*. The Edgeworths apparently see the
11 motion as an opportunity to air grievances and insinuation about the
12 production of the case file. The Edgeworths are mistaken. (See, e.g.,
13 EDCR 2.20(e) (an opposition presents arguments against the motion).)
14

15 Nonetheless, because the Edgeworths have again made an
16 unsupported claim that there is a "purposeful" retention of materials and
17 have again made unsupported claims of nefarious doings by Simon, the
18 following is offered in reply.
19

20 On November 15, 2022, this Court heard the Edgeworths bid to hold
21 Simon in contempt regarding file production. The motion was denied.
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1 On December 8, 2022, Simon served but did not file a motion for
2 Rule 11 sanctions against the Edgeworths for filing the contempt motion
3 without a sound basis and sent an accompanying safe harbor letter. (Ex. 8.)

4 On December 9, 2022, Edgeworths' counsel responded and
5 disclosed their human errors that prevented them from making accurate
6 statements to this court regarding the case file. (Ex. 9.) While Simon sent
7 another safe harbor letter on December 16, it was eventually decided that
8 counsel's admission of human error was sufficient and the motion for Rule
9 11 sanctions was not filed.
10

11 On December 21, 2022, the Edgeworths sent another letter which
12 added new requests to requests previously made before counsel admitted
13 to an incomplete review of the produced file and their own review errors.
14 (Ex. O to the response.)
15

16 There was a delay in response to the December letter for various
17 reasons. Regardless, on February 27, 2023, Simon responded to the
18 December letter as follows:
19
20

21 **2. Regarding the ongoing document requests:**

22 For the enumerated items on the December 21 letter:

- 23 1. The cost print out is just that. It was a snap shot of the
24 costs listed on the case expense summary at the time it was
25 made. If your client did not retain the copy, then it is no longer
available.

1 2. The back-up for the correct amount of costs was provided
2 in the lien adjudication hearing. (As you are aware, the amount
3 of costs claimed was corrected during the lien
4 adjudication.) You have the information.

5 3. As reflected on LODS 14786, the mediator proposal was
6 sent to Brian Edgeworth on November 11, 2017, at 10:05 a.m.

7 4&5. As reflected on LODS 24686 & 687, both invoices were
8 sent directly to Brian Edgeworth.

9 6V. Because he had been fired, Simon did not retain a fully
10 executed Viking settlement agreement. An agreement lacking
11 Scott Martorano's signature can be found at LODS 38134-
12 38140.

13 6L. Because he had been fired, Simon did not retain a fully
14 executed Lange settlement agreement. An agreement lacking
15 Lange's signature can be found at LODS 38107-38122.

16 I looked but did not find an email from you or your office dated
17 November 16.

18 I reviewed your October letter. I noted the letter was sent before your
19 motion for sanctions was filed and denied, and before your letter of
20 December 9, 2022. In the course of events, I thought it had become
21 clear that your office had not reviewed the materials already provided
22 by Simon. Your seeming concession of that point on December 9 was
23 why the Simon motion for sanctions was not filed.

24 I looked at the first 2 emails listed on the October letter, LODS 14716
25 & 14717. Both are emails from Simon to Brian Edgeworth. *Thus, on
26 their face the emails establish that you already have the emails and
27 the attachments.* Further, the referenced and attached Parker letter is
28 also separately found at LODS 464-465. I stopped my review at that
29 point.

30 Simon is happy to help, if there is a legitimate question about a
31 missing item. Please double check your future inquiries. (Ex. 10.)

1 As can be seen from the above, nothing has changed. The continuing
2 Edgeworth demands for file production are nothing more than make-work
3 requests, which have nothing to do with reaching a fee for Simon's post
4 discharge work. For example, the Edgeworths complained about not having
5 a mediator proposal that was emailed to Brian Edgeworth on November 11,
6 2017, at 10:05 am. (Ex. 11, email bated LODS 14786.) In other words, the
7 Edgeworths claimed the mediator proposal was purposefully withheld to
8 further their narrative of misdeeds by Simon, when in fact the proposal was
9 emailed to Brian over 5 years ago. The Edgeworths do not have a basis for
10 their continuing complaints, which only serve to waste the time of this Court
11 and Simon.
12
13

14 **V. Conclusion**

15 The record as detailed in pages 12 -18 of the motion reflects that
16 Simon's post discharge work was substantial, valuable and provides
17 support for the Court's new order. Simon respectfully requests a
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1 reasonable fee of \$200,000.00 or more under *quantum meruit* for his post
2 discharge work.

3 DATED this 14th day of March 2023.

4
5 /s/James R. Christensen

6 James R. Christensen Esq.
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8 James R. Christensen PC
9 601 S. Sixth Street
10 Las Vegas NV 89101
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12 (702) 272-0415 fax
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14 Attorney for LAW OFFICE OF
15 DANIEL S. SIMON, P.C.

16
17
18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of REPLY IN SUPPORT OF MOTION FOR
20 ADJUDICATION FOLLOWING REMAND was made by electronic service
21 (via Odyssey) this 14th day of March 2023, to all parties currently shown
22 on the Court's E-Service List.

23
24 /s/ Dawn Christensen

25 an employee of James R. Christensen

EXHIBIT 3

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | | |
|-------------------------------|---|------------------------|
| EDGEWORTH FAMILY TRUST, |) | |
| |) | |
| Plaintiff, |) | CASE NO. A-16-738444-C |
| |) | A-18-767242-C |
| vs. |) | DEPT NO. X |
| |) | |
| LANE PLUMBING, L.L.C., |) | TRANSCRIPT OF |
| |) | PROCEEDINGS |
| Defendant. |) | |
| <hr/> | | |
| AND RELATED CASES AND PARTIES |) | |

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 18, 2018

RE: EVIDENTIARY HEARING - EXCERPT

TESTIMONY OF ANGELA EDGEWORTH ONLY

APPEARANCES:

| | |
|-------------------|-----------------------------|
| FOR DANIEL SIMON: | JAMES R. CHRISTENSEN, ESQ. |
| | PETER S. CHRISTIANSEN, ESQ. |

| | |
|----------------------|------------------------|
| FOR EDGEWORTH TRUST: | ROBERT D. VANNAH, ESQ. |
| | JOHN B. GREENE, ESQ. |

RECORDED BY: VICTORIA BOYD, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 A Yes.

2 Q Okay. So if you're trying to get punitive damages
3 from a husband individually, you're trying to get the family's
4 money; right?

5 MR. GREENE: Same objection.

6 THE COURT: And, Mr. Christiansen, the lawsuit is
7 against Danny Simon as an individual and the law office of
8 Danny Simon. So that's who they sued.

9 BY MR. CHRISTIANSEN:

10 Q You made an intentional choice to sue him as an
11 individual as opposed to just his law office, fair?

12 A Fair.

13 Q That is an effort to get his individual money;
14 correct? His personal money as opposed to like some insurance
15 for his law practice?

16 A Fair.

17 Q And you wanted money to punish him for stealing your
18 money, converting it; correct?

19 A Yes.

20 Q And he hadn't even cashed the check yet; correct?

21 A No.

22 Q All right. He couldn't cash a check because
23 Mr. Vannah and him had to make an agreement. Mr. Vannah I
24 figured out how to do it I think at a bank, right, how to do
25 like a joint --

EXHIBIT 4

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

AA00658

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

6 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,
7 August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in
8 those invoices totaled \$486,453.09. There were hundreds of entries in these invoices. The hourly
9 rate that SIMON billed us in all of his invoices was at \$550 per hour. I paid the invoices in full to
10 SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of
11 approximately \$72,000. However, SIMON withdrew the invoice and failed to resubmit the
12 invoice to us, despite an email request from me to do so. I don't know whether SIMON ever
13 disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those
14 fees and costs to the mandated computation of damages. I do know, however, that when SIMON
15 produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018,
16 for an additional \$692,120 in fees, his hourly rate for all of his work was billed out at our agreed
17 to rate of \$550.
18

19 9. From the beginning of his representation of us, SIMON was aware that I was
20 required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also
21 aware that these loans accrued interest. It's not something for SIMON to gloat over or question
22 my business sense about, as I was doing what I had to do to with the options available to me. On
23 that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.
24

25 10. Plus, SIMON didn't express an interest in taking what amounted to a property
26 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
27 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
28

AA00659

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

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5 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the
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24 invoices submitted to us or detailed work performed. The proposed fees and costs were in
25 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the
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21 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
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1 19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific
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21 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
22 time that he'd never previously produced to us and that never saw the light of day in the
23 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was
24 nothing short of stealing what was ours.
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26 21. When SIMON refused to release the full amount of the settlement proceeds to us
27 without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable
28 alternative available to us was to file a complaint for damages against SIMON.

AA00663

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

5 23. In Motions filed in another matter, SIMON makes light of the facts that we haven't
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9 SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION
10 were, for all intents and purposes, resolved. Since we've already paid him for this work to
11 resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

12 24. Please understand that we've paid SIMON in full every penny of every invoice
13 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.
14 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one
15 ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused
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17 LITIGATION.
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19 25. I also feel that it's remarkable and so wrong that an attorney can agree to receive
20 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period
21 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless
22 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.
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25 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with
26 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to
27 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false
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AA00664

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

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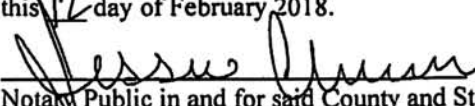
1 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
2 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
3 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
4 him to not send anything like that again. Simon claimed he did not intend the meaning
5 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
6 damage our reputation and trying to smear our names with accusations that are impossible to
7 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
8 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
9 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
10 period. In short, we never fired SIMON, though we asked him to communicate to us through an
11 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
12 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
13 LITIGATION.
14

15 27. I ask this Court to deny SIMON'S Motion and give us the right to present our
16 claims against SIMON before a jury.
17

18 FURTHER AFFIANT SAYETH NAUGHT.

19 
20 BRIAN EDGEWORTH

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

23 
24 Notary Public in and for said County and State

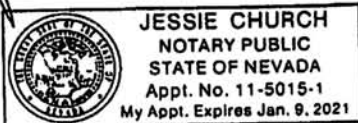


EXHIBIT 5

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

1 was ever brought up at that time, let alone ever agreed to.

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

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

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

24 10. Plus, SIMON didn't express an interest in taking what amounted to a property
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1 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
2 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
3 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
4 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
5 of loss in the LITIGATION was gone.

6 11. Please understand that I was incredibly involved in this litigation in every respect.
7 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the
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8 to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid
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17 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars
18 from me. I emphasized that SIMON'S accusation was without substance and there was nothing
19 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the
20 paperwork for another background check by USA Volleyball even though I have no coaching or
21 any contact with any of the athletes for the club. My involvement is limited to sitting on the
22 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two
23 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.
24 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit
25
26
27
28

1 from the charity are minors, an accusation of this severity. from someone he assumed I was
2 friends with and further from my own attorney could not be ignored. While I was embarrassed
3 and furious that someone who was actively retained as my attorney and was billing me would
4 attempt to damage my reputation at a charity my wife and I founded and have poured millions of
5 dollars into. I politely sent SIMON an email on December 5, 2017, telling him that I had not
6 received his voicemail he referenced in an email and directed SIMON to call John Greene if he
7 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
8 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
9 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
10 him to not send anything like that again. Simon claimed he did not intend the meaning
11 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
12 damage our reputation and trying to smear our names with accusations that are impossible to
13 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
14 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
15 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
16 period. In short, we never fired SIMON, though we asked him to communicate to us through an
17 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
18 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
19 LITIGATION.

22 27. We did not cause the Complaint or the Amended Complaint to be filed against
23 SIMON or his business entities to prevent him from participating in any public forum. We also
24 didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid
25 under the CONTRACT.

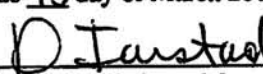
27 28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to
28

1 present our claims against SIMON before a jury.

2 FURTHER AFFIANT SAYETH NAUGHT.

3 
4 BRIAN EDGEWORTH

5 Subscribed and Sworn to before me
6 this 15 day of March 2018, by BRIAN EDGEWORTH.

7 
8 Notary Public in and for said County and State

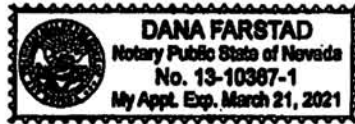


EXHIBIT 6

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 MONDAY, AUGUST 27, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 A Correct. I did expect him to finish what he was paid for.
2 Q But I thought, sir, you were paying him an hourly rate.
3 A Correct.
4 Q So he was supposed to work those hours for free?
5 A No.
6 Q Sir, you put three different times he was paid in full in
7 September of 2017.
8 A He was paid in full for every bill he submitted, correct.
9 Q But you expected him to finish the job while you were suing
10 him?
11 A Yes.
12 Q For free?
13 A No.
14 Q Okay. When -- you're going to pay him?
15 A If he submitted a bill, correct.
16 Q See, that's what I'm trying to figure out, Mr. Edgeworth.
17 What was this agreement you think you had with Mr. Simon? Because
18 what you put in your affidavits, all of them, is that Mr. Simon was paid
19 for the hours he captured and put in his will. Captured is my word, not
20 yours. Right?
21 A Yes, he was paid for all his time.
22 Q But you know darn good and well and have from the outset
23 of talking to your friend, Danny Simon, who to quote you was going to
24 do it as a favor, that he wasn't putting all his time in those bills. You
25 know that?

1 A No.

2 Q Sir, you just told the Court Danny took the case as a favor.

3 Do you remember that?

4 A Yeah, and a week later, he started billing me.

5 Q And you -- a week later, he started billing you?

6 A Yeah. On June 10th, when it became clear that he had to file

7 a lawsuit, because they weren't going to agree, he phoned me and told

8 me he was going to incur a bunch of costs and that he would need to

9 start billing me \$550 an hour, which was his board approved rate, and I

10 would get it back when I won from the Lange parties and the 550 was

11 based on his experience in litigation and everything else and was

12 approved by judges.

13 Q So now that conversation took place June the 10th. Is that

14 what your testimony is?

15 A It always took place June the 10th.

16 Q No. In all three of your affidavits, it took place at the outset

17 of your retention, which was May the 27th. We've already determined

18 that.

19 A The outset --

20 Q Sir -- sir --

21 A -- of the case.

22 Q -- did you put the --

23 MR. GREENE: May he answer the question, Your Honor? He

24 just cuts him off.

25 MR. CHRISTIANSEN: It's leading, and it's permissible.

AA00960

1 THE COURT: Okay. Mr. Christiansen, I want to know what
2 the answer to this question is, so, sir, answer the question.

3 THE WITNESS: Danny met with me at the 28th at Starbucks
4 and took the case. He said --

5 THE COURT: 28th of May?

6 THE WITNESS: 28th of May 2016. I emailed him on the 27th
7 of May 2016, to see if he could help me out with this thing, because
8 everyone said it's a slam-dunk. They have to pay. They're all liable.
9 There's a contract, everything else. They're just yanking you around. I
10 reached out to him. He agreed to meet with me. We met at Starbucks. I
11 gave him a summary of all the entities involved and who's who, et
12 cetera. We talked about it.

13 He said that he would write a few letters, which is why when
14 you asked me when was he retained, he sent letters to these other
15 people who was Kinsale at the time, Viking, someone else, saying that I
16 had retained him. That's what the letters said. They were like retention
17 letters. Then they blew him off back and forth a little bit. Around, I
18 believe it was the 9th of June, he said they aren't going to settle. They
19 aren't going to do it. We need to file a lawsuit against them. This is
20 going to start costing me some money.

21 And he gave me the whole pitch, and I agreed. I said I
22 accept. That's fine. And on the Tuesday -- that's on a Friday. On the
23 Tuesday, he filed a lawsuit on June 14th against these entities. It's as
24 simple as that. That should clarify it.

25 Q Okay. Did I allow you to complete that answer?

1 A I believe so.

2 Q Okay. So, it is true that on May the 27th or the 28th at
3 Starbucks, Danny never told you his fee was 550 an hour?

4 A No.

5 Q No, he did or no he didn't?

6 A I'm sorry. I'm getting flipped with the way you asked the
7 question.

8 Q Okay.

9 A No, he never told me that date that his fee -- of May 27th or
10 28th, that his fee was 550 an hour.

11 Q Nor did he ever tell you his associate's fee was 275 an hour?

12 A Correct.

13 Q And sir, you didn't get a bill from an associate until 14
14 months after Mr. Simon was retained by you according to your
15 affidavits. Is that fair?

16 A Likely. I'd need to review the bills to be positive, but likely.

17 Q Okay. You're a smart guy, right? Harvard MBA?

18 A I assume so.

19 Q Got lots of lawyers, right?

20 A What do you mean, lots of lawyers?

21 Q You've hired -- for -- I'll give you a simple example. You
22 hired a lawyer as an expert in this -- in the underlying case, correct?

23 A Under the advice of my lawyer, yes, I did.

24 Q All right. You hire lawyers. I mean, you have businesses, I
25 think in China, correct?

1 A Yes.

2 Q All right. You've dealt with lawyers in your life, correct?

3 A Yes, I have.

4 Q In the underlying case, you hired a guy named Crane

5 Pomerantz, former United States Attorney?

6 A Correct.

7 Q To opine about the conduct of one of the defendants, fair?

8 A I think the scope was broader, but correct, he was hired.

9 Q And can we agree that Mr. Simon never presented you an

10 hourly retainer fee agreement?

11 A No, he never presented me one.

12 Q And you know what those look like, right?

13 A Somewhat, yes. They look --

14 Q I'll show you --

15 A -- different.

16 Q -- Exhibit 62 and that's your signature, Mr. Pomerantz'

17 signature. Crane works over at Sklar Williams. Dated September 6,

18 2017. Fair?

19 A Fair.

20 Q It's an hourly retainer, where it talks about you having to

21 advance costs, right?

22 A I don't think I advanced Crane costs. He bills me for them in

23 arrears.

24 Q Monthly?

25 A I don't think he billed monthly, either. He didn't send me the

AA00963

1 bills, he sent them to Simon.

2 Q Generally monthly? See where I've got my finger?

3 A Maybe they wrote down their agreement. I don't know if
4 they billed monthly or not. You could find out, because it would be in
5 the case file.

6 Q When you're late, you have to pay him interest?

7 A Okay.

8 Q Nothing like this was ever presented to you by Mr. Simon,
9 fair?

10 A Nothing like that was ever presented to me by Mr. Simon.

11 Q And other than yourself and this June phone call, which by
12 the way, in any of the three affidavits you signed, do you talk about a
13 June 10th phone call, where Danny told you his rate was 550 an hour?

14 A I don't know.

15 Q What do you mean you don't know?

16 A I don't think so.

17 Q I'm sorry?

18 A I didn't reread these before the case, sir. I'd be more than
19 happy to read them now and tell you positively. I don't think so.

20 Q You don't think so. So, that's new testimony here mid-
21 August\ 2018, if it's not in your affidavits.

22 A Okay.

23 Q Correct?

24 A Correct.

25 Q Okay. Because --

EXHIBIT 7



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
TUESDAY, AUGUST 28, 2018

20 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 2**

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

1 MR. CHRISTIANSEN: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. CHRISTIANSEN:

4 Q Mr. Edgeworth, I appreciate you're back on the stand today. I
5 tried to sort of whittle down some of the issues. So, if we can try to
6 move through it, rapidly. Do you remember -- and get at least my
7 examination be complete before the lunch hour.

8 Do you remember yesterday discussing with me the term used in
9 your affidavits about -- the term was the outset?

10 A Yeah. The beginning of the --

11 Q Right. And yesterday you had some challenges with
12 understanding that the outset meant the very beginning, right? You
13 thought it meant June 10th, as opposed to the 27th or 28th of May, right?
14 Now that was your story yesterday on the stand, is that you didn't learn
15 of Mr. Simon's fee at the outset, you learned of it June the 10th?

16 A Correct.

17 Q Correct, okay. And, sir, when did -- can we agree that that
18 version of events, so June the 10th, being the date in which you learned
19 of Mr. Simon's fee of 550 an hour, that that is not contained anywhere,
20 that date, June the 10th, in any of the three affidavits you signed, or the
21 complaint you filed in this case, or I'm sorry, Mr. Vannah's office filed on
22 your behalf?

23 A I believe so.

24 Q That's an accurate statement, correct?

25 A I believe it is.

1 Q And, sir, were you here when Mr. Vannah gave an opening
2 statement on your behalf, yesterday?

3 A Yes.

4 Q And you know that there's been no discovery in this case,
5 nobody's had to sit for depositions, this is our hearing, right? We're just
6 sort of coming into it cold?

7 A Correct.

8 Q Okay. And did you hear -- I went back and listened to it, we
9 had the CD last night, at 11:16 when Mr. Vannah told the Court that at the
10 very first meeting, point blank, you were told Danny Simon's rate was
11 550, and his associate's rate were 275; did you hear him say that?

12 A I'm not sure about that, but I believe you.

13 Q Okay. And that's not your testimony, correct?

14 A No, it's Mr. Vannah's testimony, I guess.

15 Q And he's your lawyer, a very fine lawyer, one of the finest in
16 Southern Nevada, right?

17 A Right.

18 Q And presumably, without telling the contents of the
19 conversation, before he gave an opening statement he'd spoken to you,
20 fair?

21 A Correct.

22 Q And in his presentation he gave a version of events that once
23 I confronted you with the, we'll cross that bridge later email from Mr.
24 Simon you had to alter, correct?

25 A No, I've never altered my story.

AA01111

1 Q You never told that story in any affidavit, that you were told
2 on 6/10, Danny Simon's right, correct?

3 A Correct.

4 Q In fact, yesterday, after being shown that email and
5 confronted with the bills, for the very first time you conceded that you
6 didn't even know what his associates' were for 14 or 15 months, correct?

7 A Correct.

8 Q All right. And June the 10th, in your exhibits I requested for,
9 I think this is exhibit -- let me ask Mr. Greene.

10 [Counsel confer]

11 BY MR. CHRISTIANSEN:

12 Q This is teeny tiny writing Mr. Edgeworth, so I'm going to --
13 your Exhibit 9, and I'm just going to put a page, is like a side-by-side
14 comparison of bills, that looks like somebody must have done in
15 anticipation for this hearing; is that fair?

16 A Yes.

17 Q You did this?

18 A Yes.

19 Q And you compared the bills?

20 A Correct.

21 Q Okay. And did you find a bill on 6/10, for Danny Simon
22 talking to on the phone for this new version of when you learned of his
23 fee? Did he bill you for that phone call?

24 A He didn't put dates on his early bills.

25 Q So that's a no?

1 A I would assume he billed me for it. There's a block billing on
2 that date.

3 Q Right. He -- at your lawyer's request, later submitted a
4 complete bill for all of his time, correct?

5 A I'm not sure what you mean. my lawyer's request.

6 Q You got a bill in December, and I agree with you that for the
7 first half dozen entries Mr. Simon, in May and June, doesn't put dates for
8 things he did; that's what you're telling me, fair?

9 A Fair.

10 Q Okay.

11 A There's no dates. I think -- I don't know how far. You
12 showed me, yesterday, the exhibit.

13 Q It went about two-thirds of that first page, I think, that you
14 pointed out to me. But later on, after you hired Vannah & Vannah, and
15 listened to Vannah -- you know, were getting advice from Vannah &
16 Vannah, maybe you don't know, but a request was made for a bill, and
17 then a final bill came in. Did you get that bill?

18 A We received a final bill with a court filing motion for
19 adjudication, I believe on January 24, I believe.

20 Q Okay. January 24, so you prepped well enough for this
21 hearing to even remember when things were filed, right?

22 A I remember that date, correct.

23 Q But you didn't read any of your affidavits in preparation for
24 testimony today?

25 A No.

1 Q None of them?

2 A No.

3 Q Okay. Did you see in that court filing for the -- and I agree
4 with you, that's what it was, it was a bill involving adjudication of the
5 lien, a bill for June 10th or a phone call, the phone call that you told the,
6 Judge, for the first time in this litigation that you were informed of Mr.
7 Simon's rate?

8 A There's no phone calls going back after a certain date --

9 Q So the answer's --

10 A -- he stopped them.

11 Q -- no?

12 A No.

13 Q Okay. And I went and found an email from Mr. Simon, on
14 that date, it's --

15 MR. CHRISTIANSEN: John, Exhibit 80. Ashley, what's that --

16 MS. FERRELL: 3499.

17 MR. CHRISTIANSEN: 3499. It's too small for me to read.

18 THE COURT: Which Exhibit is it, Mr. Christiansen?

19 MR. CHRISTIANSEN: 80, Your Honor --

20 THE COURT: And this is your 80?

21 MR. CHRISTIANSEN: Yes, ma'am. It's the CD, it's the giant
22 exhibit.

23 THE COURT: Okay.

24 MR. CHRISTIANSEN: With --

25 THE COURT: With all of the emails and --

AA01114

1 MR. CHRISTIANSEN: Yeah. You know --

2 THE COURT: -- that were in the chair yesterday.

3 MR. CHRISTIANSEN: -- all the things that were over there.

4 THE COURT: Okay.

5 BY MR. CHRISTIANSEN:

6 Q And I've forgotten which one you like to look on, Mr.
7 Edgeworth. On the screen in front of you can you see the email I'm
8 talking about?

9 A Yes, I can.

10 Q And again, these emails go backwards. It looks like you are
11 asking Mr. Simon, on June the 10th, questions about United
12 Restorations, and other expenses you're having to incur?

13 A Yes, that's correct.

14 Q All right. And he responds to you on June the 10th. Not sure
15 on fireplace issue, we can talk about it, I'm out of town until Monday?

16 A Correct.

17 Q So he's answering you -- this is a Friday, June the 10th, 2016
18 is a Friday. So, he's answering you from out of town, in response to his
19 friend, who at this time he's doing a favor for?

20 A Correct.

21 Q All right. And, yesterday, do you remember talking about, it
22 might have been my term, I can't remember who used it first, for things
23 being in flux between you and Mr. Simon early on?

24 A What do you mean by that?

25 Q Well, at first he was going to represent you as a favor, you

AA01115

1 told me that?

2 A Correct.

3 Q And then later he was going to charge you?

4 A Correct. Just before the filing of the lawsuit.

5 Q Okay. And I think yesterday I said -- and so at least at that

6 timeframe, things were in flux, and I think you agreed with me?

7 A Up until the Friday call, I'd agree, but then --

8 Q No argument --

9 A -- on Monday the lawsuit --

10 Q -- I'm saying that's what you said.

11 A -- was sent to me, to ask to read it.

12 Q And so, then clearly things would have been set in stone

13 about how you two were going to operate, from that point going

14 forward?

15 A Yes.

16 Q All right. So, when September the 17th of 2017, Exhibit 80,

17 Bate Stamp 173, maybe, is sent from you to Mr. Simon. This is, I don't

18 know, 15, 17 months after he's been your lawyer, let me think? Sixteen

19 months, sorry, my math's not great. Is it fair to say that this email

20 reflects that you don't even know who's paying the experts; are you

21 going to pay them, or is he going to pay them?

22 A No, I'm offering to pay upfront.

23 Q No. No, you didn't. Are you paying these guys, or was I

24 supposed to pay Vollmer [phonetic]. That's the -- I read that, right?

25 A Yeah. He had forward on a bunch of Vollmer bills, and I

1 wanted to know, should I take care of this?

2 Q Right. So, it wasn't set in stone, you didn't know. So that's
3 all I'm pointing out, you didn't know --

4 A Yeah.

5 Q -- correct?

6 A Okay. Correct.

7 Q And that's consistent with Exhibit 80, Bate Stamp 2148,
8 which is just a few days later. Hey, should I pay this, or you?

9 A Correct.

10 Q So it's still not set in stone --

11 A Well, that one there was --

12 Q -- September 17?

13 A That one I had signed a retainer agreement, so I assumed
14 that bills would come to me.

15 Q You were asking, were you not, should I pay this or you?

16 A Correct, of course.

17 Q So, it had not been set in stone. You're asking, you're not
18 telling him I'm paying it, right?

19 A Correct.

20 Q All right. And yesterday there was some discussions about
21 after your being advised by Vannah & Vannah, communications relative
22 to Mr. Simon and Mr. Vannah; do you remember those discussions?

23 A Vaguely.

24 Q And one of them --

25 MR. CHRISTIANSEN: This is Exhibit 53, Mr. Greene.

AA01117

EXHIBIT 8

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

Via Email

December 8, 2022

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

Re: Edgeworth v. Viking and related matters

Dear Ms. Solis-Rainey:

My office has served but not filed a Rule 11 motion regarding the contempt motion recently filed by your office. The contempt motion has been denied by the Court; however, Mr. Simon had to expend fees to respond. The fees incurred were:

| | | |
|---------------------|---|------|
| 11.9.22 | Review motion for OSC/Legal research re: contempt | 1.0 |
| 11.11 – 11.14.22 | Work on contempt opposition, appendix and declaration | 20.0 |
| 11.14.22 | Review reply filed in support of motion for sanctions | .40 |

11.15.22 Prepare for and attend hearing 1.8

11.29.22 Review minutes order re: contempt; prepare order .30

Total: 23.5 hours @ \$400 per hour = \$9,400.00

Please reimburse Mr. Simon for the above fees. If the fees are reimbursed, then the Rule 11 motion will not be filed. Please indicate if you will reimburse the fees incurred by Wednesday, December 14, 2022.

Thank you for your immediate attention to this issue.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

JAMES R. CHRISTENSEN

cc: Client(s)

EXHIBIT 9

MORRIS LAW GROUP

ATTORNEYS AT LAW

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

December 9, 2022

VIA EMAIL

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101

Re: *Edgeworth adv. Simon – Rule 11 Motion, Client File, and Fund Distribution*

Dear Mr. Christensen:

I am in receipt of your letter dated December 8, 2022 stating that you will accept \$9,400 not to file the Rule 11 Motion you served on our firm on November 18, 2022. The fact the Court denied the motion for an OSC is not evidence that our Motion did not reflect a reasonable investigation which would support your Rule 11 motion. Your threatened motion does not show any evidence that the Contempt Motion was baseless or brought without reasonable inquiry. *See Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (A frivolous action is one that is "both baseless and made without a reasonable and competent inquiry."); *see also Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. Adv. Op. 1, 501 P.3d 980 (2022) (recognizing that while "a district court has discretion to award attorney fees as a sanction, there must be evidence supporting the district court's finding that the claim or defense **was unreasonable or brought to harass.**") (emphasis added). Neither standard is applicable here.

Your threatened motion is based on your mistaken interpretation of poorly stated argument in our Reply. On page 5 of our reply in support of the Contempt Motion – under the heading "B. EXPERT EMAIL AND REPORTS" -- we raised the argument as to why documents in the Bates

ROSA SOLIS-RAINEY
DIRECT DIAL: 702/759-8321
EMAIL: RSR@MORRISLAWGROUP.COM

P00761

numbered examples you provided on page 24 of your opposition were withheld. We acknowledged that although we did not have time to trace back the numbers provided on page 24 to the production given the time constraints. However, accepting the accuracy of the Bates-numbers you identified [but that I had not yet verified] for the retainer agreements, we questioned why those would have been withheld under the protective order as there is nothing confidential about them.

Simon's opposition was filed on the eve of the hearing, which I'm not faulting you for. I am simply stating the fact. I spent countless hours reviewing the three productions Simon had made by that point, and I had not seen any retainer agreements. I started to trace the Bates numbers you referenced on page 24 when I realized they appeared to go beyond the range you had produced (which I acknowledge you have since explained was a typo). Given the late hour, I realized tracing the examples would take too long, and doing so was irrelevant to the point of the argument in the paragraph as to why retainer agreements were withheld. The imperfect language was intended to convey *my inability to fully review the examples presented in the opposition on the eve of the hearing*. It was not an *acknowledgement that Simon's production* had not been reviewed. We have spent considerable time reviewing the various productions of the file segments Simon has provided, as I believe is evidenced in some of our prior exchanges that are of record.

In the interest of full disclosure, I do want to disclose a human error that I discovered *after* the hearing that helped me understand why I did not recall the four retainer agreements described in your opposition. After the hearing, I again tried to trace your examples, and realized that they were not on the Microsoft Teams One Drive used for remote review of large files. I then searched for them in the original hard-drive Simon Law delivered on October 11 and realized that for unknown reasons, the content of folders several layers in was not uploaded. My "mistake" was not noticing that omission sooner. It was not due to a lack of reasonable or competent review. On November 16, 2022, I went through the One Drive production folder by folder to upload missing content and ensure this problem does not reoccur.

If you wish to go forward with filing your motion, that is entirely up to you. We will respond accordingly and explain the foregoing to the Court. We will also show how even your latest production confirms that we had in fact not received the complete file by October 11, 2022. The confirmation the recently-produced documents provide add support to our position that obtaining Simon's complete file is necessary.

On another but related subject, I have reviewed your two letters dated December 6, 2022, one regarding the supplemental production, and the other regarding release of the funds in our Trust Account. With respect to the funds, as you are well aware, our firm specifically asked the Court last year to allow us to disburse funds that were undisputed, including the \$284K+ to Simon and the \$1.5M+ to the Edgeworths. *You opposed* that motion and the Court denied it. Though we disagree with that decision, we respect it, and therefore cannot release any funds unless there is mutual agreement as the Court said was necessary under the "bilateral agreement" argument you fronted and she accepted. Our client remains willing to disburse the undisputed portion to Simon (\$284K+) provided he agrees to release the undisputed \$1.5M+ to them. This would leave only the \$200K that reasonably remains in dispute in the Trust account for future distribution when we finally get a final order. If that is acceptable to you, please let me know and we can have the checks cut and delivered.

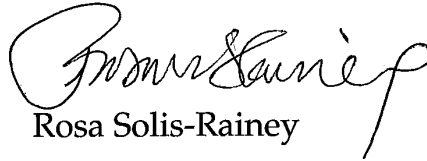
With respect to the supplemental production you provided on December 6, 2022. First of all, thank you for producing it. I trust you've also reviewed it and see that it confirms that the exchanges and drafts concerning the Viking settlement that we have requested for years were always part of Mr. Simon's file. The production also demonstrates the manner in which we've maintained the email portion of the file should

James Christensen
Page 4

have been produced, and I appreciate Mr. Simon printing this portion of the file with the corresponding attachments.

If you have any questions, please do not hesitate to reach out.

Sincerely,



Rosa Solis-Rainey

RSR:cjs

EXHIBIT 10

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

February 27, 2023

Via E-Mail

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

Re: Edgeworth v. Viking and related matters

Dear Ms. Solis-Rainey:

Thank you for your letter of February 17, 2023.

1. Regarding the funds:

My client rejects the spin and rhetoric of your letter. For example, Simon's proposal is obviously new and made well after the original agreement with Vannah. Your reference to the earlier agreement is meaningless in the context of the Simon proposal.

\$284,982.50 has been due Simon for some time. By retaining the funds in contravention of Simon's legal entitlement, a conversion has taken place. Simon has incurred and continues to incur damages. *Release the \$284,982.50 to Simon without condition immediately.*

We agree that the \$200,000.00 due Simon for *quantum meruit* is still legally disputed. However, as a practical matter, Simon's proposal makes sense. Nonetheless, as determined by the Nevada Supreme Court, without an agreement, the \$200,000.00 can be retained in trust.

The Nevada Supreme Court determined that it was proper for the \$1.5M remainder to remain in trust until final resolution of the lien. The ruling of the high court on the Edgeworths' writ for early release of funds made it clear that retention of the funds was appropriate. The \$1.5M is still disputed and Simon is entitled to Writ relief upon the final order from Judge Jones. Your use of the term "undisputed" to refer to the \$1.5M is not accurate and ignores the Supreme Court's ruling and Simon's continuing ability to seek a higher quantum meruit award. Nonetheless, my client is confident in the ability to collect any sums found to be due from the Edgeworths. Accordingly, the remainder in trust (approximately \$1.5M) may be released without any admission or condition.

2. Regarding the ongoing document requests:

For the enumerated items on the December 21 letter:

1. The cost print out is just that. It was a snap shot of the costs listed on the case expense summary at the time it was made. If your client did not retain the copy, then it is no longer available.
2. The back-up for the correct amount of costs was provided in the lien adjudication hearing. (As you are aware, the amount of costs claimed was corrected during the lien adjudication.) You have the information.
3. As reflected on LODS 14786, the mediator proposal was sent to Brian Edgeworth on November 11, 2017, at 10:05 a.m.
- 4&5. As reflected on LODS 24686 & 687, both invoices were sent directly to Brian Edgeworth.

6V. Because he had been fired, Simon did not retain a fully executed Viking settlement agreement. An agreement lacking Scott Martorano's signature can be found at LODS 38134-38140.

6L. Because he had been fired, Simon did not retain a fully executed Lange settlement agreement. An agreement lacking Lange's signature can be found at LODS 38107-38122.

I looked but did not find an email from you or your office dated November 16.

I reviewed your October letter. I noted the letter was sent before your motion for sanctions was filed and denied, and before your letter of December 9, 2022. In the course of events, I thought it had become clear that your office had not reviewed the materials already provided by Simon. Your seeming concession of that point on December 9 was why the Simon motion for sanctions was not filed.

I looked at the first 2 emails listed on the October letter, LODS 14716 & 14717. Both are emails from Simon to Brian Edgeworth. *Thus, on their face the emails establish that you already have the emails and the attachments.* Further, the referenced and attached Parker letter is also separately found at LODS 464-465. I stopped my review at that point.

Simon is happy to help, if there is a legitimate question about a missing item. Please double check your future inquiries.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

JAMES R. CHRISTENSEN

cc: Client(s)

EXHIBIT 11

Daniel Simon

From: Daniel Simon
Sent: Saturday, November 11, 2017 10:05 AM
To: Brian Edgeworth
Subject: Fwd: Edgeworth v Viking and Lange Plumbint
Attachments: mediator proposal 11-10-17.pdf; ATT00001.htm

Begin forwarded message:

From: "Floyd A. Hale" <fhale@floydhale.com>
Date: November 10, 2017 at 3:39:45 PM PST
To: <dan@danielsimonlaw.com>, <janet.pancoast@zurichna.com>, <mccconnell@mmrs-law.com>, <robinson@mmrs-law.com>
Subject: Edgeworth v Viking and Lange Plumbint

Counsel: attached is my, time-limited, mediator proposal. Floyd Hale

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

FIFTH AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE
LIEN

26 **FIFTH 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 \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 34. On March 30, 2021, the Edgeworths filed a Motion for Reconsideration Regarding
3 Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for
4 Attorney's Fees and Costs and Second Amended Decision and order on Motion to Adjudicate Lien.

5 35. On April 13, 2021, the Nevada Supreme Court issued a Remittitur ordering that the
6 judgment of the district court was AFFIRMED in part and VACATED in part AND REMANDING
7 the matter for proceedings consistent with the order.

8 36. Also on April 13, 2021, Daniel Simon filed an Opposition to Motion to Reconsider
9 and Request for Sanctions; Countermotion to Adjudicate Lien on Remand.

10 37. On April 15, 2021, the Court issued a Minute Order denying the Defendant's Motion
11 for Reconsideration Regarding Court's Amended Decision and Order Granting in Part and Denying
12 in Part Simon's Motion for Attorney's Fees and Costs and Second Amended Decision and Order on
13 Motion to Adjudicate Lien. The Court also denied the Request for Sanctions. The Court granted the
14 Countermotion to Adjudicate Lien on Remand.

15 38. On April 28, 2021, the Court filed a Third Amended Decision and Order on Motion
16 to Adjudicate Lien, in accordance with the Supreme Court's Remand Order from April 13, 2021 and
17 in response to the Court's order of April 15, 2021,

18 39. On May 3, 2021, the Edgeworths filed a Renewed Motion for Reconsideration of
19 Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for
20 Attorney's Fees and Costs; and Motion for Reconsideration of Third Amended Decision and Order
21 on Motion to Adjudicate Lien.

22 40. On May 13, 2021, the Edgeworths filed a Motion for Order Releasing Client funds
23 and Requiring Production of Complete Client File.

24 41. Also on May 13, 2021, Daniel Simon filed an Opposition to the Second Motion to
25 Reconsider; Countermotion to Adjudicate Lien on Remand.

26 42. On May 20, 2021, Daniel Simon filed an Opposition to Edgeworth's Motion for
27 Order Releasing Client Funds and Requiring Production of File.

28

1 43. Also on May 20, 2021, the Edgeworths filed a Reply ISO Plaintiff's Renewed Motion
2 for Reconsideration of Amended Decision and Order Granting in Part Simon's Motion for
3 Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order
4 on Motion to Adjudicate Lien.

5 44. On May 21, 2021, the Edgeworths filed a Reply in Support of Motion for Order
6 Releasing Client Funds and Requiring the Production of Complete Client File.

7 45. On May 24, 2021, the Court issued a Second Amended Decision and Order Granting
8 in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs.

9 46. On May 27, 2021, the Court held a hearing on the Motion to Reconsider and
10 Countermotion to Adjudicate Lien on Remand.

11 47. Following the hearing, on June 3, 2021, the Court issued a minute order denying
12 Plaintiff's Motion for Reconsideration of Third Amended Decision and Order on Motion to
13 Adjudicate Lien. The Court granted in part, and denied in part, Plaintiff's Renewed Motion for
14 Reconsideration of Third Amended Decision and Order Granting in Part and Denying in Part
15 Simon's Motion for Attorney's Fees and Costs. The court also denied the Edgeworth's Motion for
16 Order Releasing Client Funds and Requiring Production of Complete File.

17 48. On June 17, 2021, the Court issued a Decision and Order Denying Plaintiff's
18 Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to
19 Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand.

20 49. On July 1, 2021, the Edgeworths filed a Motion for Reconsideration of Order on
21 Motion for Order Releasing Client Funds and Requiring the Production of Complete File and
22 Motion to Stay Execution of Judgments Pending Appeal.

23 50. On July 15, 2021, Daniel Simon filed an Opposition to Third Motion to Reconsider.

24 51. On July 17, 2021, the Edgeworths filed a Reply in Support of Edgeworth's Motion
25 for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the
26 Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal.

27 52. On July 29, 2021, the Court issued a minute order denying Edgeworth's Motion for
28

1 Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring Production of
2 Complete Client File and Motion to Stay Execution.

3 53. On September 16, 2022, the Supreme Court Issued an Order Vacating Judgment and
4 Remanding the case to this Court for proceedings consistent with the order.

5 54. On September 27, 2022, the Court issued its Fourth Amended Decision and Order on
6 Motion to Adjudicate Lien.

7 55. On October 16, 2022, the Edgeworths filed a Verified Application to Retax Costs on
8 Appeal and a Motion to Exonerate Cost Bond.

9 56. On October 10, 2022, Daniel Simon filed a Motion to Retax Costs.

10 57. On October 18, 2022, Daniel Simon filed a Notice of Non Opposition to the
11 Edgeworth's Motion to Exonerate Cost Bond.

12 58. On October 19, 2022, Daniel Simon filed an Opposition to Edgeworth's Verified
13 Application to Tax Costs on Appeal.

14 59. On October 28, 2022, the Edgeworths filed an Opposition to Simon's Motion to
15 Retax Costs on Appeal.

16 60. On October 31, 2022, the Nevada Supreme Court issued an Order Denying the
17 Edgeworth's request for Rehearing.

18 61. On November 1, 2022, Daniel Simon filed a Reply to the Motion to Retax Costs.

19 62. On November 4, 2022, the Edgeworths filed a Motion for Order to Show Cause Why
20 Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held in Contempt and Ex Parte
21 Application to Consider Same on OST.

22 63. On November 8, 2022, the Court held a hearing on Daniel Simon's Motion to Retax
23 and the matter was taken under advisement.

24 64. On November 14, 2022, Daniel Simon filed an Opposition to Edgeworth's Motion for
25 Order to Show Cause on OST.

26 65. Also on November 14, 2022, the Edgeworth's filed a Reply ISO Motion for Order to
27 Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held In
28

1 Contempt.

2 66. On November 16, 2022, the Nevada Supreme Court filed an Order Denying Daniel
3 Simon's Petition for Writ of Prohibition or Mandamus.

4 67. On November 28, 2022 the Nevada Supreme Court issued a Remittitur regarding its
5 ruling from September 16, 2022.

6 68. On November 29, 2022, the Court issued a minute order denying in part and granting
7 in part, the Edgeworth's Verified Application to Tax Costs on Appeal and Simon's Motion to Retax
8 Costs. The Court also granted the Edgeworth's Motion to Exonerate Cost Bond and denied the
9 Edgeworth's Motion for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S.
10 Simon Should Not Be Held in Contempt.

11 69. On December 20, 2022, the Nevada Supreme Court issued an Order Denying Daniel
12 Simon's request for Rehearing and the Remittitur issued on January 17, 2023.

13 70. On February 9, 2023, Daniel Simon filed a Motion for Adjudication Following
14 Remand.

15 71. On February 23, 2023, the Edgeworths filed a Response to Motion for Adjudication
16 Following Remand.

17 72. On March 14, 2023, Daniel Simon filed a Reply in Support of Motion for
18 Adjudication Following Remand.

19 73. On March 21, 2023, the Court held a hearing on the Motion for Adjudication
20 Following Remand.

21 74. The Court finds that this Court lacked jurisdiction to issue the Fourth Amended
22 Decision and Order on Motion to Adjudicate Lien on September 27, 2022 as the Supreme Court
23 Remittitur had not issued.

24 75. As such, the Motion for Adjudication Following Remand is GRANTED IN PART, as
25 the Court finds that there was ample foundation for the quantum meruit award of \$200,000.00. As
26 such, this Order follows:

1
2 **CONCLUSION OF LAW**

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

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

8 NRS 18.015(1)(a) states:

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

10 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
11 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.

12 Nev. Rev. Stat. 18.015.

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

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

25
26 ***Fee Agreement***

27 It is undisputed that no express written fee agreement was formed. The Court finds that there
28

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

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

13
14 "We never really had a structured discussion about how this might be done. I
15 am more than happy to keep paying hourly but if we are going for punitive we
16 should probably explore a hybrid of hourly on the claim and then some other
17 structure that incents both of us to win an go after the appeal that these
18 scumbags will file etc. Obviously that could not have been done earlier since
19 who would have thought this case would meet the hurdle of punitive at the
20 start. I could also swing hourly for the whole case (unless I am off what this
21 is going to cost). I would likely borrow another \$450K from Margaret in 250
22 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?"

23 (Def. Exhibit 27).

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

26 The Court finds that an implied fee agreement was formed between the parties on December
27 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
28

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

8 9 *Constructive Discharge*

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

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

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

24 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
25 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
26 agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was
27 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
28 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 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def. Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly identified as the firm that solely advised the clients about the settlement. The actual language in the settlement agreement, for the Viking claims, states:

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.

Id.

Also, Simon was not present for the signing of these settlement documents and never explained any

1 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
2 Vannah and received them back with the signatures of the Edgeworths.

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

19 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
20 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
21 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
22 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
23 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
24 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
25 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
26 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
27 doesn't seem in his best interests." (Def. Exhibit 53).

1 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
2 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
3 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
4 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
5 was attached to the letter), and that Simon continued to work on the case after the November 29,
6 2017 date. The court further recognizes that it is always a client's decision of whether or not to
7 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
8 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
9 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
10 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
11 with him, making it impossible to advise them on pending legal issues, such as the settlements with
12 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
13 Simon from effectively representing the clients. The Court finds that Danny Simon was
14 constructively discharged by the Edgeworths on November 29, 2017.

15
16 **Adjudication of the Lien and Determination of the Law Office Fee**

17 NRS 18.015 states:

- 18 1. An attorney at law shall have a lien:
- 19 (a) Upon any claim, demand or cause of action, including any claim for
20 unliquidated damages, which has been placed in the attorney's hands by a
21 client for suit or collection, or upon which a suit or other action has been
22 instituted.
- 23 (b) In any civil action, upon any file or other property properly left in the
24 possession of the attorney by a client.
- 25 2. A lien pursuant to subsection 1 is for the amount of any fee which has
26 been agreed upon by the attorney and client. In the absence of an agreement,
27 the lien is for a reasonable fee for the services which the attorney has rendered
28 for the client.
3. An attorney perfects a lien described in subsection 1 by serving notice
in writing, in person or by certified mail, return receipt requested, upon his or
her client and, if applicable, upon the party against whom the client has a
cause of action, claiming the lien and stating the amount of the lien.
4. A lien pursuant to:

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

3 (b) Paragraph (b) of subsection 1 attaches to any file or other property
4 properly left in the possession of the attorney by his or her client, including,
5 without limitation, copies of the attorney's file if the original documents
6 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.

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

9 6. On motion filed by an attorney having a lien under this section, the
10 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.

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

13 Nev. Rev. Stat. 18.015.

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

21 *Implied Contract*

22
23 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
24 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
25 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
26 created when invoices were sent to the Edgeworths, and they paid the invoices.

27 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
28

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

9 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
10 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
11 paid in full and there was never any indication given that anything less than all the fees had been
12 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
13 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
14 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
15 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
16 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
17 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
18 Office retained the payments, indicating an implied contract was formed between the parties. The
19 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
20 date they were constructively discharged, November 29, 2017.

21
22 ***Amount of Fees Owed Under Implied Contract***

23 The Edgeworths were billed, and paid for services through September 19, 2017. There is
24 some testimony that an invoice was requested for services after that date, but there is no evidence
25 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
26 fees was formed, the Court must now determine what amount of fees and costs are owed from
27 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
28

1 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
2 billings, the attached lien, and all other evidence provided regarding the services provided during
3 this time.

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

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

22 Simon argues that he has no billing software in his office and that he has never billed a client
23 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
24 in this case, were billed hourly because the Lange contract had a provision for attorney’s fees;
25 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
26 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
27 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
28

1 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
2 emails or calls, understanding that those items may be billed separately; but again the evidence does
3 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
4 This argument does not persuade the court of the accuracy of the “super bill”.

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

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

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

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

25
26
27 ²There are no billing amounts from December 2 to December 4, 2016.

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

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

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

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

15 *Costs Owed*

16
17 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
18 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
19 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
20 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
21 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
22 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
23 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

24
25
26 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

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

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

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

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

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

1 after the constructive discharge.

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

20
21 *1. Quality of the Advocate*

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

1 work product and results are exceptional.

2
3 2. The Character of the Work to be Done

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

12
13 3. The Work Actually Performed

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

22
23 4. The Result Obtained

24 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
25 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
26 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
27 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
28

1 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
2 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
3 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
4 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
5 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
6 were made more than whole with the settlement with the Viking entities.

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

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

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

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

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

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

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

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

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

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

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

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

1 by paragraph (d) or other law. A contingent fee agreement shall be in writing,
2 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:

3 (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
4 settlement, trial or appeal;

5 (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;

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

7 (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
8 costs as required by law; and

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

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

12
13 NRCP 1.5.

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

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

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

1 continued to work on the Viking settlement until it was finalized in December of 2017, and the
2 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
3 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
4 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
5 himself were continuing, even after the constructive discharge. Though the previous agreement
6 between Simon and the Edgeworths was for \$550 per hour, the Court must take into consideration
7 that the Edgeworths' fee agreement with Vannah & Vannah was for \$925 per hour.

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

13 14 CONCLUSION

15 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
16 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
17 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
18 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
19 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
20 Simon as their attorney, when they ceased following his advice and refused to communicate with
21 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
22 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
23 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
24 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
25 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
26 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
27 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
28

1 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
2 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.
3

4 **ORDER**

5 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
6 of the Law Office of Daniel S. Simon was previously granted. The Court further finds that it lacked
7 jurisdiction to issue the Fourth Amended Decision and Order on Motion to Adjudicate Lien on
8 September 27, 2022, since the Supreme Court Remittitur had not issued. The Court further finds that
9 the Motion for Adjudication Following Remand is granted in part, as the Court finds that there was
10 ample foundation for the quantum meruit award of \$200,000.00. As such, the reasonable fee due to
11 the Law Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

Dated this 28th day of March, 2023

12 IT IS SO ORDERED.

13
14
15 
DISTRICT COURT JUDGE

16
17 **D39 E59 9E22 C62D**
18 **Tierra Jones**
19 **District Court Judge**
20
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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: 3/28/2023

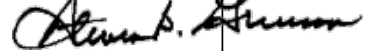
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| 17 Whitney Barrett | wbarrett@christiansenlaw.com |
| 18 Daniel Simon . | lawyers@simonlawlv.com |
| 19 Rhonda Onorato . | ronorato@rlattorneys.com |
| 20 Kendelee Leascher Works | kworks@christiansenlaw.com |
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| 22 | Claudia Morrill | cam@morrislawgroup.com |
| 23 | | |

24 If indicated below, a copy of the above mentioned filings were also served by mail
25 via United States Postal Service, postage prepaid, to the parties listed below at their last
26 known addresses on 3/29/2023

| | | |
|----|-----------------|------------------------------|
| 26 | Theodore Parker | 2460 Professional CT STE 200 |
| 27 | | Las Vegas, NV, 89128 |
| 28 | | |

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Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF FIFTH
AMENDED DECISION AND
ORDER ON MOTION TO
ADJUDICATE LIEN**

Date of Hearing: N/A
Time of Hearing: N/A

1 PLEASE TAKE NOTICE that a Fifth Amended Decision and Order on
2 Motion to Adjudicate Lien was entered on the docket on the 28th day of
3 March, 2023. A true and correct file-stamped copy of the decision and
4 order is attached hereto.

5
6 DATED this 24th day of April 2023.

7 /s/ James R. Christensen

8 James R. Christensen Esq.
9 Nevada Bar No. 3861
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12 Las Vegas NV 89101
13 (702) 272-0406
14 (702) 272-0415 fax
15 jim@jchristensenlaw.com
16 Attorney for LAW OFFICE OF
17 DANIEL S. SIMON, P.C.

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25
CERTIFICATE OF SERVICE

26 I CERTIFY SERVICE of NOTICE OF ENTRY OF FIFTH AMENDED
27 DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN was made
28 by electronic service (via Odyssey) this 24th day of April, 2023, to all parties
29 currently shown on the Court's E-Service List.

30 /s/ Dawn Christensen

31 an employee of James R. Christensen
32
33
34
35

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

16 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.

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

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

23 Defendants.

24 **FIFTH AMENDED DECISION AND ORDER ON MOTION TO**
25 **ADJUDICATE LIEN**

26 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
27 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
28 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 \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 34. On March 30, 2021, the Edgeworths filed a Motion for Reconsideration Regarding
3 Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for
4 Attorney's Fees and Costs and Second Amended Decision and order on Motion to Adjudicate Lien.

5 35. On April 13, 2021, the Nevada Supreme Court issued a Remittitur ordering that the
6 judgment of the district court was AFFIRMED in part and VACATED in part AND REMANDING
7 the matter for proceedings consistent with the order.

8 36. Also on April 13, 2021, Daniel Simon filed an Opposition to Motion to Reconsider
9 and Request for Sanctions; Countermotion to Adjudicate Lien on Remand.

10 37. On April 15, 2021, the Court issued a Minute Order denying the Defendant's Motion
11 for Reconsideration Regarding Court's Amended Decision and Order Granting in Part and Denying
12 in Part Simon's Motion for Attorney's Fees and Costs and Second Amended Decision and Order on
13 Motion to Adjudicate Lien. The Court also denied the Request for Sanctions. The Court granted the
14 Countermotion to Adjudicate Lien on Remand.

15 38. On April 28, 2021, the Court filed a Third Amended Decision and Order on Motion
16 to Adjudicate Lien, in accordance with the Supreme Court's Remand Order from April 13, 2021 and
17 in response to the Court's order of April 15, 2021,

18 39. On May 3, 2021, the Edgeworths filed a Renewed Motion for Reconsideration of
19 Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for
20 Attorney's Fees and Costs; and Motion for Reconsideration of Third Amended Decision and Order
21 on Motion to Adjudicate Lien.

22 40. On May 13, 2021, the Edgeworths filed a Motion for Order Releasing Client funds
23 and Requiring Production of Complete Client File.

24 41. Also on May 13, 2021, Daniel Simon filed an Opposition to the Second Motion to
25 Reconsider; Countermotion to Adjudicate Lien on Remand.

26 42. On May 20, 2021, Daniel Simon filed an Opposition to Edgeworth's Motion for
27 Order Releasing Client Funds and Requiring Production of File.

28

1 43. Also on May 20, 2021, the Edgeworths filed a Reply ISO Plaintiff's Renewed Motion
2 for Reconsideration of Amended Decision and Order Granting in Part Simon's Motion for
3 Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order
4 on Motion to Adjudicate Lien.

5 44. On May 21, 2021, the Edgeworths filed a Reply in Support of Motion for Order
6 Releasing Client Funds and Requiring the Production of Complete Client File.

7 45. On May 24, 2021, the Court issued a Second Amended Decision and Order Granting
8 in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs.

9 46. On May 27, 2021, the Court held a hearing on the Motion to Reconsider and
10 Countermotion to Adjudicate Lien on Remand.

11 47. Following the hearing, on June 3, 2021, the Court issued a minute order denying
12 Plaintiff's Motion for Reconsideration of Third Amended Decision and Order on Motion to
13 Adjudicate Lien. The Court granted in part, and denied in part, Plaintiff's Renewed Motion for
14 Reconsideration of Third Amended Decision and Order Granting in Part and Denying in Part
15 Simon's Motion for Attorney's Fees and Costs. The court also denied the Edgeworth's Motion for
16 Order Releasing Client Funds and Requiring Production of Complete File.

17 48. On June 17, 2021, the Court issued a Decision and Order Denying Plaintiff's
18 Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to
19 Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand.

20 49. On July 1, 2021, the Edgeworths filed a Motion for Reconsideration of Order on
21 Motion for Order Releasing Client Funds and Requiring the Production of Complete File and
22 Motion to Stay Execution of Judgments Pending Appeal.

23 50. On July 15, 2021, Daniel Simon filed an Opposition to Third Motion to Reconsider.

24 51. On July 17, 2021, the Edgeworths filed a Reply in Support of Edgeworth's Motion
25 for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the
26 Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal.

27 52. On July 29, 2021, the Court issued a minute order denying Edgeworth's Motion for
28

1 Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring Production of
2 Complete Client File and Motion to Stay Execution.

3 53. On September 16, 2022, the Supreme Court Issued an Order Vacating Judgment and
4 Remanding the case to this Court for proceedings consistent with the order.

5 54. On September 27, 2022, the Court issued its Fourth Amended Decision and Order on
6 Motion to Adjudicate Lien.

7 55. On October 16, 2022, the Edgeworths filed a Verified Application to Retax Costs on
8 Appeal and a Motion to Exonerate Cost Bond.

9 56. On October 10, 2022, Daniel Simon filed a Motion to Retax Costs.

10 57. On October 18, 2022, Daniel Simon filed a Notice of Non Opposition to the
11 Edgeworth's Motion to Exonerate Cost Bond.

12 58. On October 19, 2022, Daniel Simon filed an Opposition to Edgeworth's Verified
13 Application to Tax Costs on Appeal.

14 59. On October 28, 2022, the Edgeworths filed an Opposition to Simon's Motion to
15 Retax Costs on Appeal.

16 60. On October 31, 2022, the Nevada Supreme Court issued an Order Denying the
17 Edgeworth's request for Rehearing.

18 61. On November 1, 2022, Daniel Simon filed a Reply to the Motion to Retax Costs.

19 62. On November 4, 2022, the Edgeworths filed a Motion for Order to Show Cause Why
20 Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held in Contempt and Ex Parte
21 Application to Consider Same on OST.

22 63. On November 8, 2022, the Court held a hearing on Daniel Simon's Motion to Retax
23 and the matter was taken under advisement.

24 64. On November 14, 2022, Daniel Simon filed an Opposition to Edgeworth's Motion for
25 Order to Show Cause on OST.

26 65. Also on November 14, 2022, the Edgeworth's filed a Reply ISO Motion for Order to
27 Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held In
28

1 Contempt.

2 66. On November 16, 2022, the Nevada Supreme Court filed an Order Denying Daniel
3 Simon's Petition for Writ of Prohibition or Mandamus.

4 67. On November 28, 2022 the Nevada Supreme Court issued a Remittitur regarding its
5 ruling from September 16, 2022.

6 68. On November 29, 2022, the Court issued a minute order denying in part and granting
7 in part, the Edgeworth's Verified Application to Tax Costs on Appeal and Simon's Motion to Retax
8 Costs. The Court also granted the Edgeworth's Motion to Exonerate Cost Bond and denied the
9 Edgeworth's Motion for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S.
10 Simon Should Not Be Held in Contempt.

11 69. On December 20, 2022, the Nevada Supreme Court issued an Order Denying Daniel
12 Simon's request for Rehearing and the Remittitur issued on January 17, 2023.

13 70. On February 9, 2023, Daniel Simon filed a Motion for Adjudication Following
14 Remand.

15 71. On February 23, 2023, the Edgeworths filed a Response to Motion for Adjudication
16 Following Remand.

17 72. On March 14, 2023, Daniel Simon filed a Reply in Support of Motion for
18 Adjudication Following Remand.

19 73. On March 21, 2023, the Court held a hearing on the Motion for Adjudication
20 Following Remand.

21 74. The Court finds that this Court lacked jurisdiction to issue the Fourth Amended
22 Decision and Order on Motion to Adjudicate Lien on September 27, 2022 as the Supreme Court
23 Remittitur had not issued.

24 75. As such, the Motion for Adjudication Following Remand is GRANTED IN PART, as
25 the Court finds that there was ample foundation for the quantum meruit award of \$200,000.00. As
26 such, this Order follows:

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CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

1. An attorney at law shall have a lien:

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

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

It is undisputed that no express written fee agreement was formed. The Court finds that there

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

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

13
14 "We never really had a structured discussion about how this might be done. I
15 am more than happy to keep paying hourly but if we are going for punitive we
16 should probably explore a hybrid of hourly on the claim and then some other
17 structure that incents both of us to win and go after the appeal that these
18 scumbags will file etc. Obviously that could not have been done earlier since
19 who would have thought this case would meet the hurdle of punitive at the
20 start. I could also swing hourly for the whole case (unless I am off what this
21 is going to cost). I would likely borrow another \$450K from Margaret in 250
22 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?"

23 (Def. Exhibit 27).

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

26 The Court finds that an implied fee agreement was formed between the parties on December
27 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
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1 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
2 created with a fee of \$275 per hour for Simon’s associates. Simon testified that he never told the
3 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to “trigger
4 coverage”. When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
5 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
6 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
7 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

8 9 *Constructive Discharge*

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

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

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

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

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

7 a) ...

8 b) ...

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

14 Id.

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

22 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
23 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
24 effect of this AGREEMENT and their release of any and all claims, known or
25 unknown and, based upon that explanation and their independent judgment by
26 the reading of this Agreement, PLAINTIFFS understand and acknowledge the
27 legal significance and the consequences of the claims being released by this
28 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.

29 Id.

30 Also, Simon was not present for the signing of these settlement documents and never explained any

1 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
2 Vannah and received them back with the signatures of the Edgeworths.

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

19 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
20 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
21 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
22 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
23 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
24 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
25 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
26 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
27 doesn't seem in his best interests." (Def. Exhibit 53).

1 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
2 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
3 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
4 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
5 was attached to the letter), and that Simon continued to work on the case after the November 29,
6 2017 date. The court further recognizes that it is always a client's decision of whether or not to
7 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
8 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
9 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
10 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
11 with him, making it impossible to advise them on pending legal issues, such as the settlements with
12 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
13 Simon from effectively representing the clients. The Court finds that Danny Simon was
14 constructively discharged by the Edgeworths on November 29, 2017.

15
16 **Adjudication of the Lien and Determination of the Law Office Fee**

17 NRS 18.015 states:

- 18 1. An attorney at law shall have a lien:
19 (a) Upon any claim, demand or cause of action, including any claim for
20 unliquidated damages, which has been placed in the attorney's hands by a
21 client for suit or collection, or upon which a suit or other action has been
22 instituted.
23 (b) In any civil action, upon any file or other property properly left in the
24 possession of the attorney by a client.
25 2. A lien pursuant to subsection 1 is for the amount of any fee which has
26 been agreed upon by the attorney and client. In the absence of an agreement,
27 the lien is for a reasonable fee for the services which the attorney has rendered
28 for the client.
3. An attorney perfects a lien described in subsection 1 by serving notice
in writing, in person or by certified mail, return receipt requested, upon his or
her client and, if applicable, upon the party against whom the client has a
cause of action, claiming the lien and stating the amount of the lien.
4. A lien pursuant to:

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

3 (b) Paragraph (b) of subsection 1 attaches to any file or other property
4 properly left in the possession of the attorney by his or her client, including,
5 without limitation, copies of the attorney's file if the original documents
6 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.

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

9 6. On motion filed by an attorney having a lien under this section, the
10 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.

11 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.

12
13 Nev. Rev. Stat. 18.015.

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

21 22 *Implied Contract*

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

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

9 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRC
10 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
11 paid in full and there was never any indication given that anything less than all the fees had been
12 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
13 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
14 the NRC 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
15 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
16 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
17 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
18 Office retained the payments, indicating an implied contract was formed between the parties. The
19 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
20 date they were constructively discharged, November 29, 2017.

21
22 ***Amount of Fees Owed Under Implied Contract***

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

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

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

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

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

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

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

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

25
26
27 ²There are no billing amounts from December 2 to December 4, 2016.

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

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

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

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

15
16 *Costs Owed*

17 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
18 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
19 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
20 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
21 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
22 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
23 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

24
25
26 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

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

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

1 *Quantum Meruit*

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

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

24 The *Brunzell* factors are: (1) the qualities of the advocate; (2) the character of the work to be
25 done; (3) the work actually performed; and (4) the result obtained. *Id.* However, in this case the
26 Court notes that the majority of the work in this case was complete before the date of the
27 constructive discharge, and the Court is applying the *Brunzell* factors for the period commencing
28

1 after the constructive discharge.

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

20
21 *1. Quality of the Advocate*

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

1 work product and results are exceptional.

2
3 2. The Character of the Work to be Done

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

12
13 3. The Work Actually Performed

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

22
23 4. The Result Obtained

24 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
25 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
26 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
27 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
28

1 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
2 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
3 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
4 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
5 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
6 were made more than whole with the settlement with the Viking entities.

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

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

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

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

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

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

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

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

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

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

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

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

1 by paragraph (d) or other law. A contingent fee agreement shall be in writing,
2 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:

3 (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
4 settlement, trial or appeal;

5 (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;

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

7 (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
8 costs as required by law; and

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

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

12
13 NRCP 1.5.

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

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

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

1 continued to work on the Viking settlement until it was finalized in December of 2017, and the
2 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
3 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
4 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
5 himself were continuing, even after the constructive discharge. Though the previous agreement
6 between Simon and the Edgeworths was for \$550 per hour, the Court must take into consideration
7 that the Edgeworths' fee agreement with Vannah & Vannah was for \$925 per hour.

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

13 14 **CONCLUSION**

15 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
16 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
17 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
18 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
19 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
20 Simon as their attorney, when they ceased following his advice and refused to communicate with
21 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
22 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
23 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
24 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
25 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
26 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
27 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
28

1 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
2 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.

3
4 **ORDER**

5 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
6 of the Law Office of Daniel S. Simon was previously granted. The Court further finds that it lacked
7 jurisdiction to issue the Fourth Amended Decision and Order on Motion to Adjudicate Lien on
8 September 27, 2022, since the Supreme Court Remittitur had not issued. The Court further finds that
9 the Motion for Adjudication Following Remand is granted in part, as the Court finds that there was
10 ample foundation for the quantum meruit award of \$200,000.00. As such, the reasonable fee due to
11 the Law Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

Dated this 28th day of March, 2023

12 IT IS SO ORDERED.

13
14 
15 _____
16 DISTRICT COURT JUDGE

17 **D39 E59 9E22 C62D**
18 **Tierra Jones**
19 **District Court Judge**
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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: 3/28/2023

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 3/29/2023

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX IN SUPPORT OF EDGEWORTHS' 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 (VOL I – V)**, to be electronically filed and served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System

Judge Tierra Jones (Hard Copy Hand-Delivered to Chambers)
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

James R. Christensen (Hard Copy on CD Served by First Class U.S. Mail)
JAMES R. CHRISTENSEN PC
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Las Vegas NV 89101

*Attorneys for Daniel S. Simon and the Law Firm of Daniel S. Simon
Real Parties in Interest*

DATED this 27th day of April, 2023.

By: /s/ CATHY SIMICICH