

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Petitioners

VS.

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

Respondents,

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

Real Parties in Interest.

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Sep 11 2023 07:46 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case Number: 86467

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

**PETITIONERS' SUPPLEMENTAL
APPENDIX IN SUPPORT OF
PETITION FOR WRIT OF
MANDAMUS**

**VOLUME VI
P00835 – P00875**

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EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
SUPREME COURT CASE NO. 86467.
PETITIONERS' SUPPLEMENTAL APPENDIX IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS

CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL	BATES NOS.¹
2017-11-27	Simon/Henriod Email Exchange	VI	P00835
2017-11-28	Simon/Pancoast Email Exchange	VI	P00836
2018-08-27	Excerpts of Evidentiary Hearing Transcript (Day 1)	VI	P00837 – 42
2018-08-30	Excerpts of Evidentiary Hearing Transcript (Day 4)	VI	P00843 – 49
2018-10-11	Decision and Order on Motion to Adjudicate Lien (original)	VI	P00850 – 75

ALPHABETICAL INDEX

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2018-08-30	Excerpts of Evidentiary Hearing Transcript (Day 4)	VI	P00843 – 49
2017-11-27	Simon/Henriod Email Exchange	VI	P00835
2017-11-28	Simon/Pancoast Email Exchange	VI	P00836

¹ *Continued Volume and Bates Numbers from the Petitioners' Appendix filed concurrently with Petitioner's Writ Petition, which included five volumes: Vol. I - V (Bates No. P00001 – 834).

Daniel Simon

From: Henriod, Joel D. <JHenriod@lrrc.com>
Sent: Monday, November 27, 2017 11:53 AM
To: Janet Pancoast
Cc: Daniel Simon; tparker@pnalaw.net; Ashley Ferrel; robinson (robinson@mmrs-law.com); chun@mmrs-law.com; Jessica Rogers; Polsenberg, Daniel F.
Subject: Re: Edgeworth - Expert Depositions

In the context of discussing the settlement agreement, Danny also said that he'd like to move the 12/1 hearing (before Bulla) on various motions—perhaps to 12/20 or 12/22. He thinks those issues wouldn't need to be decided before the evidentiary hearing anyway.

just chatted with him about the settlement agree

Joel Henriod
Lewis Roca Rothgerber Christie
(Office) 702.474.2681
(Mobile) 702.743.0212
jhenriod@lrrc.com

Sent from my iPhone

On Nov 27, 2017, at 11:47 AM, Janet Pancoast <janet.pancoast@zurichna.com> wrote:

Teddy and Danny called me about the expert depositions. As you will recall, there are two set for tomorrow, Crane Pomerantz at 10:00 a.m. and Brian Garelli at 2:00 p.m. Neither of these experts is set to proceed tomorrow. In light of the ongoing discussions with Viking we have an agreement that since these depositions were noticed, that in the event they need to be re-set after the close of discovery, Plaintiffs will not object to setting these depositions later. Danny agreed to get dates for both these experts so they can be rescheduled.

If you have any questions, please advise.

Janet C. Pancoast, Esq.
CISNEROS & MARIAS
(Not a Partnership – Employee of Zurich American Insurance Company)
1160 No. Town Center Dr., Suite 130
Las Vegas, NV 89144
Off: 702.233.9660
Dir: 702.562.7616
Cell: 702.325.7876
Fax: 702.233.9665
janet.pancoast@zurichna.com

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SIMONEH0004559

P00835

Daniel Simon

From: Janet Pancoast <janet.pancoast@zurichna.com>
Sent: Tuesday, November 28, 2017 9:18 AM
To: Daniel Simon; Ashley Ferrel
Cc: Jessica Rogers; robinson (robinson@mmrs-law.com); Henriod, Joel D. (JHenriod@lrrc.com)
Subject: Edgeworth - Discovery

In light of the settlement in this matter, Viking is of the impression that it need not respond to the discovery that is due today. If you have any belief to the contrary, please advise.

Thank you,

Janet C. Pancoast, Esq.

CISNEROS & MARIAS

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

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P00836



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

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

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

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Q What were you billing at per hour?

2 A \$150 --

3 Q That's what I said. I'm sorry, I said buck-fifty.

4 A That's not what you said that I was doing. You said I billed

5 on the case on \$150 an hour. Just to clarify what I billed on.

6 Q And in fact -- and if you want to look at what you think

7 attorneys should be paid at, I mean, you're paying very fine lawyers, Mr.

8 Greene and Mr. Vannah 975 bucks an hour, right?

9 THE COURT: 925, Mr. --

10 MR. CHRISTIANSEN: 925. Sorry. My eyes are terrible,

11 Judge. I apologize.

12 THE WITNESS: Correct.

13 MR. CHRISTIANSEN: Mr. Vannah wishes it was 975.

14 MR. VANNAH: Probably should be, but I'm not trying to get

15 quantum meruit here.

16 BY MR. CHRISTIANSEN:

17 Q Now, you're willing to pay lawyers to come sort of button up

18 a settlement at 925 an hour, fair?

19 A When somebody threatens me, yes.

20 Q Okay. And that wasn't litigating a complex product case,

21 fair?

22 A Pardon me?

23 Q Mr. Vannah and Mr. Greene didn't come in to litigate a

24 complex products defect case. Isn't that true?

25 A They're litigating a pretty complicated case.

1 Q And for that they're fudging or disputing with you what Mr.
2 Vannah's worth. You're willing to pay him 925 an hour?

3 A I had little choice.

4 Q And Mr. Greene as well?

5 A Correct.

6 Q And as I read your first affidavit, Mr. Edgeworth -- because
7 you took it out of the second two -- in your first affidavit, you told Her
8 Honor that the case blossomed in the fall of 2017, right?

9 A Late summer.

10 Q I'm sorry?

11 A Yeah, later summer, early fall.

12 Q That's not what you said. You said fall.

13 A Okay.

14 Q Did you say fall, or did you say summer?

15 A I don't know. Why don't we look? I'm not sure.

16 Q I mean, it's convenient today you're trying to make it
17 summer, because in the affidavit, you said fall, right?

18 A Can I see the words, please?

19 Q Just tell me if you remember what you said.

20 A No, I do --

21 Q I'll show them to you.

22 A -- not remember.

23 Q All right. Paragraph 11, I think is the --

24 THE COURT: And which affidavit, is this Mr. Christiansen.

25 MR. CHRISTIANSEN: This -- the February 2nd one, Your

1 Q There's nothing on this document that you created that
2 reflects what you were compensating Danny Simon for, during the
3 months from December, when you got the first bill, through March,
4 when you prepared this?

5 A No.

6 Q No, there is not? It's not on the document, correct?

7 A I do not see it on the document. No, it's not there.

8 Q And, sir, that day was March the 6th, and the next day --

9 MR. CHRISTIANSEN: This 87, John.

10 BY MR. CHRISTIANSEN:

11 Q -- you, through your lawyer, sent an offer of judgment to
12 Lange Plumbing for a \$1 million, correct?

13 A Correct.

14 Q All right. So, if I went back and showed you your
15 spreadsheet, the value you had determined for past and future damages
16 was just a little bit more to the million. You authorized Mr. Simon to
17 offer Lange, the plumber that installed the sprinklers, to pay you \$1
18 million to settle the entire case?

19 A Correct.

20 Q And you knew, because Mr. Simon explained it to you, that if
21 Lange were to accept that offer of judgment, they would have made you
22 give your claim against Viking to Lange as part of the settlement, right?

23 A I'm sorry?

24 Q Sure. You had a claim against Lange?

25 A Lange Plumbing, yeah. They --

1 Q Yeah --

2 A -- installed it. Yeah, yeah.

3 Q -- Lange Plumbing, because Lange had failed to go enforce
4 the warranty as it was required under your contract?

5 A Correct.

6 Q You knew if Lange would accept this offer of judgment for a
7 million bucks, you sent in early March, that it would want from you, in
8 exchange for the million, that ability to go after Viking for the money it
9 paid you, right?

10 A No. I'm not sure I understand that right now. So, if I sign
11 this, then --

12 Q Let me make it easy for you. You knew that if this offer was
13 accepted, your case, in its entirety, was over, for you, Brian Edgeworth?

14 A I guess so.

15 Q Okay. And the value you had assigned -- the total value to
16 your property damage claim, that you sent an offer of judgment for was
17 a million bucks, right?

18 A Correct.

19 Q And I want to make sure I accurately state that as -- let me
20 check with you, Mr. Edgeworth, March the 7th of 2017, correct?

21 A Correct.

22 Q Your case settled November, between November 10th and
23 15th, the sort of essential terms of the settlement were agreed for \$6
24 million against Viking, correct?

25 A Correct.

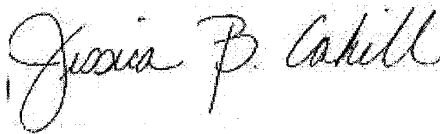
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MR. CHRISTENSEN: Thank you, Your Honor.

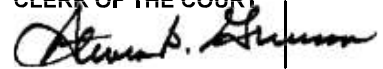
THE COURT: See you guys tomorrow.

[Proceedings concluded at 4:33 p.m.]

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



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



1 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 THURSDAY, AUGUST 30, 2018

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

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 and that represents my risk of loss right there.

2 Because during the pendency of the case -- I mean, there's at least
3 200 hours that could not be recovered in trying to recreate the bills in
4 this super bill, to show this Court our time expended, and that was not
5 included. And even at 550 an hour, that's \$700,000 that Mr. Edgeworth
6 was not billed for during the case. That's some skin in the game, that's
7 risk of loss to me. Because if this case doesn't turn out, that's time I ate.

8 But now that there is a recovery I expected to be paid a reasonable
9 value of my service, which they refuse to do, which is why we're here
10 today.

11 Q Let me give you a hypothetical. If you had fully billed Mr.
12 Edgeworth for all the time expended in the case, including emails, what
13 have you, at \$925 an hour, would you have suffered a risk of loss?

14 MR. VANNAH: Object as irrelevant, at \$925 an hour? There's
15 been no evidence that he had an agreement for that amount.

16 MR. CHRISTENSEN: Judge, we're trying to set a reasonable
17 fee here. We already have evidence in the case that the client's willing to
18 pay 925. We have evidence in the case from their fee agreement, that
19 working on the case, at least from some, at least from one point-of-view
20 is worth 925 an hour, and I'm asking a question of Mr. Simon to
21 determine where his risk of loss would end; 925 is a --

22 MR. VANNAH: And my --

23 MR. CHRISTENSEN: -- fair number.

24 MR. VANNAH: My objection, 925 an hour, there's been no
25 evidence whatsoever --

1 THE COURT: Well, they have in evidence that they're paying
2 925.

3 MR. VANNAH: Yeah. They're paying me 925 an hour, and
4 I'm not Danny Simon.

5 THE COURT: Right.

6 MR. VANNAH: And I'm not doing what Danny Simon was
7 supposed to be doing. I'm in a completely different situation. There's
8 lots of reasons my hourly fee is what it is, and it has nothing to do with
9 him.

10 THE COURT: Okay.

11 MR. VANNAH: Whatever I'm charging, and why I'm charging
12 that, and whatever -- you know, for example, it's not great being here,
13 Mr. Simon is a friend of mine, I've always considered him a friend. I
14 don't think that -- I think our friendship has been damaged by this. I get
15 referrals from other lawyers. I doubt I'd ever get a referral from Mr.
16 Simon, they never would have anyway, but bottom line is, there are
17 reasons I charge what I charge.

18 So, to take my fee, in this case, which shouldn't have been
19 given to him anyway, but taking my fee in this case and saying that's a
20 reasonable fee, because that's what I charge, I'm in a totally different
21 situation. And it just it's -- it is not relevant to anything. There's no
22 evidence that he ever was billing 925 an hour.

23 THE COURT: Right.

24 MR. VANNAH: He's --

25 THE COURT: He billed 550 an hour.

1 MR. VANNAH: Yeah. So, the idea to get my fee agreement
2 was to show when they hired me, and now I see it being used in every
3 way possible, that's way beyond what was relevant.

4 THE COURT: Okay.

5 MR. VANNAH: I meant, it's just not relevant. Why not pick
6 \$10,000 an hour, what maybe O.J. Simpson might have paid for
7 somebody to get him off from killing somebody. Why not pick any
8 number at all? But the bottom line there's no relevancy to those
9 numbers, the number is 550 an hour, that's the only number we've got to
10 work with.

11 THE COURT: Okay.

12 MR. CHRISTENSEN: May I, Your Honor?

13 THE COURT: Yes.

14 MR. CHRISTENSEN: Thank you, Your Honor.

15 It's not only Mr. Vannah being paid at 925 an hour, it's also
16 Mr. Greene. So, it's a little bit broader than what he says. The issue
17 concerning the relevancy at the outset upon production was that it had
18 to do with timing and the issue of constructive discharge. Now that the
19 document is produced and we were able to read the document, it's now
20 apparent that the document has broader relevancy.

21 Because the agreement states that they were going to work
22 on the Viking case. It's not just suing Danny Simon, and as a matter of
23 fact that's not even mentioned in the agreement.

24 THE COURT: I've read the agreement.

25 MR. CHRISTENSEN: What's mentioned in the agreement is

1 working on the Viking case, and that's what we're here to talk about.

2 THE COURT: Okay. I'll allow it. Mr. Vannah, your objection
3 is overruled. Mr. Simon, do you remember what the question was?

4 THE WITNESS: He was referencing what my risk of loss
5 would be if I was able to apply the 925 an hour.

6 BY MR. CHRISTENSEN:

7 Q May I repeat it?

8 A You may.

9 Q Okay. If you had fully billed your time, all of your time,
10 including late night phones that weren't captured, emails, everything, at
11 the rate of \$925 an hour, would you have suffered a risk of loss?

12 A I think if I was able to include my time, even the several
13 hundred hours that I could not have recovered, it would be well over \$2.4
14 million.

15 Q Would you have suffered a risk of loss?

16 A No.

17 Q Okay. There was some confusing questions concerning a
18 Federal tax burden that might be placed on any liquidation of Bitcoin
19 holdings by Mr. Edgeworth; do you recall that?

20 A I recall the question.

21 Q Are you familiar with the long-term capital gains' rate?

22 A Not so much.

23 Q Okay. The interest rate was 30 percent on the loans taken
24 out by Mr. Edgeworth?

25 A Closer to 35, 36 percent.

1 Q If I told you the long-term capital gains rate, assuming a max
2 rate, that Mr. Edgeworth would fall into the max rate, was 20 percent.
3 That would mean that the tax burden was less than the interest level,
4 correct?

5 MR. VANNAH: Two --

6 THE WITNESS: Makes sense.

7 MR. VANNAH: Two objections.

8 THE COURT: Okay.

9 MR. VANNAH: One, I don't remember qualifying him as a
10 finance expert, a); b) what is the relevance? My client decided to borrow
11 the money and he thought it was a better deal than a bit. Why are we
12 getting into long-term, short-term capital gain, long-term capital gain,
13 with an expert who has no familiarity that I know of. He's never offered
14 as an expert. He's a fact witness. Why are we going there?

15 THE COURT: Mr. Christensen?

16 MR. CHRISTENSEN: Well, we're going there, because Mr.
17 Vannah went there --

18 THE COURT: No.

19 MR. CHRISTENSEN: -- and he opened the door and I --

20 THE COURT: And I understand. But the line of questioning
21 was, was there a reason, and Mr. Simon explained that basically the
22 loans were taken out for other reasons besides just to pay his fees. And I
23 think that was the clarification I was going after. So, as far as what the
24 tax burden stuff is, I don't think that's relevant, so I'm going to ask you to
25 move on.

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MR. VANNAH: Thank you.

THE COURT: No problem.

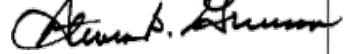
MR. VANNAH: That's been great.

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

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



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Jessica B. Cahill, Transcriber, CER/CET-708



1 ORD

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

Consolidated with

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

Hon. Tierra Jones
DISTRICT COURT JUDGE

DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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 9 **FINDINGS OF FACT**

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

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

18 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
19 suffered a flood. The house was still under construction and the flood caused a delay. The
20 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
21 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
22 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
23 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
24 Viking, et al., also denied any wrongdoing.
25

26 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
27
28

1 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
2 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
3 resolve. Since the matter was not resolved, a lawsuit had to be filed.

4 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
5 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
6 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
7 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
8 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.
9

10 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
11 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
12 had some discussion about payments and financials. No express fee agreement was reached during
13 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
14 It reads as follows:
15

16 We never really had a structured discussion about how this might be done.
17 I am more that happy to keep paying hourly but if we are going for punitive
18 we should probably explore a hybrid of hourly on the claim and then some
19 other structure that incents both of us to win an go after the appeal that these
20 scumbags will file etc.
21 Obviously that could not have been doen earlier snce who would have thought
22 this case would meet the hurdle of punitives at the start.
23 I could also swing hourly for the whole case (unless I am off what this is
24 going to cost). I would likely borrow another \$450K from Margaret in 250
25 and 200 increments and then either I could use one of the house sales for cash
26 or if things get really bad, I still have a couple million in bitcoin I could sell.
27 I doubt we will get Kinsale to settle for enough to really finance this since I
28 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?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.

1 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
2 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
3 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

4 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
5 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
6 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
7 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
8 bills indicated an hourly rate of \$550.00 per hour.

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

15
16 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
17 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
18 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
19 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
20 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
21 25, 2017.

22
23 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
24 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
25 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
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 costs to Simon. They made Simon aware of this fact.

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

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

7 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
8 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
9 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
10 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

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

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

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

19 //

20 //

21 //

22 //

23 //

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

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

1 is enforceable in form.

2 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
3 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
4 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
5 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
6 under NRS 18.015, thus the Court must adjudicate the lien.
7

8 *Fee Agreement*

9
10 It is undisputed that no express written fee agreement was formed. The Court finds that there
11 was no express oral fee agreement formed between the parties. An express oral agreement is
12 formed when all important terms are agreed upon. See, Loma Linda University v. Eckenweiler, 469
13 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*
14 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the
15 payment terms are essential to the formation of an express oral contract to provide legal services on
16 an hourly basis.
17

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

25 "We never really had a structured discussion about how this might be done. I
26 am more than happy to keep paying hourly but if we are going for punitive we
27 should probably explore a hybrid of hourly on the claim and then some other
28 structure that incents both of us to win an go after the appeal that these

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

10 (Def. Exhibit 27).

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

13 The Court finds that an implied fee agreement was formed between the parties on December
14 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
15 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
16 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
17 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
18 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
19 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
20 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
21 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

22 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

19 Id.

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

23 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
24 Though there were email communications between the Edgeworths and Simon, they did not verbally
25 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
26 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
27 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
28 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
against Lange Plumbing had not been settled. The evidence indicates that Simon was actively

1 working on this claim, but he had no communication with the Edgeworths and was not advising
2 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
3 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
4 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
5 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
6 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
7 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
8 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
9 Simon never signed off on any of the releases for the Lange settlement.
10

11 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
12 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
13 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
14 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
15 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
16 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
17 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
18 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
19 doesn't seem in his best interests." (Def. Exhibit 53).
20
21

22 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
23 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
24 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
25 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
26 was attached to the letter), and that Simon continued to work on the case after the November 29,
27
28

1 2017 date. The court further recognizes that it is always a client's decision of whether or not to
2 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
3 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
4 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
5 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
6 with him, making it impossible to advise them on pending legal issues, such as the settlements with
7 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
8 Simon from effectively representing the clients. The Court finds that Danny Simon was
9 constructively discharged by the Edgeworths on November 29, 2017.
10

11
12
13 **Adjudication of the Lien and Determination of the Law Office Fee**

14 NRS 18.015 states:

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

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

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

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

26 3. An attorney perfects a lien described in subsection 1 by serving notice
27 in writing, in person or by certified mail, return receipt requested, upon his or
28 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:

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

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

1 received from the client have been returned to the client, and authorizes the
2 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.

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

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

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

9 Nev. Rev. Stat. 18.015.

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

18 *Implied Contract*

19
20 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
21 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
22 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
23 created when invoices were sent to the Edgeworths, and they paid the invoices.
24

25 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
26 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
27

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

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
23

24 *Amount of Fees Owed Under Implied Contract*

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

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

7
8 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
9 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
10 and attempted to create a bill for work that had been done over a year before. She testified that they
11 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
12 email that was read and responded to. She testified that the dates were not exact, they just used the
13 dates for which the documents were filed, and not necessarily the dates in which the work was
14 performed. Further, there are billed items included in the "super bill" that was not previously billed
15 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
16 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
17 indicated that there were no phone calls included in the billings that were submitted to the
18 Edgeworths.
19

20
21 This attempt to recreate billing and supplement/increase previously billed work makes it
22 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed
23 between the actual work and the billing. The court reviewed the billings of the "super bill" in
24 comparison to the previous bills and determined that it was necessary to discount the items that had
25 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
26 downloading, and saving documents because the Court is uncertain of the accuracy of the "super
27
28

1 bill.”

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

13 The amount of attorney’s fees and costs for the period beginning in June of 2016 to
14 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
15 which appears to indicate that it began with the initial meeting with the client, leading the court to
16 determine that this is the beginning of the relationship. This invoice also states it is for attorney’s
17 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
18 amount has already been paid by the Edgeworths on December 16, 2016.²
19

20 The amount of the attorney’s fees and costs for the period beginning on December 5, 2016 to
21 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
22 amount has already been paid by the Edgeworths on May 3, 2017.
23

24 The amount of attorney’s fees for the period of April 5, 2017 to July 28, 2017, for the
25 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney’s fees for this period for
26

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

1 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
2 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
3 been paid by the Edgeworths on August 16, 2017.³

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

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

22 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
23 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
24

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

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

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

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

1 by the Edgeworths, so the implied fee agreement applies to their work as well.

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

4
5 ***Costs Owed***

6 The Court finds that the Law Office of Daniel Simon is owed for outstanding costs of the
7 litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing, LLC; The
8 Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-738444-C.
9 Pursuant to the Memorandum of Costs and Disbursements filed on January 17, 2018, the Law Firm
10 submits that it is owed \$71,594.93 in costs. These costs include \$3,122.97 in Clerk's Fees;
11 \$9,575.90 in Video and Court Recorder's Fees; \$57,646.06 in Expert Witness Fees; and \$1,250.00 in
12 Copy Fees. The Court finds that the Law Office of Daniel Simon is owed these costs in the amount
13 of \$71,594.93.
14
15

16
17 ***Quantum Meruit***

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

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

16 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
17 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
18 Court notes that the majority of the work in this case was complete before the date of the
19 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
20 after the constructive discharge.
21

22 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
23 case, the testimony at the evidentiary hearing, and the litigation involved in the case.
24

25 *1. Quality of the Advocate*

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

7
8 *2. The Character of the Work to be Done*

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

18
19 *3. The Work Actually Performed*

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

3 4. The Result Obtained

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

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

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

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

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

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

(4) The amount involved and the results obtained;

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

- 1 (6) The nature and length of the professional relationship with the
client;
2 (7) The experience, reputation, and ability of the lawyer or lawyers
performing the services; and
3 (8) Whether the fee is fixed or contingent.

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

5 (b) The scope of the representation and the basis or rate of the fee and
6 expenses for which the client will be responsible shall be communicated to the
7 client, preferably in writing, before or within a reasonable time after
8 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.

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

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

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

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

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

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

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

22 NRCP 1.5.

23 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
24 the Edgeworths, the character of the work was complex, the work actually performed was extremely
25 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
26 factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact
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1 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
2 responsible were never communicated to the client, within a reasonable time after commencing the
3 representation. Further, this is not a contingent fee case, and the Court is not awarding a
4 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
5 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
6 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
7 from November 30, 2017 to the conclusion of this case.
8

9 10 CONCLUSION

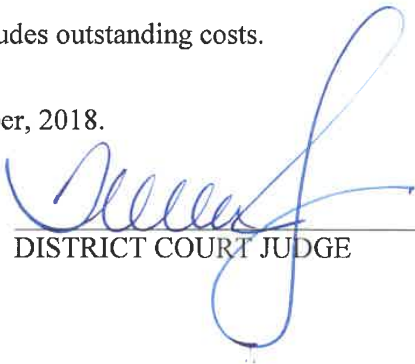
11 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
12 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
13 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
14 Edgeworths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

6 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
7 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
8 Office of Daniel Simon is \$556,577.43, which includes outstanding costs.
9

10 IT IS SO ORDERED this 10th day of October, 2018.
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13 _____
14 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

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

Electronically served to:

Peter S. Christiansen, Esq.
James Christensen, Esq.
Robert Vannah, Esq.
John Greene, Esq.



Tess Driver
Judicial Executive Assistant
Department 10

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 **PETITIONERS' SUPPLEMENTAL APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS (VOLUME VI)** to be served by mail and electronically filed and served by the following method(s):

Judge Tierra Jones
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

James R. Christensen
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101

Attorneys for Daniel Simon, Real Parties in Interest

DATED this 11th day of September, 2023.

By: /s/ CATHY SIMICICH