

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

v.

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

Respondents.

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Jul 27 2023 05:33 PM
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case Nos. 86676

District Court Case Nos.
A-16-738444-C and
A-18-767242-C

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. Id. Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department X

County Clark Judge Tierra Jones

District Court Case No. A-16-738444-C consolidated with A-18-767242-C

2. Attorney filing this docketing statement:

Attorney: Steve Morris (1543) Telephone: 702-474-9400

Firm: MORRIS LAW GROUP

Address: 801 South Rancho Dr., Ste. B4
Las Vegas, Nevada 89106
(702) 474-9400

Client: Edgeworth Family Trust and American Grating, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorneys representing respondents:

Attorney: James R. Christensen

Firm: Law Office of James R. Christensen PC

Address: 601 S. Third Street, Las Vegas, Nevada 89101

Clients: Respondents Daniel S. Simon, Law Office of Daniel S. Simon

4. Nature of disposition below (check all that apply):

☐ Judgment after bench trial

☐ Dismissal

- | | |
|---|--|
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default Judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify) Failure to Properly Adjudicate Lien Amount on Remand |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify)____ |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child custody
☐ Venue
☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- (1) *Edgeworth Family Trust; and American Grating, LLC, Appellants v. Daniel S. Simon and Law Office of Daniel S. Simon, Respondents, Appeal Case No. 77678;*
- (2) *Edgeworth Family Trust; and American Grating, LLC, Appellants v. Daniel S. Simon and Law Office of Daniel S. Simon, Respondents, Appeal Case No. 78176;*
- (3) *Law Office of Daniel S. Simon, Petitioner; Eighth Judicial District Court, the Hon. Tierra Jones, Respondent, Writ Proceeding, Case No. 79821.*
- (4) *Edgeworth Family Trust; and American Grating, LLC, Appellants v. Daniel S. Simon and Law Office of Daniel S. Simon, Respondents, Appeal Case No. 83258/83268.*
- (5) *Edgeworth Family Trust; and American Grating, LLC, Petitioners; Eighth Judicial District Court, the Hon. Tierra Jones, Respondent, Writ Proceeding, Case No. 84159.*
- (6) *Law Office of Daniel S. Simon, Petitioner; Eighth Judicial District Court, the Hon. Tierra Jones, Respondent, Writ Proceeding, Case No. 84367.*
- (7) *Edgeworth Family Trust; and American Grating, LLC, Petitioners; Eighth Judicial District Court, the Hon. Tierra Jones, Respondent, Writ Proceeding, Case No. 86467.*

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: N/A.
8. **Nature of the action.** Briefly describe the nature of the action and the result below:

This appeal, like the proceedings referenced in #6 above, arise from the attorney lien adjudication proceedings that followed settlement of the underlying action. This Court affirmed the district court's lien adjudication, its finding that the attorney, Daniel Simon, was constructively discharged, and has twice remanded for the district court to explain the basis of the \$200,000 quantum meruit award of an attorney fee and its reasonableness following Simon's discharge, under *Brunzell*. The district court has not explained the basis of the \$200,000 quantum meruit award. Appellants herein sought relief by writ petition (Case No. 86467), since the district court has twice ignored the unambiguous and clear instruction from this Court.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):
 1. Did the district court err in again disregarding, for the second time, this Court's mandate to state the basis for and the reasonableness of its \$200,000 *quantum meruit* award in the face of evidence provided by the respondent confirming that a "reasonable" fee under *Brunzell* would not be more than \$33,811.25.
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issue raised:

Appellants are not aware of any pending proceedings raising the same or similar issues.
11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the

clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
- ☐ Yes
- ☐ No

If no, explain:

12. Other Issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions.
- ☒ A substantial issue of first impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ a ballot question

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Nevada Supreme Court should retain this appeal under NRAP 17(a)(12), because it involves the district court's repeated failure to adhere to this Court's mandates in Case Nos. 77678 and 78176. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (table) 2020 WL 7828800 (unpublished) (Nev. 2020), and Case No. 83258/83260 *Edgeworth Family Trust v. Simon*. This appeal and the earlier-filed original proceeding in Case No. 86467 raises issues of first impression and public policy as to the availability of writ relief when a district court twice ignores the prior mandates of this Court.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A.

Was it a bench or jury trial? N/A

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/her from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from**

The district court entered its decision and order on March 28, 2023 and notice of entry of the order was given on April 24, 2023.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A.

17. **Date written notice of entry of judgment or order was served**

April 24, 2023.

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing: None

- ☐ NRCP _____
☐ NRCP 52(b)
☐ NRCP 59

Date of filing _____
Date of filing _____
Date of filing: N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010)

(b) Date of entry of written order resolving tolling motion: N/A.

(c) Date written notice of entry of order resolving tolling motion was served: N/A.

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal filed

May 24, 2023.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

- | | |
|---|---------------------------------------|
| (a) <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Under NRAP 3A(b)(1), an appeal may be taken from a "final judgment entered in an action . . . commenced in the court in which the judgment is rendered." The Edgeworth Family Trust and American Grating, LLC (collectively the "Edgeworths") commenced this case in the Eighth Judicial District Court. On March 28, 2023, the the district court entered its Decision and Order for Adjudication Following [Second] Mandate and refusing to obey the mandate this Court expressed in its Order of September 16, 2022 (Remittitur Issued November 28, 2022 and returned December 22, 2023) and in its prior Order of December 30, 2020 (Remittitur Issued April 13, 2021) in Case Nos. 77678/78176).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties: Plaintiffs Edgeworth Family Trust and American Grating, LLC

Lange Plumbing, LLC; Viking Automatic Sprinkler Co., Doe and Roe Defendants (Defendants in Case No. A-16-738444-C);

Daniel S. Simon and Law Office of Daniel S. Simon (Defendants in Case No. A-18-767242-C).

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

All claims against all defendants, including Lange Plumbing, LLC and Viking Automatic Sprinkler Co., in Case No. A-16-738444-C, referred to as the "underlying action" in paragraph 8 and elsewhere, were fully adjudicated in the district court. The issues that remain and that form the basis for this appeal is from the dispute between plaintiffs and their original attorney that arose from an attorney lien adjudication following settlement of the substantive claims in the underlying action.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs' Claims for Relief:

- (1) Plaintiff's original claims for conversion, declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing were dismissed, and that dismissal was affirmed in the prior appellate proceedings; the case was remanded in part for reconsideration of the basis and reasonableness of the *quantum meruit* award for an attorney fee and a separate attorney fee award. The issues that remain and that form the basis for this appeal are from the dispute between plaintiffs and their original attorney that arose from the adjudication of an attorney lien following settlement of the underlying action.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below:

☒ Yes

☐ No

25. If you answered "No" to question 23, complete the following:

N/A

26. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.* order is independently appealable under NRAP 3A(b)): N/A.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal.
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Edgeworth Family Trust;

American Grating, LLC

Name of Appellant

Steve Morris

Name of counsel of record

July 27, 2023

Date

/s/ STEVE MORRIS

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25 and NEFR 9(f), I certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **DOCKETING STATEMENT CIVIL APPEALS** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

TO:

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

Attorneys for Respondent Law Office of Daniel S. Simon, A Professional Corporation; and Daniel S. Simon

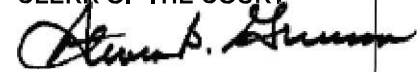
Dated this 27th day of July, 2023.

/s/ CATHY SIMICICH

AMENDED COMPLAINT IN CASE NO. A-18-767242-C¹

(These Claims Were Dismissed and Dismissal Affirmed in Prior
Appellate Procedures)

¹ Complaint in Case No. A-16-738444-C is not included as all claims were fully resolved in District Court.



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2 ROBERT D. VANNAH, ESQ.
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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

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

Consolidated with

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

AMENDED COMPLAINT

25 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC
26 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.
27 GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants,
28 complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic professional corporation licensed and doing business in Clark County, Nevada. At times, Defendants shall be referred to as SIMON.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

[e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of

1 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to
2 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever
3 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees
4 and costs to the mandated computation of damages.

5
6 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay
7 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by
8 PLAINTIFFS accrued interest.

9 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall
10 of 2017, and thereafter blossomed from one of mere property damage to one of significant and
11 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the
12 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the
13 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,
14 neither PLAINTIFFS nor SIMON agreed on any terms.

15
16 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth
17 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he
18 wanted to be paid in light of a favorable settlement that was reached with the defendants in the
19 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS
20 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented
21 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set
22 forth in the computation of damages disclosed by SIMON in the LITIGATION.

23
24 14. A reason given by SIMON to modify the CONTRACT was that he purportedly
25 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go
26 through his invoices and create, or submit, additional billing entries. According to SIMON, he
27 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason
28 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that

1 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement
2 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

3 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
4 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
5 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
6 the flooding event.
7

8 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP
9 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS
10 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS
11 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect
12 fees and costs other than those contained in his invoices that were presented to and paid by
13 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
14 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
15 alone those in excess of \$1,000,000.00.
16

17 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
18 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
19 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
20 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
21 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
22 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
23 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
24 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
25 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
26 they've been updated as of last week."
27
28

18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00 per hour for SIMON'S legal services performed in the LITIGATION.

33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or amend any of the terms of the CONTRACT.

35. The only evidence that SIMON produced in the LITIGATION concerning his fees are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which PLAINTIFFS paid in full.

36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in the LITIGATION was produced in updated form on or before September 27, 2017. The full amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS and that PLAINTIFFS paid in full.

37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON admitted that all of the bills for his services were produced in the LITIGATION; and, since the CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

THIRD CLAIM FOR RELIEF

(Conversion)

38. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 37, as set forth herein.

1 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his
2 services, nothing more.

3 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or
4 before September 27, 2017, had already been produced to the defendants.
5

6 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable
7 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.
8

9 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his
10 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay
11 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd
12 produced all of his billings through September of 2017, SIMON has refused to agree to either
13 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed
14 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.
15

16 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a
17 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

18 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises
19 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to
20 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount
21 in excess of \$15,000.00.
22

23 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,
24 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,
25 PLAINTIFFS are entitled to recover attorneys' fees and costs.
26

27 ///

28 ///

FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

1 determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
2 SIMON breached the implied covenant of good faith and fair dealing.

3 53. When SIMON executed his secret plan and went back and added substantial time to
4 his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good
5 faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and
6 fair dealing.

7 54. When SIMON demanded a bonus based upon the amount of the settlement with the
8 Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
9 SIMON breached the implied covenant of good faith and fair dealing.

10 55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an
11 amount that was far in excess of any amount of fees that he had billed from the date of the
12 previously paid invoice to the date of the service of the lien, that he could bill for the work
13 performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing
14 so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON
15 breached the implied covenant of good faith and fair dealing.

16 56. As a result of SIMON'S breach of the implied covenant of good faith and fair
17 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access
18 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,
19 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the
20 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.

21 57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a
22 conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or
23 malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are
24 therefore entitled to punitive damages, in an amount in excess of \$15,000.00.

50. PLAINTIFFS have been compelled to retain an attorney to represent their interests in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and costs.

PRAYER FOR RELIEF

Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of \$15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of \$15,000;
3. Punitive damages in an amount in excess of \$15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;
5. Costs of suit; and,
6. For such other and further relief as the Court may deem appropriate.

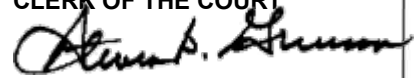
DATED this 15 day of March, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ. /sn
(4279)

**AMENDED DECISION AND ORDER ON MOTION TO
DISMISS**

(not at issue in this appeal)



1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: 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 DISMISS NRCP 12(B)(5)**

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

21 Defendants.

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

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

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

6
7 **FINDINGS OF FACT**

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

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

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

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

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

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

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

9 We never really had a structured discussion about how this might be done.

10 I am more that happy to keep paying hourly but if we are going for punitive
11 we should probably explore a hybrid of hourly on the claim and then some
12 other structure that incents both of us to win an go after the appeal that these
13 scumbags will file etc.

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

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

14 15 **CONCLUSION OF LAW**

16 ***Breach of Contract***

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

22 23 ***Declaratory Relief***

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

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

4 5 *Conversion*

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

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

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

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

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

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Breach of Fiduciary Duty

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

Punitive Damages

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

CONCLUSION

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

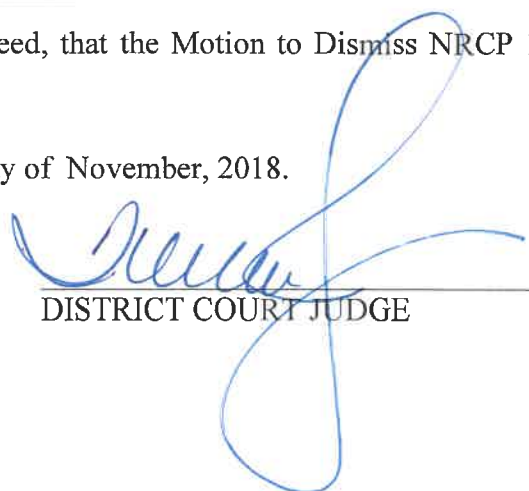
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ORDER

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

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



DISTRICT COURT JUDGE

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


Tess Driver
Judicial Executive Assistant
Department 10

NEVADA SUPREME COURT DECISION AND
REMITTITUR
(FIRST APPEAL)

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

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

vs.

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

No. 77678

FILED

DEC 30 2020

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

No. 78176

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The costs award

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

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

For the reasons set forth above, we

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

Pickering C.J.
Pickering

Gibbons J.
Gibbons

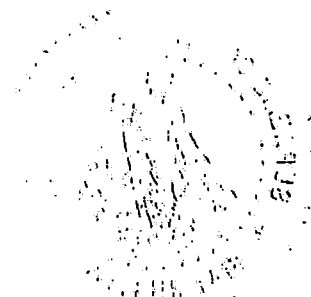
Hardesty J.
Hardesty

Parraguirre J.
Parraguirre

Stiglich J.
Stiglich

Cadish J.
Cadish

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



IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

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

vs.

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

No. 77678

FILED

MAR 18 2021

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

No. 78176

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

[Signature] C.J.
Hardesty

[Signature] J.
Parraguirre

[Signature] J.
Cadish

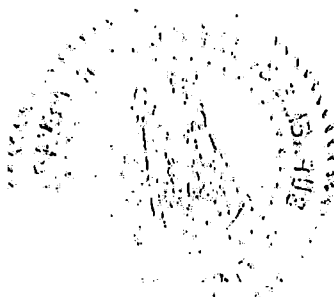
[Signature] J.
Pickering

[Signature] J.
Stiglich

[Signature] J.
Silver

[Signature] J.
Herndon

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



IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 77678
District Court Case No. A738444

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

Supreme Court No. 78176
District Court Case No. A738444

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

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

RECEIPT FOR REMITTITUR

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

HEATHER UNGERMANN

Deputy District Court Clerk

**RECEIVED
APPEALS**

APR 13 2021

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 77678
District Court Case No. A738444

FILED

APR 13 2021

Elizabeth A. Brown
CLERK OF COURT

Supreme Court No. 78176
District Court Case No. A738444

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

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

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

A - 16 - 738444 - C
CCJR
NV Supreme Court Clerks Certificate/Judgm
4961019

JUDGMENT



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

"Rehearing Denied."

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

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

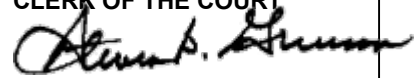
Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant

PLAINTIFF'S MOTION TO RECONSIDER BASED ON MANDATE

(STYLED AS PLAINTIFFS' RENEWED MOTION FOR
RECONSIDERATION OF THIRD-AMENDED² 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)

² THE REFERENCE TO "THIRD-AMENDED" SHOULD HAVE ONLY
BEEN "AMENDED"



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Email: sm@morrislawgroup.com
Email: rsr@morrislawgroup.com

Attorneys for Plaintiffs
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

LANGE PLUMBING, LLC
ET AL.,

Defendants.

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

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

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

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

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

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

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

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

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

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

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

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

26 ***A. RELEVANT FACTS***

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

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

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

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

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

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

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

25
26 ¹ Without waiver of any rights, the Edgeworths accept that the Court
27 has found that the circumstances leading up to and retaining other counsel
28 were a constructive discharge of Simon, notwithstanding that he remained
counsel of record.

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

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

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

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

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

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

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

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

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

9 Notwithstanding that this amount did *not* reflect the "discounting" that the
10 Court said was required, or the fact the work was not well substantiated in
11 the invoices, the Edgeworths accepted this finding.

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

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

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

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

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

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

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

B. STANDARD FOR RECONSIDERATION

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

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

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

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

C. RECONSIDERATION OF THE COSTS AWARDED IN THE AMENDED ATTORNEY FEES AND COSTS MOTION IS WARRANTED.

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

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

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

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

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

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

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

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

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

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

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

24 ...

25 ...

26 ...

27 ...

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

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

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

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

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

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

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

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

23 ***F. CONCLUSION***

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

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

6 MORRIS LAW GROUP

7
8 By: /s/ STEVE MORRIS
9 Steve Morris, Bar No. 1543
10 Rosa Solis-Rainey, Bar No. 7921
11 801 S. Rancho Dr., Ste. B4
12 Las Vegas, Nevada 89106

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

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

DATED this 3rd day of May, 2021.

By: /s/ TRACI K. BAEZ
An employee of Morris Law Group

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

I, Rosa Solis-Rainey, declare as follows:

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

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

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

Dated his 3th day of May, 2021.

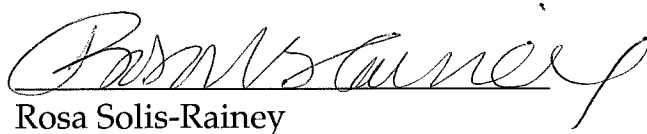

Rosa Solis-Rainey

EXHIBIT AA

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

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

Danny,

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

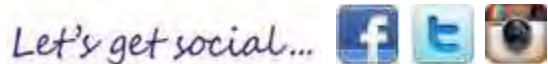
We would need to have our attorney look at this agreement before we sign.

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

Angela Edgeworth



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



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

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

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

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

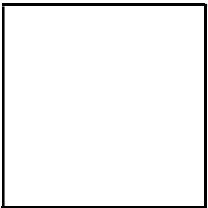
From: Angela Edgeworth [mailto:angela.edgeworth@pediped.com]
Sent: Monday, November 27, 2017 3:20 PM
To: Daniel Simon <dan@simonlawlv.com>
Cc: Brian Edgeworth (brian@pediped.com) <brian@pediped.com>
Subject: Re: Edgeworth v. Viking, et al

Danny,

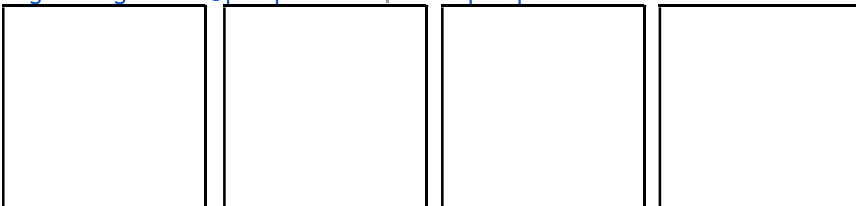
As you know, Brian is out of town and in China at the moment. I will need a couple of days to discuss this with him. We will be glad to meet once he is back.
We would need to have our attorney look at this agreement before we sign.

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

Angela Edgeworth



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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Angela

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

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

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

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

--

Angela

EXHIBIT BB

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

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

Dan –

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

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

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

Thanks,

Janet C. Pancoast, Esq.

Dir: 702.562.7616

Cell: 702.325.7876

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

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

SETTLEMENT AGREEMENT AND RELEASE

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

I. RECITALS

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

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

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

II. DEFINITIONS

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

//

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

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

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

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

III. SETTLEMENTTERMS

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

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

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

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

IV. AGREEMENT

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

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

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

V. RELEASE

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

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

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

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

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

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

VI. GOOD FAITH SETTLEMENT

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

VII. DISMISSAL

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

VIII. MISCELLANEOUS

A. COMPROMISE:

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

B. CONFIDENTIALITY:

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

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

C. SATISFACTION OF LIENS:

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

D. NO DISPARAGEMENT:

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

E. GOVERNING LAW:

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

F. TERMS OF SETTLEMENT AGREEMENT AND RELEASE INTERDEPENDENT:

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

G. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

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

H. GENDER AND TENSE:

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

I. ENTIRE AGREEMENT:

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

J. INDEPENDENT ADVICE OF COUNSEL:

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

K. VOLUNTARY AGREEMENT:

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

L. ADMISSIBILITY OF AGREEMENT:

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

M. COUNTERPARTS:

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

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

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

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

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

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

APPROVED AS TO FORM AND CONTENT:

Dated this ____ day of _____, 2017.

SIMON LAW

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

EXHIBIT CC

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

November 29, 2017

VIA FACSIMILE: (702) 364-1655

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

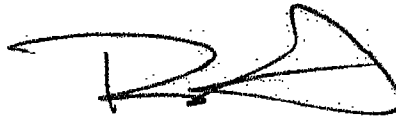
RE: Letter of Direction

Dear Mr. Simon:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Edgeworth', with a stylized, looping flourish at the end.

Brian Edgeworth

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

To:	
Phone	
Fax Number	(702) 364-1655

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

NOTE:

EXHIBIT DD

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

brian@pediped.com

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

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

SETTLEMENT AGREEMENT AND RELEASE

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

I. RECITALS

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

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

II. DEFINITIONS

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

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

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

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

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

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

III. SETTLEMENT TERMS

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

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

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

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

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

IV. AGREEMENT

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

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

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

V. RELEASE

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

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

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

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

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

VI. GOOD FAITH SETTLEMENT

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

VIII. MISCELLANEOUS

A. COMPROMISE:

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

B. CONFIDENTIALITY:

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

C. SATISFACTION OF LIENS:

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

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

D. GOVERNING LAW:

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

E. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

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

F. GENDER AND TENSE:

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

G. ENTIRE AGREEMENT:

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

H. INDEPENDENT ADVICE OF COUNSEL:

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

I. VOLUNTARY AGREEMENT:

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

J. ADMISSIBILITY OF AGREEMENT:

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

K. COUNTERPARTS:

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

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

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

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

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

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

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

Dated this ____ day of _____, 2017.

SIMON LAW

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

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

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Management

EXHIBIT EE

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

brian@pediped.com

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

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

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

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

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

Thank You!

SETTLEMENT AGREEMENT AND RELEASE

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

I. RECITALS

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

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

II. DEFINITIONS

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

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

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

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

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

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

III. SETTLEMENT TERMS

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

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

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

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

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

IV. AGREEMENT

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

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

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

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

V. MUTUAL RELEASE

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

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

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

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

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

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

VI. GOOD FAITH SETTLEMENT

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

VIII. MISCELLANEOUS

A. COMPROMISE:

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

B. SATISFACTION OF LIENS:

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

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

C. GOVERNING LAW:

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

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

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

E. GENDER AND TENSE:

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

F. ENTIRE AGREEMENT:

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

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

G. INDEPENDENT ADVICE OF COUNSEL:

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

H. VOLUNTARY AGREEMENT:

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

I. ADMISSIBILITY OF AGREEMENT:

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

J. COUNTERPARTS:

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

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

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

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

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

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

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

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

EXHIBIT FF

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

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

Danny –

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

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

Janet C. Pancoast, Esq.

CISNEROS & MARIAS

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

1160 No. Town Center Dr., Suite 130

Las Vegas, NV 89144

Off: 702.233.9660

Dir: 702.562.7616

Cell: 702.325.7876

Fax: 702.233.9665

janet.pancoast@zurichna.com

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

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

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

15
16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

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

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

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

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1 GIBERTI CONSTRUCTION, LLC, a Nevada)
Limited Liability Company,)

2 Counter-Claimant)

3 v.)

4 THE VIKING CORPORATION, a Michigan)
5 corporation; SUPPLY NETWORK, INC. d/b/a)
6 VIKING SUPPLYNET, a Michigan corporation,)

7 Counter-Defendant.)

8 GIBERTI CONSTRUCTION, LLC, a Nevada)
Limited Liability Company,)

9 Cross-Claimant)

10 v.)

11 LANGE PLUMBING, LLC, and DOES I through)
12 V and ROE CORPORATIONS VI through X,)
13 inclusive.)

14 Cross-Defendant.)

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

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

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

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

3 Each party shall bear their own fees and costs.

4 Dated this ____ day of December, 2017.

Dated this ____ day of December, 2017.

5 SIMON LAW

CISNEROS & MARIAS

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

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

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

13 **ORDER**

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

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

21 Dated this ____ day of _____, 2017

22
23 _____
24 DISTRICT COURT JUDGE

25 //

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

Submitted by:

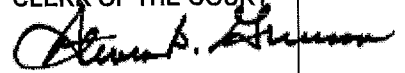
CISNEROS & MARIAS

BY: _____

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

EXHIBIT GG

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



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C
DEPT. X

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

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

21 APPEARANCES:

22 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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INDEX

Testimony6

WITNESSES FOR THE PLAINTIFF

DANIEL SIMON

Direct Examination by Mr. Christensen 6
Cross-Examination by Mr. Vannah 59
Redirect Examination by Mr. Christensen 149
Recross Examination by Mr. Vannah166
Further Redirect Examination by Mr. Christensen.....172

WILLIAM KEMP

Direct Examination by Mr. Christensen 178
Cross-Examination by Mr. Vannah 199
Redirect Examination by Mr. Christensen 218
Recross Examination by Mr. Vannah222
Further Redirect Examination by Mr. Christensen.....224

1 A Correct.

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

4 A Yes.

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

7 A Yes.

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

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

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

16 A Yes.

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

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

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

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

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

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

9 BY MR. CHRISTENSEN:

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

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

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

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

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

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

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

24 THE COURT: Okay.

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

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

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

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

13 THE WITNESS: Before I was fired, yeah.

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

15 THE WITNESS: Yes.

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

18 THE WITNESS: Nope.

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

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

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

23 THE WITNESS: Correct.

24 THE COURT: Okay.

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

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MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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



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

EXHIBIT HH

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

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

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

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

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

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

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

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

I have lost money working on your case.

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

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Value of my Services

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

Billing Statements

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

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

How I handle cases

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

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

Finalizing the settlement

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

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

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

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

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

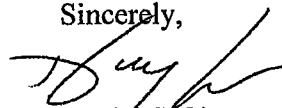
Conclusion

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

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

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

Sincerely,



Daniel S. Simon

RETAINER AGREEMENT

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

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

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

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

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

4 SIGNED this ____ day of _____, 2017.
5

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

SETTLEMENT BREAKDOWN

Date: November 27, 2017

Re: EFT AND AMERICAN GRATING v. ALL VIKING ENTITIES

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

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

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

Dated this ____ day of November, 2017.

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

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

EXHIBIT II

EXCERPTS FROM SIMON "SUPER BILL"

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

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

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	Total Hours	866.20
	Total Fees at \$550 per hour	\$476,410.00

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

DATE	DESCRIPTION	TIME
12.20.16	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc.'s Substitution of Counsel	0.30
1.4.17	Review, Download & Save Joint Case Conference Report	0.30
1.6.17	Email to DSS re Lange K inserts added to MSJ	0.15
1.9.17	Review email from DSS re phone call to Pancoast	0.15
1.9.17	Review, Download & Save Defendant The Viking Corporation and Supply Network , Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.10.17	Review, Download & Save Plaintiffs Response to Defendants The Viking Corporation and Supply Network Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.11.17	Review email from DSS re making small changes to MSJ	0.15
1.13.17	Review, Download & Save Plaintiffs Motion for Summary Judgment	0.30
1.17.17	Review email from DSS re preparing written discovery and depo notices	0.15
1.17.17	Review email from DSS to Pancoast re moving MSJ hearing and Opp date	0.15
1.18.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment	0.30
1.19.17	Email chain with DSS re Viking's Opposition to MSJ	0.50
1.20.17	Email chain with DSS re Stackiewicz case	0.15
1.20.17	Review, Download & Save Notice of Video Deposition of Shelli Lange	0.30
1.20.17	Review, Download & Save Subpoena for Shelli Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition Bernie Lange	0.30
1.20.17	Review, Download & Save Subpoena for Bernie Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition of Tracey Garvey	0.30
1.20.17	Review, Download & Save Subpoena for Tracy Garvey	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.8.17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
TOTAL HOURS x \$275 per hour (reduced)		762.6
TOTAL FEES		\$209,715.00

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

Date	Description	Time
8/16/17	Research and review prior cases and brief bank for written discovery on punitive damages	0.75
8/16/17	Send interoffice email regarding punitive damage discovery from other cases	0.25
8/17/17	Research and review licensing standards and regulations from California Board of Professional Engineers, Land Surveyors and Geologists for possible use in upcoming expert depositions	1.5
8/30/17	Send interoffice email regarding punitive damages written discovery from other cases	0.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35
11/13/17	Draft interoffice email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/6/17	Research Nevada case law regarding cost of repair damages and diminution in value damages	0.75
11/6/17	Research case law of surrounding jurisdictions regarding cost of repair damages and diminution in value damages	1.5
11/6/17	Research various law review articles, restatements of law, jury instructions and other legal authorities regarding cost of repair damages and diminution in value damages	1.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35

11/8/17	Prepare memo regarding cost of repair damages and diminution in value damages	2.0
11/9/17	Discussion with DSS re: Memo	0.5
11/13/17	Research Nevada law regarding admissibility of litigation conduct for bad faith	0.5
11/13/17	Research case law of surrounding jurisdictions regarding admissibility of litigation conduct for bad faith	3.25
11/13/17	Research various law review articles and other legal authorities regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Prepare memo regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Draft email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/14/17	Research Contract Validity within NRS Chapter 624 and Nevada case law for summary judgment briefing	2.75
11/16/17	Confer regarding recoverable damages within breach of contract vs. products liability	0.75
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
	Total Hours x's \$275 per hour (reduced)	21.8
	Total Fees	\$5,995.00

EXHIBIT JJ

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

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

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

11/11/17	Email Chain with Client with Attachment; Review and Analyze Mediator Proposal	.50
11/13/17	Draft and send email with attachments to AF	.15
11/13/17	Review Viking Motion for MSC and Stay all Rulings; Discussion with AF; Review Letter to DC Bulla; Telephone Conference with Floyd Hale; Telephone Conference with J. Olivas Re: Deposition	2.25
11/13/17	Email chain with AF re complaint filed against Harold Rodgers	.25
11/13/17	Draft and send email to AF re research re privilege log and confidentiality issues and review AF response	.75
11/13/17	Draft and send email to AF re supplementing Pomerantz opinion letter	.15
11/13/17	Email chain with AF re expert depositions noticed by Viking	.15
11/13/17	Prepare for 11/14/17 Hearings	2.25
11/13/17	Review Pomerantz Report and Produce; Discussion with Pomerantz; Discussion with Charles Rego from UL and Client	2.75
11/13/17	Receive, Review and Analyze Email From JO; Re: Additional Emails	.25
11/13/17	Email Chain with AF/CP with Attachments Re: Henderson	.15
11/13/17	Email from CP with Opinion letter	.75
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Receive, Review and Analyze Email from Client; Discussion with Client	.25
11/13/17	Email Chain with Client with Attachment	.50
11/13/17	Draft and Send Email to Client	.15
11/13/17	Email Chain with Client	.15
11/13/17	Email Chain with Client	.50
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Draft and Send Email to Client with Attachment	.15

11/13/17	Receive, Review and Analyze Email from Client	.25
11/13/17	Call with Client	.50
11/13/17	Call with Client	.25
11/14/17	Call with AMF	.10
11/14/17	Call with Client	.15
11/14/17	Call with Client	.10
11/14/17	Call with Client	.10
11/13/17	Email Chain with Client	.40
11/14/17	Email Chain with JP, AF, TP; Re: Inspection of Documents	.25
11/14/17	Email Chain with D. Holloman, JP, KR, JM; Re: Hale Settlement Matters	.25
11/14/17	Attend Hearings on MSJ; Review File with Client; Review Research; Prepare Emails to Pancoast Re: Depositions and Discovery Responses; Discussion with Attorney Olgivie Re: Retention; Email to Parker; Discussion with AF; Review Plaintiffs' 14 th ECC Supplement; Review files	7.5
11/14/17	Draft and Send Email to Ogilvie with Attachments	.75
11/14/17	Telephone Call with Ogilvie Regarding Retention	.50
11/15/17	Review cases re: validity of contract under NRS 624; discussion with AF and BM	2.75
11/15/17	Review research re: admissibility of litigation conduct; discussion with BJM	.75
11/15/17	Discussion with BJM re: recoverable damages w/ breach of contract vs. product liability	.75
11/15/17	Receive, Review and Analyze Email from Client	.15
11/15/17	Receive, Review and Analyze Email from Client	.25
11/15/17	Receive, Review and Analyze Email from Client with Link	.40
11/15/17	Call with Client	.25
11/15/17	Call with Client	.50

11/15/17	Call with Client	.25
11/15/17	Call with Client	.10
11/15/17	Call with Client	.10
11/15/17	Call with Client	.75
11/16/17	Call with Client	.25
11/16/17	Call with Client	.25
11/16/17	Call with AMF	.15
11/16/17	Call with Client	.15
11/16/17	Call with Client	.10
11/17/17	Call with Client	.15
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Client	.50
11/17/17	Call with Client	.25
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Client	.65
11/17/17	Call with Client	.15
11/17/17	Email Chain with EC, JP, AF, MN, TP, KR; Re: Olivas Deposition	.15
11/17/17	Draft and Send Email to Ogilvie with Links	.25
11/17/17	Prepare and Attend Hearings	4.5
11/17/17	Several discussions with clients from office	.50
11/17/17	Receive, Review and Analyze Email from Client with Link	.40
11/17/17	Receive, Review and Analyze Email from L. Rotert; Pomerantz Bill	.15
11/18/17	Draft and Send Email to Client with Links	.15

11/18/17	Email Chain with JP, AF, TP, BP, JH, KR; Re: MIL Meeting. Discovery with AF.	.50
11/20/17	Email chain with AF re outstanding expert bills	.25
11/20/17	Email chain with AF re meet and confer for MILS and hearing for Giberti's MGFS	.25
11/20/17	Email chain with AF re Knez letter and threat of motion to file protective order in CA for Rodgers and Rene Stone depositions	.25
11/20/17	Email Chain with Ogilvie and AF; Re: Permit App	.25
11/20/17	Receive, Review and Analyze Email from Client; Forward to AF	.15
11/21/17	Receive, Review and Analyze Email from Client	.25
11/21/17	Call with Client	.10
11/22/17	Draft and send email to AF re recent list of damages and review AF response	.15
11/22/17	Email Chain with Ogilvie, AF with Attachments; Re: Lange Supp Brief	.15
11/22/17	Draft and send email to AF re sending Lange responses brief to Ogilvie and review AF response	.15
11/22/17	Review notices of vacating deposition of Rene Stone and Harold Rodgers	.50
11/22/17	Review Lange's 12 th ECC Supplement	.25
11/24/17	Review correspondence from Dalacas	.25
11/24/17	Review email filings and depo emails	1.50
11/25/17	Call with Client	.10
11/25/17	Call with Client	.10
11/25/17	Call with Client	.15
11/26/17	Review Lange Discovery responses and attachments	1.50
11/27/17	T/C with J. Olivas re deposition	.35
11/27/17	Review hearing transcript from 11/14/17 hearing	1.50

11/27/17	T/C with T. Parker and Henriod (x3)	.75
11/27/17	Conference call with T. Parker, J. Pancoast and JEA to continue hearings; Emails	1.0
11/27/17	Receive, Review and Analyze Email From JO; Re: Final Invoice	.25
11/27/17	T/C's with Teddy Parker	.65
11/27/17	Email Chain with JP, TP, AF, KR, DP, JH; Re: MIL / Expert Depositions	.50
11/27/17	Email Chain with Bess White, TP, JP; Re: Edgeworth MOT for Summary Judgement	.35
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.15
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.25
11/27/17	Receive, Review and Analyze Email from Client	.25
11/27/17	Draft and send email to AF re Carnahan depo and review AF response	.15
11/28/17	Email Chain with JP, AF, KR, JH; Re: Outstanding Discovery	.15
11/28/17	Email Chain with EN, JP, KR, DP; Re: Letter from Parker	.50
11/28/17	Review Lange letter (11/28/17), analyze; discussion with AF	1.25
11/28/17	Review Amended Notice of Carnahan Depo	.25
11/28/17	Conference call with Judge Bulla chambers w/ Pancoast to reset December 1 st hearings to December 20 th and call with Pancoast separately	.50
11/28/17	Review notices of vacating depositions	.50
11/28/17	Email Chain with Ogilvie to Discuss Case	.15
11/29/17	Receive and analyze email from Ogilvie	1.50
11/29/17	Email Chain with EN, JP, TP; Re: Letter from Parker	.50
11/29/17	Email Chain with JP, AF; Re: Discovery Motions	.15

11/29/17	Draft and send email to AF re drafting reply to Lange's supplemental Opposition	1.50
11/29/17	Draft and send email to AF re drafting notice of attorney lien	.15
11/29/17	Draft and send email to AF re letter from Pancoast to Simon	.15
11/29/17	Review and analyze Lange's supplemental brief	2.50
11/29/17	Email from client Angela Edgeworth	.15
11/29/17	Email response to client Angela Edgeworth	.25
11/29/17	Review and analyze email from Oligilvie re: contractors license legal arguments and response email to Oligilvie; Discussion with AF	1.50
11/29/17	Draft reply to Lange's Supplemental Opposition to Plaintiffs' MSJ	2.75
11/29/17	Discussions w/ J. Henriod re moving hearings and settlement	.65
11/29/17	T/C with T. Parker	.50
11/29/17	Draft letter to Parker	.50
11/30/17	Review release; T/C J. Greene; T/C T. Parker; revise release	1.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.10
11/30/17	Call with AMF	.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.20
11/30/17	Call with AMF	.10
11/30/17	Review file for Lange bills, T/C to Parker re: settlement	.75
11/30/17	Negotiate release w/ Henriod (his office)	3.50
11/30/17	Conversation w/ Green; draft email, send release	.75
11/30/17	Receive and review letter dated 11-30-17	.25

11/30/17	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	.75
11/30/17 & 12/2/17	Email chain with AF re attorney lien	.15
12/1/17	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	.15
12/1/17	Receive and review release email to Defendant	.75
12/1/17	Receive and review release email from Pancoast & discussion with AF	.50
12/1/17	Review Viking's 19 th ECC Supplement	.25
12/4/17	Received and reviewed DCCR; L/M for Green/Vannah	.75
12/4/17	Review notice vacating UL Depos	.25
12/4/17	Discussion with AF	.40
12/5/17	T/c with John Green; Email from John Green; Discussion with staff	.40
12/5/17	Review subpoena to Dalacas	.25
12/5/17	Emails to client and John Greene messages	.50
12/5/17	Draft and Send Email to Client and Response	.15
12/6/17	Draft and send email to AF re notice to vacate Caranahan depo	.15
12/6/17	Review file and gather materials requested by Vannah; email from John Greene	2.25
12/6/17	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	.50
12/6/17	Review notice of vacating depo of Carnahan	.35
12/6/17	Receive and review email from Janet Pancoast; discussion with AF; response; forward to Vannah	.35
12/6/17	Received and reviewed Lange's 13 th ECC Supplement	.50
12/6/17	Email Chain with JP, AF; Re: Carnahan Deposition	.15
12/7/17	Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	.35
12/7/17	T/C with Vannah	.50

12/7/17	Draft and revise letter; Review of file to Vannah w/ attachment	1.75
12/8/17	Received and reviewed Lange 14 th ECC Supplement	1.25
12/8/17	Review Motion for Good faith settlement; discussion with AF	.75
12/8/17	Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker	.50
12/8/17	Email chain with AF re Order Granting Giberti MGFS	.15
12/11/17	Email from Zamiski; Response email	.15
12/11/17	Review/ Analyze Lange 15 th ECC Supplement	.50
12/11/17	T/C Parker & Pancoast; Email from T. Parker; Email from Crt	.75
12/11/17	Review client's release of claims; emails to J. Greene; Discussions with AF	.50
12/11/17	Draft and send email to AF re Lange's 15 th ECC Supplement and review AF response	.25
12/12/17	Draft and send email to AF re Stip to Dismiss and review AF response	.15
12/12/17	Attend hearing on Viking Motion for Good Faith Settlement	1.75
12/6/17- 12/12/17	Messages; Returned messages; discussions with Floyd Hale	.50
12/12/17	Email from J. Pancoast; Received/Reviewed/Analyze stip to dismiss; order on Good faith settlement; discussion with AF	1.25
12/12/17	Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	.50
12/14/17	Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review email from J. Pancoast	.50
12/15/17	Review email from T.Ure; T/C to J. Pancoast re 2 nd stip to dismiss and arrange pick up of settlement checks	.50
12/18/17	Pick up settlement checks; exchange for stip; contact Vannah's office re signature	1.50
12/18/17	T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomerantz	1.0

12/18/17	Received, reviewed and analyze email from B. Vannah	.50
12/19/17	Emails to B. Vannah and J. Greene re checks	.25
12/19/17	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and response from B. Vannah	.25
12/20/17	Request return of sprinklers from Volmer Grey	.25
12/20/17	Receive and review draft Motion for Good Faith Settlement; Lange release for \$100k and release for \$22k	1.50
12/21/17	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	.75
12/21/17	Receive, review and analyze email from B. Vannah (3:21pm)	.50
12/23/17	Received, reviewed and analyzed email from B. Vannah (10:45pm)	.50
12/26/17	Receive, review and analyze email from J. Christensen to B. Vannah (10:46am)	.25
12/26/17	Receive, review and analyze email from B. Vannah (12:18pm)	.75
12/26/17	Receive, review and analyze email from J. Christensen	.25
12/27/17	Receive, review and analyze email from JC w/e letter attached	.75
12/28/17	Receive, review and analyze email from B. Vannah (3:07pm)	.75
12/28/17	Receive, review and analyze email from B. Vannah (2:03pm)	.25
12/28/17	Receive, review and analyze email from B. Vannah (4:17am)	.75
12/29/17	Received and reviewed email re joint motion and revised joint motion	.40
1/2/18	Revise Lange release and send back to T. Parker	.75
1/2/18	Received/reviewed Viking stip to dismiss	.35
1/2/18	Received/reviewed email from J. Pancoast and T. Parker	.35
1/2/18	Received/reviewed and analyzed letters from Zurich re settlement checks	.25
1/2/18	Received, reviewed and analyzed email from J. Greene (3:45pm)	.25
1/2/18	T/C with S. Guidy at Bank of Nevada	.50

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	Total Hours	866.20
	Total Fees at \$550 per hour	\$476,410.00

EXHIBIT KK

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

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

11/27/17	Draft and serve notice to vacate deposition of Anthasia Dalacas	0.25
11/28/17	Draft and serve amended deposition notice and subpoena for Robert Carnahan	0.25
11/28/17	Review Letter from Lange and discussion with DSS	0.75
11.28.17	Review, Download & Save Subpoena Duces Tecum for Robert Carnahan PE	0.30
11.28.17	Review, Download & Save Amended Notice of Continued Video Deposition of Robert Carnahan P.E. Duces Tecum	0.30
11.29.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 19 th Supplemental NRCP 16.1 Disclosure	0.30
11.29.17	Review, Download & Save Correspondence to Counsel, dated November 29, 2017	0.30
11/29/17	Review Olgilvie response to Lange's Supplement to MSJ; Discussion with DSS re Reply	0.50
11.29.17	Review email from DSS re drafting reply to Lange's supplemental Opposition	1.50
11.29.17	Review email from DSS re drafting notice of attorney lien	0.15
11.29.17	Review email from DSS re letter from Pancoast to Simon	0.15
11.29.17	Email to Pancoast re hearing dates I front of DC Bulla in light of negotiations	0.15
11.30.17	Email to George Olgilvie instructing him to stop working on the case	0.15
11.30.17	Review, Download & Save Letter to Counsel	0.30
11.30.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	0.30
11/30/17	Review Viking's 19 th ECC Supplement	1.0
11/30/17	Review Letter from Lange regarding discovery scheduling and discussion with DSS	0.75
11.30.17 & 12.2.17	Email chain with DSS re attorney lien	0.15
12/1/17	Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.5
12.1.17	Review, Download & Save Lange Plumbing Verification to Rogs	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.1.17	Review, Download & Save Notice of Attorney Lien	0.30
12/1/17	Review Release from Viking and discussion with DSS re release	0.50
12/4/17	Draft and serve notice to vacate deposition of UL Laboratories	0.25
12/4/17	Review Lange written discovery responses	1.5
12/4/17	Discussion with DSS re scheduling and status of case	0.40
12.4.17	Review, Download & Save Notice Vacating the 2 nd Amended Video Depo of NRCP30(b) (6) Designees of Underwriters Laboratories	0.30
12.4.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
12.5.17	Email chain with UL re vacating depo	0.15
12/6/17	Review Lange's 13 th ECC Disclosure	2.5
12.6.17	Review email from DSS re notice to vacate Caranahan depo	0.15
12/6/17	Draft and serve Notice to Vacate Robert Carnahan Deposition	0.50
12/6/17	TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	0.50
12.6.17	Review, Download & Save Service Only – Lange Plumbing 13 th Supp to NRCP 16.1 ECC	0.30
12.6.17	Review, Download & Save Service Only – Notice of Vacating the Continued Video Depo of Robert Carnahan	0.30
12.7.17	Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	0.30
12/8/17	Review Viking Motion for Good Faith Settlement, Analyze and discussion with DSS	0.75
12/8/17	Review Lange's 14 th and 15 th ECC Disclosure	0.50
12.8.17	Email chain with DSS re Order Granting Giberti MGFS	0.15
12/8/17	Review Stipulation to Dismiss from Viking and discussion with DSS	0.50
12.8.17	Review, Download & Save Lange Plumbing 15 th Supplement to 16.1 ECC List Witnesses and Docs	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.8.17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
TOTAL HOURS x \$275 per hour (reduced)		762.6
TOTAL FEES		\$209,715.00

EXHIBIT LL

DEMONSTRATIVE OF POST-
DISCHARGE BILLING BY SIMON AND
FERREL, WITH BREAKDOWN OF HOURS
BY ESTIMATED PURPOSE

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. J)

DSS	11/30/2017	Review release; T/C J. Greene; T/C T. Parker; revise release
DSS	11/30/2017	Call with Teddy Parker
DSS	11/30/2017	Call with Teddy Parker
DSS	11/30/2017	Call with Teddy Parker
DSS	11/30/2017	Call with AMF
DSS	11/30/2017	Call with Teddy Parker
DSS	11/30/2017	Call with AMF
DSS	11/30/2017	Call with AMF
DSS	11/30/2017	Call with AMF
DSS	11/30/2017	Call with AMF
DSS	11/30/2017	Review file for Lange bills, T/C to Parker re: settlement
DSS	11/30/2017	Negotiate release w/Henriod (his office)
DSS	11/30/2017	Conversation w/Green; draft email, send release
DSS	11/30/2017	Receive and review letter dated 11-30-17
DSS	11/30/2017	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF
	11/30/2017 &	
DSS	12/2/2017	Email chain with AF re attorney lien
DSS	12/1/2017	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions
DSS	12/1/2017	Receive and review release email to Defendant
DSS	12/1/2017	Receive and review release email from Pancoast & discussion with AF
DSS	12/1/2017	Review Viking's 19th ECC Supplement
DSS	12/4/2017	Received and reviewed DCRR; L/M for Green/Vannah
DSS	12/4/2017	Review notice vacating UL Depos
DSS	12/4/2017	Discussion with AF
DSS	12/5/2017	T/c with John Green; Email from John Green; Discussion with staff
DSS	12/5/2017	Review subpoena to Dalacas
DSS	12/5/2017	Emails to client and John Greene messages
DSS	12/5/2017	Draft and Send Email to Client and Response
DSS	12/5/2017	Draft and send email to AF re notice to vacate Caranahan depo
DSS	12/6/2017	Review file and gather materials requested by Vannah; email from John Greene
DSS	12/6/2017	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF
DSS	12/6/2017	Review notice of vacating depo of Carnahan
DSS	12/6/2017	Receive and review email from Janet Pancoast; discussion with AF; response, forward to Vannah

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. J)

DSS	12/6/2017	Received and reviewed Lange's 13th ECC Supplement
DSS	12/6/2017	Email Chain with JP, AF; Re: Carnahan Deposition
DSS	12/7/2017	Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing
DSS	12/7/2017	T/C with Vannah
DSS	12/7/2017	Draft and revise letter; Review of file to Vannah w/ attachment
DSS	12/8/2017	Received and reviewed Lange 14th ECC Supplement
DSS	12/8/2017	Review Motion for Good faith settlement; discussion with AF
DSS	12/8/2017	Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker
DSS	12/8/2017	Email chain with AF re Order Granting Giberti MGFS
DSS	12/11/2017	Email from Zamiski; Response email
DSS	12/11/2017	Review/ Analyze Lange 15th ECC Supplement
DSS	12/11/2017	T/C Parker & Pancoast; Email from T Parker; Email from Crt
DSS	12/11/2017	Review client's release of claims; email to J. Green Discussion with AF
DSS	12/11/2017	Draft and send email to AF re Lange's 15th ECC Supplement and review AF response
DSS	12/12/2017	Draft and send email to AF re Stip to Dismiss and review AF response
DSS	12/12/2017	Attend hearing on Viking Motion for Good Faith Settlement
	12/6/2017-	
DSS	12/12/2017	Messages; Returned messages; discussions with Floyd Hale
		Email from J. Pancoast; Received/Reviewed/ Analyze stip to dismiss order on Good faith settlement; dis
DSS	12/12/2017	AF
DSS	12/12/2017	Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips
DSS	12/14/2017	Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review mail from J. Pancoast
DSS	12/15/2017	Review email from T.Ure; T/C to J. Pancoast re 2nd stip to dismiss and arrange pick up of settlement ch
DSS	12/18/2017	Pick up settlement checks; exchange for stip; contact Vannah's office re signature
DSS	12/18/2017	T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomeran
DSS	12/18/2017	Received, reviewed and analyze email from B. Vannah
DSS	12/19/2017	Emails to B. Vannah and J. Greene re checks
		Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christen
DSS	12/19/2017	response from B. Vannah
	12/20/2017	12/20/17 Request return of sprinklers from Volmer Grey .25

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. J)

DSS	12/20/2017	Receive and review draft Motion for Good Faith Settlement; Lange release for 100k and release for \$22
DSS	12/21/2017	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to
DSS	12/21/2017	Receive, review and analyze email from B. Vannah (3:21pm)
DSS	12/21/2017	Received, reviewed and analyzed email from B. Vannah (10:45pm)
DSS	12/26/2017	Receive, review and analyze email from J. Christensen to B. Vannah (10:45am)
DSS	12/26/2017	Receive, review and analyze email from B. Vannah (12:18pm)
DSS	12/26/2017	Receive, review and analyze email from J. Christensen
DSS	12/27/2017	Receive, review and analyze email from JC w/e letter attached
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (3:07pm)
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (2:03pm)
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (4: 17am)
DSS	12/29/2017	Received and reviewed email re joint motion and revised joint motion
DSS	1/2/2018	Revise Lange release and send back to T. Parker
DSS	1/2/2018	Received/reviewed Viking stip to dismiss
DSS	1/2/2018	Received/reviewed email from J. Pancoast and T. Parker
DSS	1/2/2018	Received/reviewed and analyzed letters from Zurich re settlement checks
	1/2/2018	Received, reviewed and analyzed email from J. Greene (3:45pm)
DSS	1/2/2018	T/C with S. Guidy at Bank of Nevada
DSS	1/3/2018	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments
DSS	1/3/2018	Analyze, review schedule and additional emails from S. Guindy
		Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review emails from J. Christensen and
DSS	1/4/2018	Greene
DSS	1/4/2018	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker
DSS	1/4/2018	Email to T. Parker and E. Nunez regarding revisions to release
DSS	1/4/2018	Travel to Bank of Nevada for bank account requested by client
DSS	1/4/2018	Email E. Nunez releases again per her request
DSS	1/5/2018	Email from S. Guindy and response
DSS	1/5/2018	Email from Nunez
DSS	1/5/2018	Review Court filing of MGFS Lange
DSS	1/8/2018	T/C with S. Guindy; receive, review and analyze letter from Vannah
DSS	1/8/2018	Travel to Bank of Nevada 2x re Trust deposit

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. J)

AMF	11/30/2017	Email to George Ogilvie instructing him to stop working on the case
AMF	11/30/2017	Review, Download & Save Letter to Counsel
AMF	11/30/2017	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings
AMF	11/30/2017	Review Viking's 19th ECC Supplement
AMF	11/30/2017	Review Letter from Lange regarding discovery scheduling and discussion with DSS
	11/30/2017-	
AMF	12/2/2017	Email chain with DSS re attorney lien
AMF	12/1/2017	Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested
AMF	12/1/2017	Review, Download & Save Lange Plumbing Verification to Rogs
AMF	12/1/2017	Review, Download & Save notice of Attorney Lien
AMF	12/1/2017	Review Release from Viking and discussion with DSS re release
AMF	12/4/2017	Draft and serve notice to vacate deposition of UL Laboratories
AMF	12/4/2017	Review Lange written discovery responses
AMF	12/4/2017	Discussion with DSS re scheduling and status of case
		Review, Download & Save Notice Vacating the 2nd Amended Video Depo of NRCP30(b) (6) Designees of
AMF	12/4/2017	Underwriters Laboratories
AMF	12/4/2017	Review, Download & Save Discovery Commissioners Report and Recommendations
AMF	12/5/2017	Email chain with UL re vacating depo
AMF	12/6/2017	Review Lange's 13th ECC Disclosure
AMF	12/6/2017	Review email from DSS re notice to vacate Caranahan depo
AMF	12/6/2017	Draft and serve Notice to Vacate Robert Carnahan Deposition
AMF	12/6/2017	TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS
AMF	12/6/2017	Review, Download & Save Service Only -- Lange Plumbing 13th Supp to NRCP 16.1 ECC
AMF	12/6/2017	Review, Download & Save Service Only -- Notice of Vacating the Continued Video Depo of Robert Carnahan
AMF	12/7/2017	Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Rec
AMF	12/8/2017	Review Viking Motion for Good Faith Settlement, Analyz and discussion with DSS
AMF	12/8/2017	Review Lange's 14th and 15th ECC Disclosure
AMF	12/8/2017	Email Chain with DSS re Order Granting Giberti MGFS
AMF	12/8/2017	Review Stipulation to Dismiss from Viking and Discussion with DSS
AMF	12/8/2017	Review, Download & Save Lange Plumbing 15th Supplement to 16.1 ECC List Witnesses and Docs

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. J)

AMF	12/8/2017	Review, Download & Save Lange Plumbing 14th Supp to 16,1 ECC List of Witnesses and Docs
AMF	12/11/2017	Discussion with DSS re client's release of claims
AMF	12/11/2017	Review email from DSS re Lange's 15th ECC Supplement and response
AMF	12/11/2017	Review email from DSS re Lange's 15th ECC Supplement and response
AMF	12/12/2017	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS
AMF	12/12/2017	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement
AMF	12/13/2017	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith
AMF	1/8/2018	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt
DSS		HOURS BILLED FOR DANIEL S. SIMON @ \$550 RATE
AMF		HOURS BILLED FOR ASHLEY M. FERRELL @ \$275 RATE
		TOTAL HOURS BILLED
		SIMON FEES
		FERRELL FEES
		TOTAL POST-DISCHARGE FEES
		SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW
		Admin tasks re Lange Settlement
		Admin tasks re Viking Settlement, including one hearing (1)
		Preparation of Attorney Lien
		Opening Bank Account & Depositing Settlement Checks
		Undetermined - not sufficient description
		(1) For purpose of estimating category, all T/C with Vannah were added to this category.

**EDGEWORTHS' MOTION FOR ORDER RELEASING
CLIENT FUNDS AND REQUIRING THE PRODUCTION
OF COMPLETE CASE FILE**

Attorneys for Defendant
Edgeworth Family Trust and
American Grating, LLC

Defendants.

) EDGEWORTHS' MOTION
) FOR ORDER RELEASING
) CLIENT FUNDS AND
) REQUIRING THE
) PRODUCTION OF
) COMPLETE CLIENT FILE
)
) HEARING REQUESTED

MORRIS LAW GROUP
801 S. RANCHO DR., STE. B4 • LAS VEGAS, NEVADA 89106
702/474-9400 • FAX 702/474-9422

Defendants Edgeworth Family Trust and American Grating, LLC (collectively referred to as "Edgeworths") respectfully move this Court for an order releasing the Edgeworths' settlement funds now being held in a Bank of Nevada Account, requiring the signatures of Robert Vannah and Daniel Simon for release, into the Morris Law Group Trust account, and ordering the release of over \$1.5M in the account that is not reasonably in dispute. The Edgeworths further move for an Order requiring Simon to produce their complete client file to them or, at a minimum, deposit the complete client file with the Court, as he said he would do nearly a year ago.

This Motion is based on the papers and pleadings on file, the declaration of Rosa Solis-Rainey and any argument the Court may consider on this matter.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR RELEASE OF FUNDS AND MOTION FOR PRODUCTION
OF COMPLETE CLIENT FILE**

The Court is aware of the facts of this case; thus, only those facts necessary to address the narrow issues presented by this motion will be summarized.

I. *RELEVANT FACTS*

On November 30, 2017, Daniel Simon filed an attorney charging lien against settlement proceeds due to the Edgeworths for \$80,326.86 in costs that were "continuing to accrue." Ex. A. On January 2, 2018, he amended his lien, reducing the costs claimed to be accruing to \$76,535.93¹ and attorney fees totaling \$2,345,450 less payments received from the Edgeworths, for a net of \$1,977,843.80. *See* Ex. B. On January 8, 2018, the Viking settlement

¹ Simon again reduced the cost amount later, and the Edgeworths paid the costs, as the Court acknowledged. *See* Nov. 19, 2018 Decision and Order on Motion to Adjudicate Lien at 17:12-13 ("there are no outstanding costs remaining owed").

proceeds were deposited into a bank account that requires dual signatures for release, Mr. Simon's and Robert Vannah's, whom the Edgeworths had retained to help Simon finish finalizing the settlement. Settlement funds in excess of those that would satisfy Simon's claimed lien were released to the Edgeworths. Today, however, more than \$2M remains in that account, of which no more than \$537,502.50 would completely satisfy the amount this Court and the Nevada Supreme Court has ruled would pay Simon *all* he would be entitled to *if* the Edgeworths' pending motion to reconsider this Court's Third Amended Decision and Order is denied. Mr. Vannah has confirmed he will sign to transfer the funds now; Mr. Simon would not agree to the transfer or release of any funds to avoid this motion practice and judicial intervention. *See* Exs. C and D.

With respect to the case file, the Edgeworths requested in 2017 that Simon provide them with all documentation he had regarding the Viking settlement discussions. Ex. E. In response, he provided two settlement drafts on November 30, 2017. Ex. DD and EE to 5/3/21 Mot. for Recon. In 2018, Simon also provided the Edgeworths' "original file," but it was not complete and only included selected portions of the file. Ex. F. When the Edgeworths realized the file was incomplete, their counsel served Simon's counsel with a notice of intent to bring a motion to compel the production of the complete file under NRS 7.055(2). Ex. G. After much back and forth addressing Simon's alleged obstacles to producing the file, his office sent Mr. Edgeworth the file, minus "protected confidential material" and promised to deposit the balance of the file with the Court, which he did not do. Ex. H, May 27, 2020 Exchanges; *see also* Exs. 2 – 4 to Pl.'s Opp'n to Mot.for Recon. The files he did produce were on a portable hard drive; the files were disorganized and often indecipherable, which made review very difficult and time consuming. Solis-Rainey Decl. ¶6.

1 Because the file was still not complete, Edgeworths' counsel raised the
2 deficiencies in a telephone call to Simon's counsel, James Christensen. Solis-
3 Rainey Decl. ¶ 9. Mr. Christensen asked that a list of items identified as
4 missing be provided so he could discuss it with Mr. Simon. *Id.* As he
5 requested, a letter outlining the deficiencies noted thus far was sent to Mr.
6 Christensen on May 4, 2021. Ex. I. Among the deficiencies noted in the
7 allegedly "complete" file produced in 2020 was email produced between
8 Simon and opposing counsel or other third parties that had been stripped of
9 the referenced attachments. The file also did not include correspondence,
10 including email, with third parties regarding the settlement of the Viking
11 and Lange Plumbing claims. Also missing were earlier drafts of the
12 settlement agreements with Viking and Lange, complete communications to
13 and from the experts, including expert reports, if any, as well as research
14 memos (and much of the research) prepared on behalf of the Edgeworths.
15 *Id.*

16 In response to the letter he requested, Mr. Christensen resurrected the
17 same excuses raised by Simon's other counsel in 2020 for not producing the
18 file. Ex. J. These included the claimed retaining lien on the file and alleged
19 confidentiality issues for which he provided no substantiation, both excuses
20 raised and presumably resolved when Simon tendered the allegedly
21 complete, but in fact incomplete, file in 2020. Nevada law requires Mr.
22 Simon, a terminated attorney, to turn over the **complete** client file. His prior
23 productions of incomplete files suggest that the excuses offered for failure to
24 produce his complete file show gamesmanship to frustrate the Edgeworths
25 that is indicated by the folder Simon named "Finger for Edgeworth" in the
26 incomplete file he provided in 2020. Ex. K. The record also demonstrates
27 that when seeking to substantiate his "super bill," Simon and his office spent
28 extensive time going through what his associate described as a "huge" client

1 file, much of which was in paper form; with extensive email. *See, e.g.*, Ex. L
2 at 106, 108, 109, 111-12. During the August 29, 2018 hearing, in fact, Simon's
3 office claimed that all billed entries describing email "ha[d] all been
4 produced." Ex. L. at 197. Complete email is among the items missing from
5 the file Simon produced. *See* Ex. J.

6 II. *LEGAL STANDARD*

7 This Court found that Simon was discharged November 29, 2017, and
8 that he was entitled to the reasonable value of his services after he was
9 discharged, *from November 30 forward*. That decision has been appealed
10 and affirmed by the Nevada Supreme Court. In its December 30, 2020 Order
11 the Supreme Court said:

12

13 [w]e conclude that the district court acted within its sound
14 discretion by finding that the Edgeworths constructively
15 discharged Simon on November 29, 2017.

16 Although we conclude that the district court correctly
17 found that Simon was entitled to quantum meruit for work done
18 after the constructive discharge . . . we agree with the
19 Edgeworths that the district court abused its discretion by
20 awarding \$200,000 in quantum meruit without making findings
regarding the work Simon performed after the constructive
discharge.

21 12/30/20 Order, Nev. Sup. Ct. Case Nos. 77678/76176 *rehearing denied*)
22 (emphasis added and citations omitted). Simon challenged the amount
23 awarded to him in a writ proceeding in the Supreme Court, which was
24 consolidated with two other then-pending cases for most of the appellate
25 proceedings. It was deconsolidated for disposition on December 28, and on
26 December 30, 2020, the Supreme Court issued an Order denying the writ
27 petition as moot, because the issues had been adjudicated in the Court's
28 substantive order issued that same day in which this Court's award of
\$200,000 in *quantum meruit* was vacated and the case remanded for further

proceedings on the basis for awarding the \$200,000. 12/30/20 Order, Nev. Sup. Ct. 79821 (writ).

The Edgeworths did not challenge the roughly \$285K in fees the district court awarded for the period of September 19 to November 29, 2017. *Id.* at 2-3, and at n.3. The Supreme Court Order irrevocably establishes the law of the case and now controls in this Court. The law of the case doctrine prevents Simon from rearguing that he is entitled to more than the reasonable value of the limited services he provided *from November 30, 2017 forward*. *Hsu v. County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) ("[w]hen an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal.")

With respect to Simon's client file, NRS 7.055 requires that "an attorney who has been discharged . . . upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client." The statute goes on to say that "if there is doubt as to the ownership" of any portions of the file, it may be deposited with the clerk of the court, which Simon said he would do, but did not.

III. *ARGUMENT*

A. The Client's Funds Should be Released to Them.

The Supreme Court remanded this case to this Court for a limited purpose: to explain the basis for the \$200K *quantum meruit* award, and its reasonableness.² In an effort to avoid this motion, the Edgeworths proposed to Simon that the account at Bank of Nevada be transferred to Morris Law

² The remand also required that the Court evaluate the reasonableness of the fees granted under NRS 18.010(2)(b), but that amount is not in issue in this Motion, and the fees will be satisfied from the proceeds once released.

1 Group's Trust Account, and that all *uncontested* amounts be paid at once to
2 Simon and/or his counsel. The contested amount would be maintained in
3 the Morris Law Group Trust account, and the balance disbursed to the
4 Edgeworths. Simon refused this proposal, taking the position that if the
5 Edgeworths could maintain the *quantum meruit* amount was less than
6 awarded by the Court, he could take the position that he is owed more than
7 \$200,000. This position is not credible under the law of the case. Simon was
8 given a full opportunity to adjudicate the amount owed to him; his claim
9 that he is entitled to \$2.4M in fees (less payments received) has been
10 considered and rejected by this Court and affirmed by the Supreme Court.
11 He has presented a list of the services performed between November 30
12 forward, and he cannot now reopen or enlarge the *quantum meruit* amount
13 or period as he wishes to do. With his compensation issues conclusively
14 decided but for the limited post-discharge period, Simon has no legitimate
15 excuse for holding over \$2M of the Edgeworths' funds hostage. His belief
16 that he was entitled to nearly \$2M that he alleged in his charging lien filed
17 on January 2, 2018 has been conclusively rejected. He cannot, as a matter of
18 law, reasonably maintain that he is entitled to more than the \$252,520 for
19 attorney fees, costs, and *quantum meruit* that the Supreme Court directed
20 this Court to justify would be reasonable.

21 Simon's repeated claims that the money is being held pursuant to
22 orders of this Court are not substantiated by the record. *See* Ex. M, Excerpts
23 of Simon's Opp'n to Edgeworths' Special Mot. to Dismiss in Case No. A-19-
24 807433-C at 11:20-21 (stating that "disputed funds remain held in trust . . .
25 because *the Court ordered that the money should not be distributed*
26 pending *appeal*." (emphasis added)); at 27:22-23 ("Following the hearing,
27 Judge Jones *ordered the funds remain in the account* after the Edgeworths
28 *appealed* to the Supreme Court." (emphasis added)); *see also* Ex. N Excerpts

1 of Simon's Opp'n to Vannah's NRCP 12(b)(5) Mot. to Dismiss at 13:9-10
2 ("Only the disputed funds remain in the special trust account. *Simon is*
3 *following the District Court order* to keep the disputed funds safe pending
4 appeal."). The Edgeworths' former counsel brought a motion to release the
5 funds, *after* the appeal was noticed but *before* it was heard. Correctly,
6 however, this Court found that "the Court does not have jurisdiction as this
7 case has been appealed . . ." 2/5/19 Min. Order. Though the minute order
8 instructed plaintiff's counsel prepare the order and submit it to opposing
9 counsel for review, and then to the Court, there is no record that instruction
10 was followed. A disposition due to lack of jurisdiction is not an instruction
11 to withhold all of the funds in the account following appeal, as Simon
12 claims. In any event, the appeal has been decided and remand has been
13 issued with regard to not all that is held in trust, but only \$252,520 of those
14 funds.

15 Furthermore, Simon's insistence on unilaterally withholding over \$2M
16 from the settlement proceeds was inconsistent with NRS 18.015(1), which
17 permits a charging lien, but only in "the amount of any fee **which has been**
18 **agreed upon** by the attorney and client." NRS 18.015(1)(b)³; *see also, Hoff v.*
19 *Walters*, 129 Nev. 1122 (2013) (unpublished) (recognizing statute sets the
20 limit on amount of charging lien). Simon knew at the time he asserted the
21 lien that the fees he claimed were disputed, and he knew the time spent on
22 the file, and the hourly rates that had been established for his firm's work.
23 At most, Simon should have asserted a lien only for an amount equal to the
24 hours he billed at the rate that he requested and applied throughout his
25 relationship with the Edgeworths.

26
27 ³ NRS 18.015(1)(b) in its entirety says "A lien pursuant to subsection 1
28 is for the amount of any fee which has been agreed upon by the attorney
and client. In the absence of an agreement, the lien is for a reasonable fee for
the services which the attorney has rendered for the client."

1 Even if Simon legitimately believed that the amount of his lien "was
2 the reasonable fee for the services," once the Court determined that Simon
3 was not entitled to a contingency or flat fee, and that he was entitled to
4 approximately \$485,000 in fees, Simon should have immediately released
5 the balance of the settlement proceeds that Simon encumbered to the client.
6 Nothing in NRS 18.015(1)(b) permits a lawyer to withhold more of the
7 client's funds than what was agreed for fees and costs, and certainly not
8 more than the Court determined a lien was worth. This is especially true
9 when the dispute over the amount owed arises because of the attorney's
10 own failure to communicate the basis or rate of his compensation "to the
11 client, preferably in writing, before or within a reasonable time after
12 commencing the representation." RPC 1.5.

13 The approximately \$285K based on the implied contract at the hourly
14 rates he requested for work performed on or prior to November 29, 2017 has
15 been accepted and is not in issue, as the Supreme Court recognized. The
16 \$200K in *quantum meruit* for the reasonable value of the limited post-
17 discharge services provided is all that remains in issue.

18 The Edgeworths have sought reconsideration of the *quantum meruit*
19 award because they do not understand the basis for it, and because it does
20 not comport with the Supreme Court's mandate. Given the finality of the
21 findings that Simon is not entitled to a contingency fee, or a \$1M+ flat fee, it
22 is unreasonable for him to maintain that the amount held in trust (more than
23 \$2M) should be held as security for what *at most* is \$200,000 in issue. Please
24 remember that the reasonable value of the services Simon provided, post-
25 discharge, based on his own records, is less than \$34,000. He should not be
26 allowed to hold approximately \$1.5M hostage.

1 **B. The Edgeworths are Entitled to Their Complete Client File.**

2 Like he is doing with the trust funds on deposit, Simon continues to
3 hold the Edgeworths' *complete* file⁴ hostage. The Edgeworths have
4 requested missing portions of their file since 2017. *See* Ex. E. The missing
5 information from the file was requested in 2018 and Simon produced
6 *portions* of it. *See* F. Although Simon disputes the earlier request date, he
7 cannot dispute that the Edgeworths made clear and unambiguous demands
8 for their *complete* file by May 17, 2020. Ex. G.

9 Simon previously told this Court that the file had been produced.
10 4/13/21 Opp'n to Mot. for Reconsid. at 6 (under the heading "The
11 Edgeworths have the case file," they go on to say: "In 2020, a different
12 Edgeworth lawyer asked for the file and the file was given directly to Brian
13 Edgeworth as requested."). This representation to the Court was made in the
14 context of the Edgeworths' contention that they did not have their *complete*
15 *file*. *See* 3/30/21 Mot. for Recon. at 14. Following the 2020 demands for the
16 complete file, Simon again threw up obstacles to its production, claiming the
17 existence of a retaining lien (which he knew was secured many times over
18 by the amount of the settlement funds still tied up due to his refusal to
19 release the account) and demanding that counsel sign a protective order in
20 place in the underlying case. *See* Ex. G (re retaining lien); Ex. H at 3 (re
21 protective order issue). The Edgeworths' counsel properly reminded Simon
22 that the clients were already bound by the protective order and entitled to
23 receive their complete file, without counsel needing to sign the protective
24

25 ⁴ The 2020 exchanges concerning the file acknowledged that "internal
26 emails based on relevancy, work product privilege and proportionality" had
27 been withheld. *See* Ex. P. Without waiving any objections or rights
28 regarding those "internal" emails, that should nonetheless be preserved in
light of defamation litigation initiated by Simon, the strictly internal emails
are not the subject of this Motion.

1 order. Ex. H. Ultimately, Simon's counsel agreed to produce the file, sans the
2 "confidential material" from third-parties, and agreed he would deposit "the
3 balance of the file with the Clerk." Ex. H at 3. While an electronic drive with
4 a portion of the file was sent to Mr. Edgeworth, there is no indication in the
5 record that the rest of the file was deposited with the court clerk.

6 When Edgeworths' counsel again demanded the file pursuant to NRS
7 7.055, Ex. I, Mr. Christensen claimed it had been previously produced, and
8 when informed that significant gaps remained, he asked for a list of what
9 was believed to be missing. Ex. J. Simon's response to the latest demand for
10 the file confirms that despite his contention that the mostly-complete file
11 had been produced, is simply not true. *Id.* Simon's counsel again raises the
12 false retaining lien and confidentiality issues raised and addressed, and
13 presumably resolved, in 2020. Ex. H.

14 The retaining lien issue should be a non-starter given that Simon
15 refuses to sign off on releasing the \$2M+ funds that he is essentially now
16 controlling (Mr. Vannah has unequivocally agreed to sign off on the transfer
17 of the funds), despite the Edgeworths' offer to settle all undisputed balances
18 owed to him, and maintain the contested portion in trust. Simon is more
19 than adequately secured. He cannot legitimately use that excuse to withhold
20 the file. Simon resurrected contention that confidentiality issues that were
21 resolved nearly one year ago when he produced portions of the file also do
22 not support withholding it. The Edgeworths are bound by the
23 confidentiality terms in the underlying litigation, and they are entitled to
24 their complete client file, especially since Simon has sued them in a separate
25 lawsuit. Simon has offered no legitimate reason for continuing withholding
26 the Edgeworth's complete file; the Court should order it to be produced, at
27 once, consistent with NRS 7.055.
28

IV. *CONCLUSION*

For the foregoing reasons, the Edgeworths respectfully ask that the Court issue an order requiring Simon to sign off to transfer the withheld settlement trust funds into the Morris Law Group Trust Account, and thereafter authorize Morris Law Group to hold \$537,502.50 in the Trust Account to disburse as set forth below, and to release the remainder of the settlement funds to the Edgeworths:

- (1) \$284,982.50 to Simon as fees for the period between September 19 and November 29, 2017;
- (2) \$52,520 to Simon for attorney's fees (\$50,000) and costs (\$2,520) awarded under NRS 18.010(2)(b);
- (3) At least \$200,000 to be maintained in Trust pending a final disposition on the amount Simon is due under *quantum meruit*.

The Edgeworths further request pursuant to NRS 7.055, that the Court order Simon to turn over their complete client file to them; understanding they will remain bound by the confidentiality order for the duration stated therein.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

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Rosa Solis-Rainey, Bar No. 7921
801 S. Rancho Dr., Ste. B4
Las Vegas, Nevada 89106

Attorneys for Defendants
Edgeworth Family Trust and
American Grating, LLC

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: **EDGEWORTHS' MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE**

DATED this 13th day of May, 2021.

By: /s/ TRACI K. BAEZ
An employee of Morris Law Group

EXHIBIT O

May 11, 2021 Email from Rosa-Solis Rainey to
Jim Christensen in Response to his letter dated
5/7/2021

Rosa Solis-Rainey

From: Rosa Solis-Rainey
Sent: Tuesday, May 11, 2021 10:31 AM
To: 'jim@jchristensenlaw.com'
Cc: Steve Morris
Subject: Edgeworth Matter - Response to your letter dated 5/7/21

Jim:

I am in receipt of your response dated May 7, 2021. As I mentioned when we spoke and in my letter, Mr. Edgeworth was provided a part of his file but the file was by no means complete. The excuses raised in your letter for not producing the complete file are ones that were discussed ad nauseam in 2020, and since the files were ultimately produced to Mr. Edgeworth, were presumably abandoned or resolved. I do not see any benefit to either of our clients in rehashing those arguments. This includes the fees outstanding, which you know your client is fully secured for given the \$2M+ still held, essentially under his control.

Your letter references an NDA, but one is not included either in your letter or in the 2020 exchanges your letter directs me to. In either case, Ms. Lee properly responded to that issue when she reminded the sender that the Edgeworths are already parties to the confidentiality provisions, and confidentiality was therefore not an excuse for withholding the file. My position on that excuse for withholding the file is the same. You're welcome to send me a copy of the NDA you referenced, but I don't see that as a legitimate obstacle to avoid production. Point of fact, you produced the file (incomplete as it was) to Mr. Edgeworth without further signatures on the protective order, thus confirming that the confidentiality argument was resolved to everyone's satisfaction.

In any event, the Edgeworths are not seeking tax returns or proprietary company information from Viking or Lange, though I do believe it should be preserved. To the extent confidentiality is your client's excuse for withholding any part of the file, he should schedule the documents withheld on a log and deposit that portion of the file with the Court so that we can adequately challenge the propriety of him withholding those documents. Note that the email exchanges from last year indicate Mr. Christianssen said he would deposit the challenged portions of the file with the Court last year, but there is no indication in the record the deposit was made.

With respect to your request for clarification, I expect that all email exchanges pertaining to the litigation would be produced in their complete form, including attachments. That is not difficult task if the files were properly maintained, and the complete email with attachments is what would have been captured if you transferred the email onto the production drive from the custodians' email (i.e., it takes more work to remove attachments). As I told you on the phone, the representation in 2020 was that the complete file being produced would not include the strictly internal emails, and the Edgeworths accepted that for the time being. I did not raise internal email among the "missing" portions of the file because of that prior agreement, though I expect that your client will honor his obligation to preserve that internal email along with all other communications, as they may be discoverable in the subsequent litigation he commenced.

With respect to the settlement agreements, the only drafts I am aware your clients produced regarding the Viking settlement are the two drafts produced on November 30, 2017 and the copy ultimately signed. With respect to the Lange settlement, I am aware of a draft sent in early December 2017, which appears to be the draft ultimately signed. No email regarding the settlement discussions was produced.

Unrelated to the file but an open item nonetheless, you said you would get back to me regarding your client's position on transferring the money into our Trust Account, and have not yet done so. Please provide me a response on that issue. Also, you mentioned that the writ somehow left open the question of the quantum meruit period. Note that on

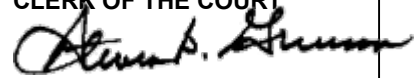
page 4 of the Supreme Court's Order on the appeal, it specifically affirmed the quantum meruit period as following the constructive discharge of November 29. Attempts to enlarge that period now are barred by the law of the case, so the only open question is the reasonable value of the November 30, 2017 forward services. I do not believe you can reasonably claim that is the \$2M+ your client is tying up by refusing the release the funds.

If you still have questions, please contact me. I would prefer to resolve the issue promptly and without judicial intervention, but if that is not possible, we will proceed with a motion.

Rosa Solis-Rainey
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**EDGEWORTHS' MOTION FOR RECONSIDERATION OF
ORDER ON MOTION FOR ORDER RELEASING CLIENT
FUNDS AND REQUIRING THE PRODUCTION OF
COMPLETE CASE FILE**



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Attorneys for Defendant
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

LANGE PLUMBING, LLC ET AL.,

Defendants.

) Case No: A-16-738444-C

) Dept. No: X

)

) EDGEWORTHS' MOTION FOR
) RECONSIDERATION OF ORDER
) ON MOTION FOR ORDER
) RELEASING CLIENT FUNDS
) AND REQUIRING THE
) PRODUCTION OF COMPLETE
) CLIENT FILE

)

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

) AND

)

) MOTION TO STAY EXECUTION
) OF JUDGMENTS PENDING
) APPEAL

)

) Case No: A-18-767242-C

) Dept. No. X

)

) HEARING REQUESTED

)

Defendants Edgeworth Family Trust and American Grating, LLC (collectively referred to as "Edgeworths") respectfully move this Court for an reconsideration of its order filed on June 17, 2021, notice of entry filed on June 18, 2021, on the Edgeworths' motion for release of funds and for an order requiring production of the Edgeworths' complete client file.

The Edgeworths also move for an order staying execution of the Second Amended Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, entered on May 24, 2021 and the Order Denying Plaintiff's Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien, entered on June 18, 2021. These Motions are based on the papers and pleadings on file, the exhibits referenced herein, and any argument the Court may permit.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR RECONSIDERATION OF ORDER ON MOTION FOR
RELEASE OF FUNDS AND MOTION FOR PRODUCTION OF COMPLETE
CLIENT FILE AND ENTRY OF ORDER STAYING ENFORCEMENT OF
JUDGMENTS PENDING APPEAL**

The Court is aware of the facts of this case; thus, they will not be set forth herein, but are incorporated from the underlying motions.

A. LEGAL STANDARDS

A party may seek reconsideration within 14 days after service of written notice of the order. E.D.C.R. 2.24. Reconsideration is appropriate when the Court has misapprehended or overlooked important facts when making its decision, *Matter of Ross*, 99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983), when new evidence is presented, or when the decision is "clearly erroneous." *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Here, the Court's Order denying the Edgeworths' request to maintain an amount equal to the full judgment in the undersigned's IOLTA account, disburse uncontested amounts, and release funds in excess of the judgment amounts

1 is clearly erroneous, and based on a misapprehension of the facts presented.
2 The Court's Order denying the release of the client's file is also clearly
3 erroneous and should be reconsidered.

4 In addition, and pursuant to Nev. R. Civ. P. 62, the Edgeworths seek
5 an order expressly staying the judgments entered by the Court in its Second
6 Amended Order Granting in Part and Denying in Part Simon's Motion for
7 Attorney's Fees and Costs, entered on May 24, 2021, resulting in a judgment
8 of \$52,520, as well as staying the Order Denying Plaintiff's Renewed Motion
9 for Reconsideration of Third Amended Decision and Order on Motion to
10 Adjudicate Lien, entered on June 18, 2021, resulting in a judgment of
11 \$484,982.50 (reconsideration denied June 18, 2021).¹

12 **B. THE COURT HAS ADJUDICATED THE LIEN AMOUNT AND HAS**
13 **NO AUTHORITY TO ENCUMBER MORE THAN THE JUDGMENT**
14 **AMOUNT.**

15 NRS 18.015(6) provides that "a court shall, after 5 days' notice to all
16 interested parties, adjudicate the rights of the attorney, client, or other
17 parties and enforce the lien." This Court has adjudicated Simon's lien, and
18 determined he is entitled to \$484,982.50 in attorney fees for the work
19 claimed under the lien. Of this amount, the Court determined \$284,982.50 is
20 due under the implied contract, and \$200,000 in quantum meruit. There is
21 no legal justification to encumber the Edgeworths' account for amounts in
22 excess of the Court's judgment "because the Court has not issued a final
23 order in this matter and the time for appeal has not run." Order at 2. As

24 ¹ The Third Amended Lien Order, filed on April 19, 2021 (in Case No.
25 A-18-767242-C) and again on April 28, 2021 (in Case No. A-16-738444-C)
26 resulted in a judgment of \$556,577.43; however, Simon and the Court have
27 both acknowledged that the costs included in the total (\$71,594.93) were
28 paid in 2018 and are no longer owed. *See* Third Am. Lien Order at 18 (Court
finds that there are no outstanding costs remaining owed); Nov. 19, 2018
Decision and Order on Motion to Adjudicate Lien at 17:12-13 (*same*). The
Court's entry of a judgment for amounts admittedly paid also exceeds its
jurisdiction.

1 another court recognized in addressing a lien question under NRS 18.015,
2 "adjudication of the lien has obviously happened here. To wit, [the party's]
3 motion to foreclose on the lien has been resolved, judgment on fees has been
4 entered, and collection remedies are available for that judgment." *Guerrero*
5 *v. Wharton*, Case No. 2:16-cv-01667-GMN-NJK, 2019 WL 4346571 at *2 (Sept.
6 12, 2019) (Slip Copy).

7 The same is true in this case. The Court has adjudicated the parties'
8 rights under the lien, and the full judgment amount is secured. There
9 remains nothing more for this Court to do. Should the Edgeworths wish to
10 appeal, enforcement of the judgment can continue unless the Court stays
11 enforcement. Nev. R. Civ. P. 62 provides a stay as a matter of right if a
12 supersedeas bond in the full judgment amount is posted, unless the Court
13 makes findings that a lesser amount is appropriate under the circumstances.
14 *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). The very
15 purpose of a supersedeas bond is "to protect the judgment creditor's ability
16 to collect the judgment if it is affirmed by preserving the status quo and
17 preventing prejudice to the creditor arising from the stay" pending appeal.
18 *Id.* at 835, 122 P.3d at 1254. Here, Simon is adequately secured. The Court
19 has no authority to require security of nearly four times the judgment
20 amount.

21 The Court's June 17, 2021 Order gave two reasons for requiring this
22 excessive security: (1) "the Motion is premature"; and (2) "there is a bilateral
23 agreement to hold the disputed funds in an interest-bearing account at the
24 bank . . .". Neither of these reasons is supported by the law.

25 With respect to the prematurity issue, once the Court adjudicated the
26 lien, which it did in 2018, and again in 2021, the Court's work was complete.
27 *See* Ex. A, Excerpts of Court's Dockets, reflecting judgments totalling
28

1 \$609,097.40;² *see also Guerrero, supra*; NRCp 62 (providing for post-
2 judgment security).

3 To the extent that the Court's order was based on accepting Simon's
4 argument that the "a bilateral agreement to hold the disputed funds in an
5 interest-bearing account at the bank" controlled by Simon and Vannah, the
6 Edgeworths' former counsel, the Court's order is clearly erroneous, and
7 premised on misapprehended facts. The funds were placed in an interest-
8 bearing account at a bank because of the very lien dispute that the Court has
9 since adjudicated. The account was established because the Edgeworths
10 disputed Simon's claim on the funds under the liens he filed in 2017 and
11 2018, which the Court has since rejected. The purpose of the account was to
12 secure the funds pending adjudication of the lien, which the Court has done.
13 Since the lien has been adjudicated for a fraction of the amount Simon
14 claimed, there is no legal justification for withholding funds in excess of the
15 adjudicated lien amount. The excess funds should be immediately released
16 to the Edgeworths to use as they wish, including to satisfy the undisputed
17 portions of the judgment (\$52,520 on the attorney's fees and costs order) and
18 the undisputed \$284,982.50 awarded in the lien order, which this Court
19 entered and the Supreme Court affirmed. The "bilateral agreement" thus has
20 no application to the Court's decision, nor does it justify requiring securing
21 Simon for nearly four times the amount of the judgment simply because his
22 full lien amount has been wrongfully secured for nearly three years.

26 ² The Court may take judicial notice of its docket upon request, or *sua*
27 *sponte*. *See* NRS 47.150(1) (providing that a court may take judicial notice);
28 *see also*, NRS 47.130(2)(b) (providing that a judicially-noticed fact must be
"[c]apable of accurate and ready determination by resort to sources whose
accuracy cannot reasonably be questioned").

1 **C. THE COURT'S REFUSAL TO COMPEL SIMON TO PRODUCE THE**
2 **EDGEWORTHS' COMPLETE CLIENT FILE, OR DEPOSIT DISPUTED**
3 **PORTIONS, IS CLEARLY ERRONEOUS**

4 As to the Court's refusal to compel Simon's production of the
5 Edgeworths file, the Court's decision is erroneous. The Court's role in
6 adjudicating a common law retaining lien claim is to ensure that the
7 lawyer's fees are secured. *Figliuzzi v. Eighth Judicial Dist. Ct.*, 111 Nev. 338,
8 890 P.2d 798 (1995); *Fredianelli v. Fine Carman Price*, 133 Nev. 586, 589, 402
9 P.3d 1254, 1256 (2017) (recognizing that pre-2013 cases remain good law
10 with respect to common law retaining liens). Even if the Court believes that
11 the non-disclosure agreement ("NDA") has application at this point, the
12 Edgeworths are parties to the NDA and are bound by it. Thus they, not
13 Simon, would be responsible if they made any unauthorized disclosures.
14 Furthermore, to the extent the Court is denying the Edgeworths the
15 "complete" file because of the NDA (Order at 3), the legislature built the
16 remedy right into the statute. NRS 7.055 provides that if the right to a
17 portion of the file is disputed, that portion should be deposited with the
18 Court. Since adequate security has been in place since 2018, there was no
19 legal basis for the Court to refuse to compel Simon to produce the
20 Edgeworths' complete file or require him to deposit any disputed portions
21 of the file with the Court.

22 **D. MOTION TO STAY ENFORCEMENT OF JUDGMENTS PENDING**
23 **APPEAL**

24 Pursuant to Nev. R. Civ. P. 62, the Edgeworths move for an order to
25 stay the judgments for \$52,520 on the Court's Second Amended Order
26 Granting in Part and Denying in Part Simon's Motion for Attorney's Fees
27 and Costs, entered on May 24, 2021, and for \$556,577.43 on its Third
28 Amended Decision and Order on Motion to Adjudicate Lien, entered on
 June 18, 2021.

Rule 62(d)(2) provides that "a party is entitled to a stay by providing bond or other security." Judgment was entered by the Court on the two foregoing orders for a total of \$609,097.40 (of which Simon and the Court acknowledge only \$537,502.50 remains outstanding). The Edgeworths do not dispute the \$52,520 award or \$284,982.50 of the lien award and have asked the Court to allow them to satisfy these amounts from the settlement funds. Should the Court refuse to reconsider permitting them to pay these undisputed portions from their settlements funds, staying enforcement of the orders pending appeal of that order is appropriate. The purpose of the security is to maintain the status quo, and secure the judgment creditor, Simon, for payment of the judgment if the judgment is affirmed. *Nelson*, 121 Nev. at 835, 122 P.3d at 1254.

The Edgeworths respectfully ask that the Court enter a stay and either (1) allow the Edgeworths to pay the undisputed portions of the judgments, \$52,520 on the attorney's fees and costs order and \$284,982.50 on the lien order from the settlement proceeds currently on deposit in Morris Law Group's IOLTA account, and deposit of \$200,000 with the Court; or (2) deposit of the entire \$537,502.50 unpaid judgment amount from the settlement monies currently on deposit in Morris Law Group's IOLTA Account while appeal is pending.

E. CONCLUSION

For the foregoing reasons, the Edgeworths respectfully ask that the Court reconsider its Order compelling the Edgeworths to over-secure Simon and order that security for the Court's judgment be provided, either by:

- (1) depositing \$537,502.50 from the undisbursed settlement funds into the Court; or
- (2) authorizing the Edgeworths to permit Morris Law Group to disburse the undisputed \$337,502.50 as described in this

1 Motion and depositing \$200,000 with the Court from the
2 undisbursed settlement proceeds,
3 and release the Edgeworths' excess funds. The Edgeworths further request
4 that the Court reconsider its order refusing to compel Simon to produce the
5 Edgeworths' entire client file or produce the complete undisputed portion of
6 the file and deposit the claimed "confidential" portions with the Court
7 pursuant to NRS 7.055.

8 Finally, the Edgeworths request an order staying execution of the
9 judgments pending appeal upon deposit with the Court of the full judgment
10 amount, unless disbursement is permitted as described above.

11 MORRIS LAW GROUP

12 By: /s/ STEVE MORRIS
13 Steve Morris, Bar No. 1543
14 Rosa Solis-Rainey, Bar No. 7921
15 801 S. Rancho Dr., Ste. B4
16 Las Vegas, Nevada 89106
17 Attorneys for Defendants Edgeworth
18 Family Trust and American Grating,
19 LLC
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: EDGEWORTHS' MOTION FOR RECONSIDERATION OF ORDER ON MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE AND MOTION TO STAY EXECUTION OF JUDGMENTS PENDING APPEAL

DATED this 1st day of July, 2021.

By: /s/ CATHY SIMICICH

An employee of Morris Law Group

EXHIBIT A

Excerpts of Dockets in Case No. A-16-738444-C and
A-18-767242-C Showing Outstanding Judgments
totaling \$609,097.40

Case Information

A-16-738444-C | Edgeworth Family Trust, Plaintiff(s) vs. Lange Plumbing, L.L.C., Defendant(s)

Case Number	Court	Judicial Officer
A-16-738444-C	Department 10	Jones, Tierra
File Date	Case Type	Case Status
06/14/2016	Product Liability	Closed

Party

Plaintiff
Edgeworth Family Trust

Active Attorneys ▼
Attorney
Morris, Steve L.
Retained

Lead Attorney
Simon, Daniel S.,
ESQ
Retained

Attorney
FERREL, ASHLEY
Retained

Attorney
Christensen, James
R.
Retained

Attorney
Solis-Rainey, Rosa
Retained

05/24/2021 Judgment

Judicial Officer
Jones, Tierra

Judgment Type
Order

Monetary Judgment

Debtors: Edgeworth Family Trust (Plaintiff)

Creditors: Daniel S Simon (Defendant)

Judgment: 05/24/2021 Docketed: 02/08/2019

Total Judgment: \$52,520.00

Comment: In Part

Case Information

A-18-767242-C | Edgeworth Family Trust, Plaintiff(s) vs. Daniel Simon, Defendant(s)

Case Number	Court	Judicial Officer
A-18-767242-C	Department 10	Jones, Tierra
File Date	Case Type	Case Status
01/04/2018	Other Contract	Closed

Party

Plaintiff
Edgeworth Family Trust

Address
400 S. 7th St.
Las Vegas NV 89101

Active Attorneys ▼
Attorney
Morris, Steve L.
Retained

Attorney
Solis-Rainey, Rosa
Retained

Attorney
Atwood, Christine L.
Retained

Lead Attorney
Calvert, Lauren
Retained

Inactive Attorneys ▼
Attorney
Vannah, Robert D.
Retained

04/19/2021 Judgment

Judicial Officer
Jones, Tierra

Judgment Type
Judgment

Monetary Judgment

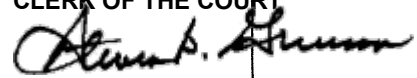
Debtors: Edgeworth Family Trust (Plaintiff), American Grating, LLC (Plaintiff)

Creditors: Law Office of Daniel S Simon (Defendant)

Judgment: 04/19/2021 Docketed: 04/21/2021

Total Judgment: \$556,577.43

**NOTICE OF ENTRY OF THIRD AMENDED DECISION
AND ORDER ON MOTION TO ADJUDICATE LIEN
(AND ORDER)**



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

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON
LAW; DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

NOTICE OF ENTRY OF ORDERS

Date of Hearing: N/A

Time of Hearing: N/A

Case No.: A-18-767242-C

Dept. No.: 26

Date of Hearing: N/A

Time of Hearing: N/A

1
2 PLEASE TAKE NOTICE, the following Orders were entered on the
3 docket:

4 1. March 16, 2021 – Amended Decision and Order Granting in
5 Part and Denying in Part, Simon’s Motion for Attorney’s Fees and Costs;
6

7 2. March 16, 2021 – Second Amended Decision and Order on
8 Motion to Adjudicate Lien;

9 3. April 19, 2021 – Third Amended Decision and Order on Motion
10 to Adjudicate Lien; and,
11

12 4. April 28, 2021 – Third Amended Decision and Order on Motion
13 to Adjudicate Lien.

14 A true and correct copy of each file-stamped order is attached hereto.
15

16 DATED this 16th day of May 2021.
17

18 /s/ James R. Christensen

19 James R. Christensen Esq.
20 Nevada Bar No. 3861
21 JAMES R. CHRISTENSEN PC
22 601 S. 6th Street
23 Las Vegas NV 89101
24 (702) 272-0406
25 (702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for SIMON

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CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF
ORDERS was made by electronic service (via Odyssey) this 16th day of
May 2021, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN, ESQ

EXHIBIT 1

1 **ORD**

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

4
5 **EDGEWORTH FAMILY TRUST; and**
6 **AMERICAN GRATING, LLC,**

7 **Plaintiffs,**

8 **vs.**

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

15 **Defendants.**

16 **EDGEWORTH FAMILY TRUST; and**
17 **AMERICAN GRATING, LLC,**

18 **Plaintiffs,**

19 **vs.**

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

24 **Defendants.**

CASE NO.: A-18-767242-C

DEPT NO.: X

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

AMENDED DECISION AND ORDER
GRANTING IN PART AND DENYING IN
PART, SIMON'S MOTION FOR
ATTORNEY'S FEES AND COSTS

25 **AMENDED DECISION AND ORDER ON ATTORNEY'S FEES**

26 This case came on for a hearing on January 15, 2019, in the Eighth Judicial District Court,
27 Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel
28 Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or
"Simon" or "Mr. Simon") having appeared in person and by and through their attorneys of record,
Peter S. Christiansen, Esq. and James Christensen, Esq. and Plaintiff Edgeworth Family Trust and
American Grating, ("Plaintiff" or "Edgeworths") having appeared through Brian and Angela

1 Edgeworth, and by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd.
2 The Court having considered the evidence, arguments of counsel and being fully advised of the
3 matters herein, the **COURT FINDS after review:**

4 The Motion for Attorney's Fees is GRANTED in part, DENIED in part.

5 1. The Court finds that the claim for conversion was not maintained on reasonable grounds, as
6 the Court previously found that when the complaint was filed on January 4, 2018, Mr. Simon was
7 not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust
8 account. (*Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)*). As such, Mr.
9 Simon could not have converted the Edgeworth's property. As such, the Motion for Attorney's Fees
10 is GRANTED under 18.010(2)(b) as to the Conversion claim as it was not maintained upon
11 reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworth's
12 property, at the time the lawsuit was filed.

13 2. Further, The Court finds that the purpose of the evidentiary hearing was primarily on the
14 Motion to Adjudicate Lien. The Motion for Attorney's Fees is DENIED as it relates to other claims.
15 In considering the amount of attorney's fees and costs, the Court finds that the services of Mr. James
16 Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit
17 against Mr. Simon, on January 4, 2018. However, they were also the attorneys in the evidentiary
18 hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose
19 of adjudicating the lien by Mr. Simon. The Court further finds that the costs of Mr. Will Kemp,
20 Esq. were solely for the purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs
21 of Mr. David Clark, Esq. were solely for the purposes of defending the lawsuit filed against Mr.
22 Simon by the Edgeworths.

23 3. The court has considered all of the *Brunzell* factors pertinent to attorney's fees and attorney's
24 fees are GRANTED. In determining the reasonable value of services provided for the defense of the
25 conversion claim, the COURT FINDS that 64 hours was reasonably spent by Mr. Christensen in
26 preparation and defense of the conversion claim, for a total amount of \$25,600.00. The COURT
27 FURTHER FINDS that 30.5 hours was reasonably spent by Mr. Christiansen in preparation of the
28

1 defense of the conversion claim, for a total of \$24,400.00. As such, the award of attorney's fees is
2 **Dated this 16th day of March, 2021**
3 GRANTED in the amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

4 IT IS SO ORDERED this 16th day of March, 2021.

5 
6 DISTRICT COURT JUDGE

7 4DA 7C0 B8B6 9D67
8 Tierra Jones
9 District Court Judge
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/16/2021

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

26
27
28

1 Michael Nunez mnunez@murchisonlaw.com

2 Gary Call gcall@rlattorneys.com

3 J. Graf Rgraf@blacklobello.law

4 Robert Vannah rvannah@vannahlaw.com

5 Christopher Page chrispage@vannahlaw.com

6 Jessie Church jchurch@vannahlaw.com

7
8
9 If indicated below, a copy of the above mentioned filings were also served by mail
10 via United States Postal Service, postage prepaid, to the parties listed below at their last
11 known addresses on 3/17/2021

12 Theodore Parker 2460 Professional CT STE 200
13 Las Vegas, NV, 89128
14
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EXHIBIT 2

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

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

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

25 (Def. Exhibit 27).

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

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

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ 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."

23 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 CONCLUSION OF LAW

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

22 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
23 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
24 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
25 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
26 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
27 22, 2017 email, titled "Contingency," he writes:
28

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

15 (Def. Exhibit 27).

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

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

27 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

18 Id.

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

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

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

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

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

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

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

6 NRS 18.015 states:

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

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

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

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

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

22 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

10 *Implied Contract*

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

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

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

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

10
11 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

1 amount has already been paid by the Edgeworths on December 16, 2016.²

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

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

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

16 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
17 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
18 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
19 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
20 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
21 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
22 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
23 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
24

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

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.

1 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

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

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

7
8 *Costs Owed*

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

16
17 *Quantum Meruit*

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

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

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

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

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

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

21 1. Quality of the Advocate

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

1 work product and results are exceptional.

2 2 The Character of the Work to be Done

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

12 3 The Work Actually Performed

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

21 4 The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (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
4 contingent fee is calculated;

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

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

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

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

10
11
12 NRCP 1.5.

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

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

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

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

10 11 CONCLUSION

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

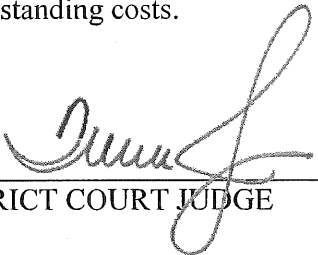
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5 **ORDER**

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

9 IT IS SO ORDERED this 16th day of March, 2021.

10
11 
12 _____
13 DISTRICT COURT JUDGE

14 B7B 840 B8A7 FF62
15 Tierra Jones
16 District Court Judge
17
18
19
20
21
22
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24
25
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27
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/16/2021

16 Daniel Simon .	lawyers@simonlawlv.com
17 Rhonda Onorato .	ronorato@rlattorneys.com
18 Mariella Dumbrique	mdumbrique@blacklobello.law
19 Michael Nunez	mnunez@murchisonlaw.com
20 Tyler Ure	ngarcia@murchisonlaw.com
21 Nicole Garcia	ngarcia@murchisonlaw.com
22 Bridget Salazar	bsalazar@vannahlaw.com
23 John Greene	jgreene@vannahlaw.com
24 James Christensen	jim@jchristensenlaw.com
25 Daniel Simon	dan@danielsimonlaw.com
26	
27	
28	

Michael Nunez	mnunez@murchisonlaw.com
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Robert Vannah	rvannah@vannahlaw.com
Christopher Page	chrispage@vannahlaw.com
Jessie Church	jchurch@vannahlaw.com

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

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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EXHIBIT 3

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

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

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

THIRD AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE
LIEN

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

21 Defendants.

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

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

14 Obviously that could not have been done earlier since who would have
thought this case would meet the hurdle of punitive at the start.

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

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

19
20 (Def. Exhibit 27).

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

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

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ 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."

23 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2
3
4 **CONCLUSION OF LAW**

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

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

10 NRS 18.015(1)(a) states:

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

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

14 Nev. Rev. Stat. 18.015.

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

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

1 *Fee Agreement*

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

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

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

25 (Def. Exhibit 27).

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

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

10 11 *Constructive Discharge*

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

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

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

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

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

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

10 a) ...

11 b) ...

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

17 Id.

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

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

1 Id.

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

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

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

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

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

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

20 NRS 18.015 states:

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

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

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

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

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

5 4. A lien pursuant to:

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

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

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

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

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

25 Nev. Rev. Stat. 18.015.

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

Implied Contract

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

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

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

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

24 25 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 19 *Costs Owed*

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

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

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

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

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

3 4 *Quantum Meruit*

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

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

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

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

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

7 1. Quality of the Advocate

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

15 2. The Character of the Work to be Done

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

25 3. The Work Actually Performed

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

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

7 4. The Result Obtained

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

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

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

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

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

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

(4) The amount involved and the results obtained;

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24 NRCP 1.5.

25 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
26 the Edgeworths, the character of the work was complex, the work actually performed was extremely

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

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

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

23 //

24 //

25 //

26 //

27 //

1 CONCLUSION

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

17
18 ORDER

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

22 IT IS SO ORDERED.

23
24
25 
DISTRICT COURT JUDGE

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

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-18-767242-C

8 vs.

DEPT. NO. Department 10

9 Daniel Simon, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 4/19/2021

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5	Candice Farnsworth	candice@christiansenlaw.com
6	Daniel Simon	lawyers@simonlawlv.com
7	Esther Barrios Sandoval	esther@christiansenlaw.com
8	Christine Atwood	catwood@messner.com
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12	Nicholle Pendergraft	npendergraft@messner.com
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15		
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28		

EXHIBIT 4

Thomas S. Simon
CLERK OF THE COURT

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

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

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

THIRD AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE
LIEN

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

21 Defendants.

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

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

25 (Def. Exhibit 27).

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

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

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ 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."

23 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

1 *Fee Agreement*

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

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

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

(Def. Exhibit 27).

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

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

10 11 *Constructive Discharge*

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

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

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

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

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

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

10 a) ...

11 b) ...

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

17 Id.

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

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

1 Id.

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

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

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

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

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

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

20 NRS 18.015 states:

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

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

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

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

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

5 4. A lien pursuant to:

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

9 (b) Paragraph (b) of subsection 1 attaches to any file or other property
10 properly left in the possession of the attorney by his or her client, including,
11 without limitation, copies of the attorney's file if the original documents
12 received from the client have been returned to the client, and authorizes the
13 attorney to retain any such file or property until such time as an adjudication
14 is made pursuant to subsection 6, from the time of service of the notices
15 required by this section.

16 5. A lien pursuant to paragraph (b) of subsection 1 must not be
17 construed as inconsistent with the attorney's professional responsibilities to
18 the client.

19 6. On motion filed by an attorney having a lien under this section, the
20 attorney's client or any party who has been served with notice of the lien, the
21 court shall, after 5 days' notice to all interested parties, adjudicate the rights of
22 the attorney, client or other parties and enforce the lien.

23 7. Collection of attorney's fees by a lien under this section may be
24 utilized with, after or independently of any other method of collection.

25 Nev. Rev. Stat. 18.015.

26 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
27 are applied. Here, there was no express contract for the fee amount, however there was an implied
28 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
services, and \$275 per hour for the services of his associates. This contract was in effect until
November 29, 2017, when he was constructively discharged from representing the Edgeworths.
After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
due a reasonable fee- that is, quantum meruit.

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was

1 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
2 created when invoices were sent to the Edgeworths, and they paid the invoices.

3 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
4 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
5 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
6 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
7 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
8 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
9 bills to give credibility to his actual damages, above his property damage loss. However, as the
10 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
11 the money, or memorialize this or any understanding in writing.

12 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
13 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
14 paid in full and there was never any indication given that anything less than all the fees had been
15 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
16 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
17 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
18 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
19 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
20 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
21 Office retained the payments, indicating an implied contract was formed between the parties. The
22 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
23 date they were constructively discharged, November 29, 2017.

24
25 *Amount of Fees Owed Under Implied Contract*

26 The Edgeworths were billed, and paid for services through September 19, 2017. There is
27 some testimony that an invoice was requested for services after that date, but there is no evidence
28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
2 fees was formed, the Court must now determine what amount of fees and costs are owed from
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
5 billings, the attached lien, and all other evidence provided regarding the services provided during
6 this time.

7 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
8 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
9 and attempted to create a bill for work that had been done over a year before. She testified that they
10 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
11 email that was read and responded to. She testified that the dates were not exact, they just used the
12 dates for which the documents were filed, and not necessarily the dates in which the work was
13 performed. Further, there are billed items included in the "super bill" that was not previously billed
14 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
15 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
16 indicated that there were no phone calls included in the billings that were submitted to the
17 Edgeworths.

18 This attempt to recreate billing and supplement/increase previously billed work makes it
19 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed
20 between the actual work and the billing. The court reviewed the billings of the "super bill" in
21 comparison to the previous bills and determined that it was necessary to discount the items that had
22 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
23 downloading, and saving documents because the Court is uncertain of the accuracy of the "super
24 bill."

25 Simon argues that he has no billing software in his office and that he has never billed a client
26 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
27 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
28

1 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
2 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
3 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
4 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
5 emails or calls, understanding that those items may be billed separately; but again the evidence does
6 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
7 This argument does not persuade the court of the accuracy of the "super bill".

8 The amount of attorney's fees and costs for the period beginning in June of 2016 to
9 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
10 which appears to indicate that it began with the initial meeting with the client, leading the court to
11 determine that this is the beginning of the relationship. This invoice also states it is for attorney's
12 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
13 amount has already been paid by the Edgeworths on December 16, 2016.²

14 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to
15 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
16 amount has already been paid by the Edgeworths on May 3, 2017.

17 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the
18 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for
19 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
20 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
21 been paid by the Edgeworths on August 16, 2017.³

22 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
23 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
24 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
25

26
27 ²There are no billing amounts from December 2 to December 4, 2016.

28 ³ There are no billings from July 28 to July 30, 2017.

1 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
2 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
3 paid by the Edgeworths on September 25, 2017.

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
5 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
10 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

13 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
14 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
15 by the Edgeworths, so the implied fee agreement applies to their work as well.

16 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
17 of September 19, 2018 to November 29, 2017 is \$284,982.50.

18 19 *Costs Owed*

20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
25

26 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

27 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,
November 21, and November 23-26.

28 ⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
2 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

3 4 *Quantum Meruit*

5 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
6 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*
7 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
8 *quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing, Gordon v.*
9 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
10 and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
11 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
12 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
13 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
14 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
15 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
16 of the Law Office's work on this case.

17 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
18 discretion on the method of calculation of attorney fee, to be "tempered only by reason and
19 fairness". *Albios v. Horizon Communities, Inc.*, 132 P.3d 1022 (Nev. 2006). The law only requires
20 that the court calculate a reasonable fee. *Shuette v. Beazer Homes Holding Corp.*, 124 P.3d 530
21 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
22 must be reasonable under the *Brunzell* factors. *Id.* The Court should enter written findings of the
23 reasonableness of the fee under the *Brunzell* factors. *Argentina Consolidated Mining Co., v. Jolley,*
24 *Urga, Wirth, Woodbury Standish*, 216 P.3d 779, at fn2 (Nev. 2009). *Brunzell* provides that
25 "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
26 may be equally significant. *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

27 The *Brunzell* factors are: (1) the qualities of the advocate; (2) the character of the work to be
28

1 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
2 Court notes that the majority of the work in this case was complete before the date of the
3 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
4 after the constructive discharge.

5 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
6 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

7 1 Quality of the Advocate

8 Brunzell expands on the “qualities of the advocate” factor and mentions such items as
9 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
10 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
11 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
12 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
13 Simon’s work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon’s
14 work product and results are exceptional.

15 2 The Character of the Work to be Done

16 The character of the work done in this case is complex. There were multiple parties,
17 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the
18 gamut from product liability to negligence. The many issues involved manufacturing, engineering,
19 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp
20 testified that the quality and quantity of the work was exceptional for a products liability case against
21 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the
22 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the
23 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a
24 substantial factor in achieving the exceptional results.

25 3 The Work Actually Performed

26 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
27 numerous court appearances, and deposition; his office uncovered several other activations, that
28

1 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
2 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
3 other activations being uncovered and the result that was achieved in this case. Since Mr.
4 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
5 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
6 the Law Office of Daniel Simon led to the ultimate result in this case.

7 4 The Result Obtained

8 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
9 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
10 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
11 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
12 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
13 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
14 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
15 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
16 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
17 were made more than whole with the settlement with the Viking entities.

18 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
19 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
20 which states:

21
22 (a) A lawyer shall not make an agreement for, charge, or collect an
23 unreasonable fee or an unreasonable amount for expenses. The factors to be
24 considered in determining the reasonableness of a fee include the following:

25 (1) The time and labor required, the novelty and difficulty of the
26 questions involved, and the skill requisite to perform the legal service
27 properly;

28 (2) The likelihood, if apparent to the client, that the acceptance of the
particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal
services;

(4) The amount involved and the results obtained;

1 (5) The time limitations imposed by the client or by the
circumstances;

2 (6) The nature and length of the professional relationship with the
client;

3 (7) The experience, reputation, and ability of the lawyer or lawyers
performing the services; and

4 (8) Whether the fee is fixed or contingent.

5 NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

6 (b) The scope of the representation and the basis or rate of the fee and
7 expenses for which the client will be responsible shall be communicated to the
8 client, preferably in writing, before or within a reasonable time after
9 commencing the representation, except when the lawyer will charge a
regularly represented client on the same basis or rate. Any changes in the
basis or rate of the fee or expenses shall also be communicated to the client.

10 (c) A fee may be contingent on the outcome of the matter for which the
11 service is rendered, except in a matter in which a contingent fee is prohibited
12 by paragraph (d) or other law. A contingent fee agreement shall be in writing,
signed by the client, and shall state, in boldface type that is at least as large as
the largest type used in the contingent fee agreement:

13 (1) The method by which the fee is to be determined, including the
14 percentage or percentages that shall accrue to the lawyer in the event of
settlement, trial or appeal;

15 (2) Whether litigation and other expenses are to be deducted from the
16 recovery, and whether such expenses are to be deducted before or after the
contingent fee is calculated;

17 (3) Whether the client is liable for expenses regardless of outcome;

18 (4) That, in the event of a loss, the client may be liable for the
opposing party's attorney fees, and will be liable for the opposing party's
costs as required by law; and

19 (5) That a suit brought solely to harass or to coerce a settlement may
result in liability for malicious prosecution or abuse of process.

20 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
21 with a written statement stating the outcome of the matter and, if there is a
22 recovery, showing the remittance to the client and the method of its
determination.

23
24 NRCP 1.5.

25 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
26 the Edgeworths, the character of the work was complex, the work actually performed was extremely

1 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
2 factors justify a reasonable fee under NRPC 1.5.

3 However, the Court must also consider the fact that the evidence suggests that the basis or
4 rate of the fee and expenses for which the client will be responsible were never communicated to the
5 client, within a reasonable time after commencing the representation. Further, this is not a
6 contingent fee case, and the Court is not awarding a contingency fee.

7 Instead, the Court must determine the amount of a reasonable fee. In determining this
8 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
9 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
10 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
11 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
12 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
13 continued to work on the Viking settlement until it was finalized in December of 2017, and the
14 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
15 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
16 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
17 himself were continuing, even after the constructive discharge. In considering the reasonable value
18 of these services, under quantum meruit, the Court is considering the previous \$550 per hour fee
19 from the implied fee agreement, the Brunzell factors, and additional work performed after the
20 constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is
21 entitled to a reasonable fee in the amount of \$200,000, from November 30, 2017 to the conclusion of
22 this case.

23 //

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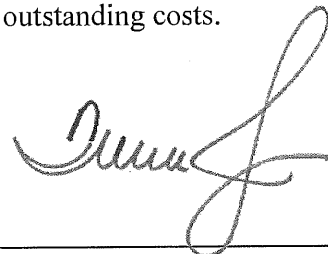
1 CONCLUSION

2 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
3 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
4 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
5 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
6 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
7 Simon as their attorney, when they ceased following his advice and refused to communicate with
8 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
9 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
10 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
11 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
12 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
13 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
14 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
15 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
16 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.

17
18 ORDER

19 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
20 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
21 Office of Daniel Simon is \$556,577.43, which includes outstanding costs.
Dated this 28th day of April, 2021

22 IT IS SO ORDERED.

23
24
25 

26 DISTRICT COURT JUDGE

27 1F8 440 36C0 D8EC
28 Tierra Jones
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/28/2021

16 Daniel Simon . lawyers@simonlawlv.com

17 Rhonda Onorato . ronorato@rlattorneys.com

18 Mariella Dumbrique mdumbrique@blacklobello.law

19 Michael Nunez mnunez@murchisonlaw.com

20 Tyler Ure ngarcia@murchisonlaw.com

21 Nicole Garcia ngarcia@murchisonlaw.com

22 Bridget Salazar bsalazar@vannahlaw.com

23 John Greene jgreene@vannahlaw.com

24 James Christensen jim@jchristensenlaw.com

25 Daniel Simon dan@danielsimonlaw.com
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11	Nicholle Pendergraft	npendergraft@messner.com
12	David Gould	dgould@messner.com
13	Jessie Church	jchurch@vannahlaw.com

14

15 If indicated below, a copy of the above mentioned filings were also served by mail

16 via United States Postal Service, postage prepaid, to the parties listed below at their last

17 known addresses on 4/29/2021

18 Theodore Parker 2460 Professional CT STE 200

19 Las Vegas, NV, 89128

20

21

22

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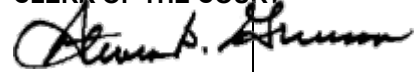
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28

**NOTICE OF ENTRY OF ORDER ON MOTION TO
RECONSIDER BASED ON MANDATE (AND ORDER)**



NEO

James R. Christensen Esq.
Nevada Bar No. 3861

JAMES R. CHRISTENSEN PC

601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406

-and-

Peter S. Christiansen, Esq.
Nevada Bar No. 5254

CHRISTIANSSEN TRIAL LAWYERS

701 S. 7th Street
Las Vegas, NV 89101
(702)240-7979
Attorneys for SIMON

**Eighth Judicial District Court
District of Nevada**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORTATION, a Michigan corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;
Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

**NOTICE OF ENTRY OF DECISION AND
ORDER DENYING PLAINTIFFS'
RENEWED MOTION FOR
RECONSIDERATION OF THIRD-
AMENDED DECISION AND ORDER ON
MOTION TO ADJUDICATE LIEN AND
DENYING SIMON'S COUNTERMOTION
TO ADJUDICATE LIEN ON REMAND**

1 **NOTICE OF ENTRY OF DECISION AND ORDER DENYING PLAINTIFFS'**
2 **RENEWED MOTION FOR RECONSIDERATION OF THIRD- AMENDED DECISION**
3 **AND ORDER ON MOTION TO ADJUDICATE LIEN AND DENYING SIMON'S**
4 **COUNTERMOTION TO ADJUDICATE LIEN ON REMAND**

5 PLEASE TAKE NOTICE, a Decision and Order Denying Plaintiffs' Renewed Motion
6 for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and
7 Denying Simon's Countermotion to Adjudicate Lien on Remand was entered on the 17th day of
8 June, 2021. A true and correct copy of the file-stamped Decision and Order is attached hereto.

9 DATED this 18th day of June, 2021.

10 **JAMES R. CHRISTENSEN PC**

11 /s/ James R. Christensen

12 James R. Christensen Esq.

13 Nevada Bar No. 3861

14 601 S. 6th Street

15 Las Vegas NV 89101

16 (702) 272-0406

17 -and-

18 Peter S. Christiansen, Esq.

19 Nevada Bar No. 5254

20 **CHRISTIENSEN TRIAL LAWYERS**

21 701 S. 7th Street

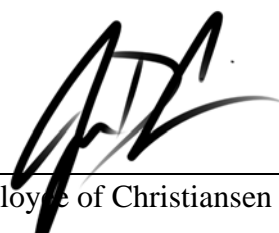
22 Las Vegas, NV 89101

23 (702)240-7979

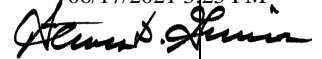
24 *Attorneys for SIMON*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN TRIAL LAWYERS, and that on this 18th day of June, 2021 I caused the foregoing document entitled ***NOTICE OF ENTRY OF DECISION AND ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF THIRD- AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN AND DENYING SIMON'S COUNTERMOTION TO ADJUDICATE LIEN ON REMAND*** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.



An employee of Christiansen Law Offices



CLERK OF THE COURT

ORDR

James R. Christensen Esq.
Nevada Bar No. 3861

JAMES R. CHRISTENSEN PC

601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406

-and-

Peter S. Christiansen, Esq.
Nevada Bar No. 5254

CHRISTIENSEN TRIAL LAWYERS

701 S. 7th Street
Las Vegas, NV 89101
(702) 240-7979
Attorneys for SIMON

**Eighth Judicial District Court
District of Nevada**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORTATION, a Michigan corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;
Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

**DECISION AND ORDER DENYING
PLAINTIFFS' RENEWED MOTION FOR
RECONSIDERATION OF THIRD-
AMENDED DECISION AND ORDER ON
MOTION TO ADJUDICATE LIEN AND
DENYING SIMON'S COUNTERMOTION
TO ADJUDICATE LIEN ON REMAND**

1 **DECISION AND ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR**
2 **RECONSIDERATION OF THIRD- AMENDED DECISION AND ORDER ON MOTION**
3 **TO ADJUDICATE LIEN AND DENYING SIMON'S COUNTERMOTION TO**
4 **ADJUDICATE LIEN ON REMAND**

5 This matter came on for hearing on May 27, 2021, in the Eighth Judicial
6 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.
7 Defendants, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law
8 (jointly the "Defendants" or "Simon") having appeared by and through their
9 attorneys of record, James Christensen, Esq. and Peter Christiansen, Esq.; and,
10 Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
11 "Edgeworths") having appeared through by and through their attorneys of record,
12 the law firm of Morris Law Group, Steve Morris, Esq. and Rosa Solis-Rainey, Esq.
13 The Court having considered the evidence, arguments of counsel and being fully
14 advised of the matters herein, the **COURT FINDS** after review:

15 The Edgeworths' Renewed Motion for Reconsideration of Third Amended
16 Decision and Order on Motion to Adjudicate Lien is DENIED.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

Simon's Countermotion to Adjudicate the Lien on Remand is DENIED.

Dated this 17th day of June, 2021

IT IS SO ORDERED.



DISTRICT COURT JUDGE

478 B49 725D 8E26

Tierra Jones

District Court Judge

Submitted By:

Approved as to Form and Content:

JAMES R. CHRISTENSEN PC

MORRIS LAW GROUP

/s/ James R. Christensen

James R. Christensen Esq.

Nevada Bar No. 3861

601 S. 6th Street

Las Vegas NV 89101

Attorney for SIMON

Declined

Steve Morris Esq.

Nevada Bar No. 1543

801 S. Rancho Drive, Ste. B4

Las Vegas NV 89106

Attorney for EDGEWORTHS

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/17/2021

16 Daniel Simon .	lawyers@simonlawlv.com
17 Rhonda Onorato .	ronorato@rlattorneys.com
18 Mariella Dumbrique	mdumbrique@blacklobello.law
19 Michael Nunez	mnunez@murchisonlaw.com
20 Tyler Ure	ngarcia@murchisonlaw.com
21 Nicole Garcia	ngarcia@murchisonlaw.com
22 Bridget Salazar	bsalazar@vannahlaw.com
23 John Greene	jgreene@vannahlaw.com
24 James Christensen	jim@jchristensenlaw.com
25 Daniel Simon	dan@danielsimonlaw.com

26
27
28

1	Michael Nunez	mnunez@murchisonlaw.com
2	Gary Call	gcall@rlattorneys.com
3	J. Graf	Rgraf@blacklobello.law
4	Robert Vannah	rvannah@vannahlaw.com
5	Christine Atwood	catwood@messner.com
6	Lauren Calvert	lcalvert@messner.com
7	James Alvarado	jalvarado@messner.com
8	Christopher Page	chrispage@vannahlaw.com
9	Nicholle Pendergraft	npendergraft@messner.com
10	Rosa Solis-Rainey	rsr@morrislawgroup.com
11	David Gould	dgould@messner.com
12	Steve Morris	sm@morrislawgroup.com
13	Traci Baez	tkb@morrislawgroup.com
14	Jessie Church	jchurch@vannahlaw.com
15	James Christensen	jim@jchristensenlaw.com
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NEVADA SUPREME COURT DECISION AND
REMITTITUR
(SECOND APPEAL)

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,
Respondents.

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,
Respondents.

No. 83258

FILED

SEP 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. 83260

ORDER VACATING JUDGMENT AND REMANDING

These consolidated appeals challenge the district court's adjudication of an attorney lien and award of quantum meruit fees. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

We previously issued an order between the same parties based on the same issue, which is whether the district court's award of \$200,000 in quantum meruit to respondent Daniel Simon was reasonable. *See Edgeworth Family Tr. v. Simon*, Nos. 77678/78176, 2020 WL 7828800, at *2 (Nev. Dec. 30, 2020) (Order Affirming in Part, Vacating in Part and Remanding). In our order, we vacated the district court's award, concluding that the district court's order was unclear with respect to whether the award

was properly limited to solely the work Simon completed after he was constructively discharged by appellants Edgeworth Family Trust and American Grating, LLC (collectively, the Edgeworths). *Id.* Accordingly, we vacated the award, remanded the issue to the district court to make specific factual findings regarding what work Simon completed after his constructive discharge, and instructed the district court that any quantum meruit award should only compensate Simon for services provided post-discharge. *Id.* On remand, the district court again awarded Simon \$200,000 in quantum meruit fees.

The Edgeworths argue that the district court erred by failing to comply with our previous order on remand. They contend that the district court failed to make specific findings reflecting that its award was limited to the work Simon completed after he was constructively discharged by the Edgeworths. We agree.

Although “[w]e review an award of attorney fees for an abuse of discretion,” *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015), we review de novo “[w]hether the district court has complied with our mandate on remand,” *State Eng’r v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017). When this court remands a case, “the district court must proceed in accordance with the mandate and the law of the case as established on appeal.” *Id.* (internal quotation marks omitted). Further, a disposition from this court serves as mandatory authority in subsequent stages of the case. *See* NRAP 36(c)(2).

As stated, we previously vacated the district court’s award of quantum meruit fees to Simon because the order did not make specific findings that its award was limited to services Simon provided post-discharge. *Edgeworth Family Tr.*, 2020 WL 7828800, at *2. Specific factual findings regarding what work Simon completed pre-discharge versus post-

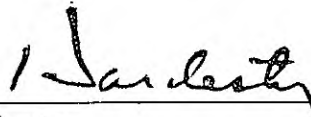
discharge is critical because a quantum meruit award can only properly compensate Simon for the services he provided post-discharge. *Id.*

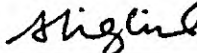
Turning to the district court's post-remand order, we conclude that the district court's order suffers from the same flaw as its previous order—the order does not make specific findings that clearly reflect that the quantum meruit award is limited to only services Simon provided post-discharge. Specifically, the district court's quantum meruit award is premised on the work Simon performed relating to the Edgeworths' settlement agreements. However, the district court's order notes that Simon began working on those settlement agreements before he was discharged. Thus, while Simon's work on the settlement agreements may consist of work he did both pre- and post-discharge, the district court's order does not make clear, nor include any specific findings of fact, that demonstrate that the quantum meruit fee is limited only to Simon's post-discharge services relating to the settlements. Further, the district court does not make any other findings of fact regarding work Simon completed post-discharge that would otherwise support the quantum meruit fee. For these reasons, it remains unclear whether the award of \$200,000 in quantum meruit fees is reasonably limited only to the services Simon provided post-discharge. The district court therefore erred by failing to comply with our previous order which was mandatory authority. Thus, we again vacate the district court's award of \$200,000 in quantum meruit fees.


Insofar as the Edgeworths argue that we should award Simon \$34,000 in quantum meruit fees based on Simon's billing statement that purportedly shows that he completed 71 hours of post-discharge work, we decline to do so. The district court found that the billing statement may not accurately reflect Simon's post-discharge work. Further, we decline to make factual findings on appeal. *See Ryan's Express Transp. Servs., Inc. v.*

Amador Stage Lines, Inc., 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (“An appellate court is not particularly well-suited to make factual determinations in the first instance.”). Because we will not make factual findings in the first instance, we also decline Simon’s invitation to affirm the district court’s order on the ground that the record supports an award of \$200,000 in quantum meruit fees. Because no new findings were made on remand explaining the basis for such an award, we remain unable to determine whether \$200,000 was a reasonable quantum meruit fee for Simon’s post-discharge work.

Accordingly, we ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order. We further instruct the district court to make specific and express findings as to what work Simon completed after he was constructively discharged and limit its quantum meruit fee to those findings.


_____, J.
Hardesty


_____, J.
Stiglich


_____, J.
Herndon

cc: Hon. Tierra Danielle Jones, District Judge
Morris Law Group
James R. Christensen
Christiansen Trial Lawyers
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION, D/B/A SIMON LAW,
Respondents.

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION, D/B/A SIMON LAW,
Respondents.

Supreme Court No. 83258/83260

District Court Case No. A738444 1A767242

FILED

DEC 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY D. Smith
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

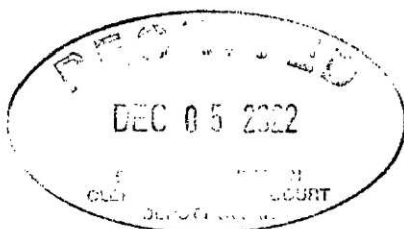
DATE: November 28, 2022

Elizabeth A. Brown, Clerk of Court

By: Brittany Cowden
Administrative Assistant

cc (without enclosures):

Hon. Tierra Danielle Jones, District Judge
Morris Law Group
Christiansen Trial Lawyers
James R. Christensen
Steven D. Grierson, Eighth District Court Clerk



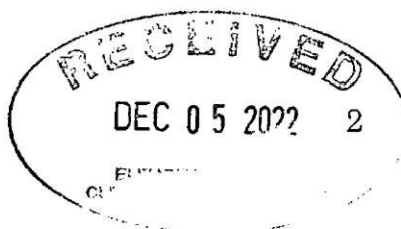
RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on NOV 29 2022.

Deputy Weather Mcgovern
District Court Clerk

RECEIVED
APPEALS
NOV 29 2022

CLERK OF THE COURT



22-36962

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION, D/B/A SIMON LAW,
Respondents.

Supreme Court No. 83258/83260
District Court Case No. A738444

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION, D/B/A SIMON LAW,
Respondents.

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgement of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 16th day of September, 2022.

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 31st day of October, 2022.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
November 28, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Brittany Cowden
Administrative Assistant

FOURTH AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE LIEN
(*VOID - ENTERED BEFORE REMITTITUR, NO NOTICE
OF ENTRY FILED*)

1 **ORD**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

10 LANGE PLUMBING, LLC; THE VIKING
11 CORPORATION, a Michigan Corporation;
12 SUPPLY NETWORK, INC., dba VIKING
13 SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through

14 Defendants.

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

FOURTH AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE
LIEN

22
23 **FOURTH AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

25 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
26 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
27 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
28 d/b/a Simon Law (“Defendants” or “Law Office” or “Simon” or “Mr. Simon”) having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, (“Plaintiff” or
3 “Edgeworths”) having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**

7 8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
17 suffered a flood. The house was still under construction and the flood caused a delay. The
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
20 within the plumber’s scope of work, caused the flood; however, the plumber asserted the fire
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
28

1 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
2 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
3 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
4 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

5 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
6 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
7 had some discussion about payments and financials. No express fee agreement was reached during
8 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
9 It reads as follows:

10
11 We never really had a structured discussion about how this might be done.
12 I am more than happy to keep paying hourly but if we are going for punitive
13 we should probably explore a hybrid of hourly on the claim and then some
14 other structure that incents both of us to win and go after the appeal that these
15 scumbags will file etc.
16 Obviously that could not have been done earlier since who would have
17 thought this case would meet the hurdle of punitive at the start.
18 I could also swing hourly for the whole case (unless I am off what this is
19 going to cost). I would likely borrow another \$450K from Margaret in 250
20 and 200 increments and then either I could use one of the house sales for cash
21 or if things get really bad, I still have a couple million in bitcoin I could sell.
22 I doubt we will get Kinsale to settle for enough to really finance this since I
23 would have to pay the first \$750,000 or so back to Colin and Margaret and
24 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

25 (Def. Exhibit 27).

26 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
27 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
28 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per

1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

4 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
5 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
6 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
7 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
8 paid by the Edgeworths on August 16, 2017.

9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
10 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
11 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
12 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
14 25, 2017.

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work
20 done in the litigation of this case. There were several motions and oppositions filed, several
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

1 open invoice. The email stated: "I know I have an open invoice that you were going to give me at
2 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
3 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

4 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to
5 come to his office to discuss the litigation.

6 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
7 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
8 Exhibit 4).

9 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
10 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
11 communications with Mr. Simon.

12 18. On the morning of November 30, 2017, Simon received a letter advising him that the
13 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
14 et.al. The letter read as follows:

15 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
16 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
17 with the Viking entities, et.al. I'm instructing you to cooperate with them in
18 every regard concerning the litigation and any settlement. I'm also instructing
19 you to give them complete access to the file and allow them to review
20 whatever documents they request to review. Finally, I direct you to allow
21 them to participate without limitation in any proceeding concerning our case,
22 whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
28

1 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

2 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
3 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
4 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
5 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
6 due to the Law Office of Danny Simon.

7 22. The parties agree that an express written contract was never formed.

8 23. On December 7, 2017, the Edgeworths signed Consent to Settle their claims against
9 Lange Plumbing LLC for \$100,000.

10 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
11 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
12 Simon, a Professional Corporation, case number A-18-767242-C.

13 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
14 Lien with an attached invoice for legal services rendered. The amount of the invoice was
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

16 26. On November 19, 2018, the Court entered a Decision and Order on Motion to
17 Adjudicate Lien.

18 27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

19 28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and
20 Denying in Part, Simon's Motion for Attorney's Fees and Costs.

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on
27 Motion to Adjudicate Lien.

1 33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.

2
3
4 **CONCLUSION OF LAW**

5 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The**
6 **Court**

7 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
8 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
9 738444-C under NRS 18.015.

10 NRS 18.015(1)(a) states:

- 11 1. An attorney at law shall have a lien:
12 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
13 damages, which has been placed in the attorney's hands by a client for suit or
14 collection, or upon which a suit or other action has been instituted.

14 Nev. Rev. Stat. 18.015.

15 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
16 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
17 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
18 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
19 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
20 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
21 is enforceable in form.

22 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
23 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
24 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
25 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
26 under NRS 18.015, thus the Court must adjudicate the lien.

1 *Fee Agreement*

2 It is undisputed that no express written fee agreement was formed. The Court finds that there
3 was no express oral fee agreement formed between the parties. An express oral agreement is
4 formed when all important terms are agreed upon. *See, Loma Linda University v. Eckenweiler*, 469
5 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*
6 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the
7 payment terms are essential to the formation of an express oral contract to provide legal services on
8 an hourly basis.

9 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
10 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
11 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
12 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
13 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
14 22, 2017 email, titled "Contingency," he writes:

15
16 "We never really had a structured discussion about how this might be done. I
17 am more than happy to keep paying hourly but if we are going for punitive we
18 should probably explore a hybrid of hourly on the claim and then some other
19 structure that incents both of us to win an go after the appeal that these
20 scumbags will file etc. Obviously that could not have been done earlier since
21 who would have thought this case would meet the hurdle of punitive at the
22 start. I could also swing hourly for the whole case (unless I am off what this
23 is going to cost). I would likely borrow another \$450K from Margaret in 250
24 and 200 increments and then either I could use one of the house sales for cash
or if things get really bad, I still have a couple million in bitcoin I could sell. I
doubt we will get Kinsale to settle for enough to really finance this since I
would have to pay the first \$750,000 or so back to Colin and Margaret and
why would Kinsale settle for \$1MM when their exposure is only \$1MM?"

25 (Def. Exhibit 27).

26 It is undisputed that when the flood issue arose, all parties were under the impression that Simon
27 would be helping out the Edgeworths, as a favor.

1 The Court finds that an implied fee agreement was formed between the parties on December
2 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
3 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
4 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
5 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
6 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
7 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
8 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
9 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

10 11 *Constructive Discharge*

12 Constructive discharge of an attorney may occur under several circumstances, such as:

- 13 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.
14 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 15 • Refusal to pay an attorney creates constructive discharge. *See e.g.*, Christian v. All Persons
16 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 17 • Suing an attorney creates constructive discharge. *See* Tao v. Probate Court for the Northeast
18 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also* Maples v.
19 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
20 2017 Nev. Unpubl. LEXIS 472.
- 21 • Taking actions that preventing effective representation creates constructive discharge.
22 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

23 Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on
24 November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated,
25 has not withdrawn, and is still technically their attorney of record; there cannot be a termination.
26 The Court disagrees.

27 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
28 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was

1 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
2 things without a compromise. Id. The retainer agreement specifically states:

3
4 Client retains Attorneys to represent him as his Attorneys regarding
5 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING
6 ENTITIES and all damages including, but not limited to, all claims in this
7 matter and empowers them to do all things to effect a compromise in said
8 matter, or to institute such legal action as may be advisable in their judgment,
9 and agrees to pay them for their services, on the following conditions:

- 10 a) ...
11 b) ...
12 c) Client agrees that his attorneys will work to consummate a settlement of
13 \$6,000,000 from the Viking entities and any settlement amount agreed to be
14 paid by the Lange entity. Client also agrees that attorneys will work to reach
15 an agreement amongst the parties to resolve all claims in the Lange and
16 Viking litigation.

17 Id.

18 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
19 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
20 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
21 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
22 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
23 identified as the firm that solely advised the clients about the settlement. The actual language in the
24 settlement agreement, for the Viking claims, states:

25 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
26 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
27 effect of this AGREEMENT and their release of any and all claims, known or
28 unknown and, based upon that explanation and their independent judgment by
the reading of this Agreement, PLAINTIFFS understand and acknowledge the
legal significance and the consequences of the claims being released by this
Agreement. PLAINTIFFS further represent that they understand and
acknowledge the legal significance and consequences of a release of unknown
claims against the SETTLING PARTIES set forth in, or arising from, the
INCIDENT and hereby assume full responsibility for any injuries, damages,
losses or liabilities that hereafter may occur with respect to the matters
released by this Agreement.

1 Id.

2 Also, Simon was not present for the signing of these settlement documents and never explained any
3 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
4 Vannah and received them back with the signatures of the Edgeworths.

5 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
6 Though there were email communications between the Edgeworths and Simon, they did not verbally
7 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
8 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
9 responds to the email saying, “please give John Greene at Vannah and Vannah a call if you need
10 anything done on the case. I am sure they can handle it.” (Def. Exhibit 80). At this time, the claim
11 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
12 working on this claim, but he had no communication with the Edgeworths and was not advising
13 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
14 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
15 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
16 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
17 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
18 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
19 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
20 Simon never signed off on any of the releases for the Lange settlement.

21 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
22 Esq. to James Christensen Esq. dated December 26, 2017, which states: “They have lost all faith and
23 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
24 Quite frankly, they are fearful that he will steal the money.” (Def. Exhibit 48). Then on January 4,
25 2018, the Edgeworth’s filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
26 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
27 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
28

1 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
2 doesn't seem in his best interests." (Def. Exhibit 53).

3 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
4 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
5 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
6 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
7 was attached to the letter), and that Simon continued to work on the case after the November 29,
8 2017 date. The court further recognizes that it is always a client's decision of whether or not to
9 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
10 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
11 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
12 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
13 with him, making it impossible to advise them on pending legal issues, such as the settlements with
14 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
15
16 Simon from effectively representing the clients. The Court finds that Danny Simon was
17 constructively discharged by the Edgeworths on November 29, 2017.

18
19 **Adjudication of the Lien and Determination of the Law Office Fee**

20 NRS 18.015 states:

- 21 1. An attorney at law shall have a lien:
22 (a) Upon any claim, demand or cause of action, including any claim for
23 unliquidated damages, which has been placed in the attorney's hands by a
24 client for suit or collection, or upon which a suit or other action has been
25 instituted.
26 (b) In any civil action, upon any file or other property properly left in the
27 possession of the attorney by a client.
28 2. A lien pursuant to subsection 1 is for the amount of any fee which has
been agreed upon by the attorney and client. In the absence of an agreement,
the lien is for a reasonable fee for the services which the attorney has rendered
for the client.

1 3. An attorney perfects a lien described in subsection 1 by serving notice
2 in writing, in person or by certified mail, return receipt requested, upon his or
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.

3 4. A lien pursuant to:

4 (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

5 (b) Paragraph (b) of subsection 1 attaches to any file or other property
6 properly left in the possession of the attorney by his or her client, including,
7 without limitation, copies of the attorney's file if the original documents
received from the client have been returned to the client, and authorizes the
attorney to retain any such file or property until such time as an adjudication
is made pursuant to subsection 6, from the time of service of the notices
required by this section.

8 5. A lien pursuant to paragraph (b) of subsection 1 must not be
9 construed as inconsistent with the attorney's professional responsibilities to
the client.

10 6. On motion filed by an attorney having a lien under this section, the
11 attorney's client or any party who has been served with notice of the lien, the
12 court shall, after 5 days' notice to all interested parties, adjudicate the rights of
the attorney, client or other parties and enforce the lien.

13 7. Collection of attorney's fees by a lien under this section may be
14 utilized with, after or independently of any other method of collection.

15 Nev. Rev. Stat. 18.015.

16 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
17 are applied. Here, there was no express contract for the fee amount, however there was an implied
18 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
19 services, and \$275 per hour for the services of his associates. This contract was in effect until
20 November 29, 2017, when he was constructively discharged from representing the Edgeworths.
21 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
22 due a reasonable fee- that is, quantum meruit.
23

24 *Implied Contract*

25 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
26 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
27
28

1 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
2 created when invoices were sent to the Edgeworths, and they paid the invoices.

3 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
4 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
5 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
6 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
7 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
8 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
9 bills to give credibility to his actual damages, above his property damage loss. However, as the
10 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
11 the money, or memorialize this or any understanding in writing.

12 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
13 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
14 paid in full and there was never any indication given that anything less than all the fees had been
15 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
16 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
17 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
18 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
19 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
20 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
21 Office retained the payments, indicating an implied contract was formed between the parties. The
22 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
23 date they were constructively discharged, November 29, 2017.

24
25 ***Amount of Fees Owed Under Implied Contract***

26 The Edgeworths were billed, and paid for services through September 19, 2017. There is
27 some testimony that an invoice was requested for services after that date, but there is no evidence
28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
2 fees was formed, the Court must now determine what amount of fees and costs are owed from
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
5 billings, the attached lien, and all other evidence provided regarding the services provided during
6 this time.

7 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
8 that was prepared with the lien “super bill,” are not necessarily accurate as the Law Office went back
9 and attempted to create a bill for work that had been done over a year before. She testified that they
10 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
11 email that was read and responded to. She testified that the dates were not exact, they just used the
12 dates for which the documents were filed, and not necessarily the dates in which the work was
13 performed. Further, there are billed items included in the “super bill” that was not previously billed
14 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
15 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
16 indicated that there were no phone calls included in the billings that were submitted to the
17 Edgeworths.

18 This attempt to recreate billing and supplement/increase previously billed work makes it
19 unclear to the Court as to the accuracy of this “recreated” billing, since so much time had elapsed
20 between the actual work and the billing. The court reviewed the billings of the “super bill” in
21 comparison to the previous bills and determined that it was necessary to discount the items that had
22 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
23 downloading, and saving documents because the Court is uncertain of the accuracy of the “super
24 bill.”

25 Simon argues that he has no billing software in his office and that he has never billed a client
26 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
27 in this case, were billed hourly because the Lange contract had a provision for attorney’s fees;
28

1 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
2 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
3 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
4 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
5 emails or calls, understanding that those items may be billed separately; but again the evidence does
6 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
7 This argument does not persuade the court of the accuracy of the “super bill”.

8 The amount of attorney’s fees and costs for the period beginning in June of 2016 to
9 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
10 which appears to indicate that it began with the initial meeting with the client, leading the court to
11 determine that this is the beginning of the relationship. This invoice also states it is for attorney’s
12 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
13 amount has already been paid by the Edgeworths on December 16, 2016.²

14 The amount of the attorney’s fees and costs for the period beginning on December 5, 2016 to
15 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
16 amount has already been paid by the Edgeworths on May 3, 2017.

17 The amount of attorney’s fees for the period of April 5, 2017 to July 28, 2017, for the
18 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney’s fees for this period for
19 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
20 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
21 been paid by the Edgeworths on August 16, 2017.³

22 The amount of attorney’s fees for the period of July 31, 2017 to September 19, 2017, for the
23 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney’s fees for this period for
24 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney’s fees for this period for Benjamin Miller
25

26
27 ²There are no billing amounts from December 2 to December 4, 2016.

28 ³ There are no billings from July 28 to July 30, 2017.

1 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
2 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
3 paid by the Edgeworths on September 25, 2017.

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
5 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
10 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

13 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
14 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
15 by the Edgeworths, so the implied fee agreement applies to their work as well.

16 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
17 of September 19, 2018 to November 29, 2017 is \$284,982.50.

18 19 *Costs Owed*

20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
25

26 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

27 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,
November 21, and November 23-26.

28 ⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
2 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

3 4 *Quantum Meruit*

5 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
6 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*
7 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
8 *quantum meruit rather than by contingency fee pursuant to agreement with client*); citing, *Gordon v.*
9 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
10 and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
11 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
12 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
13 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
14 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
15 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
16 of the Law Office's work on this case.

17 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
18 discretion on the method of calculation of attorney fee, to be "tempered only by reason and
19 fairness". *Albios v. Horizon Communities, Inc.*, 132 P.3d 1022 (Nev. 2006). The law only requires
20 that the court calculate a reasonable fee. *Shuette v. Beazer Homes Holding Corp.*, 124 P.3d 530
21 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
22 must be reasonable under the *Brunzell* factors. *Id.* The Court should enter written findings of the
23 reasonableness of the fee under the *Brunzell* factors. *Argentina Consolidated Mining Co., v. Jolley,*
24 *Urga, Wirth, Woodbury Standish*, 216 P.3d 779, at fn2 (Nev. 2009). *Brunzell* provides that
25 "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
26 may be equally significant. *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

27 The *Brunzell* factors are: (1) the qualities of the advocate; (2) the character of the work to be
28

1 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
2 Court notes that the majority of the work in this case was complete before the date of the
3 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
4 after the constructive discharge.

5 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
6 case, the testimony at the evidentiary hearing, and the litigation involved in the case. In this case, the
7 evidence presented indicates that, after the constructive discharge, Simon received consent from the
8 Edgeworths, through the Vannah Law Firm, to settle their claims against Lange Plumbing LLC for
9 \$25,000. Simon continued to work with the attorneys for Lange Plumbing LLC to settle the claims
10 for more than \$25,000, and ultimately ended up settling the claims for \$100,000. The record
11 indicates that on December 5, 2017, Simon attempted an email to contact Brian Edgeworth
12 regarding settling of the Lange case, as he was continuing to have discussions with Lange's counsel,
13 regarding settling of the claims. However, Simon was told to contact Vannah's office as the
14 Edgeworths were refusing his attempts to communicate. He then, reached out to Vannah's office and
15 continued to work with Vannah's office to settle the Viking and the Lange claims. On December 7,
16 2017, Sion sent a letter advising Mr. Vannah regarding the Lange claim. Simon had advised the
17 Edgeworths on settling of the Lange claim, but they ignored his advice and followed the advice of
18 the Vannah & Vannah. Upon settlement of all the claims, the Edgeworths made the unusual request
19 to open a new trust account with Mr. Vannah as the signer to deposit the Viking settlement proceeds.
20 Mr. Simon complied with the request. Further, there were continued representations from the
21 Edgeworths and the Vannah Law Firm that Simon had not been terminated from representation of
22 the Edgeworths, and no motion to withdraw was filed in this case.

23
24 *1. Quality of the Advocate*

25 Brunzell expands on the "qualities of the advocate" factor and mentions such items as
26 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
27 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
28

1 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
2 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
3 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's
4 work product and results are exceptional.

5
6 2. The Character of the Work to be Done

7 The character of the work done in this case is complex. This case was a very complex
8 products liability case, from the beginning. After the constructive discharge of Simon, the
9 complications in the case continued. The continued aggressive representation of Mr. Simon, in
10 prosecuting the case was a substantial factor in achieving the exceptional results. Even after the
11 constructive termination, Simon continued to work on the case. At one point, Simon said that he was
12 not going to abandon the case, and he didn't abandon the case. The lack of communication with the
13 Edgeworths made continuation of the case difficult, but Simon continued to work on the case and
14 ended up reaching a resolution beneficial to the Edgeworths.

15
16 3. The Work Actually Performed

17 Mr. Simon was aggressive in litigating this case. Since Mr. Edgeworth is not a lawyer, it is
18 impossible that it was his work alone that led to the settlement of the Viking and Lange claims, for a
19 substantial sum, in the instant case. The Lange claims were settled for four times the original offer,
20 because Simon continued to work on the case. He continued to make efforts to communicate with
21 the Edgeworths and even followed their requests to communicate with Vannah's office. He also
22 agreed to their request of opening a trust account, though in an unusual fashion. All of the work by
23 the Law Office of Daniel Simon led to the ultimate result in this case, and a substantial result for the
24 Edgeworths.

25
26 4. The Result Obtained

27 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
28

1 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
2 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
3 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
4 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
5 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
6 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
7 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
8 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
9 were made more than whole with the settlement with the Viking entities.

10 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
11 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
12 which states:

13
14 (a) A lawyer shall not make an agreement for, charge, or collect an
15 unreasonable fee or an unreasonable amount for expenses. The factors to be
16 considered in determining the reasonableness of a fee include the following:

17 (1) The time and labor required, the novelty and difficulty of the
18 questions involved, and the skill requisite to perform the legal service
19 properly;

20 (2) The likelihood, if apparent to the client, that the acceptance of the
21 particular employment will preclude other employment by the lawyer;

22 (3) The fee customarily charged in the locality for similar legal
23 services;

24 (4) The amount involved and the results obtained;

25 (5) The time limitations imposed by the client or by the
26 circumstances;

27 (6) The nature and length of the professional relationship with the
28 client;

(7) The experience, reputation, and ability of the lawyer or lawyers
performing the services; and

(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

1 commencing the representation, except when the lawyer will charge a
2 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.

3 (c) A fee may be contingent on the outcome of the matter for which the
4 service is rendered, except in a matter in which a contingent fee is prohibited
5 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:

6 (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
7 settlement, trial or appeal;

8 (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;

9 (3) Whether the client is liable for expenses regardless of outcome;

10 (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
11 costs as required by law; and

12 (5) That a suit brought solely to harass or to coerce a settlement may
result in liability for malicious prosecution or abuse of process.

13 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
14 with a written statement stating the outcome of the matter and, if there is a
recovery, showing the remittance to the client and the method of its
15 determination.

16 NRCP 1.5.

17 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
18 the Edgeworths, the character of the work was complex, the work actually performed was extremely
19 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
20 factors justify a reasonable fee under NRPC 1.5.

21 However, the Court must also consider the fact that the evidence suggests that the basis or
22 rate of the fee and expenses for which the client will be responsible were never communicated to the
23 client, within a reasonable time after commencing the representation. Further, this is not a
24 contingent fee case, and the Court is not awarding a contingency fee.

25 Instead, the Court must determine the amount of a reasonable fee. In determining this
26 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
27 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
28

1 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
2 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
3 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
4 continued to work on the Viking settlement until it was finalized in December of 2017, and the
5 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
6 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
7 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
8 himself were continuing, even after the constructive discharge. Though the previous agreement
9 between Simon and the Edgeworths was for \$550 per hour, the Court must take into consideration
10 that the Edgeworths' fee agreement with Vannah & Vannah was for \$925 per hour.

11 In considering the reasonable value of these services, under quantum meruit, the Court is
12 considering the previous \$550 per hour fee from the implied fee agreement, the fee for the Vannah
13 & Vannah Law Firm, the Brunzell factors, and additional work performed after the constructive
14 discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is entitled to a
15 reasonable fee in the amount of \$200,000, from November 29, 2017 to the conclusion of this case.

17 CONCLUSION

18 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
19 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
20 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
21 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
22 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
23 Simon as their attorney, when they ceased following his advice and refused to communicate with
24 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
25 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
26 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
27 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
28

1 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
2 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
3 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
4 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
5 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.
6

7 **ORDER**

8 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
9 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
10 Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

11 IT IS SO ORDERED.

Dated this 27th day of September, 2022

12
13 
14 _____
DISTRICT COURT JUDGE

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16 **4AA 825 C06C AB5C**
Tierra Jones
District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 9/27/2022

16 Daniel Simon . lawyers@simonlawlv.com

17 Rhonda Onorato . ronorato@rlattorneys.com

18 Mariella Dumbrique mdumbrique@blacklobello.law

19 Michael Nunez mnunez@murchisonlaw.com

20 Tyler Ure ngarcia@murchisonlaw.com

21 Nicole Garcia ngarcia@murchisonlaw.com

22 James Christensen jim@jchristensenlaw.com

23 John Greene jgreene@vannahlaw.com

24 James Christensen jim@jchristensenlaw.com

25 Michael Nunez mnunez@murchisonlaw.com

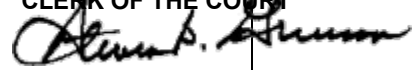
26
27
28

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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 9/28/2022

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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SIMON'S MOTION FOR ADJUDICATION
FOLLOWING MANDATE



James R. Christensen Esq.
Nevada Bar No. 3861
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Las Vegas NV 89101
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Attorney for SIMON

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK,
INC., dba VIKING 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

**MOTION FOR ADJUDICATION
FOLLOWING REMAND**

(Hearing Requested)

Notice of Intent to Appear Via
Simultaneous Audio Visual
Transmission Equipment

I. Introduction

The Supreme Court issued a decision on the Edgeworths' limited appeal and vacated the portion of this Court's Adjudication Order which granted fees to Simon under *quantum meruit*. The Supreme Court remanded the case to this Court for further findings on the amount of fees due Simon under *quantum meruit* and then the Supreme Court denied

1 Simon's Writ Petition seeking additional fees under *quantum meruit* as
2 moot, based on its earlier remand decision. While this Court responded to
3 the decision on appeal with a new Adjudication Order, this Court's Order
4 predated the Remitter and Notice in Lieu of Remittitur issued by the
5 Supreme Court. Accordingly, Simon files this motion, respectfully
6 requesting this Court again address the matter of *quantum meruit*. Further,
7 Simon submits that the Court is not limited to its prior award and that the
8 information and arguments set forth herein support an increased *quantum*
9 *meruit* award.
10
11

12 The following motion only addresses this Court's finding of *quantum*
13 *meruit* due Simon for work done after discharge which was challenged on
14 appeal by the Edgeworths. Based on the appellate decisions to date, it
15 appears that Simon will need to pursue a broader *quantum meruit* award
16 via Writ.
17

18 **II. Relevant Procedure**

19 The facts and procedure of this case are well known to this Court.
20 Therefore, only the latest events relevant to this motion are listed below.
21

22 On September 16, 2022, the Supreme Court decided the
23 Edgeworths' appeal and issued an Order Vacating Judgment and
24 Remanding.
25

1 On September 27, 2022, this Court issued the Fourth Adjudication
2 Order.

3 On October 31, 2022, the Supreme Court denied the Edgeworths'
4 request to rehear their appeal.

5 On November 16, 2022, the Supreme Court denied Simon's Writ
6 Petition as moot.

7 On November 29, 2022, this Court received the Receipt for Remittitur
8 regarding the Edgeworths' Appeal.

9 On December 15, 2022, the Remittitur for the Edgeworths' Appeal
10 was filed by the Clerk of the Supreme Court.

11 On December 20, 2022, the Supreme Court denied Simon's request
12 to rehear the Simon Writ Petition.

13 On January 17, 2023, the Supreme Court issued a Notice in Lieu of
14 Remittitur regarding the Simon Writ Petition.

15
16
17
18 **III. The Court's *Quantum Meruit* Fee Award**

19 The September of 2022 Supreme Court decision instructed the
20 district court to provide specific and express findings regarding the
21 *quantum meruit* award of fees to Simon. This Court's Fourth Adjudication
22
23
24
25

Order contained additional language regarding the issue. *In addition*,

Simon offers the following:

On November 29, 2017, Simon was constructively discharged by the Edgeworths. (*E.g.*, Adjudication Order of 4.19.21 at 12:16-17.)

On January 24, 2018, Simon filed a motion to adjudicate the Simon attorney lien. Time sheets were attached to the motion. January 8, 2018, was the last date work was noted on the time sheets. (Simon Adjudication Motion of 1.24.18 at Ex. 19.)

The following work occurred on or after November 19, 2017, as noted on the time sheets:

Daniel S. Simon

11/29/17	Receive and analyze email from Ogilvie	1.5
11/29/17	Email Chain with EN, JP, TP; Re: Letter from Parker	.50
11/29/17	Email Chain with JP, AF; Re: Discovery Motions	.15
11/29/17	Draft and send email to AF re drafting reply to Lange's supplemental Opposition	1.5
11/29/17	Draft and send email to AF re drafting notice of attorney lien	.15
11/29/17	Draft and send email to AF re letter from Pancoast to Simon	.15
11/29/17	Review and analyze Lange's supplemental brief	2.5
11/29/17	Email from client Angela Edgeworth	.15
11/29/17	Email response to client Angela Edgeworth	.25
11/29/17	Review and analyze email from Ogilvie re: contractor's license legal arguments and response email to Ogilvie; Discussion with AF	1.5

11/29/17	Draft reply to Lange's Supplemental Opposition to Plaintiffs' MSJ	2.75
11/29/17	Discussions w/ J. Henriod re moving hearings and settlement	.65
11/29/17	TIC with T. Parker	.50
11/29/17	Draft letter to Parker	.50
11/30/17	Review release; TIC J. Greene; TIC T. Parker; revise release	1.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.10
11/30/17	Call with AMF	.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.20
11/30/17	Call with AMF	.10
11/30/17	Review file for Lange bills, TIC to Parker re: settlement	.75
11/30/17	Negotiate release w/ Henriod (his office)	3.5
11/30/17	Conversation w/ Green; draft email, send release	.75
11/30/17	Receive and review letter dated 11-30-17	.25
11/30/17	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	.75
11/30/17 & 12/2/17	Email chain with AF re attorney lien	.15
12/1/17	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	.15
12/1/17	Receive and review release email to Defendant	.75
12/1/17	Receive and review release email from Pancoast & discussion with AF	.50
12/1/17	Review Viking's 19th ECC Supplement	.25

12/4/17	Received and reviewed DCRR; LIM for Green/Vannah	.75
12/4/17	Review notice vacating UL Depos	.25
12/4/17	Discussion with AF	.40
12/5/17	T/c with John Green; Email from John Green; Discussion with staff	.40
12/5/17	Review subpoena to Dalacas	.25
12/5/17	Emails to client and John Greene messages	.50
12/5/17	Draft and Send Email to Client and Response	.15
12/6/17	Draft and send email to AF re notice to vacate Caranahan depo	.15
12/6/17	Review file and gather materials requested by Vannah; email from John Greene	2.25
12/6/17	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	.50
12/6/17	Review notice of vacating depo of Carnahan	.35
12/6/17	Receive and review email from Janet Pancoast; discussion with AF; response; forward to Vannah	.35
12/6/17	Received and reviewed Lange's 13th ECC Supplement	.50
12/6/17	Email Chain with JP, AF; Re: Carnahan Deposition	.15
12/7/17	Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	.35
12/7/17	TIC with Vannah	.50
12/7/17	Draft and revise letter; Review of file to Vannah w/ attachment	1.75
12/8/17	Received and reviewed Lange 14th ECC Supplement	1.25
12/8/17	Review Motion for Good faith settlement; discussion with AF	.75
12/8/17	Received and review order granting Giberti Motion for Good Faith Settlement; TIC with Parker	.50
12/8/17	Email chain with AF re Order Granting Giberti MGFS	.15
12/11/17	Email from Zamiski; Response email	.15

1	12/11/17	Review/ Analyze Lange 15th ECC Supplement	.50
2	12/11/17	TIC Parker & Pancoast; Email from T. Parker; Email from Crt	.75
3	12/11/17	Review client's release of claims; emails to J. Greene; Discussions with AF	.50
4	12/11/17	Draft and send email to AF re Lange's 15th ECC Supplement and review AF response	.25
5	12/12/17	Draft and send email to AF re Stip to Dismiss and review AF response	.15
6	12/12/17	Attend hearing on Viking Motion for Good Faith Settlement	1.75
7	12/6/17-12/12/17	Messages; Returned messages; discussions with Floyd Hale	.50
8	12/12/17	Email from J. Pancoast; Received/Reviewed/Analyze Stip to dismiss; order on Good faith settlement; discussion with AF	1.25
9	12/12/17	Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	.50
10	12/14/17	Review both stips to dismiss; send to J. Pancoast; TIC to M. Nunez; Review email from J. Pancoast	.50
11	12/15/17	Review email from T. Ure; TIC to J. Pancoast re 2nd stip to dismiss and arrange pick up of settlement checks	.50
12	12/18/17	Pick up settlement checks; exchange for stip; contact Vannah' s office re signature	1.5
13	12/18/17	T/C and emails to J. Greene re checks; TIC to Pomerantz office re bill; emails; review bills from Pomerantz	1.0
14	12/18/17	Received, reviewed and analyze email from B. Vannah	.50
15	12/19/17	Emails to B. Vannah and J. Greene re checks	.25
16	12/19/17	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and response from B. Vannah	.25
17	12/20/17	Request return of sprinklers from Volmer Grey	.25
18	12/20/17	Receive and review draft Motion for Good Faith Settlement; Lange release for \$100k and release for \$22k	1.5

12/21/17	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	.75
12/21/17	Receive, review and analyze email from B. Vannah (3:21pm)	.50
12/23/17	Received, reviewed and analyzed email from B. Vannah (10:45pm)	.50
12/26/17	Receive, review and analyze email from J. Christensen to B. Vannah (10:46am)	.25
12/26/17	Receive, review and analyze email from B. Vannah (12:18pm)	.75
12/26/17	Receive, review and analyze email from J. Christensen	.25
12/27/17	Receive, review and analyze email from JC w/e letter attached	.75
12/28/17	Receive, review and analyze email from B. Vannah (3:07pm)	.75
12/28/17	Receive, review and analyze email from B. Vannah (2:03pm)	.25
12/28/17	Receive, review and analyze email from B. Vannah (4:17am)	.75
12/29/17	Received and reviewed email re joint motion and revised joint motion	.40
1/2/18	Revise Lange release and send back to T. Parker	.75
1/2/18	Received/reviewed Viking stip to dismiss	.35
1/2/18	Received/reviewed email from J. Pancoast and T. Parker	.35
1/2/18	Received/reviewed and analyzed letters from Zurich re settlement checks	.25
1/2/18	Received, reviewed and analyzed email from J. Greene (3:45pm)	.25
1/2/18	TIC with S. Guindy at Bank of Nevada	.50
1/3/18	TIC w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze, review schedule and additional emails from S. Guindy	.50

1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.5
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	TIC with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5

Ashley M. Ferrel

11/29.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 19 th Supplemental NRCP 16.1 Disclosure	.30
11/29/17	Review, Download & Save Correspondence to Counsel, dated November 29, 2017	.30
11/29/17	Review Ogilvie response to Lange's Supplement to MSJ; Discussion with DSS re Reply	.50
11/29/17	Review email from DSS re drafting reply to Lange's supplemental Opposition	1.5
11/29/17	Review email from DSS re drafting notice of attorney lien	.15
11/29/17	Review email from DSS re letter from Pancoast to Simon	.15
11.29.17	Email to Pancoast re hearing dates I front of DC Bulla in light of negotiations	.15

1	11/30/17	Email to George Ogilvie instructing him to stop working on the case	.15
2	11/30/17	Review, Download & Save Letter to Counsel	.30
3	11/30/17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	.30
4	11/30/17	Review Viking's 19th ECC Supplement	1.0
5	11/30/17	Review Letter from Lange regarding discovery scheduling and discussion with DSS	.75
6	11/30/17 & 12/2/17	Email chain with DSS re attorney lien	.15
7	12/1/17	Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.5
8	12/1/17	Review, Download & Save Lange Plumbing Verification to Rogs	.30
9	12/1/17	Review, Download & Save Notice of Attorney Lien	.30
10	12/1/17	Review Release from Viking and discussion with DSS re release	.50
11	12/4/17	Draft and serve notice to vacate deposition of UL Laboratories	.25
12	12/4/17	Review Lange written discovery responses	1.5
13	12/4/17	Discussion with DSS re scheduling and status of case	.40
14	12/4/17	Review, Download & Save Notice Vacating the 2 nd Amended Video Depo of NRCP30(b) (6) Designees of Underwriters Laboratories	.30
15	12/4/17	Review, Download & Save Discovery Commissioners Report and Recommendations	.30
16	12/5/17	Email chain with UL re vacating depo	.15
17	12/6/17	Review Lange's I 3u1 ECC Disclosure	2.5
18	12/6/17	Review email from DSS re notice to vacate Caranahan depo	.15
19	12/6/17	Draft and serve Notice to Vacate Robert Carnahan Deposition	.50
20	12/6/17	TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	.50

12/6/17	Review, Download & Save Service Only- Lange Plumbing 13 th Supp to NRCP 16.1 ECC	.30
12/6/17	Review, Download & Save Service Only - Notice of Vacating the Continued Video Depo of Robert Carnahan	.30
12/7/17	Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	.30
12/8/17	Review Viking Motion for Good Faith Settlement, Analyze and discussion with DSS	.75
12/8/17	Review Lange's 14 th and 15 th ECC Disclosure	.50
12/8/17	Email chain with DSS re Order Granting Giberti MGFS	.15
12/8/17	Review Stipulation to Dismiss from Viking and discussion with DSS	.50
12/8/17	Review, Download & Save Lange Plumbing 15 th Supplement to 16.1 ECC List Witnesses and Docs	.30
12/8/17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1 ECC List of Witnesses and Docs	.30
12/11/17	Discussion with DSS re client's release of claims	.20
12/11/17	Review email from DSS re Lange's 15 th ECC Supplement and response	.25
12/11/17	Review email from DSS re Lange's 15 th ECC Supplement and response	.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	.25
12/12/17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	.30

12/13/17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5

(Defendants' evidentiary hearing exhibits 13 & 14.)

The Simon time sheets did not capture all the effort expended on behalf of the Edgeworths through January 8, 2018. (See, e.g., August 29, 2018, transcript at 109-126 & 192-193.) For example, Simon also performed the following work through January 8, 2018:

11.29.17 Exchanged emails with Joel Henriod regarding resolution.

11.30.17 Emailed a proposed release to the client.

11.30.17 Exchanged emails with Joel Henriod regarding resolution.

(Ex. 1.)

There is substantial evidence that Simon continued to work on behalf of the Edgeworths after the last date on the time sheets of January 8, 2018. On February 6, 2018, Simon appeared before the Court and was actively engaged in effectuating the settlement and helping his former clients. (See, *generally*, February 6, 2018, hearing transcript.)

The February 6 transcript shows that at the hearing the defense attorneys did not turn to Vannah but instead relied upon Simon. Simon did

1 not refuse to assist his former friends and clients - *who had frivolously sued*
2 *him for conversion to punish him* - rather, Simon upheld the highest
3 standards of the profession and helped. (Transcript of 2.6.2018 hearing.) In
4 addition to the hearing appearance, the transcript reflects that Simon was
5 working on behalf of the Edgeworths outside the presence of the Court.
6 (E.g., 2.6.2018 transcript at 6:15, "MS PANCOAST: -- Mr. Simon's
7 facilitating wrapping this up.")
8

9
10 On February 20, 2018, Simon again appeared before the Court. On
11 February 20, 2018, Simon addressed the district court regarding the status
12 of resolution and discussed ongoing efforts to resolve the case which were
13 taking place outside the presence of this Court. The transcript confirms that
14 three months after retention to resolve the case, Vannah continued to deny
15 any knowledge or involvement and most matters were still being handled
16 by Simon:
17

18 THE COURT: Mr. Vannah?

19 MR. SIMON: --that they'll sign that.
20

21 MR. VANNAH: Why do we have to have anything on form and
22 content? That is not required, it's for the lawyers to sign.

23 MR. SIMON: Then if --

24 MR. VANNAH: -- I'm asking that question.

25 MR. SIMON: -- he's ok with that, then I'm fine with that.

1 MR. VANNAH: *If you take out the form and content, I don't know*
2 *anything about the case, and I want -- I don't know anything about the*
3 *case -- I mean, we're not involved in a case. You understand that,*
4 *Teddy?* (Italics added.)

5 (2.20.2018 hearing transcript at 3:15-25. Italics added.)

6 In addition to court appearances Simon did the following work after
7 January 8, 2018:

8 1.17.2018 Drafted an email to Teddy Parker regarding release
9 language

10 1.19.2018 Reviewed an email string from Janet Pancoast and sent
11 replies regarding the upcoming hearing schedule.

12 1.19.2018 Contacted the Court regarding the upcoming hearing
13 schedule

14 1.20.2018 Reviewed email from J. Pancoast regarding the upcoming
15 hearing schedule

16 1.22.2018 Reviewed email from T. Parker regarding the upcoming
17 hearing schedule

18 1.22.2018 Reviewed an email from the Court regarding the
19 upcoming hearing schedule

20 1.25.2018 Reviewed an email from J. Pancoast¹

21 2.18.2018 Reviewed an email from J. Pancoast regarding check
22 exchange and the stipulation to dismiss.

23
24 ¹ Ms. Pancoast wrote: "I just read the Motion to Adjudicate the attorney lien.
25 But for your determination, Edgeworths would have significantly less in
their pocket." (Ex. 2.)

1 2.20.2018 Reviewed an email from J. Pancoast regarding hearing
attendance and the Court's reply (Includes Vannah)

2 3.8.2018 Reviewed an email from E. Nunez regarding a proposed
3 order for good faith settlement.

4 3.8.2018 Reviewed email and replied to an email from E. Nunez
5 regarding the proposed order for the motion for good faith settlement
6 and releases.

7 3.12.2018 Reviewed emails from E. Nunez regarding the order for
8 good faith settlement and reply

9 3.12.2018 Reviewed emails with R. Vannah regarding the order for
10 good faith settlement

11 3.12.2018 Reviewed emails from J. Pancoast regarding the order for
12 good faith settlement

13 3.16.2018 Reviewed group emails (including Vannah) and reply
14 regarding the order for good faith settlement.

15 On 1.22.2018 Ashley Ferrell sent an email to the Court requesting a
16 change to the upcoming hearing schedule as agreed upon by
counsel.

17 (Ex. 1.)

18 The communications listed above involve the Vannah firm only where
19 specifically noted. It is significant that scheduling and the process of
20 drafting and submission of orders and releases went almost exclusively
21 through Simon and did not include Vannah, and that the work extended into
22 March of 2018, months after Simon's discharge on November 29, 2017.
23
24
25

1 The work performed by Simon after discharge was of substantial
2 value. Simon acted to protect the interests of his former clients, even after
3 being frivolously sued, by addressing the details of resolution of their
4 complex case. Finalizing resolution of a complex case that settled in the
5 aggregate for more than Six Million Dollars has a substantial value.
6

7 Simon's work went beyond finalizing resolution, for example,
8 following discharge Simon negotiated better terms with Lange. The former
9 client and new counsel instructed Simon to settle with Lange for
10 \$25,000.00; however, Simon was able to negotiate a larger settlement for
11 \$100,000.00. Simon's post discharge negotiation also removed a
12 confidentiality clause from the Lange settlement agreement. Removal of a
13 confidentiality clause has value not just because a confidentiality clause
14 can create future liability, but also because such clauses can have tax
15 consequences. *See, e.g., Amos v. Commissioner of Internal Revenue*,
16 2003 WL 22839795 (U.S.T.C. 2003)(40% of a settlement paid by Dennis
17 Rodman following a kicking incident during an NBA game pursuant to a
18 settlement agreement which contained a confidentiality clause found to be
19 taxable as a payment for confidentiality).
20
21
22
23

24 Notably, the Edgeworths admitted to the value of Simon's post-
25 discharge work. On January 4, 2018, the Edgeworths frivolously sued

1 Simon for conversion. Following service of the frivolous complaint,
2 replacement counsel Robert Vannah directed/threatened Simon via email
3 to continue working for the Edgeworths. Vannah stated that Simon's
4 withdrawal would result in the Edgeworths spending "lots more money to
5 bring someone else up to speed". (Defendants' evidentiary hearing exhibit
6 53.) As Vannah & Greene billed the Edgeworths at \$925.00 an hour,
7 Vannah's email demonstrates that Simon provided a substantial monetary
8 savings to the Edgeworths post discharge. Saving a client money is a
9 benefit which may be considered in reaching a reasonable fee. See,
10 *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 664 F.3d 282 (9th. Cir.
11 2011)(*Crockett & Myers II*)(the court considered fee savings as a factor to
12 consider in reaching a *quantum meruit* award). Further, the
13 contemporaneous assertion of Vannah regarding the value of Simon's
14 services to resolve the case contradicts the current Edgeworth *post hoc*
15 claim that Simon's post discharge work was of little value.

16 Further, Simon was integral to finalizing resolution as evidenced by
17 the hearings of February 6 and 20, 2018. The transcripts reveal that Simon
18 was the attorney that the defense turned to for resolution of the
19 Edgeworths' case and that Simon provided material and substantial
20 assistance. And, again, the record and the Edgeworths' first substitute
21
22
23
24
25

1 attorney contradict the current *post hoc* claim that resolution of a complex
2 case is simple or of little value.

3 Finally, as late as August 8, 2019, the Edgeworths argued to the
4 Supreme Court that Simon was still their attorney. (Appellants' Opening
5 Brief filed 8.8.2019 at 25-26.) Accordingly, there is no basis for the
6 Edgeworths to argue that consideration of Simon's work which forms the
7 basis of the *quantum meruit* award should be limited to work that occurred
8 on or before January 8, 2018. Simon submits the work continued into
9 March of 2018, and the Edgeworths contended on appeal in 2019 that
10 Simon was still their lawyer as late as 2019.
11

12 **IV. Conclusion**

13 The foregoing pages of this motion provide additional information
14 regarding Simon's post discharge work which can be added to an
15 Adjudication Order to further demonstrate the sound foundation upon which
16 this Court's *quantum meruit* award is based. There is ample foundation for
17 the Court's previous post discharge *quantum meruit* award of \$200,000.00.
18
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25

1 Further, in the discretion of this Court, there is also support for an
2 upward adjustment of the *quantum meruit* award for post discharge work.

3 DATED this 9th day of February 2023.

4
5 /s/James R. Christensen

6 James R. Christensen Esq.
7 Nevada Bar No. 3861
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9 601 S. Sixth Street
10 Las Vegas NV 89101
11 (702) 272-0406
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13 jim@jchristensenlaw.com
14 Attorney for LAW OFFICE OF
15 DANIEL S. SIMON, P.C.

16
17 **CERTIFICATE OF SERVICE**

18 I CERTIFY SERVICE of MOTION FOR ADJUDICATION
19 FOLLOWING REMAND was made by electronic service (via Odyssey) this
20 9th day of February 2023, to all parties currently shown on the Court's E-
21 Service List.

22
23 /s/ Dawn Christensen

24 an employee of
25

EXHIBIT 1

Declaration of Counsel Re: Fees

1. I, Daniel S. Simon, make this declaration of my own personal knowledge and under the penalty of perjury pursuant to NRS 53.045.

2. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

3. I am an attorney duly licensed to practice law in the State of Nevada. I

4. I and my firm performed work needed to finalize the releases and other documents required to resolve the Edgeworths' complex litigation beyond that which is noted on the time sheets or is apparent from the hearing transcripts including the following:

11.29.2017 Exchanged emails with Joel Henriod regarding resolution

11.30.2017 Emailed a proposed release to the client

11.30.2017 Exchanged emails with Joel Henriod regarding resolution

1.17.2018 Drafted an email to Teddy Parker regarding release language

1.19.2018 Reviewed an email string from Janet Pancoast and sent replies regarding the upcoming hearing schedule

1.19.2018 Contacted the Court regarding the upcoming hearing schedule

1.20.2018 Reviewed email from J. Pancoast regarding the upcoming hearing schedule

1.22.2018 Reviewed email from T. Parker regarding the upcoming hearing schedule

1.22.2018 Reviewed an email from the Court regarding the upcoming hearing schedule

1.25.2018 Reviewed an email from J. Pancoast

2.18.2018 Reviewed an email from J. Pancoast regarding check exchange and the stipulation to dismiss.

2.20.2018 Reviewed an email from J. Pancoast regarding hearing attendance and the Court's reply (Includes Vannah)

3.8.2018 Reviewed an email from E. Nunez regarding a proposed order for good faith settlement.

3.8.2018 Reviewed email and replied to an email from E. Nunez regarding the proposed order for motion for good faith settlement and releases

3.12.2018 Reviewed emails from E. Nunez regarding the order for good faith settlement and reply

3.12.2018 Reviewed emails with R. Vannah regarding the order for good faith settlement

3.12.2018 Reviewed emails from J. Pancoast regarding the order for good faith settlement

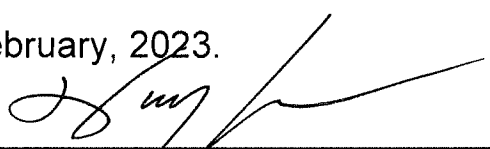
3.16.2018 Reviewed group emails (including Vannah) and reply regarding the order for good faith settlement

On 1.22.2018 Ashley Ferrell sent an email to the Court requesting a change to the upcoming hearing schedule as agreed upon by counsel.

I also performed substantive work achieving a settlement of 100k instead of the 25k settlement the Edgeworths gave authority for only a few days prior. I also spent time providing more substantive work reviewing and revising releases with Lange Plumbing that omitted valuable confidentiality clauses in favor the Edgeworth's, and separately omitted a non-disparagement clause protecting the Edgeworth's even more, along with other favorable terms. These releases were then reviewed by the Vannah lawyers, who secured signatures. Settlement checks were then obtained so the Edgeworth's could receive their money immediately.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

DATED this 9th day of February, 2023.



DANIEL S. SIMON

EXHIBIT 2

Daniel Simon

From: Janet Pancoast <janet.pancoast@zurichna.com>
Sent: Thursday, January 25, 2018 9:06 PM
To: Daniel Simon
Subject: Edgeworth -

Danny –

I just read the Motion to Adjudicate the attorney lien. But for your determination, Edgeworths would have significantly less in their pocket. If I can be of any assistance to you, let me know.

Good luck.

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
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EDGEWORTHS RESPONSE TO MOTION TO
ADJUDICATE FOLLOWING MANDATE



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Attorneys for Plaintiffs
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;	)	Case No: A-16-738444-C
AMERICAN GRATING, LLC,	)	Dept. No: X
)	
Plaintiffs,	)	EDGEWORTHS' RESPONSE TO
v.	)	MOTION FOR ADJUDICATION
	)	FOLLOWING REMAND
LANGE PLUMBING, LLC)	
ET AL.,)	
	)	HEARING REQUESTED
Defendants.)	
)	
)	

Plaintiffs Edgeworth Family Trust and American Grating, LLC
(hereafter collectively referred to as "Edgeworths") respectfully respond to
Simon's motion for adjudication following remand.

INTRODUCTION TO RELEVANT HISTORY

As a threshold matter, the Edgeworths' agree that a post-
remittitur adjudication is necessary, as the Court filed its Fourth Amended
Decision and Order on Motion to Adjudicate Lien dated September 27, 2022
before jurisdiction was returned by remittitur. On September 16, 2022, the

1 Nevada Supreme Court *again* reversed and remanded the case to this Court
2 for the limited purpose of explaining the basis and reasonableness of its
3 quantum meruit award for the limited post-remand services that Simon
4 performed. Remittitur issued on November 28, 2022 and this Court
5 acknowledged receipt of the remittitur on November 29, 2022.

6 In asking this Court for adjudication following remand, Simon
7 now seems to adopt the identical portions of his "super bill" that the
8 Edgeworths presented, summarized, and asked the Court to consider in
9 2021. *See* Ex. A, Summary of Post-Discharge Work; *see also* Exs. B and C,
10 Simon's "Time Sheets." As he did in 2018 with respect to billings he issued in
11 2016 and 2017, Simon again attempts to belatedly revise his post-discharge
12 billing records, which his office claimed were prepared after carefully going
13 through their entire file including "all of the emails." *See* Ex. D, Excerpts of
14 8/29/17 Hrg. at 111:5 – 17.

15 The additional work that Simon now improperly tries to add to
16 his "super bill," more than five years too late, appears to be based on emails
17 he *purposely withheld* and turned over *only* after the Court's denial of the
18 Edgeworths' motion for an order to show cause why he should not be held
19 in contempt for withholding portions of the client file and after the Supreme
20 Court again made clear that his quantum meruit award had to be based on
21 specific findings of post-discharge work. In denying the OSC motion, the
22 Court said:

23 While the Edgeworths argue that they are missing documents,
24 there has been no evidence presented to demonstrate the specific
25 documents that are missing from the file productions. As such,
26 the court is unable to determine the extent, if any, of missing
27 documents. Without said specifics, the Court cannot find that
28 Daniel Simon is in contempt of this Court's order.

1 Ex. W, Dec. 13, 2022 Order at 2. Simon's counsel has now presented "specific
2 documents," previously presumed to be missing but not specifically known
3 to the Edgeworths, "that were missing from the file productions." *Id.*

4 Furthermore, this Court previously rejected Simon's efforts to
5 revise his billings *two years after-the-fact*. There is no reason the Court
6 should now accept his effort to revise his post-discharge billings *more than*
7 *five years after-the-fact*. His current efforts to amend billing records are not
8 only unreliable, as the Court previously found, but if accepted would
9 reward Simon for intentionally withholding portions of his file that show he
10 lied to the Edgeworths and to the Courts.

11 For this and the reasons more fully set forth below, the Court
12 should follow the Nevada Supreme Court's mandate, but do so based on the
13 billing records Simon created somewhat contemporaneously with his post-
14 mandate work in late 2017 – 18 (Exs. B & C), *not* on additions he proposes
15 now, more than five years later based on portions of the Edgeworths' client
16 file he purposefully withheld to conceal his untruthfulness with his clients
17 and the Court.

18 This response is based on the papers and pleadings in the
19 Court's record, the declaration of Rosa Solis-Rainey and any exhibits
20 referenced therein, and any argument the Court may consider.

21 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
22 **EDGEWORTHS' RESPONSE TO SIMON'S MOTION FOR ADJUDICATION**
23 **FOLLOWING REMAND**

24 This case has a long and tortured history that the Court is
25 familiar with. It is briefly recited below only to the extent relevant to the
26 instant motion. The Court has previously found that Simon, in whom the
27 Edgeworths misplaced their trust, was constructively discharged on
28 November 29, 2018. His failure to document the terms of his engagement,
and provide timely invoices has allowed him to keep the Edgeworths tied

up in Court for years, as he promised them he would do, for more than five years after the underlying litigation was resolved.

A. RELEVANT FACTS

1. Simon Presented the Record of His Post-Discharge Work in 2018.

From April 10, 2016 to September 18, 2017, his firm billed the Edgeworths \$368,588.70 in attorney's fees, and \$114,864.39 in costs. The bills were based on *Simon's* requested hourly rate of \$550 and \$275 for his associates. Despite the Edgeworths repeated requests for outstanding invoices for services he provided after his last billed date of September 18, 2017, Simon would not provide such an invoice. *See e.g.*, Ex. V, Nov. 19, 2018 Order on Mot. to Adjudicate Lien at ¶ 14; Ex. T. In fact, Simon did not provide any billing records until he submitted a "super bill" to the Court by which he attempted to add to prior invoices he issued from 2016 to September 18, 2017 that the Edgeworths had paid. *See* Ex. D at 109:11 – 116 (discussing 2018 efforts to create "super bill"); 166 – 167 (discussing Ms. Ferrel's understanding of the 2018 add-ons);¹ 172 – 177 (testimony that Simon never informed the Edgeworths or the Viking and Lange parties that his original invoices were incomplete); 182; 184:7 – 10. In his "super bill" Simon also billed for his post-discharge services. Exs. B & C.

¹ Ms. Ferrel may have been kept in the dark about Simon's reasons for producing the "super bill" as her understanding that it was for purpose of the Lange litigation is the polar opposite of what Mr. Simon's counsel had described to Vannah: the "super bill" was created to justify how Simon's November 27, 2017 demand was less than an hourly invoice. Ex. T. The \$200K in costs he says had accrued as of that date is more than double the \$80K+ he claimed seven days before in his lien and nearly 200% more than the approximate \$68K in costs Simon would ultimately be able to prove. Simon has not offered any evidence that he had a reasonable belief of the amount of costs claimed in his letter, or the \$80K+ in his November 30, 2017 lien. *See, e.g.*, Ex. N at 1 (#2).

1 This Court rejected Simon's effort to add to his prior billings,
2 finding his efforts to rewrite history unreliable. *See* Ex. V at 14:19-27
3 (pointing to testimony that the "'super bill' was not necessarily accurate"
4 because it was created after the fact); Ex. V at 15:5 – 9 ("The court reviewed
5 the billings of the 'super bill' in comparison to the previous bills and
6 determined that it was necessary to discount the items that has not been
7 previously billed; such as text messages, reviews with the court reporter,
8 and reviewing, downloading, and saving documents because the Court is
9 uncertain of the accuracy of the 'super bill'"); Ex. V at 15:19 ("This argument
10 does not persuade the court of the accuracy of the 'super bill.'").

11 For the unbilled period of September 19, 2017 through
12 November 29, 2017 (the date of Simon's constructive discharge), the Court
13 *credited Simon for every minute that he recorded on his "super bill"* and
14 awarded him fees for that time at the hourly rates he set (\$550/275 per
15 hour). *Id.* at 16 - 17. For post-discharge services, the Court awarded Simon
16 \$200,000 without specifying the basis or explaining the reasonableness of the
17 award. That awarded him fees at a rate of more than \$2,800 per hour for
18 Simon and his associate.

19 This post-discharge award has been the subject of two appeals
20 and two remands with the same instruction: the Court must specify the
21 basis of the award, and explain its reasonableness by reference *only* to post-
22 discharge work, not to work that was performed pre-discharge.

23 In its December 30, 2020 Order, the Supreme Court held that this
24 Court erred in making the award "without making findings regarding the
25 work Simon performed after the constructive discharge." *Edgeworth Family*
26 *Trust v. Simon*, 477 P.3d 1129 *2 (Nev. 2020) (Table). The Supreme Court
27 emphasized that the proper measure of recovery is the "*reasonable* value of
28 [the] services." *Id.* at *2 (emphasis added, citations omitted). The Supreme

1 Court reiterated that in determining the reasonable value, the District Court
2 must consider the *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455
3 P.2d 31, 33 (1969) factors, focused on the post-discharge work. It said:

4 While the district court stated that it was applying the *Brunzell*
5 factors for work performed only after the constructive discharge,
6 much of its analysis focused on Simon's work throughout the
7 litigation. Those findings, referencing work performed before
8 the constructive discharge, for which Simon had already been
9 compensated under the terms of the implied contract, cannot
10 form the basis of a quantum meruit award. . . . Accordingly, we
11 vacate the district court's grant of \$200,000 in quantum meruit
12 and remand for the district court to make findings regarding the
13 basis of its award.

14 *Id.* at *2. The Supreme Court provided guidance to this Court by directing it
15 to look at the record; it said "[a]lthough there is evidence in the record that
16 Simon and his associates performed work after the constructive discharge,
17 the district court did not explain how it used that evidence to calculate its
18 award." *Id.*

19 As the Edgeworths brought to this Court's attention in 2021, the
20 *only* evidence in the record of work Simon claims to have performed post-
21 discharge was set forth in the "super bill" that he admits he provided on
22 January 24, 2018 with his motion to adjudicate his lien. Mot. at 4; *see*
23 Excerpts Showing Post-Discharge Portions of "super bill" Ex. B and C. The
24 post-discharge work described in Simon's "super bill"² totals 71.10 hours and
25 includes one hearing and several administrative tasks, including over seven
26 hours of Simon's time post discharge to open the bank account for deposit of
27 the Viking settlement checks. Ex. A at 3 (entries in green on Jan 2, 3 4, 5 and
28 8, 2018). Simon's Motion, at pages 4 – 12, finally recognizes that the evidence

² Simon's instant motion now characterizes his "super bill" as "time sheets." Simon's Mot. at 4 ("Time sheets were attached to [Simon's motion to adjudicate]"); at 12 (claiming "[t]he Simon timesheets did not capture all the effort expended . . .").

the Supreme Court referenced in its 2020 Order and the Edgeworths specifically detailed in their 2021 briefing is the only evidence in the record of his post-discharge work. *Compare* Simon's Mot. at 4 – 12 *with* Exs. B & C (listing the identical work for the period between 11/30/17 to 1/2/18 totaling 71.10 hours).³ Even if Simon is credited for the post-discharge time outlined in his "super bill," applying the *Brunzell* factors to that work does not justify the extraordinary bonus payment the Court awarded him.

2. **Simon's Attempt to Re-write and Enlarge his Post-Discharge Billing Invoice Should be Rejected.**

Just as he did in 2018 when he tried to go back to enlarge invoices he had billed in 2016-17, Simon again tries to enlarge his 2017-18 post-discharge work in 2023 by adding-on to his previous billing record. *See* Mot. at 12 – 15. Shockingly, all of the add-ons Simon now asks the Court reward him for appear to be based on documents he *intentionally withheld* from the Edgeworths, notwithstanding this Court's (and the Supreme Court's) Order that he provide the Edgeworths with their *complete* client file.

On September 27, 2022, this Court ordered Simon to release the Edgeworths' client file within 14 days. *See* Court Doc. ID #348, Sept. 27, 2022 Order. On the last of day of this period, Simon produced portions of the file he claimed to have withheld based on the stipulated protective order in the Viking/Lange litigation, including some email plus expert documents that had nothing to do with the protective order. *See* Court Doc. ID #360, Mot. for OSC. When confronted with the fact this production did not constitute

³ Simon's motion incorrectly includes billing entries for 11/29/17, which was already included in the period for which the Court compensated him under the implied contract. *See* Ex. V at 16 – 17 (awarding Simon \$284,982.50 "for the period of September 19, 2018 [sic] to November 29, 2017")

the complete file, Simon's counsel said "[t]he file is quite large; accordingly the Simon office will be producing the file in a rolling fashion." *Id.* at Ex. D thereto. He again produced the portion of the file he had turned over in 2020 which included over 5,000 pages of email. When the promised "rolling productions" did not come and Simon would not specify what remained or when it would be produced, the Edgeworths moved for an order to show cause why he should not be held in contempt, which this Court later denied. Ex. W, Dec. 13, 2022 Order.

The Edgeworths have for years maintained that Simon's production had gaps in the email produced, particularly around the time of settlement, and that the partial file Simon produced was missing the earlier drafts of the Viking settlement and even the fully-executed copy. *See*, Ex F and 4 and Ex. I thereto (stating that "among the items missing" was email with third-parties regarding the settlement of the Viking and Lange Plumbing claims, as well as earlier drafts of the settlement agreements); . . ."); Ex. G at 6 (referencing Simon's claim that he had produced all email); Ex. I at 18 (referencing Simon's withholding of emails transmitting settlement drafts and the fully executed settlement agreements).⁴ In prior testimony and briefing, Simon dismissed the Edgeworths demand for drafts of the settlement agreements because he suggested he conducted all negotiations in person. *See* Ex. E at 18:18 – 19:2; Ex. J at 6 (criticizing and dismissing the Edgeworths' contention that they expected email to include exchange of drafts by pointing to his testimony that the settlement was negotiated in person); *but see* Ex. K (emails produced 12/6/22 confirming the email

⁴ With respect to drafts of the settlement agreement, Simon in prior briefing pointed to the drafts the Edgeworths acknowledged he produced on November 30, 2017 to avoid his failure to produce the earlier drafts he withheld from them. *See* Ex. I at 19 (referencing his tactics).

exchanges "expected" by the Edgeworths did in fact exist but *had been withheld*).⁵ He also ridiculed the Edgeworths' complaint that his partial file did not include the fully-executed settlement agreement, claiming he was not involved in the settlement, perhaps forgetting he had insisted that the settlement documents be routed through his office. Ex. H at 18; *but see* Ex. L (Simon's 11/30/27 email requiring that settlement drafts be routed through him), Ex. E at 18 (Simon's testimony confirming the settlement agreements were routed through him); and Ex. M (email Simon produced 12/6/22 confirming the Edgeworths complied with Simon's demand that signed agreements be routed through his office).⁶

Since the dispute regarding the complete file arose, Simon defined his file as including email and claimed the email was produced yet in 2022, after he was forced to admit he intentionally stripped all attachments from the email he had produced, he switched course and for the first time began claiming that email was not a part of his file. Ex. J. at 18 (stating without support that "email is not typically part of any lawyer's case file . . . ");⁷ *but see* Ex. D at 197 ("Q: Okay. And on the entries that describe emails, those have all been produced, right? A: Yes. Q: Anybody can go look

⁵ Simon's December 6, 2022 production included exchanges referencing versions 1, 2 and 4 of the Viking settlement agreement were provided. Ex. K. A transmittal with version 3 of the agreement has not been located.

⁶ Transmittals with the fully-executed settlement agreement still could not be located. *See* Ex. N (#6).

⁷ Perhaps in an effort to prop-up his new argument about producing documents that were not part of his case file, Simon falsely claimed that "he voluntarily produced cell phone records, which are not part of the case file." Ex. J at 7. That production, however, was required by *the Court* to allow Mr. Vannah to review the basis for Simon's attempt to enlarge his "super bill." Ex. D at 189:5 – 13.

1 them up themselves and confirm that they occurred? A: Yes, sir."). After
2 nearly five years of claiming he'd produced all email, both before this Court
3 and the Supreme Court, it is disingenuous for Simon to now contend that
4 email is not part of his file. Simon latched on to this new argument when on
5 December 6, 2022,⁸ after this Court had orally denied the Edgeworths' OSC
6 Motion, he "found" over 280 pages of withheld email with attachments
7 (much of it between November 28, 2017 and January 7, 2018, the *exact*
8 *period* that he was told, but denied, was a gap in his prior email
9 production). Ex. Q.

10
11 Simon's belated production confirmed (1) that he was not
12 truthful when he told the Edgeworths on November 27, 2017 that he had not
13 yet heard anything about the Viking settlement (*compare* Ex. S (Simon's 4:58
14 p.m. email suggesting the settlement draft was not started before November
15 27th "due to the holidays") *with* Ex. K at 1 (showing that at least one version
16 of the draft settlement agreement has been sent to Simon by 4:48 p.m. on
17 that day); (2) that he was not truthful when he suggested no exchanges or
18 other settlement drafts existed because all negotiations were in person
19 (*compare* Ex. E at 18:18 – 19:2 (claiming no redlines circulated) *with* Ex. K
20 (showing redlines were circulated); (3) that he was not candid with the
21 Nevada Supreme Court when he mocked the Edgeworths' suggestion that
22 the fully-executed version of the settlements agreements should be in his
23 file, suggesting he would not have had them since he was no longer counsel
24 of record (*compare* Ex. H at 18 (mocking suggestion he had the executed
25 agreements) *with* Ex. M (email Simon produced 12/6/22 confirming the

26 ⁸ Simon's self-serving review of his file also came after the Nevada
27 Supreme Court's September 16, 2022 Order instructing the district court to
28 make specific findings of the post-discharge work Simon performed and
limit her quantum meruit award to those findings.

executed drafts were routed through Simon). Through other documentary evidence, Simon's testimony to this Court that he negotiated the confidentiality provision out of the Viking settlement at the Edgeworths' request was debunked. Ex. U. In denying the Edgeworths' Motion for an OSC, this Court said that "Any specific requests for production of missing items from the file can be made directly to Simon's counsel." *Id.* at 2. Requests made to his counsel prior to and since the order have gone unanswered except for a response to the Edgeworths' initial request stating he would forward the request to Simon. Exs. N, O, and P.

The Court should not reward Simon, as his motion asks, by allowing him to enlarge his billing for periods he or his colleagues claimed years ago had been thoroughly reviewed. Ex. D at 111. Additionally, Simon neither supports nor specifies the time he claims to have spent on the alleged add-ons he lists on pages 12 – 15 of his instant motion. The Court should consider the only the record it was provided in 2018 to obey the Supreme Court's latest mandate that it specify the basis for the quantum meruit award, and explain its reasonableness under *Brunzell* based only on post-discharge services. NSC Sept. 16, 2022 Order at 4 ("instruct[ing] the district court to make specific and express findings as to what work Simon completed after he was constructively discharged and limit its quantum meruit fee to those findings.").

B. THE BASIS FOR THE *QUANTUM MERUIT* MUST BE SPECIFIED AND REASONABLE BASED ONLY ON POST-DISCHARGE WORK.

The Supreme Court's 2022 mandate, just as its 2021 mandate, requires the Court to specify the work it is considering in the quantum meruit period. Simon's instant motion attempts to modify and enlarge "time-sheets" he admittedly produced *more than five years ago* with additional entries he lists in a self-serving declaration that does not even assign time to

1 the alleged tasks performed. *See* Mot. at 12 -15. Among his add-on entries,
2 Simon on page 12 lists "11.30.17 Emailed a proposed release to the client."
3 But Simon's somewhat contemporaneously prepared "time sheets" already
4 include an entry for which he billed 3/4 hour for sending the release:
5 "11/30/17 Conversation w/Green; draft email; send release" (page 5, eighth
6 entry from the bottom). This Court previously rejected Simon's 2018
7 "attempt to recreate billing and supplement/increase previously billed
8 work" as unreliable. Ex. V at 15. Simon's motion fails to explain how his
9 latest effort to "recreate billing and supplement/increase previously billed
10 work" is any more reliable, especially since the time elapsed is more than
11 double what it was when the Court properly rejected his last effort to
12 modify his billing records.

13 Simon's motion also fails to explain how any significant work to
14 finalize the Viking or Lange settlement agreements was reasonably necessary
15 when he himself testified that the agreements were signed on December 1,
16 2017 for Viking and December 7, 2018 for Lange. *See* Ex. E at 144:14 – 146:6;
17 *see also* Ex. V at ¶ 13 (Viking settlement signed 12/1/17) and at ¶ 23 (finding
18 consent to settle Lange was signed 12/7/17). Simon's November 30, 2017
19 email claims he negotiated the increase in the Lange settlement from \$25K to
20 \$100K that same day,⁹ although he appears not to have produced the third-
21 party communications to confirm when those negotiations took place. Ex. L.
22 Given that his latest productions confirm he lied when the Edgeworths
23 inquired about the status of the Viking settlement, presumably to pressure
24 them into accepting his increased fee demand, it is probable he likewise
25 withheld information about the Lange settlement to pressure the Edgeworths
26 into accepting his demands.

27
28 ⁹ The \$100K Lange settlement provided for a setoff of \$22K; thus the
net settlement amount was \$78K.

1 Although Simon's motion claims "he upheld the highest
2 standards of the profession," the Court should consider the tone of his
3 November 27, 2017 fee demand (Ex. R), and the misrepresentations he made
4 to his clients (and the Courts) in furtherance of his efforts to obtain more
5 money from the Edgeworths. When Mrs. Edgeworth requested the status of
6 the agreement on November 27, 2017, Simon suggested that because of the
7 holidays, he had not yet heard anything about the settlement agreement. Ex.
8 S. But the email he appears to have intentionally withheld shows otherwise.
9 Ex. K (first draft received before his last email to Mrs. Edgeworth). Simon also
10 falsely testified to the Court that he negotiated the confidentiality provision
11 in the agreement at Brian Edgeworth's request. Ex. D at 216 – 18.
12 Documentary evidence, however, establishes the Edgeworths had *no*
13 *problem* accepting a confidentiality clause, and such evidence has been
14 presented to the Court.¹⁰ See Ex. U. He is not entitled to any bonus he seeks
15 for ignoring his client's wishes. Simon also suggested to the Edgeworths and
16 the Courts that he could not produce back-and-forth exchanges with redline
17 drafts of the settlement agreements because all negotiations were done in-
18 person. But the documentary *evidence* shows otherwise. See Ex. K.
19 Intentionally lying or withholding information from a client to pursue the
20 lawyer's own objectives is a relevant factor when evaluating the "quality of
21 the advocate" under the *Brunzell* analysis.

22
23
24 ¹⁰ Simon's motion also touts the alleged value added by negotiating the
25 removal of the confidentiality clause in the *Lange* agreement, (Mot. at 16).
26 Simon does not present any evidence of these alleged negotiations, and as
27 already demonstrated, Simon *knew* the Edgeworths did not object to a
28 confidentiality clause. Ex. U. His continued negotiations with Lange are not
reasonable since his November 30th email confirms that Simon understood
his client's desire to be done with the litigation accept the Lange settlement
as it was. Ex. L.

Simon's motion also invites this Court to commit the same error twice reversed on appeal by suggesting the "more than Six Million" settlement amount or the opinion of other lawyers about the amount of that settlement should be considered. Mot. at 16 and at Ex. 2. Whether the settlement was \$100 or \$100M is irrelevant, the Supreme Court has twice reiterated that it is only the *actual work Simon performed post-discharge* that the Court can consider. Simon was compensated for work in furtherance of the settlement, through November 29, 2017 in his pre-discharge award. The Court found the Viking settlement offer was accepted on November 15, 2017 and the agreement was signed on December 1, 2017. Ex. V at ¶ 13. By Simon's unequivocal testimony in response to questions from the Court, the Viking Settlement Agreement was finished *before* November 30. Ex. E at 15-17.

Notwithstanding Simon's gamesmanship in withholding information about the status of the settlement from the Edgeworths, it is reasonable to conclude that his testimony to the Court is accurate on this point: *all negotiations were complete by November 27*, and little, if anything, of substance remained to be done *after* the claimed notice of termination to obtain the payment and dismiss the Viking claims. This conclusion is supported by the fact the Viking Settlement Agreement was executed the next day, December 1. Likewise, Simon's own email with respect to the Lange settlement confirms the net \$53K increase in the settlement amount was negotiated, at the latest, by November 30, 2017. *See* Ex. L.

Little else of substance remained after that date, as shown by Simon's own "time sheet" entries. For the period starting November 30 to the end of his lien, Simon's "super bill" details a total of 71.10 hours (51.85 hours for Simon; and 19.25 for his associate). Using the hourly rates established by Simon himself and confirmed by the parties' course of conduct, that number of hours translates to \$33,811.25 in fees at his *agreed* rates which would be

reasonable under a *Brunzell* analysis. But valuing that work at \$200,000, as the Court did, is *nearly six times* that amount and is *not* reasonable.

As previously presented to the Court, much of the claimed work was not justified as having been done for the benefit of the Edgeworths. It is also not work requiring special skill such that a "bonus" of \$166,188.75 would be justified.¹¹ A summary of the post-discharge work "billed" is depicted in the following table:

SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW	
Admin tasks re Lange Settlement	21.55
Admin tasks re Viking Settlement, including one hearing	26.65
Preparation of Attorney Lien	4.85
Opening Bank Account & Depositing Settlement Checks	7.25
Undetermined - not sufficient description	10.80

A consolidated summary of the hours Simon's firm billed post-termination is attached hereto as Exhibit A; Simon's actual time-sheets are included as Exhibits B and C.¹² The Court is free to determine the

¹¹ Since Simon failed to memorialize the terms of the engagement, he is the one that should bear the risk of receiving lower fee under quantum meruit. Restatement (Third) of the Law Governing Lawyers § 39 cmt. b (2000) ("Where there has been no prior contract as to fee, *the lawyer* presumably did not adequately explain the cost of pursuing the claim and *is thus the proper party to bear the risk of indeterminacy*. Hence, the fair-value standard assesses additional considerations and starts with an assumption that the lawyer is entitled to recovery only at the lower range of what otherwise would be a reasonable negotiated fee.") (emphasis added).

¹² And as previously noted, a substantial portion of Simon's bill for post-termination work does not provide adequate descriptions to enable informed evaluations of work performed. Furthermore, the Edgeworths' ability to challenge the validity of the work Simon claims to have performed is also limited because Simon has still not produced a complete file; he does

reasonable value of the services outlined, but it must explain how that value is reasonable under *Brunzell*, without reference to the pre-termination work. Billing over seven hours to set up a simple local bank account with two signers and deposit two checks, for example, is not facially reasonable under *Brunzell*. See Ex. A, entries coded in green. Likewise, billing the Edgeworths 4.60 hours for the preparation of Simon's own attorney lien was of no benefit to the Edgeworths and therefore not facially reasonable. *Id.*, entries coded in pink. And even if the Court determined the hours were justified, a reasonable rate for that work must be explained; valuing simple administrative work at over \$2,800 per hour, as the Court's prior awards have done, cannot be justified under *Brunzell*.¹³

C. CONCLUSION

Simon's motion should be granted only to the extent that it provides a valid post-mandate order in accord with the Supreme Court's instructions. Simon's attempt to expand his billings by asking the Court consider add-ons to the "time sheets" he prepared somewhat contemporaneously with the work should be rejected for the same reasons the Court rejected Simon's similar attempts in 2018.

The basis for the *quantum meruit* award should be specified, and its reasonableness under *Brunzell* should be explained solely in regards to the post-termination work. Even if the time detailed in Simon's "super bill" was credited – and it should not be since the work listed was not for the

...

it out piece-meal as it suits his own interests in his situational motion practice.

¹³ Simon's continued reference to the "Vannah & Greene" \$925 hourly rate (Mot. at 17) is irrelevant because it has nothing to do with what Simon did post-discharge.

Edgeworths' benefit – the value of the largely ministerial work listed is not reasonably worth more than \$33,811.25.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: EDGEWORTHS' RESPONSE TO MOTION FOR ADJUDICATION FOLLOWING REMAND

DATED this 23rd day of February, 2023.

By: /s/ CATHY SIMICICH
An employee of Morris Law Group

DECLARATION OF ROSA SOLIS-RAINEY IN SUPPORT OF
RESPONSE TO MOTION FOR ADJUDICATION FOLLOWING REMAND

1. I am an attorney at Morris Law Group, counsel for the Edgeworths in this matter. I make this declaration upon my own personal knowledge except where stated on information and belief, and as to those matters, I believe them to be true. I am competent to testify to these matters.
2. Attached as Exhibit A is a compilation and summary of post-discharge work taken from "time sheets" produced by Simon as part of the "super bill" he submitted to the Court in late, January, 2018. The respective portions of the "superbill are included as Exhibits B and C. The summary and the corresponding portions of the superbill were included in the Edgeworths' 2021 motion as Exhibits JJ, KK and LL.
3. Attached as Exhibit D and E are excerpts of hearing transcripts for August 29, 2018 (Ex. D) and August 30, 2017 (Ex. E).
4. Attached as Exhibits F and G are excerpts from the Edgeworths May 13, 2021 Motion for Order Releasing Client funds and Requiring the Production of Complete Client File (Ex. F) and the reply in support thereof (Ex. G).
5. Attached as Exhibit H and I are excerpts of Simon's March 11, 2022 answer to the Edgeworths' writ petition regarding the case file (Ex. H), and the Edgeworths' 4/8/22 reply in support of their writ petition re case file (Ex. I).
6. Attached as Exhibit J is Simon's Opposition to the Edgeworths' motion for an order to show cause why Simon should not be held in contempt, without exhibits.

7. Attached as Exhibit K are exchanges regarding the Viking settlement agreement. These documents were produced by Simon' on December 6, 2022.
8. Attached as Exhibit L is an email from Simon dated November 30, 2017.
9. Attached as Exhibit M is an email from Simon transmitting the Viking settlement agreement signed by the Edgeworths to counsel for Viking.
10. Attached as Exhibit N is a November 16, 2022 email to James Christensen taking him up on his offer to provide assistance locating a document in the file portion of the Edgeworths' client file received from Simon, as well as his November 23, 2022 acknowledgement of request saying he would forward it to Simon.
11. Attached as Exhibit O is a letter to James Christensen dated December 21, 2022 following up on the November 16, 2022 request and asking for additional assistance. I did not receive any response or acknowledgement of this request.
12. Attached as Exhibit P is a letter to James Christensen dated February 17, 2023 following up on the November 16, 2022 and December 21, 2022 requests. I did not receive any response or acknowledgement of this request.
13. Attached as Exhibit Q is a December 6, 32022 letter from J. Christensen producing approximately 280 pages of documents, which were made available through a Dropbox link.
14. Attached as Exhibit R is Simon's November 27, 2017 demand letter to the Edgeworths.

15. Attached as Exhibit S are email exchanges on November 27, 2017 between Angela Edgeworth and Simon.
16. Attached as Exhibit T is a December 7, 2017 letter from Simon to the Edgeworths' counsel suggesting fees would exceed the \$1.5 million demanded and claiming costs were already over \$200,000. From my review of the Court record, the final amount of costs substantiated was less than \$70,000.
17. Attached as Exhibit U is a 11/16/17 text message from B. Edgeworth to Simon confirming the Edgeworths accepted the confidentiality clause proposed for the Viking settlement agreement.
18. Attached as Exhibit V is a copy of the Court's November 19, 2018 order.
19. Attached as Exhibit W is a copy of the Court's December 13, 2022 order.
20. To the best of my knowledge, the foregoing exhibits are true and correct copies of the documents described.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the state of Nevada.

Dated this 23rd day of February, 2023.

/s/ Rosa Solis-Rainey

EXHIBIT A

DEMONSTRATIVE SUMMARY OF POST- DISCHARGE BILLING BY SIMON AND FERREL, WITH BREAKDOWN OF HOURS BY ESTIMATED PURPOSE

(Note: Identical exhibit (labeled Exhibit LL) was submitted with the Edgeworths' 5/3/21 Motion to Reconsider 3rd Lien Order in Accord with Mandate)

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
DSS	11/30/2017 Review release; T/C J. Greene; T/C T. Parker; revise release	1.25
DSS	11/30/2017 Call with Teddy Parker	0.15
DSS	11/30/2017 Call with Teddy Parker	0.15
DSS	11/30/2017 Call with Teddy Parker	0.10
DSS	11/30/2017 Call with AMF	0.25
DSS	11/30/2017 Call with Teddy Parker	0.15
DSS	11/30/2017 Call with AMF	0.10
DSS	11/30/2017 Call with AMF	0.10
DSS	11/30/2017 Call with AMF	0.20
DSS	11/30/2017 Call with AMF	0.10
DSS	11/30/2017 Review file for Lange bills, T/C to Parker re: settlement	0.75
DSS	11/30/2017 Negotiate release w/Henriod (his office)	3.50
DSS	11/30/2017 Conversation w/Green; draft email, send release	0.75
DSS	11/30/2017 Receive and review letter dated 11-30-17	0.25
DSS	11/30/2017 Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	0.75
11/30/2017 &		
DSS	12/2/2017 Email chain with AF re attorney lien	0.15
DSS	12/1/2017 Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	0.15
DSS	12/1/2017 Receive and review release email to Defendant	0.75
DSS	12/1/2017 Receive and review release email from Pancoast & discussion with AF	0.50
DSS	12/1/2017 Review Viking's 19th ECC Supplement	0.25
DSS	12/4/2017 Received and reviewed DCRR; L/M for Green/Vannah	0.75
DSS	12/4/2017 Review notice vacating UL Depos	0.25
DSS	12/4/2017 Discussion with AF	0.40
DSS	12/5/2017 T/c with John Green; Email from John Green; Discussion with staff	0.40
DSS	12/5/2017 Review subpoena to Dalacas	0.25
DSS	12/5/2017 Emails to client and John Greene messages	0.50
DSS	12/5/2017 Draft and Send Email to Client and Response	0.15
DSS	12/5/2017 Draft and send email to AF re notice to vacate Caranahan depo	0.15
DSS	12/6/2017 Review file and gather materials requested by Vannah; email from John Greene	2.25
DSS	12/6/2017 Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	0.50
DSS	12/6/2017 Review notice of vacating depo of Carnahan	0.35
DSS	12/6/2017 Receive and review email from Janet Pancoast; discussion with AF; response, forward to Vannah	0.35

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
DSS	12/6/2017 Received and reviewed Lange's 13th ECC Supplement	0.50
DSS	12/6/2017 Email Chain with JP, AF; Re: Carnahan Deposition	0.15
DSS	12/7/2017 Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	0.35
DSS	12/7/2017 T/C with Vannah	0.50
DSS	12/7/2017 Draft and revise letter; Review of file to Vannah w/ attachment	1.75
DSS	12/8/2017 Received and reviewed Lange 14th ECC Supplement	1.25
DSS	12/8/2017 Review Motion for Good faith settlement; discussion with AF	0.75
DSS	12/8/2017 Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker	0.50
DSS	12/8/2017 Email chain with AF re Order Granting Giberti MGFS	0.15
DSS	12/11/2017 Email from Zamiski; Response email	0.15
DSS	12/11/2017 Review/ Analyze Lange 15th ECC Supplement	0.50
DSS	12/11/2017 T/C Parker & Pancoast; Email from T Parker; Email from Crt	0.75
DSS	12/11/2017 Review client's release of claims; email to J. Green Discussion with AF	0.50
DSS	12/11/2017 Draft and send email to AF re Lange's 15th ECC Supplement and review AF response	0.25
DSS	12/12/2017 Draft and send email to AF re Stip to Dismiss and review AF response	0.15
DSS	12/12/2017 Attend hearing on Viking Motion for Good Faith Settlement	1.75
	12/6/2017-	
DSS	12/12/2017 Messages; Returned messages; discussions with Floyd Hale	0.50
	Email from J. Pancoast; Received/Reviewed/ Analyze stip to dismiss order on Good faith settlement; discussion with	
DSS	12/12/2017 AF	1.25
DSS	12/12/2017 Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	0.50
DSS	12/14/2017 Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review mail from J. Pancoast	0.50
DSS	12/15/2017 Review email from T.Ure; T/C to J. Pancoast re 2nd stip to dismiss and arrange pick up of settlement checks	0.50
DSS	12/18/2017 Pick up settlement checks; exchange for stip; contact Vannah's office re signature	1.50
DSS	12/18/2017 T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomerantz	1.00
DSS	12/18/2017 Received, reviewed and analyze email from B. Vannah	0.50
DSS	12/19/2017 Emails to B. Vannah and J. Greene re checks	0.25
	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and	
DSS	12/19/2017 response from B. Vannah	0.25
	12/20/2017 12/20/17 Request return of sprinklers from Volmer Grey .25	0.25

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)			
DSS	12/20/2017	Receive and review draft Motion for Good Faith Settlement; Lange release for 100k and release for \$22k	1.50
DSS	12/21/2017	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	0.75
DSS	12/21/2017	Receive, review and analyze email from B. Vannah (3:21pm)	0.50
DSS	12/21/2017	Received, reviewed and analyzed email from B. Vannah (10:45pm)	0.50
DSS	12/26/2017	Receive, review and analyze email from J. Christensen to B. Vannah (10:45am)	0.25
DSS	12/26/2017	Receive, review and analyze email from B. Vannah (12:18pm)	0.75
DSS	12/26/2017	Receive, review and analyze email from J. Christensen	0.25
DSS	12/27/2017	Receive, review and analyze email from JC w/e letter attached	0.75
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (3:07pm)	0.75
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (2:03pm)	0.25
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (4: 17am)	0.75
DSS	12/29/2017	Received and reviewed email re joint motion and revised joint motion	0.40
DSS	1/2/2018	Revise Lange release and send back to T. Parker	0.75
DSS	1/2/2018	Received/reviewed Viking stip to dismiss	0.35
DSS	1/2/2018	Received/reviewed email from J. Pancoast and T. Parker	0.35
DSS	1/2/2018	Received/reviewed and analyzed letters from Zurich re settlement checks	0.25
DSS	1/2/2018	Received, reviewed and analyzed email from J. Greene (3:45pm)	0.25
DSS	1/2/2018	T/C with S. Guidy at Bank of Nevada	0.50
DSS	1/3/2018	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	0.75
DSS	1/3/2018	Analyze, review schedule and additional emails from S. Guindy	0.50
DSS	1/4/2018	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review emails from J. Christensen and bank, J. Greene	0.75
DSS	1/4/2018	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	0.50
DSS	1/4/2018	Email to T. Parker and E. Nunez regarding revisions to release	0.50
DSS	1/4/2018	Travel to Bank of Nevada for bank account requested by client	1.50
DSS	1/4/2018	Email E. Nunez releases again per her request	0.25
DSS	1/5/2018	Email from S. Guindy and response	0.25
DSS	1/5/2018	Email from Nunez	0.15
DSS	1/5/2018	Review Court filing of MGFS Lange	0.25
DSS	1/8/2018	T/C with S. Guindy; receive, review and analyze letter from Vannah	0.50
DSS	1/8/2018	Travel to Bank of Nevada 2x re Trust deposit	2.50

B C

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
AMF	11/30/2017 Email to George Ogilvie instructing him to stop working on the case	0.15
AMF	11/30/2017 Review, Download & Save Letter to Counsel	0.30
AMF	11/30/2017 Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	0.30
AMF	11/30/2017 Review Viking's 19th ECC Supplement	1.00
AMF	11/30/2017 Review Letter from Lange regarding discovery scheduling and discussion with DSS	0.75
	11/30/2017-	
AMF	12/2/2017 Email chain with DSS re attorney lien	0.15
AMF	12/1/2017 Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.50
AMF	12/1/2017 Review, Download & Save Lange Plumbing Verification to Rogs	0.30
AMF	12/1/2017 Review, Download & Save notice of Attorney Lien	0.30
AMF	12/1/2017 Review Release from Viking and discussion with DSS re release	0.50
AMF	12/4/2017 Draft and serve notice to vacate deposition of UL Laboratories	0.25
AMF	12/4/2017 Review Lange written discovery responses	1.50
AMF	12/4/2017 Discussion with DSS re scheduling and status of case	0.40
	Review, Download & Save Notice Vacating the 2nd Amended Video Depo of NRCP30(b) (6) Designees of	
AMF	12/4/2017 Underwriters Laboratories	0.30
AMF	12/4/2017 Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
AMF	12/5/2017 Email chain with UL re vacating depo	0.15
AMF	12/6/2017 Review Lange's 13th ECC Disclosure	2.50
AMF	12/6/2017 Review email from DSS re notice to vacate Caranahan depo	0.15
AMF	12/6/2017 Draft and serve Notice to Vacate Robert Carnahan Deposition	0.50
AMF	12/6/2017 TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	0.50
AMF	12/6/2017 Review, Download & Save Service Only -- Lange Plumbing 13th Supp to NRCP 16.1 ECC	0.30
AMF	12/6/2017 Review, Download & Save Service Only -- Notice of Vacating the Continued Video Depo of Robert Carnahan	0.30
AMF	12/7/2017 Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	0.30
AMF	12/8/2017 Review Viking Motion for Good Faith Settlement, Analyz and discussion with DSS	0.75
AMF	12/8/2017 Review Lange's 14th and 15th ECC Disclosure	0.50
AMF	12/8/2017 Email Chain with DSS re Order Granting Giberti MGFS	0.15
AMF	12/8/2017 Review Stipulation to Dismiss from Viking and Discussion with DSS	0.50
AMF	12/8/2017 Review, Download & Save Lange Plumbing 15th Supplement to 16.1 ECC List Witnesses and Docs	0.30

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
AMF	12/8/2017 Review, Download & Save Lange Plumbing 14th Supp to 16,1 ECC List of Witnesses and Docs	0.30
AMF	12/11/2017 Discussion with DSS re client's release of claims	0.20
AMF	12/11/2017 Review email from DSS re Lange's 15th ECC Supplement and response	0.25
AMF	12/11/2017 Review email from DSS re Lange's 15th ECC Supplement and response	0.25
AMF	12/12/2017 Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
AMF	12/12/2017 Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
AMF	12/13/2017 Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
AMF	1/8/2018 Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.50
DSS	HOURS BILLED FOR DANIEL S. SIMON @ \$550 RATE	51.85
AMF	HOURS BILLED FOR ASHLEY M. FERRELL @ \$275 RATE	19.25
	TOTAL HOURS BILLED	71.10
	SIMON FEES	28517.50
	FERRELL FEES	5293.75
	TOTAL POST-DISCHARGE FEES	33811.25
SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW		
	Admin tasks re Lange Settlement	21.55
	Admin tasks re Viking Settlement, including one hearing (1)	26.65
	Preparation of Attorney Lien	4.85
	Opening Bank Account & Depositing Settlement Checks	7.25
	Undetermined - not sufficient description	10.80
		71.10
	(1) For purpose of estimating category, all T/C with Vannah were added to this category.	

EXHIBIT B

EXCERPTS FROM "SUPERBILL" WITH SIMON'S POST-DISCHARGE ENTRIES

(Note: Identical exhibit (labeled Exhibit JJ) was submitted with the Edgeworths' 5/3/21 Motion to Reconsider 3rd Lien Order in Accord with Mandate)

INVOICE FOR DANIEL S. SIMON
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

11/11/17	Email Chain with Client with Attachment; Review and Analyze Mediator Proposal	.50
11/13/17	Draft and send email with attachments to AF	.15
11/13/17	Review Viking Motion for MSC and Stay all Rulings; Discussion with AF; Review Letter to DC Bulla; Telephone Conference with Floyd Hale; Telephone Conference with J. Olivas Re: Deposition	2.25
11/13/17	Email chain with AF re complaint filed against Harold Rodgers	.25
11/13/17	Draft and send email to AF re research re privilege log and confidentiality issues and review AF response	.75
11/13/17	Draft and send email to AF re supplementing Pomerantz opinion letter	.15
11/13/17	Email chain with AF re expert depositions noticed by Viking	.15
11/13/17	Prepare for 11/14/17 Hearings	2.25
11/13/17	Review Pomerantz Report and Produce; Discussion with Pomerantz; Discussion with Charles Rego from UL and Client	2.75
11/13/17	Receive, Review and Analyze Email From JO; Re: Additional Emails	.25
11/13/17	Email Chain with AF/CP with Attachments Re: Henderson	.15
11/13/17	Email from CP with Opinion letter	.75
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Receive, Review and Analyze Email from Client; Discussion with Client	.25
11/13/17	Email Chain with Client with Attachment	.50
11/13/17	Draft and Send Email to Client	.15
11/13/17	Email Chain with Client	.15
11/13/17	Email Chain with Client	.50
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Draft and Send Email to Client with Attachment	.15

11/13/17	Receive, Review and Analyze Email from Client	.25
11/13/17	Call with Client	.50
11/13/17	Call with Client	.25
11/14/17	Call with AMF	.10
11/14/17	Call with Client	.15
11/14/17	Call with Client	.10
11/14/17	Call with Client	.10
11/13/17	Email Chain with Client	.40
11/14/17	Email Chain with JP, AF, TP; Re: Inspection of Documents	.25
11/14/17	Email Chain with D. Holloman, JP, KR, JM; Re: Hale Settlement Matters	.25
11/14/17	Attend Hearings on MSJ; Review File with Client; Review Research; Prepare Emails to Pancoast Re: Depositions and Discovery Responses; Discussion with Attorney Olgivie Re: Retention; Email to Parker; Discussion with AF; Review Plaintiffs' 14 th ECC Supplement; Review files	7.5
11/14/17	Draft and Send Email to Ogilvie with Attachments	.75
11/14/17	Telephone Call with Ogilvie Regarding Retention	.50
11/15/17	Review cases re: validity of contract under NRS 624; discussion with AF and BM	2.75
11/15/17	Review research re: admissibility of litigation conduct; discussion with BJM	.75
11/15/17	Discussion with BJM re: recoverable damages w/ breach of contract vs. product liability	.75
11/15/17	Receive, Review and Analyze Email from Client	.15
11/15/17	Receive, Review and Analyze Email from Client	.25
11/15/17	Receive, Review and Analyze Email from Client with Link	.40
11/15/17	Call with Client	.25
11/15/17	Call with Client	.50

11/15/17	Call with Client	.25
11/15/17	Call with Client	.10
11/15/17	Call with Client	.10
11/15/17	Call with Client	.75
11/16/17	Call with Client	.25
11/16/17	Call with Client	.25
11/16/17	Call with AMF	.15
11/16/17	Call with Client	.15
11/16/17	Call with Client	.10
11/17/17	Call with Client	.15
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Client	.50
11/17/17	Call with Client	.25
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Client	.65
11/17/17	Call with Client	.15
11/17/17	Email Chain with EC, JP, AF, MN, TP, KR; Re: Olivas Deposition	.15
11/17/17	Draft and Send Email to Ogilvie with Links	.25
11/17/17	Prepare and Attend Hearings	4.5
11/17/17	Several discussions with clients from office	.50
11/17/17	Receive, Review and Analyze Email from Client with Link	.40
11/17/17	Receive, Review and Analyze Email from L. Rotert; Pomerantz Bill	.15
11/18/17	Draft and Send Email to Client with Links	.15

11/18/17	Email Chain with JP, AF, TP, BP, JH, KR; Re: MIL Meeting. Discovery with AF.	.50
11/20/17	Email chain with AF re outstanding expert bills	.25
11/20/17	Email chain with AF re meet and confer for MILS and hearing for Giberti's MGFS	.25
11/20/17	Email chain with AF re Knez letter and threat of motion to file protective order in CA for Rodgers and Rene Stone depositions	.25
11/20/17	Email Chain with Ogilvie and AF; Re: Permit App	.25
11/20/17	Receive, Review and Analyze Email from Client; Forward to AF	.15
11/21/17	Receive, Review and Analyze Email from Client	.25
11/21/17	Call with Client	.10
11/22/17	Draft and send email to AF re recent list of damages and review AF response	.15
11/22/17	Email Chain with Ogilvie, AF with Attachments; Re: Lange Supp Brief	.15
11/22/17	Draft and send email to AF re sending Lange responses brief to Ogilvie and review AF response	.15
11/22/17	Review notices of vacating deposition of Rene Stone and Harold Rodgers	.50
11/22/17	Review Lange's 12 th ECC Supplement	.25
11/24/17	Review correspondence from Dalacas	.25
11/24/17	Review email filings and depo emails	1.50
11/25/17	Call with Client	.10
11/25/17	Call with Client	.10
11/25/17	Call with Client	.15
11/26/17	Review Lange Discovery responses and attachments	1.50
11/27/17	T/C with J. Olivas re deposition	.35
11/27/17	Review hearing transcript from 11/14/17 hearing	1.50

11/27/17	T/C with T. Parker and Henriod (x3)	.75
11/27/17	Conference call with T. Parker, J. Pancoast and JEA to continue hearings; Emails	1.0
11/27/17	Receive, Review and Analyze Email From JO; Re: Final Invoice	.25
11/27/17	T/C's with Teddy Parker	.65
11/27/17	Email Chain with JP, TP, AF, KR, DP, JH; Re: MIL / Expert Depositions	.50
11/27/17	Email Chain with Bess White, TP, JP; Re: Edgeworth MOT for Summary Judgement	.35
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.15
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.25
11/27/17	Receive, Review and Analyze Email from Client	.25
11/27/17	Draft and send email to AF re Carnahan depo and review AF response	.15
11/28/17	Email Chain with JP, AF, KR, JH; Re: Outstanding Discovery	.15
11/28/17	Email Chain with EN, JP, KR, DP; Re: Letter from Parker	.50
11/28/17	Review Lange letter (11/28/17), analyze; discussion with AF	1.25
11/28/17	Review Amended Notice of Carnahan Depo	.25
11/28/17	Conference call with Judge Bulla chambers w/ Pancoast to reset December 1 st hearings to December 20 th and call with Pancoast separately	.50
11/28/17	Review notices of vacating depositions	.50
11/28/17	Email Chain with Ogilvie to Discuss Case	.15
11/29/17	Receive and analyze email from Ogilvie	1.50
11/29/17	Email Chain with EN, JP, TP; Re: Letter from Parker	.50
11/29/17	Email Chain with JP, AF; Re: Discovery Motions	.15

11/29/17	Draft and send email to AF re drafting reply to Lange's supplemental Opposition	1.50
11/29/17	Draft and send email to AF re drafting notice of attorney lien	.15
11/29/17	Draft and send email to AF re letter from Pancoast to Simon	.15
11/29/17	Review and analyze Lange's supplemental brief	2.50
11/29/17	Email from client Angela Edgeworth	.15
11/29/17	Email response to client Angela Edgeworth	.25
11/29/17	Review and analyze email from Oligilvie re: contractors license legal arguments and response email to Oligilvie; Discussion with AF	1.50
11/29/17	Draft reply to Lange's Supplemental Opposition to Plaintiffs' MSJ	2.75
11/29/17	Discussions w/ J. Henriod re moving hearings and settlement	.65
11/29/17	T/C with T. Parker	.50
11/29/17	Draft letter to Parker	.50
11/30/17	Review release; T/C J. Greene; T/C T. Parker; revise release	1.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.10
11/30/17	Call with AMF	.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.20
11/30/17	Call with AMF	.10
11/30/17	Review file for Lange bills, T/C to Parker re: settlement	.75
11/30/17	Negotiate release w/ Henriod (his office)	3.50
11/30/17	Conversation w/ Green; draft email, send release	.75
11/30/17	Receive and review letter dated 11-30-17	.25

11/30/17	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	.75
11/30/17 & 12/2/17	Email chain with AF re attorney lien	.15
12/1/17	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	.15
12/1/17	Receive and review release email to Defendant	.75
12/1/17	Receive and review release email from Pancoast & discussion with AF	.50
12/1/17	Review Viking's 19 th ECC Supplement	.25
12/4/17	Received and reviewed DCRR; L/M for Green/Vannah	.75
12/4/17	Review notice vacating UL Depos	.25
12/4/17	Discussion with AF	.40
12/5/17	T/c with John Green; Email from John Green; Discussion with staff	.40
12/5/17	Review subpoena to Dalacas	.25
12/5/17	Emails to client and John Greene messages	.50
12/5/17	Draft and Send Email to Client and Response	.15
12/6/17	Draft and send email to AF re notice to vacate Caranahan depo	.15
12/6/17	Review file and gather materials requested by Vannah; email from John Greene	2.25
12/6/17	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	.50
12/6/17	Review notice of vacating depo of Carnahan	.35
12/6/17	Receive and review email from Janet Pancoast; discussion with AF; response; forward to Vannah	.35
12/6/17	Received and reviewed Lange's 13 th ECC Supplement	.50
12/6/17	Email Chain with JP, AF; Re: Carnahan Deposition	.15
12/7/17	Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	.35
12/7/17	T/C with Vannah	.50

12/7/17	Draft and revise letter; Review of file to Vannah w/ attachment	1.75
12/8/17	Received and reviewed Lange 14 th ECC Supplement	1.25
12/8/17	Review Motion for Good faith settlement; discussion with AF	.75
12/8/17	Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker	.50
12/8/17	Email chain with AF re Order Granting Giberti MGFS	.15
12/11/17	Email from Zamiski; Response email	.15
12/11/17	Review/ Analyze Lange 15 th ECC Supplement	.50
12/11/17	T/C Parker & Pancoast; Email from T. Parker; Email from Crt	.75
12/11/17	Review client's release of claims; emails to J. Greene; Discussions with AF	.50
12/11/17	Draft and send email to AF re Lange's 15 th ECC Supplement and review AF response	.25
12/12/17	Draft and send email to AF re Stip to Dismiss and review AF response	.15
12/12/17	Attend hearing on Viking Motion for Good Faith Settlement	1.75
12/6/17- 12/12/17	Messages; Returned messages; discussions with Floyd Hale	.50
12/12/17	Email from J. Pancoast; Received/Reviewed/Analyze stip to dismiss; order on Good faith settlement; discussion with AF	1.25
12/12/17	Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	.50
12/14/17	Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review email from J. Pancoast	.50
12/15/17	Review email from T.Ure; T/C to J. Pancoast re 2 nd stip to dismiss and arrange pick up of settlement checks	.50
12/18/17	Pick up settlement checks; exchange for stip; contact Vannah's office re signature	1.50
12/18/17	T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomerantz	1.0

12/18/17	Received, reviewed and analyze email from B. Vannah	.50
12/19/17	Emails to B. Vannah and J. Greene re checks	.25
12/19/17	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and response from B. Vannah	.25
12/20/17	Request return of sprinklers from Volmer Grey	.25
12/20/17	Receive and review draft Motion for Good Faith Settlement; Lange release for \$100k and release for \$22k	1.50
12/21/17	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	.75
12/21/17	Receive, review and analyze email from B. Vannah (3:21pm)	.50
12/23/17	Received, reviewed and analyzed email from B. Vannah (10:45pm)	.50
12/26/17	Receive, review and analyze email from J. Christensen to B. Vannah (10:46am)	.25
12/26/17	Receive, review and analyze email from B. Vannah (12:18pm)	.75
12/26/17	Receive, review and analyze email from J. Christensen	.25
12/27/17	Receive, review and analyze email from JC w/e letter attached	.75
12/28/17	Receive, review and analyze email from B. Vannah (3:07pm)	.75
12/28/17	Receive, review and analyze email from B. Vannah (2:03pm)	.25
12/28/17	Receive, review and analyze email from B. Vannah (4:17am)	.75
12/29/17	Received and reviewed email re joint motion and revised joint motion	.40
1/2/18	Revise Lange release and send back to T. Parker	.75
1/2/18	Received/reviewed Viking stip to dismiss	.35
1/2/18	Received/reviewed email from J. Pancoast and T. Parker	.35
1/2/18	Received/reviewed and analyzed letters from Zurich re settlement checks	.25
1/2/18	Received, reviewed and analyzed email from J. Greene (3:45pm)	.25
1/2/18	T/C with S. Guidy at Bank of Nevada	.50

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	Total Hours	866.20
	Total Fees at \$550 per hour	\$476,410.00

EXHIBIT C

EXCERPTS FROM "SUPERBILL" WITH FERREL'S POST-DISCHARGE ENTRIES

(Note: Identical exhibit (labeled Exhibit KK) was submitted with the Edgeworths' 5/3/21 Motion to Reconsider 3rd Lien Order in Accord with Mandate)

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

11/27/17	Draft and serve notice to vacate deposition of Anthasia Dalacas	0.25
11/28/17	Draft and serve amended deposition notice and subpoena for Robert Carnahan	0.25
11/28/17	Review Letter from Lange and discussion with DSS	0.75
11.28.17	Review, Download & Save Subpoena Duces Tecum for Robert Carnahan PE	0.30
11.28.17	Review, Download & Save Amended Notice of Continued Video Deposition of Robert Carnahan P.E. Duces Tecum	0.30
11.29.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 19 th Supplemental NRCP 16.1 Disclosure	0.30
11.29.17	Review, Download & Save Correspondence to Counsel, dated November 29, 2017	0.30
11/29/17	Review Ogilvie response to Lange's Supplement to MSJ; Discussion with DSS re Reply	0.50
11.29.17	Review email from DSS re drafting reply to Lange's supplemental Opposition	1.50
11.29.17	Review email from DSS re drafting notice of attorney lien	0.15
11.29.17	Review email from DSS re letter from Pancoast to Simon	0.15
11.29.17	Email to Pancoast re hearing dates I front of DC Bulla in light of negotiations	0.15
11.30.17	Email to George Ogilvie instructing him to stop working on the case	0.15
11.30.17	Review, Download & Save Letter to Counsel	0.30
11.30.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	0.30
11/30/17	Review Viking's 19 th ECC Supplement	1.0
11/30/17	Review Letter from Lange regarding discovery scheduling and discussion with DSS	0.75
11.30.17 & 12.2.17	Email chain with DSS re attorney lien	0.15
12/1/17	Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.5
12.1.17	Review, Download & Save Lange Plumbing Verification to Rogs	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

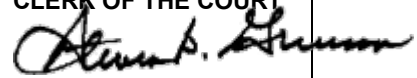
12.1.17	Review, Download & Save Notice of Attorney Lien	0.30
12/1/17	Review Release from Viking and discussion with DSS re release	0.50
12/4/17	Draft and serve notice to vacate deposition of UL Laboratories	0.25
12/4/17	Review Lange written discovery responses	1.5
12/4/17	Discussion with DSS re scheduling and status of case	0.40
12.4.17	Review, Download & Save Notice Vacating the 2 nd Amended Video Depo of NRCP30(b) (6) Designees of Underwriters Laboratories	0.30
12.4.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
12.5.17	Email chain with UL re vacating depo	0.15
12/6/17	Review Lange's 13 th ECC Disclosure	2.5
12.6.17	Review email from DSS re notice to vacate Caranahan depo	0.15
12/6/17	Draft and serve Notice to Vacate Robert Carnahan Deposition	0.50
12/6/17	TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	0.50
12.6.17	Review, Download & Save Service Only – Lange Plumbing 13 th Supp to NRCP 16.1 ECC	0.30
12.6.17	Review, Download & Save Service Only – Notice of Vacating the Continued Video Depo of Robert Carnahan	0.30
12.7.17	Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	0.30
12/8/17	Review Viking Motion for Good Faith Settlement, Analyze and discussion with DSS	0.75
12/8/17	Review Lange's 14 th and 15 th ECC Disclosure	0.50
12.8.17	Email chain with DSS re Order Granting Giberti MGFS	0.15
12/8/17	Review Stipulation to Dismiss from Viking and discussion with DSS	0.50
12.8.17	Review, Download & Save Lange Plumbing 15 th Supplement to 16.1 ECC List Witnesses and Docs	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.8.17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
TOTAL HOURS x \$275 per hour (reduced)		762.6
TOTAL FEES		\$209,715.00

EXHIBIT D

EXCERPTS FROM 8/29/18 HEARING



1 RTRAN

2
3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-16-738444-C

DEPT. X

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 WEDNESDAY, AUGUST 29, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

22 APPEARANCES:

23 For the Plaintiff:

ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 A No, sir.

2 Q Exhibits attached to depositions?

3 A No, sir.

4 Q Research?

5 A No, sir.

6 Q And of course, the emails, we know were in a whole bunch of

7 additional boxes behind those?

8 A Yes, sir.

9 Q Okay. So that would be in addition to the 25 boxes?

10 A Yeah, that's just the discovery produced in the case.

11 Q I'd like to talk a little bit about the timesheets that were

12 submitted during the adjudication process.

13 A Okay.

14 Q I think we've been calling them superbills today.

15 A Yes, sir.

16 Q Okay.

17 A I understand what you're talking about.

18 Q All right. Those are exhibits 13, 14, and 15?

19 A Yes. I believe so, yes.

20 Q Did you have a role in the creation of those --

21 A Yes, sir.

22 Q -- timesheets?

23 A Yes.

24 Q What was your role?

25 A Well, I did all of mine, and then I also helped with Mr.

1 Simon's.

2 Q I think there was an allegation that you all sat around a
3 conference table and dreamed up the numbers contained in the
4 timesheets; is that true?

5 A No, sir. We did not do that.

6 MR. VANNAH: I'm going to object to that. I don't remember,
7 and I'm pretty good at reading, but I don't remember anybody saying
8 anybody sat around a conference table and dreamed up anything. Can
9 we just come up with crap like that with no background? Can we not do
10 that?

11 THE COURT: Well, I mean, I don't recall that, Mr.
12 Christiansen, anybody saying that.

13 MR. VANNAH: Yeah. If you want to show me where I ever
14 alleged in a pleading that you guys sat around the table holding hands,
15 praying, and coming up with a time out of the blue, I'd like to see that.

16 MR. CHRISTIANSEN: I will provide it.

17 MR. VANNAH: Okay. Well we'll --

18 MR. CHRISTIANSEN: Tomorrow.

19 MR. VANNAH: Maybe Mr. Simon can --

20 MR. CHRISTIANSEN: I didn't anticipate your standing up and
21 contradicting that, but we'll give it to him.

22 THE COURT: Okay.

23 MR. CHRISTIANSEN: We'll provide it.

24 THE COURT: Okay.

25 MR. VANNAH: All right.

1 BY MR. CHRISTIANSEN:

2 Q So, what went into your timesheets?

3 A What went into my -- the superbill timesheets?

4 Q Correct.

5 A So, basically, we billed -- so, I guess you could kind of split it
6 up into two things. From September 19th, so like September 20th, I think
7 it is, through when we stopped working on the case, which mine is
8 sometime in January 2018. That was all hours that we were working on
9 the case. Everything before that -- and I'm just talking about mine. I
10 don't know if I clarified that. All of mine before that, we went back to
11 May of -- I didn't start working the case until May, until January, except
12 for that one December 20th, 2016 date. In January from that point to
13 September 19th, all of those bills were emails, and telephone calls, and
14 downloads -- WIZnet downloads, that I did that I had not billed for
15 previously. And --

16 Q Was that a time consuming process?

17 A Yes, sir. I had to go through all of the emails.

18 THE COURT: Okay. I'm sorry, Mr. Christiansen. I have a
19 question. So, your bills, in this superbill --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: -- everything from January of 2017 to
22 September 19th of 2017, is for emails, telephone calls, and WIZnet
23 downloads that you hadn't previously billed for?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay. And that's what's included in this

1 superbill?

2 THE WITNESS: Yeah. And I believe if you look at mine,
3 that's all that's in there are telephone calls for my cell phone --

4 THE COURT: Okay.

5 THE WITNESS: -- and WIZnet downloads, and also emails.

6 THE COURT: But from September 20th to January 2018,
7 that's the hours you worked on this case?

8 THE WITNESS: Well, that's the hours I worked on this case,
9 including -- but I also incorporated in my downloads, also my emails,
10 and my telephone calls in there, as well.

11 THE COURT: So, that's in that calculation --

12 THE WITNESS: Yes, ma'am.

13 THE COURT: -- on the superbill? Okay.

14 BY MR. CHRISTIANSEN:

15 Q Do the timesheets capture all the work?

16 A No. So, the timesheets -- when we had to go back and do it
17 for this adjudication process, we had to show -- because it's my
18 understanding we had to show the Court how much work we did on the
19 file, and so we went back, and we only put entries on there that we could
20 support with documentation.

21 So, that's why the emails were added, that's why the cell phone
22 records were added, and that's also why the WIZnet filings were added,
23 as well. And so, basically -- and because we had a hard document. If we
24 didn't have a hard document, we didn't capture it on the bill. We didn't
25 put it on there. Any discussions with Mr. Simon that I had, you know, 10

1 minute discussions -- there are a few discussions on the bills that are on
2 there, those aren't captured.

3 Any calls from the office that we did with regard to this case,
4 whether it be with Mr. Edgeworth, whether it be with experts, whether it
5 be whoever, any calls from the office we weren't able to get, we
6 subpoenaed the records from Cox and were not able to obtain those, so
7 those aren't include on there -- included on there.

8 But what we did to get those dates on that superbill was we had to
9 choose a landmark date. So, with regard to the WIZnet filings, because I
10 needed something -- I needed a landmark date for each of those filings, I
11 went to the date that that thing was filed, the date that the pleading was
12 filed and that's the date that I put it in on.

13 I know there's been some allegations about a 22 hour day, which I
14 know we're going to talk about in detail, but that kind of explains that
15 because I -- and I mean, again, I talked about it in detail. Everything that
16 was filed, for example, on September 13th, I put on September 13th for
17 the WIZnet filings. Every email that was received on September 13th, I
18 put on September 13th, and then I also gave all of the WIZnet documents
19 .3 hours, because what I did was I would review the -- when it came in on
20 WIZnet -- I was the one working on this case. We didn't have a paralegal
21 in this case. I was the one that did it. I would open the WIZnet
22 document, review it, download it, save it, and send it out to wherever it
23 needed to do. Some of these, super quick, maybe not .3. Some of them,
24 way longer than .3.

25 So, we had to have a base mark number for all of the WIZnet

1 filings, so that's why we chose .3 for the WIZnet filings, which are
2 identified as -- I can tell you, if you'd like. On my bills, review, download,
3 and save, and then I put the name of the document, and that's a WIZnet
4 filing. So anytime you see review, download, and save, that's a WIZnet
5 filing.

6 Same thing with emails. Our base calculation, I had to put a base
7 calculation, it was .15, and then if the email was more time consuming,
8 the appropriate number was put on there. This is with regard to my bill.

9 Q So, I heard a couple of things. One, I heard no paralegal.

10 A Yes, sir.

11 Q So that's why there are no paralegal bills?

12 A Yes, sir.

13 Q Okay. Thanks for clearing that up. Let's take the WIZnet
14 filings as an example. What did you do with a WIZnet filing when it was
15 made in this case, in the Edgeworth case?

16 A I would -- like a WIZnet, like any filing?

17 Q Like someone filed a motion. One of the Defendants filed a
18 motion.

19 A When the Defendants filed a motion, I would download it, I
20 mean, review it, save it, and then send it out to Danny, send it out to
21 Brian, send it out to whoever. And I didn't send it to Brian every single
22 time, but some of the more important things, I know Brian was very
23 active in the case, and like he wanted to be in charge -- like not in charge.
24 Informed of the stuff going on. So, I would sometimes send it to him,
25 too.

1 Q Okay. And is that different from any review you would do if
2 you were say taking the lead on drafting an opposition to a motion?

3 A Well, yeah. I would review it to see what it is. I mean, do I --
4 and then I would also have to like calendar it or what not, too. I mean,
5 and if I was supposed to do an opposition, so for example, with your
6 example, a motion. A motion comes in, the review, download, and case
7 only incorporates the review, download, and save. If it was a motion,
8 then I -- and I was going to do an opposition to it, I would review it later.
9 I wasn't reviewing it at that time to draft the opposition.

10 Q Okay. You indicated that you did some -- that you helped Mr.
11 Simon with his timesheets?

12 A Yes, sir; I did.

13 Q What did you do --

14 A Some of it.

15 Q -- for Mr. Simon?

16 A Well, I did -- I took his cell phone records. Again, because we
17 weren't able to get the office records, so I took his cell phone records and
18 I plugged in his cell phone records into the bill, and then I also -- I'm the
19 one that put the infamous, on Exhibit 13, a Plaintiff review of all emails
20 concerning service of all pleadings, (679 emails), without a date. So,
21 would you like me to explain that?

22 THE COURT: I would.

23 THE WITNESS: Okay.

24 MR. CHRISTIANSEN: Yeah, I'd like to hear about it, too.

25 THE WITNESS: So, what that is, is that's the WIZnet filings.

1 If you look at any of Mr. -- if you look at Mr. Simon's superbill, there are
2 no WIZnet filings in his. And so, when I would send the WIZnet filing -- I
3 sent every single WIZnet filing to Mr. Simon.

4 So, what that number is -- or so what is, there were 679
5 emails, and I had multiplied that by .2 because he would have to open it,
6 and then analyze it or whatever, and then that was it. And if he wanted
7 to do more to it, then he could choose to do more to it, but because there
8 was a formatting issue, plugging every one of those 679 emails in -- so
9 those are all WIZnet filings. Those WIZnet filings are for the entire case,
10 679. So, that goes from May -- well, I guess the complaint wasn't filed
11 until June, so June of 2016 through -- I guess the attorney lien is when
12 we kind of stopped counting. That's when we stopped counting any of
13 the WIZnet filings in the case.

14 MR. CHRISTENSEN: Okay.

15 THE COURT: So, that's through the attorney lien?

16 THE WITNESS: Yes, ma'am. The amended attorney lien in
17 January.

18 THE COURT: And do these include some of the same WIZnet
19 filings that are in your bill?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Okay.

22 THE WITNESS: But we would both -- I mean, he would read
23 them as I -- he didn't download them. He just read them when I would
24 send them to him.

25 THE COURT: And what did you -- what was the time per --

1 THE WITNESS: .2.

2 THE COURT: .2. Okay.

3 BY MR. CHRISTIANSEN:

4 Q Did Mr. Simon enjoy billing?

5 A No.

6 Q How do you know?

7 A He was super grumpy about it, and he had lots of Post-Its
8 everywhere, and he just -- he absolutely did not enjoy billing. I don't
9 know how many times he said he didn't know how to bill.

10 Q Let's talk about the Edgeworth Exhibit 9.

11 A Okay.

12 Q Have you seen Edgeworth Exhibit 9?

13 A Yes, sir.

14 Q What did you do when you first received Edgeworth Exhibit
15 9?

16 A Well, I looked at it. I added up -- not that I'm great at math,
17 but I think I'm decent enough. I added up just to make sure their hours
18 were all, and the math -- the chart was right. And then I looked at all of
19 the boxed ones, because I assumed those were the ones that they had
20 issue with, and then I pulled the bills for -- if -- because some of them are
21 prior to the superbill. I pulled the paid hours and the new hours, the
22 superbill hours, and I compared them to see what their issue was or
23 what I thought their issue was with it.

24 Q Okay.

25 A So I could review it.

1 Q And just for clarification of the record, it's Edgeworth Exhibit
2 9, Bate 8 through 12; is that what you have?

3 A I believe it's 7 through 12.

4 Q Oh, did I miss one?

5 THE COURT: Yes, it starts on 7.

6 MR. CHRISTIANSEN: Okay. I apologize. I missed one.

7 THE COURT: Well, Ms. Ferrel starts on 8, but the --

8 THE WITNESS: Oh, I do --

9 THE COURT: Right. There's beginning with Mr. Simon on
10 page 12.

11 THE WITNESS: Sorry, Judge.

12 MR. CHRISTIANSEN: Okay.

13 THE COURT: I mean on 7.

14 BY MR. CHRISTIANSEN:

15 Q So, there was some discussion about email billing for Mr.
16 Simon on 8/20 and 8/21/2017.

17 A Yes, sir.

18 Q Do you recall that earlier today?

19 A Yes, I do.

20 Q Okay. So, what did you find when you took a deeper look
21 into those boxes on this exhibit?

22 A On Mr. Simon's 8/20 and 8/21, or just --

23 Q Correct.

24 A -- all boxes? On those boxes, it was different things. A lot of
25 -- what I think the common error is, and maybe Mr. Vannah can correct

1 me if I'm wrong, but it's the emails, the WIZnet filings, and the telephone
2 calls that were added that put all of these -- that put -- that I think they're
3 questioning these hours, because -- and again, like I just told you, I had
4 to use a landmark date.

5 So, whether I opened, reviewed, and downloaded on that specific
6 day, or whether it was the next day, or the next day, I mean, it happened
7 within a few days of that, but I used a landmark date because again, I
8 wanted to have support for everything I put into the superbill.

9 Q Talking, specifically, about the Sing [phonetic] work old, new,
10 on 8/20/2017, that's listed on Bated page 10 of Exhibit 9 for Mr. Simon.

11 A Oh, I apologize. Yeah. Well, what I found on there is that he
12 had -- they're different. It's actually different stuff.

13 Q Okay. Those are the emails that Mr. Christiansen showed to
14 Mr. Edgeworth earlier today?

15 A I believe so, yes.

16 Q And copies of those emails are in Exhibit 80 that's been
17 submitted to the Edgeworth counsel and to the Court?

18 A Yes, sir. And I believe one of them, and I can't tell you which
19 date right now, one had 10 emails and one had 12 emails.

20 Q Okay.

21 A And on one of those days, I believe it was 8/21, he hadn't
22 billed for any emails at all.

23 Q So, let's take a look at some of these issues on here. There's
24 a 22 hour day on here.

25 A Yes, sir.

1 Q 9/13/2017. That's on page 10 of Exhibit 9.

2 A Yes, sir.

3 Q What's going on there?

4 A Okay. So again, what I think happened, if you look at the --
5 it's the very last entry on that page. On the paid bills, it was -- I had eight
6 hours, 8.75 hours, and then on the new superbill, there's 14.10 hour, and
7 if you look at the new bill, all of the time is review, download, and save
8 the WIZnet filings. But, also, on that day, and I know for a fact because
9 that was right after -- we had to do out-of-state commission. We're like
10 ramping everything up. This case was incredibly fast at the very end.

11 Q Let me interrupt you for just a second.

12 A Okay.

13 Q Did something happen the day before that date on 9/13?

14 Was there a deposition or something that went on?

15 A Well, on 9/7 --

16 Q Okay.

17 A -- Mr. Carnahan -- yeah, Carnahan, he was deposed.

18 Q Okay.

19 A And he was our expert for like seven hours, and so then one
20 of their other complaints they have is the one right above that -- or not
21 complaints. I apologize. One of the other issues that they had boxed
22 was the 9/8/17 date.

23 Q Okay.

24 A And that was the date after Mr. Carnahan's deposition, and
25 there was a ton going on that day because of what Mr. Carnahan had

1 testified to, we were -- I mean, we were resetting depositions, we were
2 starting the motion to strike, we were noticing all these depositions over
3 that course of between the 8th, the 13th. I mean, and it just all happened
4 in a short period of time, Viking people in Michigan.

5 So, on the 13th one, which you were talking about a minute ago, a
6 lot of those downloads were for Michigan people, okay? The Viking
7 counsel refused to accept service on a lot of them, so we had to file
8 applications to take out-of-state commission, deposition, out-of-state -- I
9 think everyone knows what I --

10 THE COURT: Out-of-state depositions?

11 THE WITNESS: Yeah, the commission to take an out-of-state
12 deposition. There we go. So, we had to file that. But then you had to
13 also file all of the paperwork with the Court in that jurisdiction. Well, in
14 Lansing, you have Ingham and Eaton, and that's where some of these
15 were at, and then some of them were in Grand Rapids, which is a
16 different county, and you had to fill out documents each time you did.

17 So, some of these, yeah, it was, you know, an amended
18 deposition notice, okay, but each time I filed that deposition notice, I had
19 to resubmit the paperwork to the Court, which took time. I mean, and it
20 was, yeah, I had some of it filled out. It was a little quicker the next
21 times, but you know, that's why it took so long each time I did it, even
22 whether it was amended or the first notice.

23 BY MR. CHRISTIANSEN:

24 Q We were talking about some of the WIZnet filings with regard
25 to the 22 hour entry on 9/13.

1 A Yes, sir.

2 Q So, you know, I use WIZnet, sort of, right? I get an email, I
3 can open it up, I can download something. I don't always do it that day.
4 Sometimes I do it the following day when I get to it. What were you
5 doing in this case?

6 A What was I doing in the WIZnet --

7 Q Yeah, with the WIZnet.

8 A -- with regard to WIZnet?

9 Q Did you open them every day as soon as they came in? How
10 did that work?

11 A No. I mean, yeah, I would try to do that, but there was,
12 again, a lot of stuff going on with the case. I mean, if I'm working on a
13 motion to strike, I'm not going to stop my motion to strike when I see,
14 you know -- just when I'm downloading, when I know I just filed 10 or 12,
15 you know, deposition notices, especially in the ones Viking counsel's,
16 you know, taking -- that they're accepting service of.

17 I'm not going to stop working on my motion to strike and/or reply,
18 or opposition, or motion to compel, or whatever I'm working on, to
19 download that day. It may have been the next day or the next day, but it
20 would've had to be within two or three days because we had to keep up
21 to date on this case all the time.

22 Q So, I mean, why does it take you to do this work, just to do a
23 WIZnet for a notice of taking deposition?

24 A Okay. So, what happened in this case is they had a
25 confidentiality order, right? A protective order. I know that's super

1 common in these big document cases and things like that, but this one,
2 they had actually threatened us because a document got served that was
3 confidential, and they sent a letter to us threatening to sue us if --
4 because we violated -- not sue us, but they were going to take action
5 against us, because we violated the protective order.

6 And so, they told us to withdraw it and then we had to do all this
7 other stuff from that. So, because of that, I was the one that was doing
8 all of this.

9 Q Well, is calendaring also an important issue in a large
10 complex litigation?

11 A Yes.

12 Q I mean, you have to keep track of all the different parts, right?

13 A Yes.

14 Q But do you keep track of all the different parts and do this
15 kind of labor on a smaller case?

16 A No.

17 Q Only the larger cases?

18 A I mean, this is the only one that I typically do all of it on. I
19 mean, we have a paralegal who is very competent and has done --
20 worked for Mr. Simon for 20 years, so she does most of it, but with
21 regard to this case, because again, it was kind of a -- it was a very -- it
22 was his friend, it was a very fast moving case. We didn't want to miss
23 anything. That's why I was doing all of it.

24 Q When you performed your review of these box entries, did
25 you find any errors?

1 A On?

2 Q On any of the billing? Did you go and see -- like for the 22
3 hour day, did you go back and see, yeah, there were however many
4 WIZnet filings that day and --

5 A Oh, yeah. No. Sorry. I didn't quite --

6 Q Yeah.

7 A -- understand. Yeah. So, no, I did. I took that day, and I
8 pulled -- you know, I pulled the paid hours, and then I also pulled the
9 new hours, and I compared them, and these are an exhibit, if you needed
10 them, but -- and there were no -- I recalculated everything because I
11 anticipated that they were going to talk to me about the ones in the box
12 -- in the boxes.

13 Q Okay.

14 A So, I just wanted to make sure that I didn't screw up, so if I
15 did screw up, I could at least say that it was my fault.

16 Q Okay. Well, are you padding bills?

17 A No, sir.

18 Q Was that your intent?

19 A No, sir.

20 Q Long days happen when you're an attorney?

21 A Yeah. Especially a trial attorney, yes.

22 Q Okay. And especially in document intensive cases?

23 A Yes, sir.

24 Q I think your testimony is that you probably didn't work 22
25 hours on 9/13 because of the WIZnet filings?

1 A Yeah. I don't think I worked 22 hours on 9/13, however --

2 Q And --

3 A -- I do --

4 Q Have you worked 22 hour days before?

5 A I have one hundred percent worked 22 hour days before.

6 Q Okay. Can you --

7 A When I --

8 Q -- explain that a little bit?

9 A Yeah. When I worked over with -- at Mr. Eglet's firm, we did
10 -- I worked hand-in-hand with him and Mr. Adams, and a couple of other
11 attorneys on the endoscopy cases, and those were huge, complex cases,
12 very similar -- I mean, not similar in fact and stuff to this case. I mean,
13 but when we were preparing for it, I mean, we're talking hundreds and
14 thousands of documents. Yeah, we would. We would work, I mean, on
15 average, 15, 16 hour days. That was an average day for us if we were in
16 trial.

17 Q Okay.

18 A There were -- I can think of at least a dozen days where we
19 worked all through the night, me and Mr. Adams, and I went home, I
20 would shower, and I'd come right back to work, and we'd go right to
21 trial. Did it happen on this day? No. I didn't do 22 hours on this day
22 specifically, but again, that -- I have worked 15 hour -- yeah, I have
23 definitely worked 15, 16 hour days on this case.

24 You know, I mean, and so there was a lot of times I would even
25 work from home. I think it was said, and I don't remember who said it,

1 but I heard the testimony, or it may have been in opening that, you
2 know, I was working from my -- there is no way someone could work
3 from their office for that long. Well, I have remote access, and so I'm -- I
4 work a lot of times at home until 1 or 2:00 in the morning. I live by
5 myself with my dogs, so, you know, I mean, I don't have a lot of
6 interruptions.

7 And so, you know, I mean, I work from home a ton. I'm at the --
8 but in this case, I had to be at the office for a lot, and so it was very
9 common for me to be there 12, 13 hour days, and then I would go home
10 and work from home. And I have email on my phone, I have email --
11 remote access on my laptop. So, I mean, I would work long hours.

12 Q Did you do all the work that you billed for?

13 A Yes, sir; I did.

14 Q Did you get the right date on all the work that you billed for?

15 A Well, I mean, I think I did. Yeah, with what we've just talked
16 about, I mean, with the exception of those -- with the WIZnet filings
17 maybe being the next day or the following day within that time range;
18 yes, I did.

19 Q Okay. And on that same theme, we've got a 135 hour block
20 entry for Mr. Simon. How do you know that he was reviewing these
21 emails that you gave him credit for?

22 A Because he would respond back to the email with the WIZnet
23 filing attached.

24 Q Okay.

25 A Like he would -- like I would send the email, and then he

1 would respond to the email, and the WIZnet filing would be at the
2 bottom. You know how an email is.

3 Q So, he was on top of it?

4 A Yes, sir.

5 Q Okay. Let's talk a little bit about the review of these
6 produced documents and the assertion by Mr. Edgeworth that he was
7 solely responsible for the blossoming value of the case. Is it fair to say
8 that you get the first look at any document production?

9 A Yes.

10 Q Was the first major production on July 6th, 2017?

11 A Yeah, that's the first one that was like thousands and
12 thousands of pages. It was a lot more. They had only produced like a
13 couple hundred pages or maybe a thousand pages before that one.

14 Q Okay.

15 A That's the first big one.

16 Q And that was by Viking, I believe?

17 A Yes, sir.

18 Q Okay. So, this is Exhibit 88. It's the law offices, Exhibit 88.
19 So, this appears to be an email from you, Ms. Ferrel, on July 6th; is that
20 correct?

21 A Yes, sir.

22 Q And that's 2017?

23 A Yep. Yes. Sorry.

24 Q And it seems to be a -- as these emails are set up, as we can
25 see, it's a forward on top of an email from Janet Pancoast --

1 A Yes, sir.

2 Q -- to some of the other lawyers in the case, including
3 yourself?

4 A Yes, sir.

5 Q So, first of all, can you tell me a little bit about what had gone
6 on in the case prior to this time about disclosures and attached
7 documents?

8 A Yeah. So, what Viking was doing when they were producing
9 their documents and, actually, Lange was doing it, too, is they'd serve
10 the pleading without any documents attached, unless it was like six
11 pages or something like that, or maybe even like 20 pages. I don't -- you
12 know, but a small amount. And then they'd send a disc in the mail, and
13 so we would wait three days, four days, or however long the mail took to
14 get it. And I mean, that's -- and when a case is moving this case, you
15 kind of need the documents then.

16 So, I said something to Janet -- Ms. Pancoast, and so then that's
17 why she sent the email before they would serve a pleading, or the day
18 they'd serve the pleading, and it let -- she then would email us and tell
19 us, hey, we're going to serve this today. Let me know if your runner is
20 going to come pick it up.

21 So, I would send a runner to pick it up, so then they would put it --
22 so it wouldn't get put in the mail. The runner would come back, bring it
23 to me, so then I could start going through it as soon as I get it.

24 Q Did that happen with this production on July 6th?

25 A Yes, sir.

1 Q So, the runner went and picked up the production on July
2 6th?

3 A Yes, sir.

4 Q And then you started in on it?

5 A I downloaded it and started in on it right as soon as I got it,
6 and this is at 9:12 in the morning, so she went and picked it up pretty
7 early.

8 Q About how much was the -- that download? The July 6th
9 download?

10 A Twenty-two -- 24,000 pages. I don't know exactly, but it was
11 at least 22, but it may have been 24,000.

12 Q I want to show you what's been marked as the Law Office
13 Exhibit Number 89. It's an email. So, it looks like you sent an email on
14 July 10, 2017, at 10:26 a.m.

15 A Could you bring it down just a little bit? Oh, 10:26. Yeah,
16 never mind. I see what you're saying. Yes, sir.

17 Q You see that? Right --

18 A Yeah.

19 Q -- in the middle?

20 A Yes.

21 Q And you wrote, holy crap, two words, punitive damages.

22 A Yeah.

23 Q And then you mention there's a ton of documents, and then
24 you talk about sending a Dropbox link out to folks for their review?

25 A Yes, sir.

1 Q Is that fair?

2 A Yes.

3 Q Okay. What did you find?

4 A In there? I mean, there was so much stuff. So, kind of go
5 back a minute. The reason why I said that was, holy crap, punitive -- two
6 words, punitive damages, is because on May 3rd, Scott Martorano, who
7 was the 30(b)(6) witness for Viking was deposed for the first time, and he
8 had said that there were 46 activations, okay? Activation is something
9 that Mr. Edgeworth testified to, and it's all throughout this entire case.

10 Q It's when a sprinkler brings rain to everyone --

11 A Yes.

12 Q -- below it and everything below it?

13 A Correct.

14 Q It's when one of those sprinklers goes off.

15 A Yes.

16 Q The 457s. Okay.

17 A Correct. And so, in his deposition, he testified 46 activations.
18 So, when reviewing these, there was a ton of emails, and I don't know
19 how many emails there were. There was a ton of emails. There were
20 also a ton of other documents and things like that. Well, in these emails,
21 they kept referencing another activation, another activation, another
22 activation, another activation. Oh, we had two go off this weekend. Oh,
23 we had two go off this weekend, or -- and even some of these emails
24 were from Viking. Some of these -- I mean, they all came from Viking.
25 Some of them were from people, it turns out, in Southern California,

1 talking about other activations. Well, just looking at it, you could tell that
2 it had it up to weigh more than 46. So, he had basically lied under oath
3 or misrepresented, you know, 46 activations. There were definitely more
4 than 46 activations.

5 Q When you reviewed the July 6th documents, were you
6 looking for something to drive some sort of a punitive damages claim?
7 Was that the part of your thinking?

8 A Well, yeah, that's just something that we do. That's
9 something that I've learned as, you know -- that is -- that's kind of how
10 you kind of change a case, I guess, you know, to say -- I don't know how
11 to exactly say it other than that, but when you find out people are hiding
12 things. When you find out, you know, things like that. We're always
13 looking for ways to, you know, change it and get punitive damages in the
14 case.

15 Q You had done that in other cases to drive value?

16 A Yes. Multiple.

17 Q Without violating any confidentiality provisions, is it fair to
18 say that the law office has recovered a number of seven and eight figure
19 cases using this method?

20 A Yes, sir.

21 Q I'd like to show you what's been marked by the Office as
22 Exhibit 80. This is Bates stamp 6751. It's an email from you to Brian
23 Edgeworth; is that correct?

24 A Yes, sir.

25 Q And this is July 10, 2017, at 11:40 a.m.?

1 A Yes, sir.

2 Q And is it fair to say that via this email, you were providing
3 him with a link to the Dropbox where you had loaded that Viking
4 production into?

5 A The sixth supplement; yes, sir.

6 Q Okay. And then again, looking back to -- let's take a look at
7 the time here that's 11:40 on July the 10th, and going back to Exhibit 89,
8 the time here is 10:26 a.m.; is that true?

9 A Yes, sir.

10 Q Okay. So, you'd already looked through these and had
11 located evidence to support the punitive damage claim, or at least get it
12 up and running --

13 A Yes, sir.

14 Q -- before these documents were ever provided to Mr.
15 Edgeworth --

16 A Yes, sir.

17 Q -- is that accurate? Okay. Now, Mr. Edgeworth talked about
18 an email summary in the last couple of days?

19 A Yes, sir.

20 Q Do you recall the email summary?

21 A Yeah. It was based off of that sixth supplement. There --
22 again, there were thousands and thousands of pages of emails, and so
23 we created an email summary. I created an email summary of what
24 those emails said with Bates stamps, and so it was easier for us to
25 locate. And at that point, activations were, I mean, key for us, so I bolded

1 anywhere it kind of referenced something that was activation related.

2 Q Okay. So, the email was sent around on July 19 via -- or the
3 summary was sent to around on July 19 via email?

4 A I believe so; yeah.

5 Q Okay.

6 MR. CHRISTIANSEN: I'd like to mark Plaintiff's next in order,
7 it's 91. This is 91.

8 MR. GREENE: And what is that?

9 MR. CHRISTIANSEN: It's the e-mail summary --

10 MR. GREENE: Okay.

11 MR. CHRISTIANSEN: -- that Brian talked about earlier today,
12 or maybe it was yesterday. I forget.

13 THE COURT: So, this is the email summary that Ms. Ferrel
14 prepared?

15 MR. CHRISTIANSEN: Correct.

16 THE COURT: Okay. Exhibit 91.

17 [Law Office's Exhibit 91 Received]

18 MR. CHRISTIANSEN: Your Honor, if I could -- yes?

19 THE COURT: Defense has got it. Okay.

20 MR. CHRISTIANSEN: If I could approach the witness?

21 THE COURT: Yes.

22 MR. CHRISTIANSEN: I have a courteous copy for you.

23 THE COURT: I was going to say; do I have a copy. Yeah.

24 MR. CHRISTIANSEN: You sure do.

25 THE COURT: This way I can follow along.

1 MR. CHRISTIANSEN: And you can have a Post-It.

2 THE COURT: Well, thank you.

3 MR. CHRISTIANSEN: There you go.

4 BY MR. CHRISTIANSEN:

5 Q When did you put together Exhibit 91?

6 A Well, I started putting it together after we received the -- it
7 was sometime between July 6th -- I probably -- I didn't start it on the 6th.
8 It would've been the 7th, 8th, sometime after that.

9 Q Okay.

10 A After we received the document production. It took a while.
11 It's a lot of emails.

12 Q When did you finish it?

13 A Well, I sent it out on July 19th.

14 Q Okay. Do you recall if you finished on the 19th or on the
15 18th?

16 A It could have been the 18th. It could have even been the 19th
17 depending on what time the email -- I sent the email. I'm sure I sent it
18 out after.

19 Q Fairly quickly?

20 A Yes, sir.

21 Q Okay. So, tell me a little bit about the work that went into
22 this.

23 A Well, I looked at the email, I would write Bates stamp down,
24 any key phrases kind of that would jog my memory. I mean, I guess it
25 was more geared towards me, but it was also for everybody else to look

1 at. Description of the email, date, from, to. I mean, I just kind of filled in
2 the --

3 Q You also had the Bates number of the particular document
4 that you're discussing?

5 A Correct.

6 Q Okay. And this was sent around to everyone, including
7 Brian?

8 A Yeah. Yes.

9 Q All right. It looks like the very first entry addresses Harold
10 Rogers?

11 A That was who the email was to, yes.

12 Q Okay. Was that the same Harold Rogers that we heard Mr.
13 Edgeworth discuss yesterday?

14 A I believe it was, yes.

15 Q Okay. Without going through -- how many pages is this?

16 A Twenty.

17 Q Okay. You counted it?

18 A I just counted it, yeah. I recounted it.

19 Q Okay. Thank you. How many activations were you able to
20 identify that are reflected just on this email summary, Exhibit 91?

21 A Well, so in --

22 MR. VANNAH: I didn't understand your words. How many
23 what?

24 MR. CHRISTIANSEN: Activations.

25 MR. VANNAH: Activations. Thank you. Thank you.

1 MR. CHRISTIANSEN: Sorry.

2 THE WITNESS: So about 83, but the other thing that's in
3 here is there's an email of 91 in the U.K. So, that was something that
4 was -- I mean, 91 in and of itself, that one email. So, it shows that it's
5 over 46, right? But setting that 91 email aside, there was at least, I
6 believe, 83 to 85. I'd have to go back and count exactly again, which is
7 obviously more than 46, so.

8 BY CHRISTIANSEN:

9 Q The 80 some activations were here in the U.S.?

10 A Yeah, those were in the U.S.

11 Q And then we had 91 in the U.K.?

12 A Right. and that was kind of a distinction. I should've made
13 that distinction because whether the U.K. ones were going to come in or
14 not, I mean, that was kind of a fight we were having with -- you know, in
15 the case, but there were definitely over 46, in the 80s referenced in here,
16 you know, at the time I did the summary.

17 Q The Defense were fighting introduction of activations in a
18 different country?

19 A Yes, they were.

20 Q On evidentiary grounds?

21 A Yes, they were.

22 Q Of course, the U.K. is traditionally a little bit colder than the
23 western United States, especially California, southern California?

24 MR. VANNAH: Is that an expert opinion on the weather?

25 Objection. Some days it's colder, some days it's not.

1 THE WITNESS: I'm not an expert on it. I know Southern
2 California gets warm.

3 MR. CHRISTIANSEN: Whenever I see those guys on the golf
4 channel, they always look cold when they're in the U.K.

5 MR. VANNAH: During the summer, it's not as bad.

6 THE COURT: Mr. Vannah is probably pretty much an expert.

7 MR. CHRISTIANSEN: He could be.

8 MR. VANNAH: Mr. Christensen -- he's not here.

9 MR. CHRISTIANSEN: Christiansen.

10 MR. VANNAH: He just got -- yeah, but he just --

11 THE COURT: Oh, he's here.

12 MR. VANNAH: He's an expert because --

13 MR. CHRISTIANSEN: He's in the back.

14 MR. VANNAH: He's got a daughter that's living in Scotland,
15 right?

16 MR. CHRISTENSEN: Yeah, I do.

17 MR. VANNAH: So, he can be an expert, but I don't think she
18 can.

19 MR. CHRISTIANSEN: I hear he sends her sweaters like every
20 week, because it's so cold.

21 MR. VANNAH: Maybe a bikini, too. Who knows?

22 MR. CHRISTIANSEN: Oh, stop.

23 MR. VANNAH: I'm talking about summer.

24 MR. CHRISTIANSEN: You know --

25 THE COURT: Oh, we are so far -- oh, Mr. Greene, just come

1 save us.

2 MR. CHRISTIANSEN: So, moving on, Your Honor. Moving
3 on.

4 BY MR. CHRISTIANSEN:

5 Q Taking a look at Number 91, was that the extent of the work
6 that you did on activations?

7 A No. This was just kind of the beginning of it. I mean, no -- I
8 mean, this is -- the activations turned into a huge thing, and Mr.
9 Edgeworth created -- I believe he's testified to, a big chart that had -- I
10 think he said -- I don't even remember anymore. There was a lot, over a
11 hundred activations on this chart that were broken down, that he
12 testified to in his --

13 Q Did you --

14 A -- direct.

15 Q -- see the chart from Mr. Edgeworth?

16 A Yes. He sent it. Each time he would add stuff to it, he sent it.

17 Q Okay. Was the starting point of the chart some of the
18 activations on Exhibit 91?

19 A I believe it was. That's one of the first times that we got
20 detailed, you know -- we got detailed, like Bate stamps, because in his
21 chart, he had Bate stamps, and like he had the addresses and things like
22 that. Again, other than the emails, there were a couple other things in
23 there.

24 Q Did you send this around -- 91 around in Excel form?

25 A No. No, it was a PDF.

1 Q Oh, okay. Was Mr. Edgeworth's chart useful?

2 A Yeah.

3 Q Okay. Did you discover evidence of more activations during
4 discovery?

5 A Yes, we did.

6 Q And that was through a use of what I would call traditional
7 discovery?

8 A Yes.

9 Q Interrogatories, request for production of documents --

10 A Motions to compel.

11 Q -- motions to compel. Okay. So, that information combined
12 with -- did Mr. Edgeworth ever independently find an activation?

13 A Maybe -- I'm sure he found activation. Yeah, I'm sure --

14 Q Okay.

15 A -- he did. There was lots of them. I mean --

16 Q All right.

17 A -- so yeah.

18 Q So, those were all used?

19 A Yes.

20 Q Okay.

21 A I mean -- yeah. I think -- yeah, we used the chart. So, yes.

22 Q All right.

23 MR. CHRISTIANSEN: Can I have just a moment, Your Honor?

24 THE COURT: Yes.

25 [Counsel confer]

1 MR. CHRISTIANSEN: No more questions, Your Honor.

2 THE COURT: Okay. And, Mr. Vannah, would you mind if we
3 took like 10 minutes before you start so I didn't have to stop in the
4 middle, because I'm going to need use the restroom before you finish
5 with her. So, if we just go now, then we can do it, and I won't have to
6 cut you off in the middle.

7 MR. VANNAH: I think that's a great idea.

8 THE COURT: Okay. So, we'll take 10 minutes. We'll be back
9 at 3:00.

10 [Recess at 2:55 p.m., recommencing at 3:08 p.m.]

11 THE COURT: Okay. Are you guys ready? We're going to go
12 back on the record in 9738444, Edgeworth Family Trust, American
13 Grating, v. Daniel Simon doing business as Simon Law.

14 Mr. Christiansen, you were finished?

15 MR. CHRISTIANSEN: Yeah.

16 THE COURT: Mr. Vannah --

17 MR. CHRISTIANSEN: Yes, Your Honor.

18 THE COURT: -- your witness.

19 CROSS-EXAMINATION

20 BY MR. VANNAH:

21 Q Do you mind if I call you Ashley?

22 A That's fine.

23 Q We've known each other a long time.

24 A Yes, we have.

25 Q You used to work over at the house of Eglet that I helped

1 build, right?

2 A Yes, we did.

3 Q All right.

4 THE COURT: Mr. Vannah, we just actually had a discussion
5 as to whether you were ever partners with Eglet. I wasn't sure.

6 MR. VANNAH: Well, I own half the building, but he put his
7 name on there. He had more votes than I did. I think Mr. Christiansen
8 voted for him; didn't he?

9 THE COURT: You wanted to call him out.

10 MR. GREENE: I think he did.

11 MR. VANNAH: I don't want to get into that. It's now the
12 house of Eglet, though, but I pay half of it. Okay. I think that was the tie.
13 That was before the endoscopy, I think.

14 THE WITNESS: Yeah.

15 MR. VANNAH: It was me they were looking to, not him. All
16 right.

17 BY MR. VANNAH:

18 Q So, if you don't mind if I just call you Ashley? I don't mean
19 any disrespect. I've just known you that way. It's hard to --

20 A That's fine.

21 Q Okay. So, I just wanted to clarify some things. So, do I
22 understand correctly -- we've seen four invoices and the superbill, right?

23 A Yes, sir.

24 Q All right. And I just wanted to clarify and make sure I
25 understand it. Somebody had to actually prepare those; was that you?

1 A Well, so let me -- the superbill -- I prepared my own superbill,
2 or the timesheet, the big one. And then I prepared all my own invoices.
3 So, I started invoicing, is it April? So, I only did the last two, and I would
4 only prepare my own invoices.

5 Q Yeah. And I may be -- so, let me just back up and make sure I
6 understand it. And I'm not trying to confuse you or make -- either one.

7 A Of course.

8 Q So, I think of four invoices that got paid, I think that way.

9 A Yes.

10 Q Are you with me, up through --

11 A Yeah.

12 Q -- September 22, 2017?

13 A Yes, sir.

14 Q Where there was four separate invoices?

15 A Correct.

16 Q All right. So, let's start with that. Somebody actually had to
17 sit down and prepare that, and kind of what I was listening to is that
18 somewhere in late 2016 or so, that you and Danny had a conversation
19 about the fact that, hey, we need to send an invoice out, right?

20 A Yes, sir.

21 Q Is that right?

22 A Yeah. It would have been like the fall. It was in November-
23 ish.

24 Q Okay.

25 A Yes, sir.

1 Q Of 2016?

2 A Yes, sir.

3 Q And that's the invoice number one --

4 A Yeah, that's invoice number one.

5 Q -- can we call it?

6 A Yes, sir.

7 Q Okay. Fair enough. So, my question to you is that
8 somebody, a human -- some human being, prepared that invoice,
9 actually went through and put it together. Was that you?

10 A No.

11 Q Okay. Who did that?

12 A I believe it was Mr. Simon.

13 Q Okay.

14 A I'm not sure. I did not do it.

15 Q Not a problem. Let's talk about invoice number two --

16 A Okay.

17 Q -- that had been paid.

18 A Yes.

19 Q Did you have any input in preparing that invoice?

20 A No, sir. I did not do that invoice either.

21 Q Do you know -- again, was that Mr. Simon, to your
22 knowledge, that did that, or do you know?

23 A I don't know.

24 Q And as to invoice number one, do you actually know or is
25 that just kind of a guess on your part?

1 A I know I've physically seen Danny typing into that invoice,
2 whether the actual final one was the one that was -- you know, he did it
3 all. I don't know.

4 Q Okay. Let me ask you about invoice number three.

5 A Yes.

6 Q Did you have any input in preparing invoice number three?

7 A Yes.

8 Q What -- did you prepare the entire invoice number three?

9 A No, sir. The one that's -- okay, so invoice number three --

10 Q Yes.

11 A -- it had a cover sheet on it, if I remember correctly, and then
12 it had an invoice for Daniel S. Simon, and then it had the chart, and then
13 after that it had invoice for Ashley M. Ferrel. So, everything that was
14 identified as invoice for Ashley M. Ferrel, I prepared.

15 Q All right. I appreciate that.

16 A Uh-huh.

17 Q Now, how did you go about making the document? What do
18 you physically do?

19 A So, I actually used, as I told Mr. Christiansen, we had put
20 together an hourly bill for a case in Mr. Israel's court -- Judge Israel, with
21 regard to hours for that mistrial earlier in 2016, so I actually just used
22 that template. It was a Word document that I -- that had four columns in
23 it -- and I think it's four. Three. I apologize. It had a date -- well, that's
24 Danny's. Yeah, it had three. Date, description, and time.

25 Q Okay. So, if I understand correctly then, that's a two-part

1 document, invoice three?

2 A Yes, sir.

3 Q And one part is Danny's time and one part is your time,
4 right?

5 A Yes, sir.

6 Q And you use that template and you prepared -- completely
7 prepared the portion of invoice number three of your time, right?

8 A Yes, sir.

9 Q Okay. Invoice number four, same question. Tell me -- the
10 same question I'm going to ask you is do you know who prepared that?
11 Is that when you prepared your portion and Danny prepared his?

12 A Yes, sir. And I believe in that one Mr. Miller also had one.

13 Q Okay.

14 A He has like a single sheet, and I believe his format is very
15 similar to mine, and it's just a single sheet, and he did that himself.

16 Q Okay. But you did your share of that --

17 A Yes, sir, I did.

18 Q -- for your time?

19 A Yes, sir.

20 Q And when you say format, I think I sort of get it. So, the

21 format -- normally on a bill that I see from law offices, I've sent a
22 hundred -- probably millions, millions of those, maybe billions of those.

23 A Uh-huh.

24 Q But on bills, normally, you have something that says the date
25 you do the item.

1 A Yes, sir.

2 Q A description of the item, the number of hours, and
3 sometimes off to the right, some people multiply that out, but a lot of
4 times, just at the bottom, they add up the hours and then put down the
5 rate and come up with the amount; is that how you did that?

6 A Yes, sir. It just had three columns. Date, description, time,
7 and then at the bottom, I think the last page had -- I mean, it will say -- I
8 don't have a full copy of it up here, but it had like total hours, and then it
9 would multiply by \$275, because that was for --

10 Q Okay. Very good. Now, I want to kind of back up to a
11 conversation that you and Mr. Simon had when the first invoice was
12 going out. And I may be wrong about that, so I just want to make sure I
13 understood it. My understanding was that in late 2016, whenever that
14 was, that you and Mr. Simon had a conversation where Mr. Simon says,
15 you know, we need to send a bill -- an invoice out to the client. Do you
16 remember that? Am I right about that? Did you have that conversation
17 before the first invoice went out?

18 A It was with regard to creating an invoice for purposes of the
19 calculations of damages because of the attorney's fee provision in the
20 Lange contract. That was the discussion we had for it. I don't recall
21 anything with regard to him sending this to the client or anything like
22 that. The discussion was just with regard to the hourly rate and how we
23 could do the hourly rate, and that's where the *Sarah Ash* case came in.

24 Q Okay. So that conversation -- how did that conversation
25 come about? I mean, why were you having this conversation, because

1 you're not going to be doing it in billing? Why is he talking to you about
2 it?

3 A Well, we talk about all of our cases.

4 Q Okay.

5 A I mean, and so I'm sure I was just talking to him about a case
6 that was going on or a couple issues that I had in other cases not related
7 to this case. And I mean, we just sat down, and we were talking, and I
8 think he just brought it up. It was one of -- because he was working on
9 the Edgeworth case. At that point in time, you know, he wasn't like fully
10 consumed as he was at the end of the Edgeworth case. You know, and
11 so it was kind of more just us talking about it, and he had to put together
12 a bill for that disclosure.

13 Q Yeah, so I'm just trying to get my brain around the whole
14 thing. So, do you remember the conversation?

15 A Yeah. I mean, the verbatim, no, not the exact.

16 Q But you remember the conversation occurring?

17 A Yes, sir.

18 Q Okay. So, here it is. You're not working on the case, but you
19 guys are talking about it, right?

20 A Yes.

21 Q He's telling you; you know, I need to put together an invoice
22 -- a billing invoice on the case, on the Edgeworth matter, right? He tells
23 you; I need to get an invoice put together?

24 A He may have said sprinkler case, but yeah, we all knew it was
25 Edgeworth -- I knew it was the Edgeworth case.

1 Q What did you guys call it?

2 A The sprinkler case. The Edgeworth case.

3 Q That's --

4 A Same thing.

5 Q You're like me. It's easier to think of the sprinkler case. Yes.

6 A Yes, sir.

7 Q Okay. So, you talk about the sprinkler case. I need to do an
8 invoice to the client, right?

9 A Yes, sir.

10 Q All right.

11 A I've got -- sorry. An invoice for the calculation of damages. I
12 don't know whether or not at that point he was sending it. It was -- the
13 hours he was working, I don't know if he was actually going to send it to
14 the client at that time. In the conversation, I don't know.

15 Q That's fair.

16 A Okay.

17 Q So, out of curiosity, there in the firm, people always ask me
18 questions. Did you ask them at that point in time, by the way, what are
19 your -- what are the terms of our engagement in that case? Did you ask
20 him during that period of time? What exactly is our billing arrangement
21 with him?

22 A No. I kind of leave the money stuff to him.

23 Q Okay, and that's fair. So, was there -- okay. So, we know
24 you didn't know anything about the billing arrangements by the end of
25 2016. You don't have any clue what the billing arrangements are, right?

1 A Correct.

2 Q On the sprinkler case?

3 A Other than what I just told you.

4 Q That he needed to put together a bill?

5 A Correct.

6 Q Right, but you didn't talk about whether it was hourly,
7 whether it was contingency, whether it's an hourly plus a contingency, or
8 how much the hourly was if it was; none of that discussion, right?

9 A Well, with regard to the *Sarah Ash*, it was the five -- we chose
10 the 550. We discussed what he should put.

11 Q Okay.

12 A So, the five -- that's where the 550 came from was -- there
13 was a discussion about his hourly rate at that time.

14 Q And that's -- I want to make sure I get all of the parts of the
15 conversation.

16 A Okay. Sorry.

17 Q And then that's why I've been asking you a little more
18 penetrating questions, so.

19 A Okay.

20 Q So, in this conversation in 2016, late two-thousand -- can I
21 call it late 2016?

22 A That's fine. Yes, sir.

23 Q All right. So, now that you thought about it, you do
24 remember, and I think you might've said that earlier -- you do remember
25 that as part of the conversation, there was a discussion about what was

1 going to be the billing of rate? There was a discussion about that?

2 A Yes, sir.

3 Q And let me involve myself on that. Did Mr. Simon tell you, I
4 don't have an agreement with the client on an hourly rate, so I need to
5 come up with something that I can justify or something like that? How
6 did that come up about the hourly rate?

7 A Well, I mean, he didn't specifically -- I just remember he
8 needed to come up with an hourly rate, and so I said, why don't we use
9 the *Sarah Ash* thing, so --

10 Q So, okay, I want to make sure I get it.

11 A Yeah.

12 Q So, Mr. Simon is looking to you for your thoughts and says
13 to you, I don't have an hourly rate, I don't have an agreement with the
14 client for an hourly rate. Does he say, what do you think would be a
15 good hourly rate or just exactly how -- can you remember the details of
16 that conversation?

17 A All I know is we were talking about the case, and that he
18 needed to -- he was coming up with an hourly rate, and I suggested
19 using the *Sarah Ash* order from Judge Israel. And so, in that one -- do
20 you want me to just talk? I'm sorry. I don't --

21 Q Yeah, go ahead.

22 A Okay.

23 Q I don't mind.

24 A In that one, it was \$600. Judge Israel, \$600 for himself. And
25 so, he decided to just knock it off so the Defense wouldn't complain,

1 balk, whatever word you want to use, wouldn't complain about the rate,
2 because Judge Israel -- if they were to complain about the rate, we had
3 an order from Judge Israel saying that the rate was, you know, approved
4 earlier that year.

5 Q Right. So, if I understand correctly, you have a mistrial?

6 A Yes.

7 Q And Judge Israel says, you guys are going to pay for this
8 mistrial, right?

9 A Well, not ask the Defense, but yes.

10 Q Not you.

11 A Yeah.

12 Q But the people that caused the mistrial, the bad boys.

13 A Yes, sir.

14 Q And he says, you guys are going to pay for the mistrial. So,
15 I'm going to give you an hourly fee for how much you guys lost, you
16 come up with what you did in the case, and we'll come up with a fair
17 hourly fee, right?

18 A Yes.

19 Q And Judge Israel eventually approved \$600 an hour to Mr.
20 Simon as a reasonable compensation for his time, given his stature in
21 the community, correct?

22 A Yes, sir.

23 Q Okay.

24 A I mean, I think.

25 Q So, I'm back to the conversation. I get that.

1 A Okay.

2 Q So, Danny and you were talking, and do you call him Danny?

3 A I do.

4 Q Okay. All right. So, Danny and you were talking and
5 somehow, he discusses with you, I need to do a billing, I need to
6 prepare a billing, and does he say to you, what do you think would be a
7 fair billing, or do you just volunteer that number, or does he say, I
8 wonder what I ought to bill? I mean, I'm trying to get my arms around
9 that because that's -- let me tell you why.

10 You've been in the courtroom. My client has a clear, clear
11 recollection of the conversation at the onset of the case, looking at an
12 onset meeting, you know, within a week, you know, a broader term than
13 Mr. Christiansen likes, but at the onset of the case that the billing was
14 going to be for his time, they don't talk about you. I was wrong the other
15 day when I said that, but it wasn't you who was discussed, it was 550 an
16 hour. Do you remember hearing that testimony?

17 A I heard that testimony.

18 Q Okay. So, that's why I'm so interested in your conversation
19 with Danny, in more -- in as much detail as possible. Did Danny say to
20 you, I don't have an agreement with Mr. Edgeworth as to an hourly fee,
21 so I need to come up with something? Did he say that to you?

22 A He didn't talk about the agreement between him and Mr.
23 Edgeworth at all.

24 Q So, see, here's why I'm asking that question, because I mean,
25 if he's going to prepare an hourly bill to Mr. Edgeworth, was it your

1 impression this hourly bill wasn't a "real bill"? It's going to be just a bill
2 that's going to be presented to the Defense to say, hey guys, your
3 damages are getting bigger, and bigger, and bigger under this indemnity
4 agreement to Lange. The more I bill, the more you guys got to pay. Was
5 that kind of what you saw that as the purpose?

6 A That was my -- yes, sir. That was my understanding of it.

7 Q That that was the purpose of the bill?

8 A That was the purpose of the bill.

9 Q So, you know, I find it kind of odd that the bill that he's
10 preparing to show to Lange that he actually sends to Mr. Edgeworth, and
11 that Mr. Edgeworth actually writes checks and pays not only the legal
12 portion of the bill, but all the costs? Do you see -- you understand that
13 happened?

14 A No, I understand that happened.

15 Q Okay. And in invoice number two, that happened again,
16 right? He prepared another bill at 550 an hour, sent -- gave eventually to
17 the Lange people in discovery, but also sent that to Mr. Edgeworth, and
18 Mr. Edgeworth writes a check for the 550 an hour and all the costs, and
19 pays that bill.

20 A I understand that happened.

21 Q And then, eventually, you get involved in the billing process?

22 A Yes, sir.

23 Q And I think that was on invoice number three?

24 A Yes, sir.

25 Q And so, in invoice number three, again, Mr. Simon prepares

1 a bill for 550 an hour, outlines it. You then prepare your portion of the
2 bill for how much?

3 A Two-seventy-five.

4 Q Very reasonable. No complaints. You're worth more than
5 that, probably. So, for 275 an hour, which is more than that other guy on
6 the stand bills, but that's okay. You prepare your share of the bill for 275
7 an hour, and at the time that you did that, were you also under the same
8 thinking that these are just bills being prepared to give to Lange -- the
9 Lange lawyers to say, well, your damages are getting bigger and bigger?
10 Is that --

11 A That's my understanding of what the bills were for.

12 Q But what you had learned is that Mr. Simon took that bill, not
13 only gave it to the Lange people, but gave that to the Edgeworths and
14 the Edgeworths paid all of that bill, plus all of the costs that had been
15 incurred to date, right?

16 A I understand Mr. Edgeworth paid the bill; yes, sir.

17 Q And on the fourth invoice, they got paid. Again, your time's
18 included in that, right?

19 A Yes, sir.

20 Q Mr. Simon's time is included in that?

21 A Yes, sir.

22 Q And there might've been someone else. Ben, was he in
23 there?

24 A Mr. Miller. Yeah, Ben Miller.

25 Q And I don't know him, but I'm sure his bill was reasonable,

1 but he included time in that. That was all presented to the Edgeworths,
2 and they paid that bill again, in full, with all the costs, correct?

3 A That is my understanding, yes.

4 Q All right. Were you ever present at any meeting, or overhear
5 any discussion on the phone, or anything else where you overheard or
6 were present, where Mr. Simon said to Mr. Edgeworth, hey, old buddy,
7 I'm sending you a bill for 550 an hour, but my time is worth a whole lot
8 more than that, and some day we're going to have to reckon this thing
9 out. Did you ever hear him say something like that?

10 A No. That -- I wasn't around for any of those conversations.

11 Q Okay. Did Mr. Simon ever say to you, hey, I'm billing him for
12 550 an hour, but, in actuality, I have a better idea, someday I'm going to
13 bring him in, sit him down, and tell him, you know what, all my options
14 are on the table, and you guys need to come up and agree to pay me
15 more than the agreement we agreed to in the first place? Did you ever
16 heard that kind of a conversation from Mr. Simon or anyone else?

17 A No, sir. I didn't have anything -- discussions with him like
18 that.

19 Q Did Mr. Simon ever tell you that he had planned on bringing
20 the Edgeworths into the office -- and after they had paid four of those
21 invoices in full, did he ever tell you that he planned on calling them into
22 his office and sit down and say, you know what, you paid all your bills
23 faithfully, you've written every check, you've paid every bill I've given to
24 you, but you know what, I'm losing money. I'm losing money and you
25 guys need to pay me more or my options are on the table. Did he ever

1 tell you he was going to do that? Mr. Simon tell you he was going to do
2 that?

3 A No. I wasn't privy to any of those conversations.

4 Q Did you ever have a conversation with Mr. Simon where you
5 said, you know, Mr. Simon, or boss, or Danny, are you aware that there's
6 rules in the Rules of Professional Conduct that actually talk about having
7 an agreement with a client upfront before you do all of this billing,
8 before you charge them, and you get the fee agreement preferably in
9 writing, but certainty clear as a bell, early on or at the very near outset of
10 the case? Did you ever have that conversation with Mr. Simon where
11 you told him, you ought to do that?

12 A No, sir. I wasn't involved in the case in early -- in mid-
13 summer of 2016. So, I --

14 Q I mean, I'm talking about even later have you ever had that
15 conversation with him? Like why didn't you just have an agreement that
16 everybody was familiar with and have somebody signed it, and you
17 wouldn't be here today. Did you ever say that to him?

18 A I don't think I've ever said that. I just -- you know, I don't
19 have any idea what their agreement was, and I have never had any of
20 those conversations with Mr. Simon, so.

21 Q It felt a little uncomfortable telling him that maybe a little
22 preventative medicine might prevent a lot of what we're doing here
23 today?

24 A Well --

25 Q I get that. And you're an associate, right?

1 A I am an associate.

2 Q Okay. And, again, it's not comfortable to go to a partner and
3 say, you know -- I'm just asking if you ever --

4 MR. CHRISTIANSEN: Excuse me, Your Honor. I'm going to
5 object on foundation grounds. From what I've heard, there is no
6 foundation that she knew whether there was or wasn't a fee agreement.
7 So, this is -- there's no evidence in the record to support any of these
8 questions. He has to lay a foundation first before he can ask these
9 questions.

10 MR. VANNAH: I'm laying a foundation for one thing, but I'm
11 asking a separate question. I think that my foundation is well laid here.

12 THE COURT: Well, I mean, what is the -- I mean, you're
13 asking her if she ever had said to Mr. Simon that he could've prevented
14 this?

15 MR. VANNAH: Yeah.

16 THE COURT: Okay.

17 MR. VANNAH: Just by simply having a fee agreement.

18 THE COURT: Right. And I think she already said no.

19 MR. VANNAH: I think she has.

20 THE COURT: So, can you ask her something else until, Mr.
21 Vannah?

22 MR. CHRISTIANSEN: She has to know whether the, you
23 know, was there an agreement.

24 MR. VANNAH: I thinks he said, no, she didn't have that
25 conversation.

1 MR. CHRISTIANSEN: Was there --

2 THE COURT: Okay. Hold on. Only one of you is going to
3 talk at any given time. We're still in court.

4 MR. VANNAH: Well, he's objecting -- okay.

5 THE COURT: We're still having court here.

6 MR. VANNAH: You are. Go ahead.

7 THE COURT: I mean, this is the deal. He asked her if she
8 ever said that to Mr. Simon, which I think she can testify to, but she
9 already said, no, I never said that to him.

10 MR. CHRISTIANSEN: Absolutely, and then the questions --

11 MR. VANNAH: I'm not -- I don't have any other questions.

12 THE COURT: Okay. He's going to move on.

13 MR. VANNAH: So, to make it simple --

14 MR. CHRISTIANSEN: Okay.

15 MR. VANNAH: I mean, I don't have questions about --

16 THE COURT: About that.

17 MR. VANNAH: -- that because --

18 THE COURT: Okay.

19 MR. VANNAH: -- that answered the question.

20 THE COURT: Okay.

21 BY MR. VANNAH:

22 Q Has Mr. Simon ever told you that he actually had a fee
23 agreement with Mr. Edgeworth that he made early on in the case? Has
24 he ever said I actually had a fee agreement?

25 A I have never had any conversations with regard to the fee

1 agreement with Mr. Simon.

2 Q Okay. And so, you know, this is a yes or no question. Has
3 Mr. Simon ever told you -- I just want to make it clear -- that he actually
4 had a fee agreement with Mr. Edgeworth that he entered into at the
5 outset of the case?

6 A No, sir.

7 Q Thank you. Now, I don't want to go through each and every
8 one of your billings, but the ones -- I just pulled out some. Like the
9 9/13/2017.

10 A Yes, sir.

11 Q You billed -- I think you billed -- at least I just added up 22.85
12 hours.

13 THE COURT: And are you referring to the chart that was
14 created by your client, Mr. Vannah?

15 MR. VANNAH: I am because I think that reflects that day.

16 THE COURT: Okay. I'm just -- I just need to follow along
17 with you. I just wanted to know what document we're talking about.

18 MR. VANNAH: Good question. I don't even know that.

19 THE COURT: So, it's your Exhibit 9.

20 MR. VANNAH: 9.

21 THE COURT: Okay. And what date did you say, Mr. Vannah?

22 MR. VANNAH: I just want to take one date and just go to
23 September 13th --

24 THE COURT: '17?

25 MR. VANNAH: -- 2017. That date. Hold that right there. Let

1 me just ask some preliminary questions.

2 THE WITNESS: Okay.

3 BY MR. VANNAH:

4 Q So, what I understand --

5 MR. VANNAH: -- okay. While he's looking for that let me just
6 make sure --

7 THE COURT: It should be Bates stamp page 10, Mr. Greene.

8 MR. GREENE: It sure should.

9 THE COURT: At the very bottom.

10 MR. VANNAH: All right.

11 MR. GREENE: Thank you, Judge.

12 THE COURT: You're welcome.

13 BY MR. VANNAH:

14 Q I want to call it the original invoice.

15 A Yes, sir.

16 THE COURT: Okay. Just so we're clear, Mr. Vannah, this
17 isn't the invoice. This is a chart that your client prepared, not the invoice
18 that was sent out by Mr. Simon's office, right?

19 MR. VANNAH: Right. I'm saying -- I want to talk -- yes.

20 THE COURT: Oh, so you are talking about the original
21 invoice?

22 MR. VANNAH: Yeah. Just keep this in mind.

23 THE COURT: Okay.

24 BY MR. VANNAH:

25 Q We're going to go to this. I want to now go to -- just in my

1 mind. You don't have to look at it, I don't think. What I call the original
2 invoice, would that be invoice number three or invoice number four that
3 would capture this date?

4 A That would be invoice number four.

5 Q Okay. I don't think we have to look at it, because you've
6 already looked at it, but on invoice number four that was eventually sent
7 to Mr. Edgeworth that he paid --

8 A Yes, sir.

9 Q -- on that date, 9/13/2017, had your time on that date been
10 8.75 hours on invoice number four? And if you need to look at it, you
11 can.

12 A Yes, sir. It was 8.75.

13 Q 8.75. And this one you've looked at, so you're pretty sure of
14 what you're saying, right?

15 A Yeah. I actually --

16 THE COURT: Mr. Vannah, I need to follow along, so I'm
17 going to need some page numbers.

18 MR. VANNAH: Okay. Then help me just --

19 MR. GREENE: That's Exhibit 2, page number --

20 MR. VANNAH: We'll do -- help me out here.

21 MR. GREENE: -- 30.

22 THE COURT: Page 30? Okay.

23 MR. GREENE: Yeah.

24 THE COURT: Okay.

25 MR. VANNAH: I'm going to have --

1 THE COURT: Okay. So, 9/13. Okay.

2 MR. VANNAH: I've got this tech genius here next to me. He
3 can't even turn a cell phone on, but --

4 BY MR. VANNAH:

5 Q All right. Just point -- so if you look at -- what's the
6 document number so I say it right? Exhibit what?

7 THE COURT: 2.

8 MR. GREENE: Exhibit 2.

9 MR. VANNAH: Exhibit 2? That's our Exhibit 2?

10 MR. GREENE: Yes, it is.

11 THE COURT: Yes.

12 MR. VANNAH: Page 30. Point to where it says that. So, if
13 you look at line item -- it would be 9/13.

14 THE COURT: The very top two, Mr. Vannah.

15 MR. VANNAH: Thank you.

16 BY MR. VANNAH:

17 Q Yeah, so, if you look at 9/13, the very top two, in detail, you
18 talked about you prepared, and you attended a hearing on Defendant's
19 motion to compel home inspection, right?

20 A Yes, sir.

21 Q And you reviewed the Pancoast letter and discussed it with
22 DSS, and that'd be Danny Simon, I'd take it?

23 A Yes, sir.

24 Q So, your time for that particular task was 6.25 hours, right?

25 A Yes, sir.

1 Q All right. Then you go down to the next item. Finalize and
2 serve Nevada revised civil procedure 30(b)(6), notice of deposition. That
3 time took two-and-a-half hours, right?

4 A Yes, sir.

5 Q Or two-and-a-half, right? So, if we add those two things
6 together on 9/13, on the bill that got paid, you -- the firm got paid for 8.75
7 hours of your time for 9/13/2017, right?

8 A Yes, sir.

9 Q Then if I understand correctly, then you went back, and we've
10 talked about that a little bit, and created among other things -- so this --
11 you created more time for -- that the firm wanted to be reimbursed, for
12 example, on this date, the very same day, 9/13/2017, correct? That's
13 what you entered in timewise, correct?

14 A Yes.

15 Q Okay. Now, let's talk about that. So, the time in addition to
16 the 8.75 hours that you came up with in this task that you undertook was
17 an additional 14.1 hours to bill for on 9/13/2017, right?

18 A Yes, sir.

19 Q Now, when you add that up, I come up with really close to 23
20 hours. Do you see that?

21 A Yes, sir.

22 Q All right. And in all due candor, I think you've said that
23 earlier, and I know you're an honest person, you didn't work anywhere
24 near 23 hours that day, correct --

25 A Likely not that day.

1 Q -- on this case?

2 A Correct.

3 Q Okay. So, when we look at this -- and I'm just not going to
4 go through every entry, okay, because it would -- we would be here, I
5 mean, literally until months from now, and I don't want to do that, but if I
6 look at one entry here, you're clearly telling me that's just erroneous that
7 you know for a fact you did not bill -- you did not work 23 hours plus that
8 day on the sprinkler case, right?

9 A On that day, probably not, but those --

10 Q That's my question.

11 A Okay.

12 Q Because the billing is for that day.

13 A What?

14 Q The billing is for that day, right?

15 A The billing is on -- identified as 9/13/17, correct.

16 Q All right. And you understand, and to be honest and fair to
17 you, you've never sent a bill to another client in your entire life, correct?

18 A Correct.

19 Q You don't have anything to do with billing?

20 A Nope.

21 Q Never had anything to do with billing?

22 A No, sir.

23 Q This is the one and only client that you've ever billed, right?

24 A Well, yeah, that I've -- yeah, that I've ever billed.

25 Q Hourly.

1 A Correct.

2 Q I mean hourly.

3 A Other than the Ash. Putting together hours for the Ash case.

4 Q Okay.

5 MR. GREENE: This is Exhibit 5, Your Honor. This is from --

6 THE COURT: I think it was page --

7 MR. GREENE: That's correct.

8 THE COURT: I don't know what page it was.

9 MR. GREENE: It begins at pages -- page 131 and goes
10 through page 134.

11 THE COURT: Okay.

12 MR. VANNAH: Right.

13 BY MR. VANNAH:

14 Q And if you look at that document, so what you did -- this is
15 the ongoing -- what we've been calling the superbill for that date.
16 There's all those entries about an email chain, et cetera, et cetera, review
17 email, the attachment, review email from documents, and there's just
18 one after another after another, and they're at -- they start at the email
19 chain with DSS, which is Danny Simon. Documents being sent to
20 Zamisky [phonetic], and then it goes -- you go through the next page,
21 and some of them are .15. There's a lot of .30's, right, for review,
22 download, and save, review, download, and save. And then you go to
23 the third page, and you get a lot more review, download, and save, and
24 all at .3, correct?

25 A Correct.

1 Q And then you go to the next page, and you've got a lot more
2 review, download, and save, going all the way down to the last entry,
3 which is review of email from Robinson re deposition dates for Zamisky,
4 Hastings, and Olives [phonetic], and that's .15, right?

5 A Correct.

6 Q So, when you add all that up, that's when you come up with
7 this 14.1 new hours in addition to the 8.75 that you already billed on that
8 day, correct?

9 A Correct.

10 Q Okay. So, was it ever explained to you why Mr. Simon -- did
11 Mr. Simon ever explain to you why he wanted you to go back and create
12 this new billing that had never been presented to the Edgeworths for that
13 period of time in May of 2016 through September 22, 2017? Did he ever
14 tell you why he wanted you to go and come up with all this new -- these
15 new numbers?

16 A Well, the new numbers were all just emails -- things that I
17 could have a hard tie, because I had never billed for any of that time.
18 And it was actually -- I didn't start working on the file until January, so I
19 didn't bill for anything from May until January, but for that one 12/20/16
20 download. So, from that period to the September, so January '17 to
21 September '17, because I had not -- well, January to April, I had not
22 billed for, and so those are emails, phone calls, that kind of thing.

23 Q My question was, did Mr. Simon ever tell you why he wanted
24 you to go back and create all this additional time to put in invoices that
25 had already been sent, reviewed, and paid? Did he ever tell you why he

1 wanted you to do that?

2 A It was my understanding for Lange adjudication process, we
3 had to put together all of our time that we spent on the case.

4 Q Okay. Now, in all fairness, Mr. Edgeworth never said in this
5 courtroom or anywhere that you guys did nothing of any value on this
6 case. Do you understand that? Have you ever heard him say otherwise?
7 Have you ever heard Mr. Edgeworth say you guys never did anything of
8 value on the case?

9 A Not as I sit here right now.

10 Q Do you remember when Mr. Edgeworth said he thought you
11 were very -- you, personally, were very competent, very good at what
12 you did, and he was pleased to work with you. Do you remember him
13 saying that?

14 A I don't know if those were his exact words, but I do -- I wasn't
15 here yesterday when he was testifying.

16 Q Oh, okay.

17 A Yes, sir.

18 Q Did you always have cordial, good relationships with Mr.
19 Edgeworth?

20 A Mr. Edgeworth and I had a cordial relationship.

21 Q Did you find him to be -- it's posed to most clients that I've
22 had at least, did you find him to be more easy -- did you find him more --
23 I don't want to use the word intelligent, but the type of logical mind that
24 could understand the things that you were telling him, as opposed to a
25 lot of clients that I have that -- I mean, personal injuries tend not to get

1 anything.

2 A I mean, he's a smart guy. He's definitely a smart guy. I
3 mean, I have other clients, though, that are engineers, lawyers, things
4 like that. So, I don't want to say he's the only smart guy. I mean, but I
5 won't take away that he's a smart guy.

6 Q I mean, but he -- was he trying to help when he would give
7 you information that he would go out and find? Did you get to -- was
8 some of it helpful to you?

9 A Yeah. Some of it was helpful, yes, sir.

10 Q Did he seem to understand the factual background in the
11 case, the way the failure happened about the different activations, what
12 they had withheld from you guys, and how these things were being
13 activated? Did he seem to understand that?

14 A The factual background to the case with regard to the
15 sprinkler and stuff like that, he was very knowledgeable about that,
16 correct. With holding stuff, I don't understand, but definitely with regard
17 to the factual stuff, yes.

18 Q Yeah, I wasn't suggesting he was withholding anything.

19 A No, no, not him, but I didn't understand that part. That was
20 all I wanted to clarify.

21 Q I understand.

22 A Okay.

23 Q Okay. So -- now, were you at the deposition of Brian
24 Edgeworth?

25 A I was not at Mr. Edgeworth's deposition, no, sir.

1 Q Did you ever read that deposition?

2 A I've read bits and pieces of it, and I haven't read it from cover
3 to -- I have read it, yes, in its entirety, but it was in the middle of the case.

4 Q Did you read the portion of the deposition where Mr. Simon,
5 while, albeit, not under oath, as the attorney said, look, I had given you
6 our billings over and over and over again to billings in this case. Do you
7 remember reading that?

8 A I know that part of the deposition, yes, sir.

9 Q Okay. And when you reviewed that part of the deposition,
10 did you ever see anywhere where Mr. Simon said, well, there's actually
11 more billings for that time, but I'm just giving you the friends and family
12 discount portion of the billing. Did you ever hear him say that to the
13 other side?

14 A Well, no, I don't -- the way -- not the friends and family
15 portion, but my reading of that is that we had supplemented it over and
16 over and over again. That's what he meant by over and over and over
17 again is my understanding. I mean, I don't know, you can ask him,
18 which I'm sure you're going to.

19 Q You're right.

20 A But that we were supplementing, because we did
21 supplement the calculation and the damages over and over and over
22 again, so that's my understanding of that. I don't --

23 Q Did you personally, as working on the case, ever tell the
24 lawyers on the other side, especially the Lange lawyers, or anybody on
25 the other side, hey, you know, these billings that we're submitting as

1 part of the damages, the billings that have been paid by Mr. Edgeworth,
2 these aren't -- this is only a portion of the billings during that time? Did
3 you ever tell anybody on the other side so that they don't get mislead
4 here, that our billings in this case and the damages to Mr. Edgeworth as
5 a result of our legal billings are going to be quite a bit higher than what
6 we've told you so far? Did you ever tell anybody that?

7 A No, sir, I never had that conversation with any of the other
8 defense lawyers or anybody.

9 Q Were you -- did you, during your time you worked in the
10 case, did Mr. Simon ever say to you, you know, these billings that we're
11 giving to the other attorneys, that we're giving to them as our
12 computation of the damages, they really aren't as big as they really are.
13 They're going to be a lot bigger some day when I get a chance to go back
14 and rebill the file? Did they ever tell you that? Did Mr. Simon tell you
15 that?

16 A Not in those words. I knew that the bills, at least mine,
17 specifically -- you would have to ask him. I mean, and I've looked at his
18 bills. It didn't include the emails, the WIZnet filings, and telephone calls,
19 specifically. I knew that, but that conversation -- what you just asked me,
20 did that conversation happen, no, sir.

21 Q So, let me ask you this because I'm trying to understand why
22 you would do something like that. So, it was your belief, was it not, right
23 or wrong, but it was your belief that the larger the bills were that were
24 being paid by the Edgeworths, the more they paid for legal fees, the
25 more Lange would have to reimburse; is that -- that's kind of the thinking

1 that was going on there? At least that's what they told Mr. Edgeworth; is
2 that what you understood?

3 A Well, my understanding is that there was an attorney fee
4 provision in the Lange contract, so whether it was \$1,000 or \$500, or
5 whatever, whatever his attorney's fees were, were recoverable.

6 Q And my point is this, is if those fees were recoverable to the
7 Edgeworths when the case is over. If they're recoverable, wouldn't you
8 want the fees -- if the fees are actually higher than what you're giving
9 them, would you want the fee that you're going to be seeking recovery
10 on to be as high as possible? And not just inflated artificially, but if the
11 fees are really more than what you are giving them in the computation of
12 damages, don't you want to say, hey, we need to get the full amount of
13 the fees that he's eventually going to be responsible for into the
14 computation of damages? Wouldn't you want that to happen?

15 A Well, I mean, yeah, but it was my -- this case was super
16 quick. I mean --

17 Q So, I just want to ask then, when you want that to happen --

18 A Oh, okay. Sorry.

19 Q -- wouldn't you want to get all the damages to the
20 computation of damages, not just part of them?

21 A Yes.

22 Q In fact, you understand, do you not, that if you -- the way the
23 rules work -- I mean, I know you know this, that if you don't do a proper
24 computation of damages, then you leave damages out, at the time of
25 trial, you can't just come up and say, well, we actually had more

1 damages, and we forgot to put them in here, right? You can't just --
2 that's a problem, right?

3 A I understand what NRCP 16.1 says, yes, sir, with regards to
4 computation of damages.

5 Q I bet you know that more than I do, because you're in the
6 trenches doing that and the partner sometimes just relies on the people
7 that really do the good work and know the rules.

8 So, you knew that those computations of damages that in -- that
9 were including the attorney fees of the Edgeworths' pay, you knew that
10 they had a lot of significance to what his damages that he could
11 eventually recover from Lange would be; you knew that, right?

12 A I knew that they were going towards the provision. It was a
13 portion of damages. Yes, sir.

14 Q So if you knew -- if you and Mr. Simon knew that there were
15 going to be additional billings over that four-invoice period, and you
16 knew that the Defense didn't know that, right? They didn't know there
17 was going to be additional billings during that four-invoice period, right?

18 A I don't know what they knew, but I would assume, no; I don't
19 know.

20 Q So, wasn't it incumbent if you had, in your mind and Mr.
21 Simon's mind, you guys had reached the agreement that there's a lot
22 more billing that Mr. Edgeworth's eventually going to have to pay during
23 that period of time that covers those four invoices, we'd better get those
24 supplemented so that we could collect that from Lange? Did you and
25 Mr. Simon ever have a conversation like that?

1 A Not during -- the case was moving so quickly. Like I was
2 saying, none of the emails or telephone calls were captured in those
3 initial bills.

4 Q That's not the question I'm asking you.

5 A Okay.

6 Q My question was if you knew that there was going to be a
7 substantial additional time during the four invoices that you had
8 basically given as a computation of damages to Lange, if you knew there
9 was considerable extra time that wasn't being presented to the Lange
10 defendants, for example, didn't you know that would be a problem in the
11 future when suddenly you say, oh, by the way, you guys have been
12 defending this case for two years, but, here, we have 300,000 more in
13 damages that you weren't aware of that we never bothered to tell you
14 about; didn't you know that would be a problem?

15 A Yeah, it could be a problem at trial. Yes, sir.

16 Q Okay. You knew that -- did you know that you didn't have
17 this case on a contingency fee?

18 A I didn't know what the fee agreement -- or fee arrangement
19 was on this case.

20 Q And you -- were you aware, as you were preparing the billing
21 in the first place, that eventually the Edgeworths would be charged for
22 these additional billings that you were eventually going to come up with
23 at the end of the case?

24 A No, sir. We didn't start doing this, the -- what everyone's
25 called the superbill, until the Lange adjudication process, so I don't think

1 that --

2 Q So, here's what really happened; isn't it? So, what happened
3 is the Edgeworths and the Simons had a little bit of a falling out in
4 November; that would be fair to say, right?

5 A I don't know their relationship. I know they're not talking any
6 more, and I know they used to be friends, so I think that's fair.

7 Q But you learned that working at the office, I assume, that
8 there was some discussion at the office about this Lange adjudication?

9 A Yeah. Yes.

10 Q And then at that point, Mr. Simon said, you know what, I
11 don't know how the Judge is going to rule here, but let's go back and
12 add all the time we can that we can add to -- into the period of time that
13 the Edgeworths were already billed, and even though they had paid
14 those bills in full and even though they paid all the costs in full, let's go
15 back and find more time and add more time so that we can be in a better
16 position with the Judge; isn't that what happened?

17 A No. It's my understanding that they're timesheets, so it's just
18 the hours that were not captured. The purpose of the -- what's been
19 termed the superbill is just a timesheet to show the Judge how much
20 work has been done. Whether or not that's considered a bill, that's
21 something Mr. Simon -- I was told to put my time into a timesheet to put
22 in the motion for adjudication.

23 Q Well, you are aware, are you not, that Mr. Simon is asking
24 the Court to rule and determine that the Edgeworths should pay this
25 extra, what is it, 2-, 300,000?

1 MR. CHRISTIANSEN: Your Honor, I'd like to object as a
2 mischaracterization of a motion for adjudication of Lange.

3 MR. VANNAH: Of what? I haven't asked a question yet.

4 THE COURT: Okay. Only one of you can talk at any given
5 time. And what was the objection, Mr. Christiansen?

6 MR. CHRISTIANSEN: It's a mischaracterization of a motion.
7 We requested quantum meruit, which is a reasonable fee.

8 MR. VANNAH: That would be great.

9 MR. CHRISTIANSEN: But in this case, that was the larger
10 number. That's not what these hours are based upon.

11 THE COURT: Mr. Vannah, your response?

12 MR. VANNAH: I haven't asked the question, so I don't know
13 how to respond. I just started the question.

14 THE COURT: Well, you said are you aware that Mr. Simon is
15 requesting, and then you turned to Mr. Greene to say --

16 MR. VANNAH: Right, so I'd like to finish the question.

17 THE COURT: Okay.

18 MR. VANNAH: Yeah.

19 BY MR. VANNAH:

20 Q Are you aware that Mr. Simon is asking this Court to take
21 into account this additional billing that you guys had come up with,
22 which includes, for example, clearly erroneous billing on one day of
23 almost 23 hours, and they're asking this Court to take -- to factor that in,
24 this additional billing, that had never been presented to Mr. Edgeworth
25 until after December of last year?

1 MR. CHRISTIANSEN: Objection, Your Honor. Compound.

2 MR. VANNAH: It's one question, yes or no, you're aware of it
3 or you weren't aware of it.

4 MR. CHRISTIANSEN: Your Honor, that's not a yes or no
5 question, because he put in a lot of variables and statements into that
6 question. For example, clearly erroneous billings, things of that type.

7 MR. VANNAH: I never said much --

8 MR. CHRISTIANSEN: There's too much in that one question.

9 MR. VANNAH: I never said anybody who had been clearly
10 erroneous.

11 THE COURT: Okay. Well, that's what you said, Mr. Vannah.
12 You said clearly erroneous about the 23 hours that was billed in one day.

13 MR. VANNAH: Oh, I did.

14 THE COURT: Yeah. And you said --

15 MR. VANNAH: I did. I did and that was clearly erroneous.

16 BY MR. VANNAH:

17 Q You didn't bill --

18 A I don't believe it is.

19 Q You didn't work 23 hours in that day on that case, right?

20 A I think I've testified as to why they're --

21 Q I think my question is you didn't work 23 hours on that day
22 on that case, correct?

23 A I don't believe I did.

24 Q Okay. And my question was are you aware that Mr. Simon
25 has taken your work product on these billings and is asking the Court to

1 consider 275,000 in additional billings during that period of time that the
2 Edgeworths have already paid 387,000 in attorney fees; are you aware of
3 that?

4 A That's not my understanding of what the motion is, but so I
5 guess the answer would be no.

6 Q Okay.

7 MR. VANNAH: Let me just go through some of the -- I might
8 have covered a lot of these.

9 BY MR. VANNAH:

10 Q So, at the time of Mr. Edgeworth's deposition, when Mr.
11 Simon said -- do you remember Mr. Simon saying all of these bills -- all
12 of these invoices have been disclosed to you numerous times? You
13 remember him saying that, right?

14 A Yes.

15 Q At any time, did Mr. Simon tell the Defense we've only
16 disclosed a portion of Plaintiff's fees and costs to you. Did he ever say
17 that?

18 A I wasn't at the deposition. That is not in the deposition
19 transcript though.

20 Q You've read it though?

21 A I've read the deposition transcript and --

22 Q And I'm asking you, from your review of the deposition
23 transcript, did Mr. Simon ever say to the Defendants we've only
24 disclosed a portion of Plaintiff's fees and costs to you? Did he ever say
25 that?

1 A I didn't read that in the transcript, no, sir.

2 Q Did Mr. Simon ever say to the Defendants that there are
3 more invoices for additional fees and costs, which will be disclosed that
4 cover that period of time, up to September 22?

5 A I didn't read that in the deposition transcript, but again, it's
6 been a long time since I've read it, so --

7 Q Did Mr. Simon ever say to the Defendants, we're going to be
8 sifting through Plaintiff's invoices and our files and add time and fees
9 that we haven't added or disclosed yet to you; did he say that to the
10 Defendants?

11 A He couldn't have. So, no, sir, that's not in the transcript.

12 Q Did he ever say anything to the Defendants in the transcript
13 to give notice or even an indication that every fee and cost incurred
14 today hadn't been produced to the Defendants?

15 A Not based upon the transcripts that I recall.

16 Q Okay. Now, when you go back and look at the early billings,
17 you see that they go back and even cover the meeting at Starbucks,
18 right?

19 A I believe -- well, it doesn't have a date on it, but that says,
20 yeah -- yes, sir, I've seen that.

21 Q So, the -- in spite of the -- and that's okay. In spite of the
22 friends and family discount, whatever that is, it is apparent when you've
23 reviewed the billings that the billings do cover the meeting at Starbucks
24 and all those things that happened at that point in time, all the way back
25 to the first day that they met?

1 A There are some entries that are in the first bill, yes, sir.

2 Q Okay. Oh, I know one thing I wanted to talk to you about that
3 was kind of interesting. Mr. Christiansen, when he was talking to Mr.
4 Edgeworth was saying that -- pointed out to him that he had said in
5 August of 2017, that he had perceived that the case -- and I can't
6 remember the exact words -- but had blossomed, gotten better,
7 improved greatly? Do you remember that? Did you ever hear that
8 testimony?

9 A I heard the testimony, yes, sir.

10 Q All right. And in fact -- and then Mr. Christiansen said, well,
11 you say that, but had any defendants offered you a dime in this case at
12 that point by August 2017, and his answer was, no, correct?

13 A That was his answer, I believe.

14 Q Is that true? But is that true, I'm sorry?

15 MR. CHRISTIANSEN: Objection, Your Honor. That's a
16 mischaracterization of the record.

17 MR. VANNAH: I don't think so, but --

18 THE COURT: Okay. Would Mr. Christiansen saying that
19 nobody had offered any money by August of 2017?

20 MR. VANNAH: That's what he asked.

21 THE COURT: Right, and isn't that what Mr. Edgeworth
22 testified to?

23 MR. VANNAH: It is.

24 THE COURT: Okay. I recall Mr. Edgeworth saying that.

25 MR. CHRISTIANSEN: Different testimony at different times.

1 MR. VANNAH: I don't understand. I just asked the question
2 very specifically. What am I mischaracterizing?

3 THE COURT: What is the mischaracterization? Because Mr.
4 Christiansen asked Mr. Edgeworth about that blossoming email. We
5 talked about blossoming for about an hour. And then Mr. Edgeworth
6 said, yes, I said blossoming in the email. He finally said that, and then
7 Mr. Christiansen said isn't it true no one had offered any settlement
8 money by August of 2017, and Mr. Edgeworth agreed to that.

9 MR. CHRISTIANSEN: At one point that is correct; however,
10 when they were going over Exhibit 16 of Mr. Edgeworth's deposition, in
11 which he stated under oath to this Court earlier, that there was a
12 significant offer on the table prior to the blossom -- the dreaded
13 blossoming email, he affirmed that and then he got -- he went back and
14 forth on it. It was very confusing testimony. He went back and forth a
15 number of times. So, that's why it's a mischaracterization. And it also
16 ignores what Mr. Edgeworth said in a -- in his declaration under oath.

17 MR. VANNAH: So, we --

18 THE COURT: No, and I mean I know that there's a huge
19 dispute about what was said in the declaration that attached to the
20 motion. What he testified here to today is nobody had offered any
21 money by August of 2017.

22 MR. CHRISTIANSEN: Oh, today?

23 THE COURT: Yes.

24 MR. CHRISTIANSEN: As opposed to yesterday or the day
25 before?

1 THE COURT: Right. But today --

2 MR. CHRISTIANSEN: I withdraw the objection then.

3 THE COURT: Okay.

4 MR. CHRISTIANSEN: Okay.

5 THE COURT: When Mr. Christiansen asked him, he said, no.

6 Okay. Mr. Vannah, you can ask the question.

7 MR. VANNAH: I don't think it was really disputed.

8 BY MR. VANNAH:

9 Q Wasn't he offered -- there was no offer on the table as of
10 August 17th, or whatever that date was, 2017, was there?

11 A I don't believe there were any offers on the table in August of
12 2017.

13 Q Right.

14 THE COURT: Okay. Mr. Vannah, we've moved on.

15 BY MR. VANNAH:

16 Q Right. So, when Mr. Christiansen said, well, you're talking
17 about how this case is blossoming and the offers to you are zero;
18 remember that?

19 A I was here for the testimony.

20 Q Yes. Okay. But, now -- and you're very bright, and you're
21 very perceptive, and in July of 2017, before this August meeting took
22 place --

23 A Okay.

24 Q -- you were very perceptive and wrote, holy crap.

25 A Yes, I did.

1 Q Holy crap with big explanation marks. That's a legal term,
2 right, holy crap?

3 A Completely. Black's law.

4 Q It's a joke, but it's like, wow, and then you wrote something
5 like can you say punitive?

6 A Something like that, yes, sir.

7 Q Something like that. So, in July -- being the perceptive
8 young lawyer you are, with a lot of experience working with good firms,
9 in July, before this August meeting, you recognized that, by your holy
10 crap comment, holy crap, you know, punitives are in play at this point,
11 right?

12 A Yes, sir.

13 Q And that changes the case substantially; doesn't it?

14 A Punitive damages definitely change a case, yes, sir.

15 Q Changes the complexion of negotiations when insurance
16 companies got their insured out there facing a potential punitive claim,
17 the insurance company can be a little more generous, right?

18 A From my experience.

19 Q Okay. So, when Mr. Edgeworth said in August that the case
20 had blossomed, even though there hadn't been any offers on the table,
21 you recognize that the case had greatly changed when you wrote that
22 holy crap memo, right?

23 A Yeah. There was a lot of stuff that happened, but, yes, sir,
24 that was one of the aspects of it.

25 Q Now, did Mr. Simon ever say to you that he had some -- that

1 he was only charging Mr. Edgeworth a fee to collect compensatory
2 damages? Did he ever, like, tell you, well, I have a fee agreement for
3 compensatory damages, but my fee agreement doesn't include
4 exemplary or punitive damage; did Mr. Simon ever tell you that?

5 A No, I don't have any idea what their fee agreement was.

6 Q And isn't it true that it was Brian Edgeworth, if you know,
7 who actually contacted fire marshals and others, both here and abroad,
8 and discovered how extensive these activations were, both before and
9 after Plaintiff's incident, before his activation?

10 A I know that Mr. Edgeworth contacted a fire marshal in
11 California, and I know he contacted some people in Europe.

12 Q And he did that, right?

13 A He's the one that made the phone call.

14 Q So, isn't it true that Brian was the one who found the link that
15 uncovered hundreds of additional activations of these sprinklers? He's
16 the one that actually went out and found that, right?

17 A I believe that he found some additional activations. I'm not
18 going to discredit him for that, but I don't think he found all of them.

19 Q So -- but he found a great many of them?

20 A He found -- he found -- yeah, he found some, yes.

21 Q And brought that to your attention?

22 A Yeah, he -- well, I mean, I think in the documents that we had
23 as well.

24 Q And isn't it true that Brian prepared many of the document
25 productions and other discovery responses in this litigation?

1 A I can't agree with that, no.

2 Q Okay. So, let me --

3 MR. VANNAH: -- if I can confer with the client?

4 THE COURT: Yes.

5 [Pause]

6 BY MR. VANNAH:

7 Q Now, you had mentioned that a part of your efforts -- which
8 are your efforts too, to go back and create this additional billing for that
9 four-invoice period, that you went out and got cell records?

10 A Cell phone records, yes, sir.

11 Q Where did you get the cell records from? From what
12 company?

13 A Well, I got mine from my company and then Mr. Simon
14 obtained his.

15 Q Where are those records?

16 A Where are those records?

17 Q Yes.

18 A On the internet. I mean, I just looked them up.

19 Q Well, do you have -- do you have those so you can show the
20 Court and us?

21 A I'm happy to -- I mean, mine, I don't know -- yeah, I don't
22 have them with me right now.

23 Q No, no, I mean, but could you -- we're going to be here --
24 today's Wednesday. Yeah, and I'd like you to stay available. I don't
25 want to call you back up. I want --

1 MR. CHRISTENSEN: I'm sorry, Your Honor, if Mr. Vannah
2 has a discovery request, he should make it to counsel, not to the person
3 on the witness stand.

4 MR. VANNAH: I guess we're not allowed to do discovery in
5 this case. I mean, all due respect, you told us --

6 THE COURT: Well, I said you weren't allowed to do
7 depositions, Mr. Vannah. I wouldn't allow depositions. I mean, it's my
8 understanding there have been some conversations between the two of
9 you and there's been some documents exchanged.

10 MR. VANNAH: Well, I'd like to see the phone records that
11 she's referring to that she used for both her and Mr. Simon. Yeah, that's
12 a simple request, so we can look at them tomorrow and then -- and
13 compare them to her work, and I may recall her as a witness, depending
14 on what I find from that, since we're now relying on documents that
15 have never been produced in this litigation. Can I have those
16 documents?

17 THE COURT: Mr. Christensen.

18 MR. CHRISTENSEN: Your Honor, do I get an opportunity to
19 respond?

20 THE COURT: Yes.

21 MR. CHRISTENSEN: Thank you, Your Honor. We've actually
22 been working very well on producing documents. For example, Mr.
23 Greene asked late last week for some documents, and we got them right
24 over to him pretty promptly. If this request had come in early after the --
25 I mean, this -- the timesheets were provided in January. Even having

1 said all of that, they waited months and months to bring this up, to raise
2 it during the third day of the hearing. I don't have a base objection to
3 produce any redacted phone records, only the calls that relate to the
4 billings here. That's not going to be done overnight.

5 THE COURT: Well, I mean, and that was my concern,
6 because my concern is we're not entitled to know everybody that Ms.
7 Ferrell is talking to back in 2017.

8 MR. VANNAH: I don't want that.

9 THE COURT: So, we're only entitled to know which calls she
10 used in regards to preparing this -- we'll refer to it as the superbill
11 because everybody knows what we're talking about -- the superbill in
12 this litigation. So, I mean, that's going to have to be redacted.

13 MR. VANNAH: I agree.

14 THE COURT: So --

15 MR. VANNAH: I don't want -- I don't want to know who
16 she's --

17 THE COURT: Well, you had also --

18 MR. VANNAH: She may have somebody we don't want to
19 see. No, I'm just teasing.

20 THE COURT: You would also agree with me, Mr. Vannah,
21 that we can't force her to do that tonight?

22 MR. VANNAH: Yeah. So, here's -- I appreciate Mr.
23 Christiansen, but --

24 THE COURT: Mr. Christensen.

25 MR. CHRISTENSEN: Christensen.

1 THE COURT: It's okay.

2 MR. VANNAH: I'm going back and forth.

3 THE COURT: It's okay.

4 MR. VANNAH: You guys should not work together.

5 MR. CHRISTIANSEN: It's our plan.

6 MR. VANNAH: It's a good plan. If I had known, remember,
7 this is the problem, and I'm not coitizing anybody for that, but if I had
8 been able to -- if I had taken her deposition she would have told me all of
9 this, and I would say, oh, I want those phone records.

10 So, I get it, but I -- that's part of the problems that occur
11 when you're doing discovery in the middle of the hearing. I'd just like to
12 see those phone records and have them redacted so we can see them
13 and be able to compare to what those phone records -- because my --
14 you know, I'd like to be able to compare them and see if those phone
15 records match up to what she's got in here. There's a lot of time for
16 telephone calls.

17 THE COURT: Well, there is a lot of time for --

18 MR. CHRISTENSEN: Your Honor, if I may? I've already said I
19 don't have an objection to producing them. You should have asked
20 earlier.

21 THE COURT: You just have an objection to her staying up all
22 night.

23 MR. CHRISTENSEN: You can't get them tomorrow. I'm not
24 doing that.

25 THE COURT: Well, and I -- we can't expect them tomorrow. I

1 mean, we just cannot.

2 MR. VANNAH: All right. I'm okay.

3 THE COURT: But, I mean, I think then in regards to timing of
4 this case, I mean, if we can get -- I assume we'll finish Ms. Ferrell today
5 because it's only 4:00 right now, so I think we're doing well on her, so if
6 we can get her off the stand today, we then still have Mr. Simon and Mr.
7 Kemp is my understanding that are coming in tomorrow.

8 MR. VANNAH: That's fine.

9 THE COURT: I'm not going to hold out a ton over -- that's not
10 going to leave us a ton of time at the end of the day. So, I mean, we're
11 going to have to come back on this case for something else later
12 anyway, so if you want the phone records, we can produce them, but
13 they're not -- that's not going to be done tomorrow.

14 MR. VANNAH: That's fine, Your Honor. And what Mr.
15 Christensen says, he could have asked earlier, I didn't --

16 MR. CHRISTENSEN: You can call me Jim.

17 MR. VANNAH: When Jim got -- you know, that's a lot easier.
18 Jim and Pete, that's easy. You can call me Bob. So, bottom line is I --

19 THE COURT: I understand the point you're making, Mr.
20 Vannah.

21 MR. VANNAH: I didn't know anything about any phone
22 records or how she did it. I didn't even know she was the one who did it.

23 THE COURT: Right. Well, we found all that out today.

24 MR. VANNAH: It's okay.

25 THE COURT: But you said it at the hearing, Judge, I want to

1 do depositions, and I told you that you and I were going to find out all
2 these stuff at the same time, and that's exactly what's happening here
3 today.

4 MR. VANNAH: And I --

5 THE COURT: So, we're going to -- Ms. Ferrell, we're going to
6 need you to produce those records, you know, timely, but not tonight.

7 THE WITNESS: Okay.

8 THE COURT: Okay. We're not going to ask you to produce
9 them tonight, so we'll address, you know, how we proceed after
10 tomorrow at the end of the day tomorrow, but there is no expectation for
11 you to have those here tomorrow. But they'll be redacted, any personal
12 information, just the records in regards to the calls you made in regards
13 to the Edgeworth's litigation.

14 THE WITNESS: Okay.

15 MR. VANNAH: And the damage records too. His phone.

16 THE COURT: Well, we have to ask Mr. Simon for those,
17 because she just testified that she got them from him, and it's my
18 understanding that it's probably just going into -- I'm using Verizon
19 because that's my carrier.

20 MR. VANNAH: Okay.

21 THE COURT: Probably you went into Verizon's website and
22 pulled up all your old billings. I'm assuming you don't have access to
23 Mr. Simon's cell phone bills, so we can request that of Mr. Simon to get
24 you those, but he's going to have to get you those because what she's
25 saying is there was no court order issued. She went on the website and

1 went through her old bills. So, Mr. Simon would need to sign in, put his
2 password in, and go get his bills.

3 MR. VANNAH: And I -- but I thought you did that?

4 THE WITNESS: I didn't get Mr. Simon's bills.

5 THE COURT: No, she said she didn't.

6 THE WITNESS: I just put them into a bill.

7 BY MR. VANNAH:

8 Q Well, I didn't mean you went and got them, but you had --
9 you had his billing records -- you had his phone bill records.

10 MR. CHRISTENSEN: Your Honor --

11 THE COURT: Yes.

12 MR. CHRISTENSEN: Can I short circuit this, please?

13 THE COURT: Yes.

14 MR. VANNAH: Yeah, sure.

15 MR. CHRISTENSEN: Okay.

16 MR. VANNAH: Anything you can do to help.

17 MR. CHRISTENSEN: My understanding is that Mr. Simon
18 has calls in paper form.

19 MR. CHRISTIANSEN: I think so.

20 MR. CHRISTENSEN: Okay. So whenever appropriate, which
21 we'll address tomorrow --

22 THE COURT: Yes.

23 MR. CHRISTENSEN: At some point in the future we'll do the
24 redaction job, we'll provide them.

25 THE COURT: Okay. And we'll get the timing and everything

1 of that, depending on how things shape up tomorrow by the time we
2 end.

3 MR. VANNAH: Which brings up an additional question, and
4 I'm almost done.

5 BY MR. VANNAH:

6 Q So, the question is, too, when you talked to Mr. Edgeworth, it
7 was usually on your cell phone?

8 A No, both. If I didn't answer my cell phone, he would call the
9 office or vice versa.

10 Q And just out of curiosity, so would your office -- did that keep
11 track of the length of the call with somebody and who you talked you?

12 A No, that's the problem because we subpoenaed the Cox --
13 Cox is our phone provider, and Cox wasn't able to give us the bills for
14 that time period.

15 Q So, what bills you're talking about, you looked at, would be
16 the cell phone records?

17 A The cell phone records, correct.

18 Q Okay.

19 A Yes, sir.

20 Q No, I just want to make sure I'm kind of narrowing it --

21 A Yeah.

22 Q Ashely, thank you very much. It's nice to see you again.

23 A Nice to see you, too.

24 THE COURT: Okay. Mr. Christensen.

25 MR. CHRISTENSEN: Thank you, Your Honor.

1 understand it, it had some additional clauses or contingencies in it; is
2 that correct?

3 A Correct. It wasn't just \$6 million, hey, the case is over. They
4 had stipulations attached to the \$6 million. They wanted a confidentiality
5 clause. They wanted a motion for good faith settlement, and there was a
6 lot to talk about in regard to the settlement itself because it wasn't a
7 done deal just because they said \$6 million. And Brian didn't want a
8 confidentiality. I mean, that was a deal breaker for him the whole way
9 through this case. And every mediation, I'm not signing a
10 confidentiality. So, when that came in with that requirement, it's kind of
11 a problem.

12 Q It's something you had to talk to him about?

13 A Yeah, he wanted to understand how it would affect him, why
14 he would want to do it, why he wouldn't want to do it, and that was just
15 one of the many things that we talked about on November 17th in my
16 office.

17 Q I mean, the \$6 million offer, that's not peanuts.
18 Confidentiality seems like a small thing.

19 A I don't know if it's a small thing or not. I know I don't like
20 confidentiality. I know that as a routine basis, I don't sign off on
21 releases with confidentiality, because with confidentiality comes a lot of
22 invitations for lawsuits. It can create exposure to clients beyond that
23 particular deal.

24 Q Did the settlement agreement with Viking have a
25 confidentiality provision in it in the -- in its final form when it was

1 signed?

2 A It did not.

3 Q Why not?

4 A Because I negotiated that out of there.

5 Q And that was at Brian's request? As well as being your
6 opinion of what should happen?

7 A Yeah.

8 Q So, we talked about the mediator proposal. Was that
9 discussed at the meeting of November 17th?

10 A Yes.

11 THE COURT: And, I'm sorry, Mr. Christensen, but I am the
12 finder of facts, so I have some questions.

13 Mr. Simon, you said that you basically negotiated the
14 removal of the confidentiality agreement you all agreed with because
15 normally you don't do it and Mr. Edgeworth didn't want it, so together
16 you guys agreed to do this. Do you remember when Viking agreed to
17 remove that?

18 THE WITNESS: I do not.

19 THE COURT: Okay.

20 THE WITNESS: But I think it was prior to the final release, so
21 I think it would have been --

22 THE COURT: Was it prior to you going on vacation?

23 THE WITNESS: It would not have been prior. It probably
24 would have been right when I got back.

25 THE COURT: Okay.

1 BY MR. CHRISTENSEN:

2 Q And your vacation was right over Thanksgiving?

3 A Correct.

4 Q Okay.

5 A So, technically, I was back in the office on that Monday.

6 THE COURT: Which is the 27th? Monday is -- of November?

7 THE WITNESS: Yeah.

8 THE COURT: Yeah, Thanksgiving would have been the 23rd,
9 so that following Monday is the 27th.

10 THE WITNESS: Okay. So, when I got back from that,
11 obviously I went -- hard to work on all aspects of the Edgeworth case. I
12 was, you know, negotiating that out, and then obviously preparing my
13 letter and the proposed retainer that I sent to them attached to the letter.

14 THE COURT: Okay. But at this point, you have not had any
15 contact with the Edgeworths since the 17th?

16 THE WITNESS: I never -- no, I think -- I've had some phone
17 call -- I had some -- I had this meeting and I had a few phone calls after
18 this meeting, and then I tried to iron this out a few times over my
19 vacation with him.

20 I think the last full communication ever with -- verbally with
21 either one of them was the 25th when I was boarding a plane, because I
22 never had a lot of time to be available because I was always -- you know,
23 if I was on a plane for five hours, I'm unavailable.

24 So, I tried to get a hold of him, you know, when I could, and I
25 think the last time was when I was boarding the plane to come home.

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MR. VANNAH: Thank you, Your Honor.

THE COURT: Thank you.

[Proceedings concluded at 4:29 p.m.]

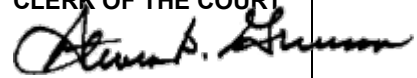
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

A handwritten signature in cursive script that reads "Jessica B. Cahill". The signature is written in dark ink and is positioned above a horizontal line.

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT E

EXCERPTS FROM 8/30/18 HEARING



1 RTRAN

2
3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

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 again addressed to the same parties, re bate 4553, and this was a letter
2 addressing discovery and some other issues?

3 A Yes.

4 Q Can you sum up that letter and --

5 A This letter basically confirms that Mr. Parker and myself, ever
6 since his appearance, have been talking about this case and how we're
7 going to proceed with him and his client, Lange Plumbing. From day
8 one of his coming into the case, he wanted to extend the trial, continue
9 the trial, extend discovery, so he could get (a) caught up. He's made that
10 argument and, you know, representation to the Court on a few
11 appearances.

12 And I've known Teddy for 20 plus years. I've worked with him on
13 many cases. We have mutual respect for each other. And as far as us
14 reopening discovery, now that we were finalizing the Viking settlement,
15 that's what we were going to do. And it only benefitted my claim and
16 Mr. Edgeworth's claim against Lange Plumbing if we decided to pursue
17 it.

18 Q Now, even though in your mind you'd been fired, that puts
19 you in a tough position with the client, correct?

20 A Yes.

21 Q You can't do anything to torpedo the settlement, for
22 example?

23 A Obviously.

24 Q I mean you're going to have to carry on to a certain extent,
25 correct?

1 A Correct.

2 Q Okay. There was a Settlement Agreement between
3 Edgeworth Family Trust, American Grating, LLC, and Viking?

4 A Yes.

5 Q That's Office Exhibit Number 5. This is the lead page, which
6 is bated -- I believe the Bate is 36; do you see that?

7 A Yes.

8 Q Now, on page 4 of the release, which is bates number 39 of
9 Exhibit 5, there's a paragraph E. Obviously, that paragraph mentions
10 Vannah and Vannah as attorneys for the Edgeworth's; fair to say?

11 A Yes. Can you show me the date of this release? I think it's
12 December 1st, but I just want to confirm.

13 Q On page 42 of Exhibit 5 -- I'm sorry, bated 42 of Exhibit 5, I
14 can show you the dates that both Brian and Angela signed the release,
15 December 1 of 2017; is that correct?

16 A Yes.

17 Q So after that -- and that's after the date you felt -- after the
18 date that you felt you had been fired, correct?

19 A Yeah. So, if I can just explain briefly. I get back on 9-20 -- or
20 11-27. I am basically negotiating, not torpedoing any settlement, not
21 making any threats. I'm basically getting this release where they omitted
22 the confidentiality clause and preserved the Lange claim, and I get the
23 Edgeworths, which is a very uncommon term, as a mutual release
24 because this case was so contentious, all right?

25 And Mr. Edgeworth was I'm going to use the word scared,

1 nervous, you know, whatever you want to use, he was very nervous that
2 Viking was ultimately going to come after him if they had some type of
3 opportunity. So that's why the confidentiality clause was not a good
4 idea, and we wanted to preserve the Lange claim, as well, and I got a
5 mutual release, I think, for them, on or about 11-27.

6 THE COURT: And you got the mutual release on 11-27?

7 THE WITNESS: Right in that range, yeah. It was -- it was
8 before I got the Letter of Direction, and I was out of the case.

9 BY MR. CHRISTENSEN:

10 Q Did Mr. -- a Viking sprinkler flooded Mr. Edgeworth's house
11 that he was building as an investment, and he thought Viking was going
12 to sue him?

13 A If they had -- if they had some type of basis, they probably
14 would have.

15 Q Okay. Now, you did reach out to Mr. Edgeworth on
16 December 5?

17 THE COURT: Okay, and I'm sorry, Mr. Christensen, before
18 you move on, on December 1, when that Settlement Agreement is
19 signed, the one that's Exhibit 5, how did you -- when's the first time you
20 saw that document?

21 THE WITNESS: That was a prior one that was proposed.

22 THE COURT: That had the confidentiality and all that?

23 THE WITNESS: Yeah, it had all of that.

24 THE COURT: Okay.

25 THE WITNESS: And so, you know, the Edgeworth's were

1 pressing me, right. There's an email from -- while Brian's in -- well,
2 Brian's in China, unavailable, no phone calls, no emails with me. He now
3 has Angela stepping up, typing all these emails, saying hey, where's the
4 Viking Settlement Release, where is it, where is it, where is it, get it to us.
5 And I just got back in town from a vacation over Thanksgiving.

6 So right when I get back there was probably the, you know,
7 proposed release. And so, I went over to the office with Mr. Henriod,
8 who was Viking counsel, and I have a great relationship with him, and
9 we basically just hammered out the terms of the release right there. And
10 then I was done, I was out of it.

11 THE COURT: Okay. But you hammered out the terms of the
12 release of that final agreement?

13 THE WITNESS: Before I was fired, yeah.

14 THE COURT: Okay. So, this is before 11-30?

15 THE WITNESS: Yes.

16 THE COURT: And then were you present when the
17 Edgeworth's signed that document?

18 THE WITNESS: Nope.

19 THE COURT: Okay. So, when did you see the signed copy?

20 THE WITNESS: When Mr. Vannah's office delivered it to me
21 to then forward it to Viking counsel.

22 THE COURT: But you received it from Vannah's office?

23 THE WITNESS: Correct.

24 THE COURT: Okay.

25 THE WITNESS: And just one other note. I didn't explain any

1 of the terms of the Viking release to the Edgeworth's because they
2 weren't talking to me anymore, and Mr. Vannah was their counsel.

3 THE COURT: Okay. So how did they get that document to
4 sign?

5 THE WITNESS: I had forward it to him.

6 THE COURT: Okay. So, you forwarded it to the
7 Edgeworth's?

8 THE WITNESS: No. I forwarded it to Mr. Vannah's office.

9 THE COURT: You forwarded that document to Vannah after
10 you got it from Viking's lawyers?

11 THE WITNESS: Yeah.

12 THE COURT: You forward it to Vannah. And then the next
13 time you saw it, it had the Edgeworth's signature on it being hand-
14 delivered to you to go back to Lange?

15 THE WITNESS: Correct.

16 THE COURT: Okay.

17 BY MR. CHRISTENSEN:

18 Q And just so that I understand this, a lot of times when you
19 were negotiating a release, you sent back proposed versions all the time
20 on email and people could track changes and all that stuff on it. What I
21 seemed to hear you say is that you actually physically went to Mr.
22 Henriod's office, Joel's office, sat down with them and went through it
23 right there?

24 A Correct.

25 Q Okay. And as a result of that meeting, that's what resulted in

1 what appears to be this document?

2 A Yes.

3 Q But someone put in paragraph E, right?

4 A Yep.

5 Q Okay. Later on --

6 THE COURT: So, paragraph E wasn't in there when you got
7 it?

8 THE WITNESS: What's that?

9 THE COURT: Paragraph E was not in the document that you
10 forwarded to the Edgeworth's?

11 THE WITNESS: That I don't know if E was in there or not.

12 THE COURT: Okay.

13 THE WITNESS: But I don't know if E was in there. All I know
14 is I hammered out some of the major terms, which were the mutual
15 release, if that's in that document, confidentiality, and preserving the
16 Lange claim; because those were some issues of contention.

17 BY MR. CHRISTENSEN:

18 Q And whenever section E was put in, that was accurate
19 because you didn't get the -- I mean normally you sit down with a client
20 and you're going over the release kind of paragraph by paragraph or
21 section by section, correct?

22 A Yeah.

23 Q And you didn't have that opportunity?

24 A No. And I didn't even know of Vannah's involvement at that
25 time, so, you know, paragraph E must of potentially come later. I don't

1 know the exact timing of all E, but it was -- you know, it was at the point
2 in time where Vannah was obviously involved because he was known to
3 the Defendants. And I wasn't at that point, you know, involved in the
4 case where I was even able to explain the release.

5 Q In fact, even in this courtroom when the Lange release was
6 presented, you declined to sign it?

7 A Correct. I mean I can't sign off on a release, I can't have my
8 name in a release if I'm not the one advising the client about the release.
9 So, at some point in time, whether this was the actual document that
10 was finalized with me and Mr. Henriod or just before their signing, I
11 wasn't representing them at that point in time because I didn't explain
12 the release to them.

13 Q That doesn't mean a client doesn't get the money or that the
14 settlement is blown up or anything, correct?

15 A Correct.

16 Q It just means you don't sign the release?

17 A Correct.

18 MR. CHRISTENSEN: Any other questions, Your Honor, on
19 the --

20 THE COURT: No.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 BY MR. CHRISTENSEN:

23 Q You did reach out once on -- on or about Tuesday, December
24 5 to Brian Edgeworth; is that correct?

25 A Yes.

1 A Agreed, it says that.

2 Q I said, take it, take the 25,000. So, you went back to him and
3 talked, and listen, I'm grateful for you, and you used your skills, which
4 are legendary. You've got good skills. You will use your skills, and not
5 only did you get 25 you got it up to a 100, and they had to pay back 22,
6 but they still -- now they're getting 75 instead of 25, which means you've
7 done better than what all authority you had.

8 So, basically, on that day, and that turned out to be exactly what
9 was eventually signed and settled, right?

10 A Yes.

11 Q And when we came to Court, I mean, I want to -- because Mr.
12 Christensen who maybe wasn't here that day, and I don't want to
13 impugn him, but at Court you point out, oh, I'm not, Mr. Vannah is the
14 one that's on that settlement document; he's the one that signed it, not
15 me.

16 Well, that's because, when we're standing here, and I can pull that
17 document out, you said, I don't want to sign, I don't want to sign it
18 because Mr. Vannah has talked to these people, and the judge said, Mr.
19 Vannah, do you have any trouble signing this? I'm like, I'm not even in
20 this case. Now, I have that, I could read that transcript, but if you doubt
21 me, we can --

22 A I know exactly what the transcript says.

23 Q Yeah. And I said, I'm not even in that case, but if you want
24 me to sign it, fine, I'll sign it, because I want this thing to wrap up, and
25 it's not a big deal to me, and I remember I said, it's trivial, is the words I

1 used, it's trivial, whether I sign it, or you sign it. But if you want me to
2 sign it, I'll sign it. Even though it wasn't my name on it, it was yours.

3 A What you quoted was, I don't know anything about the
4 underlying case, but I'm happy to sign it.

5 Q Okay. And that's how I ended up signing that, right?

6 A Right. Because I'm not -- I didn't feel like I was their lawyer
7 anymore.

8 Q Okay.

9 A But I'm coming to these appearances because --

10 Q Because? When did you withdraw?

11 A I've never --

12 Q When did you -- you've never withdrawn.

13 A I've never withdrawn.

14 Q If you feel like that you can't wrap -- you had this case
15 wrapped up on December 30th -- by December 1st. By December 1st
16 you had a signed agreement with Viking, and you had accepted the
17 \$100,000, you had 40, and you accept 25 and you got a 100, and that
18 turned out to be the amount. I mean, that all happened on November
19 30th, frankly, right here.

20 MR. CHRISTENSEN: Objection. Foundation and compound.

21 THE WITNESS: The Viking settlement was --

22 THE COURT: Hold on just one second --

23 THE WITNESS: Sorry.

24 THE COURT: -- Mr. Simon. Mr. Vannah?

25 MR. VANNAH: Yes.

1 THE COURT: What is your response to the objection?

2 MR. VANNAH: Well, it's not compound. And I don't know
3 what lack of foundation we're talking about. I mean, he's the person that
4 did it. I'm just asking --

5 MR. CHRISTENSEN: May I respond, Your Honor?

6 MR. VANNAH: -- did this happen that way?

7 THE COURT: Mr. Christensen?

8 MR. CHRISTENSEN: It's compound because of all the
9 information in there. There's two or three different questions, I actually
10 lost track. There's a lack of foundation because although Mr. Vannah
11 keeps on saying you accepted. There's no evidence that backs that up.

12 THE COURT: Okay.

13 BY MR. VANNAH:

14 Q Well, you were told to accept it.

15 THE COURT: Well, hold on --

16 BY MR. VANNAH:

17 Q You were --

18 THE COURT: -- Mr. Vannah, I haven't ruled yet.

19 MR. VANNAH: Oh, I'm sorry.

20 THE COURT: I'm still here.

21 MR. VANNAH: I was just going to try to make it easier.

22 THE COURT: Well, Mr. Vannah, re-ask the question. I mean,
23 is the question, did Mr. Simon wrap the Lange and the Viking
24 settlements on November 30th?

25 MR. VANNAH: He wrapped up -- he did.

1 THE COURT: But, I mean, is that the question?

2 MR. VANNAH: Yeah.

3 THE COURT: Okay. Mr. Simon, can you answer that
4 question?

5 THE WITNESS: Yeah. The Viking settlement was December
6 1st, and your Lange settlement was December 7th.

7 BY MR. VANNAH:

8 Q That's when you signed, the documents were signed for
9 Lange.

10 A Right. That's when the settlement was done. I'm
11 communicating to you this better offer that you're going to go take to the
12 clients, which led to a discussion for a consent to sell on December 7th.

13 Q I didn't take it to the clients, because it was more than the
14 authority I had. It said, oh, if we have more authority do it.

15 A Well, the consent to settle that is from -- drafted by your
16 office has both of their signatures saying that you advised them.

17 Q I did.

18 A About the 100,000?

19 Q I did that too. But I already had authority at 25.

20 A Oh, okay, well, I just heard you say that you --

21 THE COURT: Okay, you guys. I don't really know what's
22 happening here, but there's not any questions being asked. You two are
23 having some sort of conversation.

24 THE WITNESS: Fair enough.

25 MR. VANNAH: I know.

1 THE COURT: Can we get back to the question section.

2 BY MR. VANNAH:

3 Q November 30th, I told you. Clients have authorized a
4 settlement for \$25,000 with Lange.

5 A That's what the email says, yes.

6 Q Go do it. That's what it's --

7 A Yes.

8 Q -- saying, go take it?

9 A Right.

10 Q They had authority at 25, so when he came back and said, I'll
11 pay you a 100, even though you got to pay 22 back, that's certainly better
12 than 25, right?

13 A Right.

14 Q I mean, haven't you ever had authority from a client, where
15 the client says, I'll take a million dollars, and you came back, and you
16 said, guess what, I got you a million-one, did you think you had to go
17 back and talk to him about that?

18 A This particular deal, yes.

19 Q All right.

20 A Because Teddy Parker was requiring 22 be paid back to
21 Lange Fleming, who that man over there despised at the time.

22 Q All right. In any event the Lange Plumbing settlement
23 documents were all signed by December 7th, with exactly what we
24 talked about, the 100,000 --

25 A Yes.

1 Q -- minus the 22?

2 A Agreed.

3 Q And got paid?

4 A Agreed.

5 Q Okay. And the rule is if you -- anyway, you didn't withdraw
6 from the case, you're still attorney of record. I am not attorney of record,
7 am I?

8 A No. You never provided a substitution attorney, correct?

9 Q I didn't sub --

10 A And you didn't associate-in either?

11 Q I didn't substitute-in, I didn't associate-in, and I even -- when I
12 came to Court I clearly said I can show you that, to the Judge. I don't --
13 I'm not here representing them on this case as Mr. Simon, he's attorney
14 of record. Do you want me to sign a document? I'll sign anything you
15 want to get the case to go down, but at no time did you ever withdraw
16 from the case or become not the attorney of record, correct?

17 A Correct.

18 Q Okay.

19 MR. VANNAH: Let me see if there's anything else.

20 [Counsel confer]

21 MR. VANNAH: One second, Your Honor, if you don't mind?

22 THE COURT: No problem.

23 MR. VANNAH: I don't have any further questions. Thank
24 you.

25 THE COURT: Okay. Mr. Christensen, do you have any

1 redirect?

2 MR. CHRISTENSEN: I do, Your Honor.

3 THE COURT: Do we need to get Mr. Kemp on now, or -- Mr.
4 Kemp do you --

5 MR. KEMP: I'm here all day, Your Honor

6 THE COURT: Okay. Sorry, I didn't if you have another
7 scheduling issue and you had to leave or --

8 MR. KEMP: Thank you, Your Honor

9 THE COURT: Okay. I just saw him here. So, I didn't know if
10 you guys told him to be here at a certain time.

11 MR. CHRISTENSEN: We did. Mr. Vannah was kind enough
12 to let him sit in here, as opposed lonely out in the hallway.

13 [Pause]

14 REDIRECT EXAMINATION

15 BY MR. CHRISTENSEN:

16 Q I'd like to follow-up on the last line of questioning, by Mr.
17 Vannah, about the timing of the Lange settlement.

18 A Okay.

19 Q I'm not going to put up that Google email again, Edgeworth
20 Exhibit 12, but I do want to put up Office Exhibit 46. This is has been
21 seen before. On December 7th was there a conference call between
22 yourself and Mr. Vannah? I'm not sure if Mr. Greene was on the phone; I
23 know I was by that point?

24 A Yes.

25 Q During that conversation was there some discussion of the

1 potential for the attorney fee claim against Lange, based upon a breach
2 of their contract?

3 A It was very limited, but there was a little bit of it.

4 Q Okay. And later on, the consent to settle came in on
5 December 7th, and expressly stated, or directed you to go on out and
6 accept that 100,000 from Lange?

7 A Correct.

8 Q And that was against your advice?

9 A It was against my advice, that's not what I advised, though.

10 Q What was your advice?

11 A My advice was that that was a very valuable claim,
12 depending on whatever the total attorney's fees and costs would be in
13 the case, and that's a valid, viable claim that could have been pursued in
14 a separate proceeding.

15 Q There's been an issue raised, time and time again, where you
16 have to disclose all these bills. And setting Mr. Parker's agreement to
17 extend discovery, that wouldn't necessarily get rid of that argument. Did
18 you have another way to look at that claim?

19 A Yeah. This is why nobody is understanding this claim. All
20 right. There's a contract between the Edgeworths and Lange Plumbing.
21 If they put in a defective product in the house, and it's within the scope
22 of the work, which it was, and it's defective, and he has to go out and
23 enforce that warranty to get paid, because they won't step up and do it,
24 initially, like they didn't, anything that he incurs as far as attorney's fees
25 and costs under Section 18, he can go recover that for.

1 So technically, I could have dismissed all of the claims against
2 Lange, without prejudice, finished up the Viking claim, and refiled that
3 claim, because I had six years to do it, and I could then say, this is all the
4 attorney's fees that Edgeworths incurred, and paid to enforce your
5 warranty against the product manufacturer, and then just brought a
6 straight breach of contract they need. Because they didn't enforce the
7 warranty they get repaid all the attorney's fees and costs.

8 So as far as this silliness about you had to produce everything in
9 discovery, otherwise it's going to be barred, it's just simply not the case,
10 and that's not how it would go; there were many different ways to do it.
11 Of course, we were going to keep them in the case and try, because
12 you're already a year down the line, right?

13 So, when you got trial dates getting bumped out that would have
14 been the quickest way, because Mr. Parker was going to reopen
15 discovery. We were going supplement whatever they ultimately paid,
16 and then you go to trial and have a jury decide if they breach that
17 provision, and what they're entitled to. It seemed like a pretty simple
18 straightforward case to me.

19 Q There was some back and forth about reasonableness of
20 insured conduct?

21 A Yeah.

22 Q When did you take the depositions of the Lange employees?

23 A I took those in April.

24 Q And what did they say? They admitted to the breach of
25 contract. They admitted to the fact that there was a defective product,

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MR. VANNAH: Thank you.
THE COURT: No problem.
MR. VANNAH: That's been great.

[Proceedings adjourned at 4:16 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT F

EXCERPTS FROM EDGEWORTHS' 5/13/21
MOTION FOR ORDER RELEASING CLIENT
FUNDS AND REQUIRING THE PRODUCTION OF
COMPLETE CLIENT FILE

1 Because the file was still not complete, Edgeworths' counsel raised the
2 deficiencies in a telephone call to Simon's counsel, James Christensen. Solis-
3 Rainey Decl. ¶ 9. Mr. Christensen asked that a list of items identified as
4 missing be provided so he could discuss it with Mr. Simon. *Id.* As he
5 requested, a letter outlining the deficiencies noted thus far was sent to Mr.
6 Christensen on May 4, 2021. Ex. I. Among the deficiencies noted in the
7 allegedly "complete" file produced in 2020 was email produced between
8 Simon and opposing counsel or other third parties that had been stripped of
9 the referenced attachments. The file also did not include correspondence,
10 including email, with third parties regarding the settlement of the Viking
11 and Lange Plumbing claims. Also missing were earlier drafts of the
12 settlement agreements with Viking and Lange, complete communications to
13 and from the experts, including expert reports, if any, as well as research
14 memos (and much of the research) prepared on behalf of the Edgeworths.
15 *Id.*

16 In response to the letter he requested, Mr. Christensen resurrected the
17 same excuses raised by Simon's other counsel in 2020 for not producing the
18 file. Ex. J. These included the claimed retaining lien on the file and alleged
19 confidentiality issues for which he provided no substantiation, both excuses
20 raised and presumably resolved when Simon tendered the allegedly
21 complete, but in fact incomplete, file in 2020. Nevada law requires Mr.
22 Simon, a terminated attorney, to turn over the *complete* client file. His prior
23 productions of incomplete files suggest that the excuses offered for failure to
24 produce his complete file show gamesmanship to frustrate the Edgeworths
25 that is indicated by the folder Simon named "Finger for Edgeworth" in the
26 incomplete file he provided in 2020. Ex. K. The record also demonstrates
27 that when seeking to substantiate his "super bill," Simon and his office spent
28 extensive time going through what his associate described as a "huge" client

1 IV. CONCLUSION

2 For the foregoing reasons, the Edgeworths respectfully ask that the
3 Court issue an order requiring Simon to sign off to transfer the withheld
4 settlement trust funds into the Morris Law Group Trust Account, and
5 thereafter authorize Morris Law Group to hold \$537,502.50 in the Trust
6 Account to disburse as set forth below, and to release the remainder of the
7 settlement funds to the Edgeworths:

8 (1) \$284,982.50 to Simon as fees for the period between September 19
9 and November 29, 2017;

10 (2) \$52,520 to Simon for attorney's fees (\$50,000) and costs (\$2,520)
11 awarded under NRS 18.010(2)(b);

12 (3) At least \$200,000 to be maintained in Trust pending a final
13 disposition on the amount Simon is due under *quantum meruit*.

14 The Edgeworths further request pursuant to NRS 7.055, that the Court
15 order Simon to turn over their complete client file to them; understanding
16 they will remain bound by the confidentiality order for the duration stated
17 therein.

18 MORRIS LAW GROUP

19 By: /s/ STEVE MORRIS

20 Steve Morris, Bar No. 1543
21 Rosa Solis-Rainey, Bar No. 7921
22 801 S. Rancho Dr., Ste. B4
Las Vegas, Nevada 89106

23 Attorneys for Defendants
24 Edgeworth Family Trust and
25 American Grating, LLC
26
27
28

EXHIBIT I

May 4, 2021 Letter from Rosa Solis-Rainey to
James R. Christensen regarding Production of
Complete Client File

MORRIS LAW GROUP
ATTORNEYS AT LAW

801 S. RANCHO DR., STE. B4
LAS VEGAS, NV 89106
TELEPHONE: 702/474-9400
FACSIMILE: 702/474-9422
WEBSITE: WWW.MORRISLAWGROUP.COM

May 4, 2021

VIA EMAIL: jim@jchristensenlaw.com

James R. Christensen
601 S. 6th Street
Las Vegas, NV 89101

Re: *Eighth Judicial District Court Case No. A-16-738444-C*

Dear Jim:

As discussed in our call, please consider this formal demand, pursuant to NRS 7.055, that your client provide mine with the complete client file in the above-referenced case. I understand Mr. Simon (or someone on his behalf) previously provided portions of the file to Mr. Edgeworth, however, the file provided is incomplete.

Among the items missing are all attachments to emails included in the production, all correspondence, including email, with third-parties regarding the settlement of the Viking and Lange Plumbing claims, other drafts of the settlement agreements, communications regarding experts, including the expert reports themselves, all research conducted and/or research memos prepared on behalf of and paid by my clients.

NRS 7.055 is unambiguous that an attorney must, "upon demand and payment of the fee due from the client, deliver to the client all papers, documents, pleadings, and items of tangible personal property which belong to *or were prepared for that client*."

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Rosa Solis-Rainey

EXHIBIT G

EXCERPTS FROM EDGEWORTHS' 5/21/21 REPLY
IN SUPPORT OF MOTION FOR ORDER
RELEASING CLIENT FUNDS AND REQUIRING
THE PRODUCTION OF COMPLETE CLIENT FILE



RIS
MORRIS LAW GROUP
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Email: rsr@morrislawgroup.com

Attorneys for Defendant
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

LANGE PLUMBING, LLC ET AL.,

Defendants.

) Case No: A-16-738444-C
) Dept. No: X

) HEARING DATE: 5/27/21
) HEARING TIME: 9:30 AM

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

) Case No: A-18-767242-C
) Dept. No. X

) EDGEWORTHS' REPLY IN
) SUPPORT OF MOTION
) FOR ORDER RELEASING
) CLIENT FUNDS AND
) REQUIRING THE
) PRODUCTION OF
) COMPLETE CLIENT FILE

) HEARING REQUESTED

1 not closed. Ex. 2; 5/27/20 12:57 p.m. Email from P. Christiansen to P. Lee.
2 Now, in this Opposition he nonsensically suggests that portions of the file
3 could never be turned over because "case against Viking and Lange is over,
4 *thus there can be no disclosure . . .*" Opp'n at 6:11-12. More importantly, this
5 shifting line of argument is an excuse for acting irresponsibly, as is evident
6 from the fact the Edgeworths confirmed to Simon's counsel that they were
7 not looking for confidential Viking or Lange Plumbing data. Motion Ex. O,
8 at 1 ("the Edgeworths are not seeking tax returns or proprietary company
9 information from Viking or Lange, though I do believe it should be
10 preserved"). The NDA and the concept of confidentiality simply do not
11 provide immunity for Simon to avoid the full production required by NRS
12 7.055.

13 **3. The Alleged Burden of Production is of Simon's Own Making**
14 **and Does Not Excuse his Legal Duty to Produce the File.**

15 The "burden" excuse offered by Simon should be rejected. Simon
16 claimed that he had already produced all email in the case for which his
17 firm billed. Mot. to Release Funds/File at 5; Ex. O to same at 197. And as
18 pointed out in the exchanges with his counsel, producing complete emails is
19 much easier than attempting to de-duplicate them manually. Since Simon
20 has already gone through all the emails, all he has to do is place the
21 remaining .pst files onto a hard drive. NRS 7.055 does not allow a lawyer to
22 choose which portions of the file he must produce merely because the file
23 was maintained in a way that now makes it inconvenient for the lawyer to
24 produce it.

25 **4. Simon's Other Excuses are also Wrong**

26 As to his other excuses, Simon is flat wrong. Simon says that beyond
27 the NDA issue, the Edgeworths "have not disclosed with any specificity how
28 they believe the file is not complete." Opp'n at 13; *but see*, Ex. I to Mot. to

1 the files were disorganized and often indecipherable, as the Edgeworths
2 point out in the Motion.

3 **C. CONCLUSION**

4 Simon acknowledges that the Special Trust Account balance is well in
5 excess of his exorbitant lien. That balance cannot be reasonably maintained
6 today in view of the law of the case. He is not entitled to be over-secured.
7 For the reasons set forth in the Motion and in this Reply, the Edgeworths
8 respectfully ask that the Court enter an order requiring the transfer of the
9 disputed settlement funds to the Morris Law Group trust account, to be held
10 pending further order of the Court concerning distribution. Simon has not
11 presented any credible reason as to why he should be permitted to hold
12 funds that are in excess of what is necessary to secure his lien until the Court
13 rules on the amount of the lien, as the Supreme Court has mandated.

14 The file requested by his former clients, who have been asking for the
15 complete file since November 2017, should be produced now.

16
17 MORRIS LAW GROUP

18 By: /s/ STEVE MORRIS
19 Steve Morris, Bar No. 1543
20 Rosa Solis-Rainey, Bar No. 7921
21 801 S. Rancho Dr., Ste. B4
22 Las Vegas, Nevada 89106

23 Attorneys for Defendants
24 Edgeworth Family Trust and
25 American Grating, LLC
26
27
28

EXHIBIT H

EXCERPTS FROM SIMON'S 3/11/22 ANSWER TO
WRIT PETITION RE CASE FILE

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 JONES,
DISTRICT JUDGE, DEPT. 10,

Respondents,

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,

Real Parties in Interest.

Supreme Court Case No. 84159
Electronically Filed
Mar 11 2022 02:40 p.m.
Elizabeth A. Brown
(District Court A-16-73426 Supreme Court
Consolidated with
A-16-738444-C)

**ANSWER OF RESPONDENTS TO WRIT OF MANDAMUS TO RELEASE
CLIENT FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO
RELEASE THE COMPLETE CLIENT FILE**

JAMES R. CHRISTENSEN, ESQ.

Nevada Bar No. 003861

601 S. 6th Street

Las Vegas, NV 89101

(702) 272-0406

(702) 272-0415 fax

jim@jchristensenlaw.com

Attorney for Law Office of Daniel S. Simon and Daniel S. Simon

On September 9, 2021, the district court denied the motion for reconsideration. (IV-P000706-714.) In sum, the district court found that the Edgeworths had failed to make a showing that reconsideration was warranted. (*Ibid.*)

On December 13, 2021, this Court dismissed the Edgeworths' attempt to appeal the district court's case file order. (IV-P000715-719.)

On February 1, 2022, the Edgeworths filed a petition for writ of mandamus challenging the district court's case file order. In the petition the Edgeworths tried a new argument for re-production of the case file by claiming without citation or foundation that Simon did not turn over:

[O]r even the fully executed settlement agreements that resulted in the settlement funds on which Simon based his charging lien.

(Petition at 13-14.) If this is their smoking gun, it is not pointed at Simon.

The fully executed settlement agreements were signed *after Simon was fired by the Edgeworths* and Vannah had been hired. (I-P000048-49.) On February 20, 2018, at the status check hearing for settlement documents and stipulation and order for good faith settlement, at which both Simon and Vannah appeared, Vannah did not raise a missing fully executed settlement agreement as an issue, which might imply Vannah has a copy. (I-AA00002-11.) Lastly, the Edgeworths have obtained attorney client

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 11th day of March, 2022.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.

Nevada Bar No. 003861

601 S. 6th Street

Las Vegas, NV 89101

Attorney for Petitioner

EXHIBIT I

EXCERPTS FROM EDGEWORTHS' 4/8/22 REPLY
ISO WRIT PETITION RE CASE FILE

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Apr 08 2022 04:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

PETITIONERS,

VS.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE TIERRA JONES,
DISTRICT JUDGE, DEPT. 10,

Respondents,

DANIEL S. SIMON; THE LAW OFFICE
OF DANIEL S. SIMON,

Real Parties in Interest.

Case Number: 84159

Dist. Ct. Case No. A-18-767242-C
Consolidated with A-16-738444-C

REPLY IN SUPPORT OF
PETITION FOR WRIT OF
MANDAMUS TO RELEASE
CLIENT FUNDS IN EXCESS OF
ADJUDICATED LIEN AMOUNT
AND TO RELEASE THE
COMPLETE CLIENT FILE

Steve Morris, Bar No. 1543
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V. THE DISTRICT COURT SHOULD HAVE ORDERED SIMON TO
RELEASE THE COMPLETE CLIENT FILE

A. The Edgeworths Are Entitled to Their Complete Client File

Simon's contention that NRS 7.055 does not apply because he has not been paid is a nonstarter for the reasons and authority presented at page 27 of the instant petition, which Simon's answer does not address.

Simon has repeatedly and falsely reported to the district court that the Edgeworths have received their file. *See, e.g.*, P000124C (the implication being that he turned over the *entire file* because the Edgeworths have acknowledged they received portions of the file in 2019 and 2020). He now switches tunes and admits that not all of the file has been produced, pointing to the protective order as an excuse and claiming he withheld only confidential information that he alleges is subject to the stipulated protective order. *See, e.g.*, Ans. at 11; *see also* P000309 (testifying unequivocally during the 2018 proceedings that all email had been produced when, at that time, not even the partial file with some of the email had been produced). Yet Simon avoids offering any response to justify withholding emails or other communications memorializing the settlement negotiations, including emails transmitting settlement drafts and the fully executed settlement agreement, when these documents cannot possibly be covered by the

protective order. *Compare* P000167 (telling the Edgeworths on 11/27/17 that the settlement documents had not been received and probably had not been started due to the holiday) *with* P000206-07 (testifying about terms in the agreement (that he was telling his clients he had not received) and confirming that he received the mutual release on 11/27/17).¹⁴

In his turgid answer, Simon rehashes what the Edgeworths acknowledge he produced; he dismisses or fails to address the lack of file organization and gaps in his production. He criticizes the Edgeworths for not addressing the terms of the stipulated protective order, yet he fails to address why the protective order prevents *any party to it* from having access to the documents in their own client file. The protective order was just a tool to facilitate discovery; it entitled parties to designate as confidential discovery that they reasonably believed contained "confidential, proprietary or trade secret information." *See* P000339:5. The Edgeworths are "parties" under the protective order and have a right to their file, and while the protective order protects some documents marked "confidential" from dissemination to *third parties*, the stipulated protective order *does not limit*

¹⁴ These two representations cannot be reconciled; Simon was either untruthful with the client or with the court. If his testimony to the court is the truthful statement, then it also confirms that the partial file he produced was stripped of earlier settlement drafts.

a party's access to its own file nor does it regulate communications between the Edgeworths and their former counsel. See P000338 – 50.

Simon's ad hominem attacks notwithstanding, the Edgeworths reviewed the external drive he provided and identified deficiencies in the file to him through examples. P000251. As examples of the file's incompleteness, the Edgeworths advised Simon's counsel that emails were missing their referenced attachments, that there was missing correspondence with third parties regarding the settlement of the Viking and Lange Plumbing claims, and that complete communications to and from experts, including reports prepared on behalf of the Edgeworths, had been omitted. Simon's own admissions of what the file should contain confirm that what the Edgeworths were given is incomplete. In his answer, Simon admits there were at least 89 exhibits presented to the Court at one point but the "Exhibit" folder produced to the Edgeworths contains only 18 exhibits. The folder titled "Experts" contains the e-served designation of the Edgeworths' experts but no expert reports, no retention letters, no invoices, and no communications with the experts.¹⁵

¹⁵ This information is of interest to the Edgeworths for the reasons set forth in note 3 at 13 of their petition.

The protective order is a false issue. Simon knows that the documents the Edgeworths are most interested in have nothing to do with the protective order because they are *not* confidential documents that were exchanged in discovery. They are largely documents created or received by Simon discussing settlement, exchanging settlement drafts, or the retention and reports of the Edgeworths' own experts.

Tellingly, although Simon claims to be concerned for the confidentiality of the underlying parties in the concluded litigation as an excuse to use the protective order as both a sword and a shield, he had no qualms about providing the Edgeworths documents stamped "confidential" referencing information concerning Viking and/or Lange. *See* P000703 – 5 (examples of documents Simon included in the partial file containing confidential information, the substance of which was redacted by the Edgeworths before submitting the exhibit to the court). Even if the Court determined documents stamped confidential by the Viking and Lange Plumbing parties in the underlying litigation should be kept from the Edgeworths (who were also parties), those documents should have been segregated, logged, and deposited with the district court for review.

Simon also cannot reasonably complain that more examples were provided only in the Edgeworths' reply in support of reconsideration

when the specific examples of disorganization and missing exhibits were offered by the Edgeworths in response to the declaration Simon submitted in his opposition denying disorganization or any gaps in the production. P000487 – 89. In other words, Simon invited additional proof. He presumably kept the partial file he produced to the Edgeworths on a hard drive. Instead of irresponsibly making bogus denials and ignoring the identified problems with his production, Simon easily could have examined the examples of deficiencies provided to him by the Edgeworths after review of the partial file he produced. If he had done this, he would not have forced the Edgeworths to provide additional specific examples to be brought up in reply. *See* P000251 (Edgeworths' initial motion identifying nearly identical examples of what remains missing to this day, which Simon could easily have correlated to the partial file he produced that was "stripped of the referenced attachments. . . . missing correspondence, including email with third parties regarding settlement of the Viking and Lange Plumbing claims. . . . missing earlier drafts of settlement agreements . . . expert reports prepared on behalf of the Edgeworths); *see also* P000495 (describing examples of file disorganization). Simon never explained why the specific documents requested in other motion practice that cannot reasonably be said

to be covered under the protective order have been withheld.¹⁶ *See e.g.*, P000494 (referencing requests for all drafts of settlement agreements, all email by and among counsel regarding settlement discussions, emails with experts, opposing counsel, etc.).

VI. CONCLUSION

Simon's answer has not presented any legal reason why the Edgeworths' excess funds should not be immediately released and why he should not be ordered to turn over their complete client file. The Edgeworths respectfully ask that the Court grant this petition, and order the district court to: (i) vacate its June 17, 2021, order (NOE 6/18/21) declining to release

¹⁶ Although Mr. Vannah advised the Edgeworths on the Viking settlement and obtained their signatures on the settlement agreement, the signed agreement was routed to Viking through Simon at his request, *and* he did not produce the fully executed copy signed by Viking in the partial file he gave the Edgeworths. *See* P000188 (Simon email requesting that signed settlement documents be routed through his office). The missing document was not intended as a smoking gun but merely as an example of a non-confidential document that is not in the partial file Simon provided; moreover, *Simon's answer does not contest the fact it was not provided*. Simon's flip response to the missing document is that the Edgeworths could have obtained it from Viking (Ans. at 18), as he has previously taken the position that documents copied to the Edgeworths in the course of litigation, obtained from other sources, or somehow made part of the court record did need to be produced as part of his client file. This misses the point: it is unreasonable to expect that clients will maintain a complete file of litigation for which they have retained counsel to address and document. Furthermore, NRS 7.055 does not say a lawyer has to turn over only the portions of the client file that a lawyer doesn't think the client can scrounge up from other sources.

funds in excess of the lien amount; and (ii) instruct Simon to produce the complete file of his former clients.

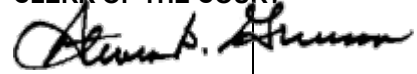
MORRIS LAW GROUP

By: /s/ STEVE MORRIS
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Attorneys for Petitioners

EXHIBIT J

EXCERPTS FROM SIMON'S 11/14/22 OPP'N TO
OSC MOTION



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jim@jchristensenlaw.com
Attorney for Daniel S. Simon

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK,
INC., dba VIKING SUPPLY NET, a
Michigan Corporation; and DOES 1
through 5 and ROE entities 6 through
10;

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

**OPPOSITION TO EDGEWORTHS'
MOTION FOR ORDER TO SHOW
CAUSE ON OST**

Hearing date: 11.15.22
Hearing time: 9:00 a.m.

1 evidence. (App., Ex. 9 at p.131-134.) The Exhibits contained email and the
2 Viking draft and final release. (See, e.g., App., Ex. 9 at p. 123-160.)

3
4 At the 2018 evidentiary hearing, Simon answered questions
5 regarding the settlements with Viking and Lange and the releases. In direct
6 contradiction of the missing “expected” information claims:

- 7
8 • Simon worked on the Viking release during an in-person
9 meeting at Joel Henriod’s office. (App., Ex. 9 at p. 126-30.)
- 10
11 • Negotiation with Lange occurred between Teddy Parker and
12 Simon on the phone or during in-person meetings. (E.g., App.,
13 Ex. 9 at p. 140-56.)
- 14
15 • After he was fired, Simon received an email from Vannah with
16 the Edgeworths signed Viking release and forwarded it to
17 Viking counsel. (E.g., App., Ex. 9 at p. 127.)
- 18
19 • Vannah agreed to sign the Lange release in open court. (App.,
20 Ex. 27 at p. 223-27.)

21
22 The declaration is not accurate, therefore, the motion for contempt
23 must be denied.

24
25 **b. The Edgeworths have Simon’s work product.**

26
27 In May of 2020, Simon provided a drive with over 300 pages of
28 research, contained in a folder entitled “Research”. (App., Ex. 2 at p. 6-
110.) Yet, on May 27, 2021, the Edgeworths told this Court that Simon did
not provide research. (App., Ex. 17 at p. 176-181.)

1 In October of 2022, Simon again confronted the Edgeworths on the
2 accuracy of claims of missing documents, in response the Edgeworths
3 shifted the missing research claim in paragraph 22 to the following:
4

5 With respect to research, Simon has not produced any portions of
6 the file to demonstrate that his office independently “researched” the
7 Viking activations.

8 In sum, the Edgeworths now claim that “research” refers to Simon
9 work product concerning analysis of Viking discovery. First, the
10 Edgeworths did not provide any showing that such information must be
11 provided to a client. *See, e.g., Ill. State Bar Ass’n Advisory Op., 144*
12 *(1988)*(and cases cited therein indicating that legal research and other
13 memorandum need not be provided).
14
15

16 Moving past the lack of legal support for the Edgeworths claim, *the*
17 *information has been provided*. For example, the chart reflecting the
18 Simon activation analysis was provided in the drive containing confidential
19 documents at LODS 1352727 – 746. The chart is confidential but will be
20 provided to the Court at the hearing of this matter.
21
22

23 **c. Simon produced expert agreements and email.**
24

25 The Edgeworths failure to review what has been provided is again
26 apparent from the inaccurate claims regarding missing expert retention
27 agreements and related email.
28

1 Simon agrees that the Edgeworths may request their case file and
2 that due to the size and scope of the file, it is entirely possible that a
3 document(s) may be misfiled or may not have been produced. Simon will
4 respond when and if such issues arise. However, it is not appropriate for
5 the Edgeworths to present added work projects or to make inaccurate
6 claims. Simon respectfully requests that the Edgeworths review what has
7 been provided before claiming that documents are missing. Also, that any
8 inquiries about case file production be made in a clear and specific
9 manner, without insult or shortened deadlines.
10
11
12

13 DATED this 14th day of November 2022.
14

15 /s/ James R. Christensen
16 JAMES CHRISTENSEN, ESQ.
17 Nevada Bar No. 003861
18 601 S. 6th Street
19 Las Vegas, NV 89101
20 (702) 272-0406
21 (702) 272-0415
22 jim@jchristensenlaw.com
23 *Attorney for Daniel S. Simon*
24
25
26
27
28

EXHIBIT K

EMAIL AND REDLINES (Versions 1, 2, and 4) OF
VIKING SETTLEMENT DRAFTS PRODUCED IN
SIMON'S 12/6/22 PRODUCTION

EXHIBIT K
APPEARS TO BE VERSION 1

Daniel Simon

From: Janelle
Sent: Tuesday, November 28, 2017 7:51 AM
To: Daniel Simon
Cc: Ashley Ferrel
Subject: FW: The Viking Corporation adv. Edgeworth Family Trust
Attachments: Edgeworth -- Settlement Agreement.docx

JANELLE WHITE

LEGAL ASSISTANT

 SIMON LAW

810 South Casino Center Blvd.

Las Vegas, NV 89101

(P) 702.364.1650

(F) 702.364.1658

JANELLE@SIMONLAWLV.COM

From: Henriod, Joel D. [mailto:JHenriod@lrrc.com]
Sent: Monday, November 27, 2017 4:48 PM
To: Lawyers <Lawyers@SIMONLAWLV.COM>
Subject: The Viking Corporation adv. Edgeworth Family Trust

Draft settlement agreement attached.

Joel D. Henriod
Las Vegas Office Managing Partner
702.474.2681 office
702.743.0212 mobile
jhenriod@lrrc.com

Lewis Roca
ROTHGERBER CHRISTIE

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth (hereinafter "PLAINTIFFS"), Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. (hereinafter "VIKING") for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

B. "VIKING" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners, employers, employees, predecessors, successors, heirs,

assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

C. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

D. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. VIKING will pay PLAINTIFFS Six Million Dollars and Zero-Cents (\$6,000,000) by December 21, 2017. The \$6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, and AMERICAN GRATING, LLC."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING entities with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to VIKING upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING entities (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the \$6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the Viking entities by Lange Plumbing, LLC.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against VIKING, by way of PLAINTIFFS Complaint and any amendments thereto.

V. RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, heirs and assigns do hereby release and forever discharge VIKING and any of VIKING's affiliates, as well as its insurers, all respective officers, employees and assigns, agents, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. It is the intention of the SETTLING PARTIES hereto that this AGREEMENT shall be effective as a bar to all claims, with respect to the INCIDENT that PLAINTIFFS may have against DEFENDANTS, their affiliates, and any other entity that was involved in the INCIDENT, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT at the time of executing this AGREEMENT.

C. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and VIKING and their related persons and entities.

D. PLAINTIFFS represent their counsel of record has explained the effect of a release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement.

PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and VIKING each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. CONFIDENTIALITY:

The amount of this Agreement shall remain confidential and the SETTLING PARTIES and their counsel (Daniel Simon) agree not to make any statement to anyone, including the press, regarding the amount of this settlement except to the extent that it may be disclosed to their respective attorneys, consultants, auditors, accountants or insurance carriers, or as any Party may hereafter be required to by law or in response to a properly issued subpoena for other court process or order, or as necessary to enforce the terms of this Agreement or in connection with the proceedings in the Action as either Party may deem appropriate.

C. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify VIKING and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

D. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

E. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

F. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

G. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

H. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel.

I. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

J. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

K. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this ____ day of _____, 2017 DATED this ____ day of _____, 2017

BRIAN EDGEWORTH as Trustee of
The Edgeworth Family Trust &
Manager of American Grating, LLC

ANGELA EDGEWORTH as Trustee of
The Edgeworth Family Trust &
Manager of American Grating, LLC

Agreeing to bind himself to the confidentiality obligation set forth in Section VIII.B..

Dated this ____ day of _____, 2017.

SIMON LAW

Daniel S. Simon, Esq.
810 South Casino Center Blvd.
Las Vegas, NV 89101
Attorney for Plaintiffs

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Management

EXHIBIT K
VIKING SETTLEMENT IDENTIFIED
AS VERSION 2

Daniel Simon

From: Henriod, Joel D. <JHenriod@lrrc.com>
Sent: Wednesday, November 29, 2017 4:23 PM
To: Daniel Simon
Subject: RE: W9 Form
Attachments: Edgeworth -- Settlement Agreement (redline v. 2).docx

Certainly. (Redline version attached.)

Joel D. Henriod
Las Vegas Office Managing Partner
702.474.2681 office
702.743.0212 mobile
jhenriod@lrrc.com

Lewis Roca

ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com

From: Daniel Simon [mailto:dan@simonlawlv.com]
Sent: Wednesday, November 29, 2017 10:29 AM
To: Henriod, Joel D.
Subject: W9 Form

My Firm name of Law Office of Daniel S. Simon should be placed on the check and in the release to avoid any delay. In order to expedite resolution and issuance of the check, attached is my W-9, which as you know, is required by the insurance company before any check can be issued. Please send the release as soon as you can so I can review with the clients tomorrow. Mr. Edgeworth was out of the Country until tomorrow anyway so this is the first time I will be able to review it with them. Thanks for your time and attention to this matter.

From: Jen
Sent: Wednesday, November 29, 2017 10:12 AM
To: Daniel Simon <dan@simonlawlv.com>
Subject: W9 Form

JENNIFER WHITE

LEGAL ASSISTANT



810 South Casino Center Blvd.

Las Vegas, NV 89101

(P) 702.364.1650

(F) 702.364.1655

JEN@SIMONLAWLV.COM

E-MAIL CONFIDENTIALITY NOTICE: The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth (hereinafter "PLAINTIFFS"), Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. (hereinafter "VIKING") for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

B. "VIKING" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners, employers, employees, predecessors, successors, heirs,

assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

C. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

D. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. VIKING will pay PLAINTIFFS Six Million Dollars and Zero-Cents (\$6,000,000) by December 21, 2017. The \$6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; and AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING entities with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to VIKING upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING entities (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the \$6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the Viking entities by Lange Plumbing, LLC.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against VIKING, by way of PLAINTIFFS Complaint and any amendments thereto.

V. RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, heirs and assigns do hereby release and forever discharge VIKING and any of VIKING's affiliates, as well as its insurers, all respective officers, employees and assigns, agents, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. It is the intention of the SETTLING PARTIES hereto that this AGREEMENT shall be effective as a bar to all claims, with respect to the INCIDENT that PLAINTIFFS may have against DEFENDANTS, their affiliates, and any other entity that was involved in the INCIDENT, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT at the time of executing this AGREEMENT.

C. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and VIKING and their related persons and entities.

D. PLAINTIFFS represent their counsel of record has explained the effect of a release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement.

PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and VIKING each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. CONFIDENTIALITY:

The amount of this Agreement shall remain confidential and the SETTLING PARTIES and their counsel (Daniel Simon) agree not to make any statement to anyone, including the press, regarding the amount of this settlement except to the extent that it may be disclosed to their respective attorneys, consultants, auditors, accountants or insurance carriers, or as any Party may hereafter be required to by law or in response to a properly issued subpoena for other court process or order, or as necessary to enforce the terms of this Agreement or in connection with the proceedings in the Action as either Party may deem appropriate.

C. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify VIKING and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

D. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

E. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

F. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

G. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

H. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel.

I. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

J. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

K. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this ____ day of _____, 2017 DATED this ____ day of _____, 2017

BRIAN EDGEWORTH as Trustee of
The Edgeworth Family Trust &
Manager of American Grating, LLC

ANGELA EDGEWORTH as Trustee of
The Edgeworth Family Trust &
Manager of American Grating, LLC

Agreeing to bind himself to the confidentiality obligation set forth in Section VIII.B..

Dated this ____ day of _____, 2017.

SIMON LAW

Daniel S. Simon, Esq.
810 South Casino Center Blvd.
Las Vegas, NV 89101
Attorney for Plaintiffs

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Management

which are absolutely privileged,

EXHIBIT K

VIKING SETTLEMENT IDENTIFIED
AS VERSION 4

Daniel Simon

From: Henriod, Joel D. <JHenriod@lrrc.com>
Sent: Thursday, November 30, 2017 3:13 PM
To: Daniel Simon
Subject: RE: W9 Form
Attachments: Edgeworth -- Settlement Agreement (v.4).pdf; Edgeworth -- Settlement Agreement (v.4).docx

Version 4.

Joel D. Henriod
Las Vegas Office Managing Partner
702.474.2681 office
702.743.0212 mobile
jhenriod@lrrc.com

Lewis Roca ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com

From: Henriod, Joel D.
Sent: Wednesday, November 29, 2017 4:23 PM
To: 'Daniel Simon'
Subject: RE: W9 Form

Certainly. (Redline version attached.)

Joel D. Henriod
Las Vegas Office Managing Partner
702.474.2681 office
702.743.0212 mobile
jhenriod@lrrc.com

Lewis Roca ROTHGERBER CHRISTIE


Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com

From: Daniel Simon [<mailto:dan@simonlawlv.com>]
Sent: Wednesday, November 29, 2017 10:29 AM
To: Henriod, Joel D.
Subject: W9 Form

My Firm name of Law Office of Daniel S. Simon should be placed on the check and in the release to avoid any delay. In order to expedite resolution and issuance of the check, attached is my W-9, which as you know, is required by the

insurance company before any check can be issued. Please send the release as soon as you can so I can review with the clients tomorrow. Mr. Edgeworth was out of the Country until tomorrow anyway so this is the first time I will be able to review it with them. Thanks for your time and attention to this matter.

From: Jen
Sent: Wednesday, November 29, 2017 10:12 AM
To: Daniel Simon <dan@simonlawlv.com>
Subject: W9 Form

JENNIFER WHITE
LEGAL ASSISTANT
 **SIMON LAW**
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.364.1680
(F) 702.364.1685
JEN@SIMONLAWLV.COM

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

C. "VIKING ENTITIES" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and VIKING GROUP, INC. (the "VIKING ENTITIES") and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners,

employers, employees, predecessors, successors, heirs, assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

D. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

E. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. The VIKING ENTITIES will pay PLAINTIFFS Six Million Dollars and Zero-Cents (\$6,000,000) within 20 days of PLAINTIFFS' execution of this AGREEMENT, assuming resolution of the condition set out in § III.D below. The \$6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING ENTITIES with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to the VIKING ENTITIES upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING ENTITIES (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the \$6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the VIKING ENTITIES by Lange Plumbing, LLC. Alternatively, this condition would be satisfied in the event that Lange Plumbing, LLC voluntarily dismisses all claims with prejudice against the VIKING ENTITIES and executes a full release of all claims, known or unknown.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY

hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against the VIKING ENTITIES, by way of PLAINTIFFS Complaint and any amendments thereto.

V. MUTUAL RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge the VIKING ENTITIES and any of its affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. Reciprocally, in consideration of the settlement payment and promises described herein, the VIKING ENTITIES, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge PLAINTIFFS and any of PLAINTIFFS' affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION. C. This AGREEMENT shall be effective as a bar to all claims, relating to or arising from the INCIDENT or the SUBJECT ACTION, which PLAINTIFFS may

have against the VIKING ENTITIES, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

C. Reciprocally, this AGREEMENT shall be effective as a bar to all claims, relating to or arising from the INCIDENT or the SUBJECT ACTION, which the VIKING ENTITIES may have against PLAINTIFFS, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, the VIKING ENTITIES and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

D. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and the VIKING ENTITIES and their related persons and entities.

E. PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and the VIKING ENTITIES each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify the VIKING ENTITIES and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

C. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

E. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

F. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES

hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

G. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel. For PLAINTIFFS, that independent attorney is Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah.

H. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

I. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

J. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

EXHIBIT L

SIMON'S 11/30/17 EMAIL REQUIRING THAT
SETTLEMENT DRAFTS BE ROUTED THROUGH
HIM

brian@pediped.com

From: Daniel Simon <dan@simonlawlv.com>
Sent: Thursday, November 30, 2017 5:31 PM
To: jgreene@vannahlaw.com
Cc: Brian Edgeworth; angela.edgeworth@pediped.com; Daniel Simon
Subject: Edgeworth -- Settlement Agreement
Attachments: Settlement Release Final.pdf

Please find attached the final settlement agreement. Please have clients sign as soon as possible to avoid any delay in processing payment. This shall also confirm that your office is advising them about the effects of the release and representing them to finalize settlement through my office.

Also, I first received a call from you this morning advising the clients wanted to sign the initial draft of the settlement agreement "as is." Since this time, I spent substantial time negotiating more beneficial terms to protect the clients. Specifically, I was able to get the Defendants to agree to omit the Confidentiality provision, provide a mutual release and allow the opportunity to avoid a good faith determination from the court if the clients resolve the Lange claims, providing Lange will dismiss its claims against Viking. Just so we are clear, your office did not ask for these substantial additional beneficial terms to protect the clients.

Additionally, this morning you asked me to approach Lange to accept the \$25,000 offer from the mediation. Since this time, I was able to secure a \$100,000 offer less all money Lange is claiming they are owed. Lange would then dismiss their Claims against Viking allowing the client to avoid the motion for determination of good faith settlement as part of the settlement. Please advise if the clients want me to move forward to finalize the settlement with Lange pursuant to these terms.

Please have the clients sign the release and return originals to my office to avoid delays in payment and finalizing this matter.

Thank You!

EXHIBIT M

EMAIL FROM SIMON TRANSMITTING VIKING
SETTLEMENT AGREEMENT SIGNED BY THE
EDGEWORTHS'

Daniel Simon

From: Daniel Simon
Sent: Friday, December 1, 2017 10:41 AM
To: Henriod, Joel D.; Polsenberg, Daniel F.
Cc: Daniel Simon
Subject: Edgeworth v. Viking, et al
Attachments: Settlement Release Executed.pdf

Please request the check forthwith. Thank you!

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

C. "VIKING ENTITIES" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and VIKING GROUP, INC. (the "VIKING ENTITIES") and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners,

employers, employees, predecessors, successors, heirs, assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

D. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

E. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. The VIKING ENTITIES will pay PLAINTIFFS Six Million Dollars and Zero-Cents (\$6,000,000) within 20 days of PLAINTIFFS' execution of this AGREEMENT, assuming resolution of the condition set out in § III.D below. The \$6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING ENTITIES with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to the VIKING ENTITIES upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING ENTITIES (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the \$6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the VIKING ENTITIES by Lange Plumbing, LLC. Alternatively, this condition would be satisfied in the event that Lange Plumbing, LLC voluntarily dismisses all claims with prejudice against the VIKING ENTITIES and executes a full release of all claims, known or unknown.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY

hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against the VIKING ENTITIES, by way of PLAINTIFFS Complaint and any amendments thereto.

V. MUTUAL RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge the VIKING ENTITIES and any of its affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. Reciprocally, in consideration of the settlement payment and promises described herein, the VIKING ENTITIES, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge PLAINTIFFS and any of PLAINTIFFS' affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION. C. This AGREEMENT shall be effective as a bar to all claims, relating to or arising from the INCIDENT or the SUBJECT ACTION, which PLAINTIFFS may

have against the VIKING ENTITIES, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

C. Reciprocally, this AGREEMENT shall be effective as a bar to all claims, relating to or arising from the INCIDENT or the SUBJECT ACTION, which the VIKING ENTITIES may have against PLAINTIFFS, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, the VIKING ENTITIES and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

D. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and the VIKING ENTITIES and their related persons and entities.

E. PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and the VIKING ENTITIES each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify the VIKING ENTITIES and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

C. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

E. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

F. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES

hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

G. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel. For PLAINTIFFS, that independent attorney is Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah.

H. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

I. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.


J. COUNTERPARTS:

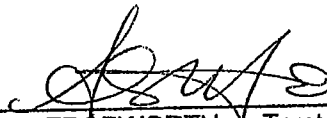
This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this 1st day of DECEMBER 2017 DATED this 1 day of December 2017


BRIAN EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC


ANGELA EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

EXHIBIT N

11/16/22 EMAIL TO J. CHRISTENSEN
REQUESTING ASSISTANCE AND 11/23/22
ACKNOWLEDGEMENT OF REQUEST

/

Rosa Solis-Rainey

From: Rosa Solis-Rainey
Sent: Wednesday, November 23, 2022 8:19 AM
To: James R. Christensen
Cc: Steve Morris
Subject: Re: Edgeworth adv. Simon - Your Offer

Thank you. I look forward to a response.

Happy holidays to all of you.

Rosa Solis -Rainey

On Nov 23, 2022, at 8:06 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Ms. Solis-Rainey,

Thank you for your inquiry. I have forwarded the inquiry to the Simon office.

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: Rosa Solis-Rainey <rsr@morrislawgroup.com>
Sent: Wednesday, November 16, 2022 1:30 PM
To: James R. Christensen <jim@jchristensenlaw.com>
Cc: Steve Morris <SM@morrislawgroup.com>
Subject: Edgeworth adv. Simon - Your Offer

Mr. Christensen –

Pursuant to your in-court offer, please identify where the release that was in Simon's office on 11/27/17 upon his return from Peru is located the in the partial file you provided, along with the location of any letter or email transmitting same. If you could also identify the location of any other drafts of the Viking or Lange settlement agreements in the file, and the corresponding transmittals for the drafts, that would be very helpful.

Sincerely,

Rosa Solis-Rainey
MORRIS LAW GROUP
801 S. Rancho Drive, Ste B4
LAS VEGAS, NEVADA 89106
(702) 474-9400 (Main)

(702) 759-8321 (Direct)
(702) 474-9422 (Fax)
rsr@morrislawgroup.com
www.morrislawgroup.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

EXHIBIT O

12/21/22 LETTER TO J. CHRISTENSEN
FOLLOWING UP ON 11/16/22 REQUEST AND
ADDING ADDITIONAL REQUESTS

MORRIS LAW GROUP

ATTORNEYS AT LAW

801 S. RANCHO DR., STE. B4
LAS VEGAS, NV 89106
TELEPHONE: 702/474-9400
FACSIMILE: 702/474-9422
WEBSITE: WWW.MORRISLAWGROUP.COM

December 21, 2022

VIA EMAIL

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101

Re: *Edgeworth adv. Simon*

Dear Mr. Christensen:

We have not received a response to the email I sent to you on November 16, 2022 asking you to help us locate the copy of the settlement agreement that Simon testified was in his office on November 27, 2017. You indicated in your November 23, 2022 response that you had forwarded the inquiry to Mr. Simon.

Additionally, please help us locate where the following documents, which I've advised you in prior correspondence that I have not been able to locate, can be found:

1. The Cost Printout Simon testified he handed to the Edgeworths at the November 17, 2017 meeting;
2. The cost backup supporting the \$80,326.86 in costs Simon claimed in his November 30, 2017 lien;
3. The Mediator proposal dated 11/10/17, referenced in LODS014786 and LODS014787;
4. The Invoice titled "EDGEWORTH FAMILY TRUST REVISED 12012017 INVOICE.PDF" referenced in LODS014686;
5. The Invoice titled "EDGEWORTH FAMILY TRUST 95458.PDF" referenced in email LODS014687;
6. The fully executed Viking and Lange settlement agreements;

ROSA SOLIS-RAINEY
DIRECT DIAL: 702/759-8321
EMAIL: RSR@MORRISLAWGROUP.COM

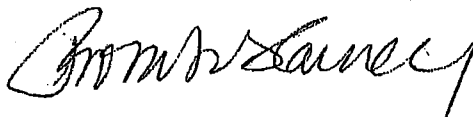
7. The attachments to the 24 emails listed in my October 27, 2022 letter.

I understand but disagree with your attempt to now claim that despite prior representations, Mr. Simon does not maintain email in client files. As you Mr. Simon defined his client file as containing email, and as you know from the email from the latest supplement you provided, the email contains the exact type of documents that our client has requested for over five years, and that you and your client testified and/or suggested did not exist. Likewise, I disagree Mr. Simon produced phone records "voluntarily" and as we've previously explained, whatever you or he produced in other proceedings is irrelevant to his obligation to produce to the Edgeworths a complete client file as ordered by the Nevada Supreme Court and Judge Jones.

I have received your letter of December 16, 2022 and disagree with you, for the reasons previously explained. As to the funds, I agree we have been unable to reach mutual agreement, which is what the Court said was necessary for us to release any funds. We have repeated our offer to release any undisputed portions of the funds to Simon and the Edgeworths on multiple occasions. That offer remains open and unless we can mutually agree to the amounts that should be disbursed, we cannot disburse any funds.

If you have any questions, please do not hesitate to reach out.

Sincerely,



Rosa Solis-Rainey

RSR:cjs

EXHIBIT P

2/17/23 LETTER TO J. CHRISTENSEN
FOLLOWING UP ON 11/16/22 AND 12/21/22
REQUESTS

MORRIS LAW GROUP

ATTORNEYS AT LAW

801 S. RANCHO DR., STE. B4
LAS VEGAS, NV 89106
TELEPHONE: 702/474-9400
FACSIMILE: 702/474-9422
WEBSITE: WWW.MORRISLAWGROUP.COM

February 17, 2023

VIA EMAIL: jim@jchristensenlaw.com
James R. Christensen
601 S. 6th Street
Las Vegas, NV 89101

Re: *Eighth Judicial District Court Case No. A-16-738444-C*
Distribution of funds and Outstanding Requests

Dear Jim:

I am in receipt of your February 17, 2023 letter, which appears to repeat the proposal you made on October 20, 2022. As a threshold matter, please include Steve Morris on all future correspondence and email exchanges. Assuming your proposal continues to request distribution of the quantum meruit amount for which the district court has still not explained the basis or reasonableness, our response also remains unchanged.

As a reminder, we filed a motion asking that the court order the distribution of the withheld funds as follows: \$284,982.50 to Mr. Simon; at least \$200,000 retained in trust pending final adjudication of the fee dispute; and the remainder released to the Edgeworths as should have been released in 2018. You opposed that motion and the Court denied it on June 17, 2021, stating:

The Court further finds and orders that there is a bilateral agreement to hold the disputed funds in an interest-bearing account at the bank and until new details are agreed upon to invalidate said agreement and a new agreement is reached, the bilateral agreement is controlling and the disputed funds will remain in accordance with the agreement.

Although we disagree with that decision, we respect it, and therefore cannot release any funds unless there is the mutual agreement as the Court said was necessary under the "bilateral agreement" argument you fronted and she accepted.¹ I note that you continued to front the bilateral agreement argument in opposing the Edgeworths' writ petition, which as to the funds, the Supreme

¹ Note that the Order is also mistaken as to the location of the funds as they had been moved to my firm's Trust account by agreement of the parties.

James Christensen
February 17, 2023
Page 2

Court declined to consider. Your recent unilateral demands are inconsistent with your prior position and with the Court's order.

My clients remain willing to disburse the funds as previously offered: the pre-discharge fee award of \$284,982.50 would be released to Mr. Simon, the undisputed \$1.5 million would be released to the Edgeworths, and the \$200,000 quantum meruit award in the district court's last four orders, which all fail to explain its basis and reasonableness would remain in our trust account. If this distribution is acceptable, let me know and we will promptly cut the checks.

On a related note, I still have not received a response to the email request I sent you on November 16, 2022 or my letter dated December 21, 2022, both requesting specific documents that we have not been able to locate in the portion of the file produced. The Court's December 13, 2022 Order instructed us to make specific requests from you. As it has been 93 days since my first request and nearly 60 since my second request, please advise when I can expect your response.

Sincerely,



Rosa Solis-Rainey

cc: Steve Morris
File

RSR:cjs

EXHIBIT Q

12/6/22 LETTER FROM J. CHRISTENSEN WITH
282 PAGE PRODUCTION INCLUDING
EXCHANGES RE SETTLEMENT

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

December 6, 2022

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 request regarding additional email. As previously noted, drafts and emails are not typically part of a case file. However, just as Simon previously produced such things as cell phone records and spent days creating file indexes for the benefit of his former clients, Simon voluntarily performed another review.

Please find LODS139996 - LODS140277 in the following Drobox:

<https://www.dropbox.com/s/v4u0xqthgfkjx2t/LODS139996-140277.pdf?dl=0>

Please note that there are duplicate documents in the above bated range, and/or some of the bated documents are already possessed by the Edgeworths and were discussed at the evidentiary hearing. Further, some of the bated documents evidence work by Simon that is not reflected on the superbill and which further supports a quantum meruit fee grant to Simon.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

JAMES R. CHRISTENSEN

cc: Client(s)

EXHIBIT R

SIMON'S 11/27/17 DEMAND LETTER

LAW OFFICE OF
DANIEL S. SIMON
A PROFESSIONAL CORPORATION
810 SOUTH CASINO CENTER BOULEVARD
LAS VEGAS, NEVADA 89101

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

Pursuant to your request, please find attached herewith the agreement I would like signed, as well as the proposed settlement breakdown, if a final settlement is reached with the Viking entities. The following is to merely clarify our relationship that has evolved during my representation so you are not confused with my position.

I helped you with your case and went above and beyond for you because I considered you close friends and treated you like family

As you know, when you first asked me to look at the case, I did not want to take it as I did not want to lose money. You already met with Mr. Marquis who wanted a 50k retainer and told you it would be a very expensive case. If Mr. Marquis did the work I did, I have no doubt his billing statements would reflect 2 million or more. I never asked you for a retainer and the initial work was merely helping you. As you know, you received excellent advice from the beginning to the end. It started out writing letters hoping to get Kinsale to pay your claim. They didn't. Then this resulted in us filing a lawsuit.

As the case progressed, it became apparent that this was going to be a hard fight against both Lange and Viking who never offered a single dollar until the recent mediations. The document production in this case was extremely voluminous as you know and caused my office to spend endless late night and weekend hours to push this case through the system and keep the current trial date.

As you are aware, we asked John to get involved in this case to help you. The loss of value report was sought to try and get a favorable negotiation position. His report was created based on my lawyering and John's willingness to look at the information I secured to support his position. As you know, no other appraiser was willing to go above and beyond as they believed the cost of repairs did not create a loss. As you know, John's opinion greatly increased the value of this case. Please do not think that he was paid a fee so he had to give us the report. His fee was very nominal in light of the value of his report and he stepped up to help you because of us and our close relationship. Securing all of the other experts and working with them to finalize their opinions were damaging to the defense was a tremendous factor in securing the proposed settlement amount. These experts were involved because of my contacts. When I was able to retain Mr. Pomerantz and work with him to finalize his opinions, his report was also a major factor. There are very few lawyer's in town that would approach the case the way I did to get the results I did for you. Feel free to call Mr. Hale or any other lawyer or judge in town to verify this. Every time I went to court I argued for you as if you were a family member taking the arguments against you personal. I made every effort to protect you and your family during the process. I

was an exceptional advocate for you. It is my reputation with the judiciary who know my integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number. It is also because my office stopped working on other cases and devoted the office to your case filing numerous emergency motions that resulted in very successful rulings. My office was available virtually all of the time responding to you immediately. No other lawyer would give you this attention. I have already been complimented by many lawyers in this case as to how amazing the lawyering was including Marks lawyer who told me it was a pleasure watching me work the way I set up the case and secured the court rulings. Feel free to call him. The defense lawyers in this case have complimented me as well, which says a lot. My work in my motions and the rulings as an exceptional advocate and the relationships I have and my reputation is why they are paying this much. The settlement offer is more than you ever anticipated as you were willing to take 4-4.5 at the first mediation and you wanted the mediator's proposal to be 5 million when I advised for the 6 million. One major reason they are likely willing to pay the exceptional result of six million is that the insurance company factored in my standard fee of 40% (2.4 million) because both the mediator and the defense have to presume the attorney's fees so it could get settled. Mr. Hale and Zurich both know my usual attorney's fees. This was not a typical contract case your other hourly Lawyers would handle. This was a major fight with a world-wide corporation and you did not get billed as your other hourly lawyers would have billed you. This would have forced you to lay out substantially more money throughout the entire process. Simply, we went above and beyond for you.

I have lost money working on your case.

As you know, when I was working on your case I was not working on many other cases at my standard fee and I told you many times that I can't work hourly because I would be losing too much money. I felt it was always our understanding that my fee would be fair in light of the work performed and how the case turned out. I do not represent clients on an hourly basis and I have told this to you many times.

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Value of my Services

The attached agreement reflects a greatly reduced sum for the value of my services that I normally charge in every case. I always expected to be compensated for the value of my services and not lose money to help you. I was troubled at your statements that you paid me hourly and you now want to just pay me hourly when you always knew this was not the situation. When I brought this to your attention you acknowledged you understood this was not just an hourly fee case and you were just playing devil's advocate. As you know, if I really treated your case as only an hourly case, I would have included all of the work my staff performed and billed you at a full hourly fee in 30 day increments and not advance so much money in costs. I would have had you sign just an hourly contract retainer just as Mr. Pomerantz had you sign. I never did this because I trusted you would fairly compensate me for the value of my services depending on the outcome. In the few statements I did send you I did not include all of the time for my staff time or my time, and did not bill you as any other firm would have. The reason is that this was not just an hourly billing situation. We have had many discussions about this as I helped you through a very difficult case that evolved and changed to a hotly contested case demanding full attention. I am a trial attorney that did tremendous work, and I expect as you would, to be paid for the value of my service. I did not have you sign my initial standard retainer as I treated you like family to help you with your situation.

Billing Statements

I did produce billing statements, but these statements were never to be considered full payment as these statements do not remotely contain the full time myself or my office has actually spent. You have acknowledged many times that you know these statements do not represent all of my time as I do not represent clients on an hourly basis. In case you do not recall, when we were at the San Diego Airport, you told me that a regular firm billing you would likely be 3x my bills at the time. This was in August. When I started filing my motions to compel and received the rulings for Viking to produce the information, the case then got substantially more demanding. We have had many discussions that I was losing money but instead of us figuring out a fair fee arrangement, I did continue with the case in good faith because of our relationship focusing on winning and trusted that you would fairly compensate me at the end. I gave you several examples of why I was losing money hourly because my standard fee of 40% on all of my other cases produced hourly rates 3-10 times the hourly rates you were provided. Additionally, just some of the time not included in the billing statement is many phone calls to you at all hours of the day, review and responses of endless emails with attachments from you and others, discussions with experts, substantial review the filings in this case and much more are not contained in the bills. I also spent substantial time securing representation for Mark Giberti when he was sued. My office continued to spend an exorbitant amount of time since March and have diligently litigated this case having my office virtually focus solely on your case. The hourly fees in the billing statements are much lower than my true hourly billing. These bills were generated for several reasons. A few reasons for the billing statements is that you wanted to justify your loans and use the bills to establish damages against Lange under the contract, and this is the why all of my time was not included and why I expected to be paid fairly as we worked through the case.

I am sure you will acknowledge the exceptional work, the quality of my advocacy, and services performed were above and beyond. My services in every case I handle are valued based on results not an hourly fee. I realize that I didn't have you sign a contingency fee agreement and am not asserting a contingency fee, but always expected the value of my services would be paid so I would not lose money. If you are going to hold me to an hourly arrangement then I will have to review the entire file for my time spent from the beginning to include all time for me and my staff at my full hourly rates to avoid an unjust outcome.

How I handle cases

I want you to have a full understanding as to how my office works in every other case I am handling so you can understand my position and the value of my services and the favorable outcome to you.

My standard fee is 40% for a litigated case. I have told you this many times. That is what I get in every case, especially when achieving an outcome like this. When the outcome is successful and the client gets more and I will take my full fee. I reduce if the outcome is not as expected to make sure the client shares fairly. In this case, you received more than you ever anticipated from the outset of this case. I realize I do not have a contract in place for percentages and I am not trying to enforce one, but this merely shows you what I lost by taking your case and given the outcome of your case, and what a value you are receiving. Again, I have over 5 other big cases that have been put on the back burner to handle your case. The discovery period in these cases were continued several times for me to focus on your case. If I knew you were going to try and treat me unfairly by merely asserting we had an hourly agreement after doing an exceptional work with an exceptional result, I wouldn't have continued. The reason is I would lose too much money. I would hope it was never your intention to cause me hardship and lose money when helping you achieve such an exceptional result. I realize I did not have you sign a fee agreement because I trusted you, but I did not have you sign an hourly agreement either.

Finalizing the settlement

There is also a lot of work left to be done. As you know, the language to the settlement must be very specific to protect everyone. This will need to be negotiated. If this cannot be achieved, there is no settlement. The Defendant will require I sign the confidentiality provisions, which could expose me to future litigation. Depending on the language, I may not be comfortable doing this as I never agreed to sign off on releases. Even if the language in the settlement agreement is worked out, there are motions to approve the settlement, which will be strongly opposed by Lange. If the Court does not grant the motion, then there is no settlement. If there is an approved settlement and Viking does not pay timely, then further motions to enforce must be filed.

Presently, there are many things on calendar that I need to address. We have the following depositions: Mr. Carnahan, Mr. Garelli, Crane Pomerantz, Kevin Hastings, Gerald Zamiski, and the UL deposition in Chicago. We have the Court hearings for Zurich's motions for protective order, our motion to de-designate the documents as confidential, our motion to make Mr. Pomerantz an initial expert, as well as the summary judgment motions involving Lange, who has

recently filed a counter motion and responses need to be filed. Simply, there is a substantial amount of work that still needs to be addressed. Since you knew of all of the pending matters on calendar, it is unfortunate that you were obligated to go to China during a very crucial week to attempt to finalize the case. When I asked if you would be available to speak if necessary, you told me that you are unavailable to discuss matters over the phone. This week was very important to make decisions to try and finalize a settlement.

I understand that the way I am looking at it may be different than the way your business mind looks at things. However, I explained my standard fees and how I work many times to you and the amount in the attached agreement is beyond fair to you in light of the exceptional results. It is much less than the reasonable value of my services. I realize that because you did not sign my retainer that you may be in a position to take advantage of the situation. However, I believe I will be able to justify the attorney fee in the attached agreement in any later proceeding as any court will look to ensure I was fairly compensated for the work performed and the exceptional result achieved.

I really want us to get this breakdown right because I want you to feel like this is remarkable outcome while at the same time I don't want to feel I didn't lose out too much. Given what we have been through and what I have done, I would hope you would not want me to lose money, especially in light of the fact that I have achieved a result much greater than your expectations ever were in this case. The attached agreement should certainly achieve this objective for you, which is an incredible reduction from the true value of my services.

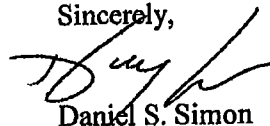
Conclusion

If you are agreeable to the attached agreement, please sign both so I can proceed to attempt to finalize the agreement. I know you both have thought a lot about your position and likely consulted other lawyers and can make this decision fairly quick. We have had several conversations regarding this issue. I have thought about it a lot and this the lowest amount I can accept. I have always felt that it was our understanding that that this was not a typical contract lawyer case, and that I was not a typical contract lawyer. In light of the substantial work performed and the exceptional results achieved, the fee is extremely fair and reasonable.

If you are not agreeable, then I cannot continue to lose money to help you. I will need to consider all options available to me.

Please let me know your decisions as to how to proceed as soon as possible.

Sincerely,



Daniel S. Simon

EXHIBIT S

11/27/17 EMAIL EXCHANGES BETWEEN SIMON
AND ANGELA EDGEWORTH RE SETTLEMENT
STATUS

From: Daniel Simon <dan@simonlawlv.com>
Sent: Monday, November 27, 2017 4:58 PM
To: Angela Edgeworth
Cc: Brian Edgeworth (brian@pediped.com)
Subject: Re: Edgeworth v. Viking, et al

It appears that you have a lot of questions about the process which is one reason I wanted to meet with you. If you would like to come to the office or call me tomorrow I will be happy to explain everything in detail. My Letter also explains the status of the settlement and what needs to be done. Due to the holiday they probably were not able to start on it. I will reach out to lawyers tomorrow and get a status. I am also happy to speak to your attorney as well. Let me know. Thx

On Nov 27, 2017, at 4:14 PM, Angela Edgeworth <angela.edgeworth@pediped.com> wrote:

Did you agree to the settlement? Why have they not sent it yet and when is it coming? Please clarify.

From: Daniel Simon <dan@simonlawlv.com>
Sent: Monday, November 27, 2017 3:50 PM
To: Angela Edgeworth
Cc: Brian Edgeworth (brian@pediped.com)
Subject: RE: Edgeworth v. Viking, et al

I have not received the Viking agreement. When I receive I will forward. Let me know as soon as you can. Thanks

From: Angela Edgeworth [mailto:angela.edgeworth@pediped.com]
Sent: Monday, November 27, 2017 3:20 PM
To: Daniel Simon <dan@simonlawlv.com>
Cc: Brian Edgeworth (brian@pediped.com) <brian@pediped.com>
Subject: Re: Edgeworth v. Viking, et al

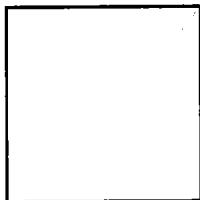
Danny,

As you know, Brian is out of town and in China at the moment. I will need a couple of days to discuss this with him. We will be glad to meet once he is back.

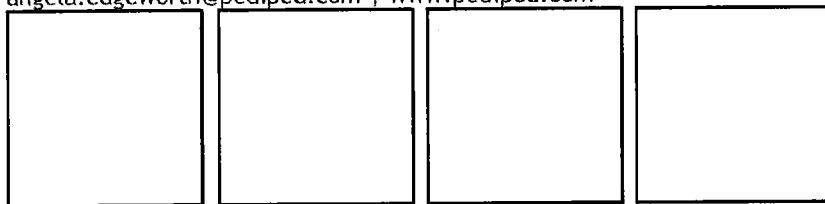
We would need to have our attorney look at this agreement before we sign.

In the meantime, please send us the Viking Agreement immediately, so we review it.

Angela Edgeworth



Angela Edgeworth
D 702.352.2585 | T 702.567.0311 | F 702.567.0319
1191 Center Point Drive | Henderson, NV 89074
angela.edgeworth@pediped.com | www.pediped.com



On Mon, Nov 27, 2017 at 2:26 PM, Daniel Simon <dan@simonlawlv.com> wrote:

Please review and advise me of your position at your earliest possible convenience. If you would like to discuss, please call me anytime. Thanks

EXHIBIT T

SIMON'S 12/7/17 LETTER CLAIMING HIS
SUPERBILL WOULD EXCEED THE AMOUNT OF
HIS 11/27/17 DEMAND AND OVERSTATING
COSTS

SIMON LAW
A PROFESSIONAL CORPORATION
810 SOUTH CASINO CENTER BOULEVARD
LAS VEGAS, NEVADA 89101

TELEPHONE (702) 364-1650

FACSIMILE (702) 364-1655

December 7, 2017

Robert Vannah, Esq.
John Greene, Esq.
400 South 7th Street, Suite 400
Las Vegas, Nevada 89101

RE: Edgeworth v. Viking, et al.

Dear Mr. Vannah,

It was a pleasure speaking with you today. Pursuant to your direction, based on the wishes of the client, all client communication will be directed to your office.

Thank you for confirming that the pending evidentiary hearing concerning Viking, may be taken off calendar. There are pending motions on the enforceability of the Lange contract which need to be addressed in the very near term. We have moved to enforce the contract; and, Lange has asked the Court to find the contract void. The Lange brief to void the contract is attached. Because of the motion briefing schedule, the decision to take the pending motions off calendar should be made on or before Monday, December 11, 2017.

An issue of concern is the current settlement proposal from Lange. The offer is \$100,000.00 with an offset of approximately \$22,000.00 for a net offer of about \$78,000.00. The \$78k would be "new" money in addition to the \$6M offered by Viking. If the Lange offer is accepted it would end the case and no other recovery for the subject incident would be possible. If the Lange offer is not accepted, then Viking will need to file a motion for Good Faith settlement. See attached motion. If the motion is granted, then the \$6M settlement will be paid. If denied, then the \$6M payment will be delayed an indeterminate time.

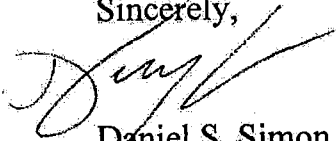
The Lange offer is good as far as the property damage claims are concerned. However, there is a potential for recovery of attorney fees and costs from Lange

based upon the Lange contract with American Grating LLC. If the current Lange offer is accepted the potential recovery of attorney fees and costs pursuant to the contract will be waived. If the Lange motion to void the contract is granted, then the claim against Lange for attorney fees and costs will be destroyed (unless there is a successful appeal).

Simon Law is reviewing the case file and work performed from the outset that has not been billed (including such things as obtaining a forensic copy of case related e-mails and phone records) to provide a comprehensive hourly bill. It is reasonably expected at this time that the hourly bill may well exceed a total of \$1.5M and the costs currently are approximately \$200,000. The size of the billing and costs incurred should be considered in the decision to accept the current Lange offer or to continue to pursue Lange under the contract.

Thank you for your assistance in this matter. I have discussed the above with the client previously, but the situation requires a review. If there are any questions, or if any additional information is needed, please let me know.

Sincerely,



Daniel S. Simon

EXHIBIT U

11/16/17 TEXT FROM B. EDGEWORTH TO
SIMON CONFIRMING THE EDGEWORTHS
ACCEPTED THE CONFIDENTIALITY CLAUSE

8:53

LTE

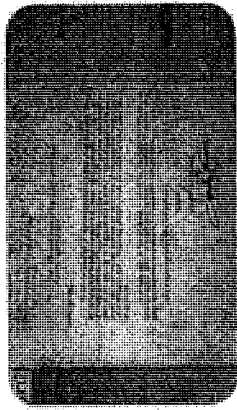


+1 (702) 279-7246

Wed, Nov 15, 7:21 PM

At meeting

Thu, Nov 16, 5:13 PM



FLOYD fucked us.
Case is back on

That line is fine. The settlement is the only thing that is confidential. I assume that means the amount.

We can just haggle

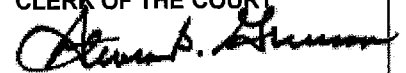


Message



EXHIBIT V

11/19/18 ORDER



1 **ORD**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

10 LANGE PLUMBING, LLC; THE VIKING
11 CORPORATION, a Michigan Corporation;
12 SUPPLY NETWORK, INC., dba VIKING
13 SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

**DECISION AND ORDER ON MOTION
TO ADJUDICATE LIEN**

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

22
23 **DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
28

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**

7 8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
17 suffered a flood. The house was still under construction and the flood caused a delay. The
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
20 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
28

1 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
2 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
3 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
4 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

5 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
6 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
7 had some discussion about payments and financials. No express fee agreement was reached during
8 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
9 It reads as follows:

10 We never really had a structured discussion about how this might be done.
11 I am more that happy to keep paying hourly but if we are going for punitive
12 we should probably explore a hybrid of hourly on the claim and then some
13 other structure that incents both of us to win an go after the appeal that these
scumbags will file etc.

14 Obviously that could not have been doen earlier snce who would have though
this case would meet the hurdle of punitives at the start.

15 I could also swing hourly for the whole case (unless I am off what this is
16 going to cost). I would likely borrow another \$450K from Margaret in 250
and 200 increments and then either I could use one of the house sales for cash
or if things get really bad, I still have a couple million in bitcoin I could sell.

17 I doubt we will get Kinsale to settle for enough to really finance this since I
18 would have to pay the first \$750,000 or so back to Colin and Margaret and
why would Kinsale settle for \$1MM when their exposure is only \$1MM?

19
20 (Def. Exhibit 27).

21 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
22 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
23 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
24 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
25 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

26 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
27 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
28

1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

4 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
5 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
6 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
7 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
8 paid by the Edgeworths on August 16, 2017.

9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
10 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
11 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
12 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
14 25, 2017.

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work
20 done in the litigation of this case. There were several motions and oppositions filed, several
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

1 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
2 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
3 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

4 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to
5 come to his office to discuss the litigation.

6 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
7 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
8 Exhibit 4).

9 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
10 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
11 communications with Mr. Simon.

12 18. On the morning of November 30, 2017, Simon received a letter advising him that the
13 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
14 et.al. The letter read as follows:

15
16 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
17 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
18 with the Viking entities, et.al. I'm instructing you to cooperate with them in
19 every regard concerning the litigation and any settlement. I'm also instructing
20 you to give them complete access to the file and allow them to review
whatever documents they request to review. Finally, I direct you to allow
them to participate without limitation in any proceeding concerning our case,
whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
28

1 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

2 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
3 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
4 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
5 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
6 due to the Law Office of Danny Simon.

7 22. The parties agree that an express written contract was never formed.

8 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
9 Lange Plumbing LLC for \$100,000.

10 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
11 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
12 Simon, a Professional Corporation, case number A-18-767242-C.

13 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
14 Lien with an attached invoice for legal services rendered. The amount of the invoice was
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

16 17 CONCLUSION OF LAW

18 The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The 19 Court

20 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
21 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
22 738444-C under NRS 18.015.

23 NRS 18.015(1)(a) states:

24 1. An attorney at law shall have a lien:

25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
26 damages, which has been placed in the attorney's hands by a client for suit or
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

1 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
2 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
3 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
4 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
5 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
6 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
7 is enforceable in form.

8 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
9 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
10 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
11 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
12 under NRS 18.015, thus the Court must adjudicate the lien.

13 14 *Fee Agreement*

15 It is undisputed that no express written fee agreement was formed. The Court finds that there
16 was no express oral fee agreement formed between the parties. An express oral agreement is
17 formed when all important terms are agreed upon. *See, Loma Linda University v. Eckenweiler*, 469
18 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*
19 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the
20 payment terms are essential to the formation of an express oral contract to provide legal services on
21 an hourly basis.

22 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
23 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
24 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
25 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
26 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
27 22, 2017 email, titled "Contingency," he writes:

1 "We never really had a structured discussion about how this might be done. I
2 am more than happy to keep paying hourly but if we are going for punitive we
3 should probably explore a hybrid of hourly on the claim and then some other
4 structure that incents both of us to win and go after the appeal that these
5 scumbags will file etc. Obviously that could not have been done earlier since
6 who would have thought this case would meet the hurdle of punitives at the
7 start. I could also swing hourly for the whole case (unless I am off what this
8 is going to cost). I would likely borrow another \$450K from Margaret in 250
9 and 200 increments and then either I could use one of the house sales for cash
10 or if things get really bad, I still have a couple million in bitcoin I could sell. I
11 doubt we will get Kinsale to settle for enough to really finance this since I
12 would have to pay the first \$750,000 or so back to Colin and Margaret and
13 why would Kinsale settle for \$1MM when their exposure is only \$1MM?"

14 (Def. Exhibit 27).

15 It is undisputed that when the flood issue arose, all parties were under the impression that Simon
16 would be helping out the Edgeworths, as a favor.

17 The Court finds that an implied fee agreement was formed between the parties on December
18 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
19 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
20 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
21 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
22 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
23 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
24 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
25 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

26 *Constructive Discharge*

27 Constructive discharge of an attorney may occur under several circumstances, such as:

- 28 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- Refusal to pay an attorney creates constructive discharge. See e.g., Christian v. All Persons Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).

- Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also Maples v. Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State, 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge. McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated, has not withdrawn, and is still technically their attorney of record; there cannot be a termination. The Court disagrees.

On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and signed a retainer agreement. The retainer agreement was for representation on the Viking settlement agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all things without a compromise. Id. The retainer agreement specifically states:

Client retains Attorneys to represent him as his Attorneys regarding Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING ENTITIES and all damages including, but not limited to, all claims in this matter and empowers them to do all things to effect a compromise in said matter, or to institute such legal action as may be advisable in their judgment, and agrees to pay them for their services, on the following conditions:

- a) ...
- b) ...
- c) Client agrees that his attorneys will work to consummate a settlement of \$6,000,000 from the Viking entities and any settlement amount agreed to be paid by the Lange entity. Client also agrees that attorneys will work to reach an agreement amongst the parties to resolve all claims in the Lange and Viking litigation.

Id.

This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr. Simon had already begun negotiating the terms of the settlement agreement with Viking during the week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put

1 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
2 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
3 identified as the firm that solely advised the clients about the settlement. The actual language in the
4 settlement agreement, for the Viking claims, states:

5
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
8 effect of this AGREEMENT and their release of any and all claims, known or
9 unknown and, based upon that explanation and their independent judgment by
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the
11 legal significance and the consequences of the claims being released by this
12 Agreement. PLAINTIFFS further represent that they understand and
13 acknowledge the legal significance and consequences of a release of unknown
14 claims against the SETTLING PARTIES set forth in, or arising from, the
15 INCIDENT and hereby assume full responsibility for any injuries, damages,
16 losses or liabilities that hereafter may occur with respect to the matters
17 released by this Agreement.

18 Id.

19 Also, Simon was not present for the signing of these settlement documents and never explained any
20 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
21 Vannah and received them back with the signatures of the Edgeworths.

22 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
23 Though there were email communications between the Edgeworths and Simon, they did not verbally
24 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
25 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
26 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
27 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
28 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
working on this claim, but he had no communication with the Edgeworths and was not advising
them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon

1 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
2 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
3 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
4 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
5 Simon never signed off on any of the releases for the Lange settlement.

6 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
7 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
8 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
9 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
10 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
11 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
12 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
13 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
14 doesn't seem in his best interests." (Def. Exhibit 53).

15 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
16 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
17 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
18 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
19 was attached to the letter), and that Simon continued to work on the case after the November 29,
20 2017 date. The court further recognizes that it is always a client's decision of whether or not to
21 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
22 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
23 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
24 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
25 with him, making it impossible to advise them on pending legal issues, such as the settlements with
26 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

27 //

1 Simon from effectively representing the clients. The Court finds that Danny Simon was
2 constructively discharged by the Edgeworths on November 29, 2017.

3
4 **Adjudication of the Lien and Determination of the Law Office Fee**

5 NRS 18.015 states:

6 1. An attorney at law shall have a lien:

7 (a) Upon any claim, demand or cause of action, including any claim for
8 unliquidated damages, which has been placed in the attorney's hands by a
9 client for suit or collection, or upon which a suit or other action has been
10 instituted.

11 (b) In any civil action, upon any file or other property properly left in the
12 possession of the attorney by a client.

13 2. A lien pursuant to subsection 1 is for the amount of any fee which has
14 been agreed upon by the attorney and client. In the absence of an agreement,
15 the lien is for a reasonable fee for the services which the attorney has rendered
16 for the client.

17 3. An attorney perfects a lien described in subsection 1 by serving notice
18 in writing, in person or by certified mail, return receipt requested, upon his or
19 her client and, if applicable, upon the party against whom the client has a
20 cause of action, claiming the lien and stating the amount of the lien.

21 4. A lien pursuant to:

22 (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or
23 decree entered and to any money or property which is recovered on account of
24 the suit or other action; and

25 (b) Paragraph (b) of subsection 1 attaches to any file or other property
26 properly left in the possession of the attorney by his or her client, including,
27 without limitation, copies of the attorney's file if the original documents
28 received from the client have been returned to the client, and authorizes the
attorney to retain any such file or property until such time as an adjudication
is made pursuant to subsection 6, from the time of service of the notices
required by this section.

5. A lien pursuant to paragraph (b) of subsection 1 must not be
construed as inconsistent with the attorney's professional responsibilities to
the client.

6. On motion filed by an attorney having a lien under this section, the
attorney's client or any party who has been served with notice of the lien, the
court shall, after 5 days' notice to all interested parties, adjudicate the rights of
the attorney, client or other parties and enforce the lien.

7. Collection of attorney's fees by a lien under this section may be
utilized with, after or independently of any other method of collection.

1 Nev. Rev. Stat. 18.015.

2 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
3 are applied. Here, there was no express contract for the fee amount, however there was an implied
4 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
5 services, and \$275 per hour for the services of his associates. This contract was in effect until
6 November 29, 2017, when he was constructively discharged from representing the Edgeworths.
7 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
8 due a reasonable fee- that is, quantum meruit.

9
10 *Implied Contract*

11 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
12 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
13 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
14 created when invoices were sent to the Edgeworths, and they paid the invoices.

15 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
16 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
17 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
18 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
19 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
20 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
21 bills to give credibility to his actual damages, above his property damage loss. However, as the
22 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
23 the money, or memorialize this or any understanding in writing.

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
26 paid in full and there was never any indication given that anything less than all the fees had been
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees

1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
2 the NRCPC 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
6 Office retained the payments, indicating an implied contract was formed between the parties. The
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
8 date they were constructively discharged, November 29, 2017.

9
10 *Amount of Fees Owed Under Implied Contract*

11 The Edgeworths were billed, and paid for services through September 19, 2017. There is
12 some testimony that an invoice was requested for services after that date, but there is no evidence
13 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
14 fees was formed, the Court must now determine what amount of fees and costs are owed from
15 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
16 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
17 billings, the attached lien, and all other evidence provided regarding the services provided during
18 this time.

19 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
20 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
21 and attempted to create a bill for work that had been done over a year before. She testified that they
22 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
23 email that was read and responded to. She testified that the dates were not exact, they just used the
24 dates for which the documents were filed, and not necessarily the dates in which the work was
25 performed. Further, there are billed items included in the "super bill" that was not previously billed
26 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
27 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
28

1 indicated that there were no phone calls included in the billings that were submitted to the
2 Edgeworths.

3 This attempt to recreate billing and supplement/increase previously billed work makes it
4 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed
5 between the actual work and the billing. The court reviewed the billings of the "super bill" in
6 comparison to the previous bills and determined that it was necessary to discount the items that had
7 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
8 downloading, and saving documents because the Court is uncertain of the accuracy of the "super
9 bill."

10 Simon argues that he has no billing software in his office and that he has never billed a client
11 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
12 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
13 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
14 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
15 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
16 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
17 emails or calls, understanding that those items may be billed separately; but again the evidence does
18 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
19 This argument does not persuade the court of the accuracy of the "super bill".

20 The amount of attorney's fees and costs for the period beginning in June of 2016 to
21 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
22 which appears to indicate that it began with the initial meeting with the client, leading the court to
23 determine that this is the beginning of the relationship. This invoice also states it is for attorney's
24 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
25 amount has already been paid by the Edgeworths on December 16, 2016.²

26
27 ²There are no billing amounts from December 2 to December 4, 2016.
28

1 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to
2 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
3 amount has already been paid by the Edgeworths on May 3, 2017.

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
8 been paid by the Edgeworths on August 16, 2017.³

9 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
10 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
11 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
12 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
13 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
14 paid by the Edgeworths on September 25, 2017.

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
16 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
21 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

24 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

25
26 ³ There are no billings from July 28 to July 30, 2017.

27 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

28 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,
November 21, and November 23-26.

⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
2 by the Edgeworths, so the implied fee agreement applies to their work as well.

3 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
4 of September 19, 2018 to November 29, 2017 is \$284,982.50.

5
6 ***Costs Owed***

7 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
8 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
9 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
10 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
11 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
12 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
13 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

14
15 ***Quantum Meruit***

16 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
17 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*
18 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
19 *quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing, Gordon v.*
20 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
21 *and, Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
22 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
23 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
24 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
25 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
26 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
27 of the Law Office's work on this case.

1 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
2 discretion on the method of calculation of attorney fee, to be “tempered only by reason and
3 fairness”. Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires
4 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530
5 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
6 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the
7 reasonableness of the fee under the Brunzell factors. Argentina Consolidated Mining Co., v. Jolley,
8 Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that
9 “[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
10 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

11 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
12 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
13 Court notes that the majority of the work in this case was complete before the date of the
14 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
15 after the constructive discharge.

16 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
17 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

18 *1. Quality of the Advocate*

19 Brunzell expands on the “qualities of the advocate” factor and mentions such items as
20 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
21 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
22 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
23 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
24 Simon’s work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon’s
25 work product and results are exceptional.

26 *2. The Character of the Work to be Done*

27 The character of the work done in this case is complex. There were multiple parties,
28

1 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the
2 gamut from product liability to negligence. The many issues involved manufacturing, engineering,
3 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp
4 testified that the quality and quantity of the work was exceptional for a products liability case against
5 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the
6 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the
7 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a
8 substantial factor in achieving the exceptional results.

9 3. The Work Actually Performed

10 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
11 numerous court appearances, and deposition; his office uncovered several other activations, that
12 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
13 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
14 other activations being uncovered and the result that was achieved in this case. Since Mr.
15 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
16 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
17 the Law Office of Daniel Simon led to the ultimate result in this case.

18 4. The Result Obtained

19 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
20 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
21 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
22 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
23 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
24 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
25 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
26 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
27 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
28

1 were made more than whole with the settlement with the Viking entities.

2 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
3 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
4 which states:

5
6 (a) A lawyer shall not make an agreement for, charge, or collect an
7 unreasonable fee or an unreasonable amount for expenses. The factors to be
8 considered in determining the reasonableness of a fee include the following:

9 (1) The time and labor required, the novelty and difficulty of the
10 questions involved, and the skill requisite to perform the legal service
11 properly;

12 (2) The likelihood, if apparent to the client, that the acceptance of the
13 particular employment will preclude other employment by the lawyer;

14 (3) The fee customarily charged in the locality for similar legal
15 services;

16 (4) The amount involved and the results obtained;

17 (5) The time limitations imposed by the client or by the
18 circumstances;

19 (6) The nature and length of the professional relationship with the
20 client;

21 (7) The experience, reputation, and ability of the lawyer or lawyers
22 performing the services; and

23 (8) Whether the fee is fixed or contingent.

24 NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

25 (b) The scope of the representation and the basis or rate of the fee and
26 expenses for which the client will be responsible shall be communicated to the
27 client, preferably in writing, before or within a reasonable time after
28 commencing the representation, except when the lawyer will charge a
regularly represented client on the same basis or rate. Any changes in the
basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the
service is rendered, except in a matter in which a contingent fee is prohibited
by paragraph (d) or other law. A contingent fee agreement shall be in writing,
signed by the client, and shall state, in boldface type that is at least as large as
the largest type used in the contingent fee agreement:

(1) The method by which the fee is to be determined, including the
percentage or percentages that shall accrue to the lawyer in the event of
settlement, trial or appeal;

(2) Whether litigation and other expenses are to be deducted from the
recovery, and whether such expenses are to be deducted before or after the
contingent fee is calculated;

- 1 (3) Whether the client is liable for expenses regardless of outcome;
2 (4) That, in the event of a loss, the client may be liable for the
3 opposing party's attorney fees, and will be liable for the opposing party's
4 costs as required by law; and
5 (5) That a suit brought solely to harass or to coerce a settlement may
6 result in liability for malicious prosecution or abuse of process.
7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
8 with a written statement stating the outcome of the matter and, if there is a
9 recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

12 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
13 the Edgeworths, the character of the work was complex, the work actually performed was extremely
14 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
15 factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
17 responsible were never communicated to the client, within a reasonable time after commencing the
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
27 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
28 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
Simon as their attorney, when they ceased following his advice and refused to communicate with

1 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
2 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
3 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
4 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
5 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
6 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
7 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
8 constructively discharged, under quantum meruit, in an amount of \$200,000.

9
10 **ORDER**

11 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
12 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
13 Office of Daniel Simon is \$484,982.50.

14 IT IS SO ORDERED this 19 day of November, 2018.


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18 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

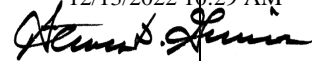
Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.



Tess Driver
Judicial Executive Assistant
Department 10

EXHIBIT W

12/13/22 ORDER



CLERK OF THE COURT

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK,
INC., dba VIKING SUPPLY NET, a
Michigan Corporation; and DOES 1
through 5 and ROE entities 6 through
10;

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

**ORDER DENYING EDGEWORTHS'
MOTION FOR ORDER TO SHOW
CAUSE ON OST**

Hearing date: 11.15.22
Hearing time: 9:00 a.m.

1 The Edgeworth's Motion for Order to Show Cause Why Daniel
2 Simon and the Law Firm of Daniel S. Simon Should Not Be Held in
3 Contempt came before the Court on the 15th day of November, 2022.
4
5 James R. Christensen appeared on behalf of Daniel Simon and the Law
6 Firm of Daniel S. Simon ("Simon"). Steve L. Morris and Rosa Solis-Rainey
7 appeared on behalf of the Edgeworth Family Trust and American Grating,
8 LLC ("Edgeworths"). The Court, having heard the arguments of counsel,
9 having reviewed the papers and pleadings on file herein, and being fully
10 apprised in the premises, hereby finds as follows:
11

12 The Court FINDS that Simon has provided the Edgeworths with a
13 CD of email, three external drives, multiple copies of documents, videos,
14 cell phone records, tangible evidence, and newly created file indexes.
15
16 While the Edgeworths argue that they are missing documents, there has
17 been no evidence presented to demonstrate the specific documents that
18 are missing from the file productions. As such, the court is unable to
19 determine the extent, if any, of missing documents. Without said specifics,
20 the Court cannot find that Daniel Simon is in contempt of this Court's
21 order. Any specific requests for production of missing items from the file
22 can be made directly to Simon's counsel.
23
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1 The Motion for Order to Show Cause Why Daniel Simon and the
2 Law Firm of Daniel S. Simon Should Not be Held in Contempt is DENIED.
3 Dated this 13th day of December, 2022

4 DATED this ____ day of December 2022.

5 
6 _____
7 DISTRICT COURT JUDGE

8 Submitted by:

0F9 797 E176 E417
Tierra Jones
District Court Judge

9 /s/ James R. Christensen

10 JAMES CHRISTENSEN, ESQ.
11 Nevada Bar No. 003861
12 601 S. 6th Street
13 Las Vegas, NV 89101
14 (702) 272-0406
15 (702) 272-0415
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

16 Approved as to form and content:

17 Agreed as to form but no consent given to sign electronically

18 STEVE MORRIS, ESQ.
19 Nevada Bar No. 1543
20 ROSA SOLIS-RAINEY, ESQ.
21 Nevada Bar No. 007921
22 Morris Law Group
23 801 S. Rancho Drive Suite B4
24 Las Vegas, NV 89106
25 (702) 474-9400
26 (702) 474-9422
27 Attorney for Plaintiffs
28

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/13/2022

16 Peter Christiansen	pete@christiansenlaw.com
17 Whitney Barrett	wbarrett@christiansenlaw.com
18 Kendelee Leascher Works	kworks@christiansenlaw.com
19 R. Todd Terry	tterry@christiansenlaw.com
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21 Rhonda Onorato .	ronorato@rlattorneys.com
22 Keely Perdue	keely@christiansenlaw.com
23 Jonathan Crain	jcrair@christiansenlaw.com
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26
27
28

1	John Greene	jgreene@vannahlaw.com
2	James Christensen	jim@jchristensenlaw.com
3	Michael Nunez	mnunez@murchisonlaw.com
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5	Gary Call	gcall@rlattorneys.com
6	Tyler Ure	ngarcia@murchisonlaw.com
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17	Zeairah Marable	zmarable@vannahlaw.com
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19	Claudia Morrill	cam@morrislawgroup.com
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FIFTH AMENDED DECISION AND ORDER
ON MOTION TO ADJUDICATE LIEN

1 **ORD**

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3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

10 LANGE PLUMBING, LLC; THE VIKING
11 CORPORATION, a Michigan Corporation;
12 SUPPLY NETWORK, INC., dba VIKING
13 SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

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
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

22
23 **FIFTH AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

25 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
26 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
27 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
28 d/b/a Simon Law (“Defendants” or “Law Office” or “Simon” or “Mr. Simon”) having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, (“Plaintiff” or
3 “Edgeworths”) having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**

7 8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
17 suffered a flood. The house was still under construction and the flood caused a delay. The
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
20 within the plumber’s scope of work, caused the flood; however, the plumber asserted the fire
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
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1 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
2 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
3 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
4 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

5 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
6 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
7 had some discussion about payments and financials. No express fee agreement was reached during
8 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
9 It reads as follows:

10
11 We never really had a structured discussion about how this might be done.
12 I am more than happy to keep paying hourly but if we are going for punitive
13 we should probably explore a hybrid of hourly on the claim and then some
14 other structure that incents both of us to win and go after the appeal that these
15 scumbags will file etc.
16 Obviously that could not have been done earlier since who would have
17 thought this case would meet the hurdle of punitive at the start.
18 I could also swing hourly for the whole case (unless I am off what this is
19 going to cost). I would likely borrow another \$450K from Margaret in 250
20 and 200 increments and then either I could use one of the house sales for cash
21 or if things get really bad, I still have a couple million in bitcoin I could sell.
22 I doubt we will get Kinsale to settle for enough to really finance this since I
23 would have to pay the first \$750,000 or so back to Colin and Margaret and
24 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

25 (Def. Exhibit 27).

26 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
27 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
28 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per

1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

4 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
5 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
6 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
7 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
8 paid by the Edgeworths on August 16, 2017.

9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
10 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
11 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
12 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
14 25, 2017.

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work
20 done in the litigation of this case. There were several motions and oppositions filed, several
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
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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
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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.

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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
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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
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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:

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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,
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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.

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 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
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.

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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 NRPC 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.

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

16 Peter Christiansen

pete@christiansenlaw.com

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

21 R. Todd Terry

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22 Keely Perdue

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23 Jonathan Crain

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24 Mariella Dumbrique

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25 Chandi Melton

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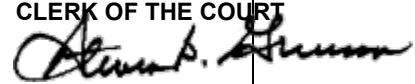
1	John Greene	jgreene@vannahlaw.com
2	Tyler Ure	ngarcia@murchisonlaw.com
3	Nicole Garcia	ngarcia@murchisonlaw.com
4	Michael Nunez	mnunez@murchisonlaw.com
5	James Christensen	jim@jchristensenlaw.com
6	James Christensen	jim@jchristensenlaw.com
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8	Daniel Simon	dan@danielsimonlaw.com
9	Gary Call	gcall@rlattorneys.com
10	J. Graf	Rgraf@blacklobello.law
11	Robert Vannah	rvannah@vannahlaw.com
12	Esther Barrios Sandoval	esther@christiansenlaw.com
13	Christopher Page	chrispage@vannahlaw.com
14	Aileen Bencomo	ab@christiansenlaw.com
15	Steve Morris	sm@morrislawgroup.com
16	Rosa Solis-Rainey	rsr@morrislawgroup.com
17	Zeairah Marable	zmarable@vannahlaw.com
18	Laysha Guerrero	lguerrero@vannahlaw.com
19	Claudia Morrill	cam@morrislawgroup.com
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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

26	Theodore Parker	2460 Professional CT STE 200
27		Las Vegas, NV, 89128
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NOTICE OF ENTRY OF ORDER OF FIFTH
DECISION AND ORDER ON MOTION TO
ADJUDICATE LIEN



NEOJ
James R. Christensen Esq.
Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
601 S. 6th Street
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(702) 272-0406
jim@jchristensenlaw.com
Attorney for SIMON

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK,
INC., dba VIKING 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 DATED this 24th day of April 2023.

7 /s/James R. Christensen

8 James R. Christensen Esq.
9 Nevada Bar No. 3861
10 James R. Christensen PC
11 601 S. Sixth Street
12 Las Vegas NV 89101
13 (702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for LAW OFFICE OF
DANIEL S. SIMON, P.C.

14 **CERTIFICATE OF SERVICE**

15 I CERTIFY SERVICE of NOTICE OF ENTRY OF FIFTH AMENDED
16 DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN was made
17 by electronic service (via Odyssey) this 24th day of April, 2023, to all parties
18 currently shown on the Court's E-Service List.
19

20 /s/ Dawn Christensen

21 an employee of James R. Christensen
22
23
24
25

1 **ORD**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

10 LANGE PLUMBING, LLC; THE VIKING
11 CORPORATION, a Michigan Corporation;
12 SUPPLY NETWORK, INC., dba VIKING
13 SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

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
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

22
23 **FIFTH AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

25 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
26 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
27 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
28 d/b/a Simon Law (“Defendants” or “Law Office” or “Simon” or “Mr. Simon”) having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, (“Plaintiff” or
3 “Edgeworths”) having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**

7 8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
17 suffered a flood. The house was still under construction and the flood caused a delay. The
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
20 within the plumber’s scope of work, caused the flood; however, the plumber asserted the fire
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
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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:

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11 We never really had a structured discussion about how this might be done.
12 I am more than happy to keep paying hourly but if we are going for punitive
13 we should probably explore a hybrid of hourly on the claim and then some
14 other structure that incents both of us to win and go after the appeal that these
15 scumbags will file etc.
16 Obviously that could not have been done earlier since who would have
17 thought this case would meet the hurdle of punitive at the start.
18 I could also swing hourly for the whole case (unless I am off what this is
19 going to cost). I would likely borrow another \$450K from Margaret in 250
20 and 200 increments and then either I could use one of the house sales for cash
21 or if things get really bad, I still have a couple million in bitcoin I could sell.
22 I doubt we will get Kinsale to settle for enough to really finance this since I
23 would have to pay the first \$750,000 or so back to Colin and Margaret and
24 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

25 (Def. Exhibit 27).

26 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
27 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
28 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per

1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

4 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
5 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
6 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
7 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
8 paid by the Edgeworths on August 16, 2017.

9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
10 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
11 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
12 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
14 25, 2017.

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work
20 done in the litigation of this case. There were several motions and oppositions filed, several
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
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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
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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.

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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
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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
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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:

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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,
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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.

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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
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
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.

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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 NRPC 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.

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.

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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**
4 **CLARK COUNTY, NEVADA**

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 3/28/2023

16 Peter Christiansen

pete@christiansenlaw.com

17 Whitney Barrett

wbarrett@christiansenlaw.com

18 Daniel Simon .

lawyers@simonlawlv.com

19 Rhonda Onorato .

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25 Chandi Melton

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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

26	Theodore Parker	2460 Professional CT STE 200
27		Las Vegas, NV, 89128
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