

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

APPELLANTS,

VS.

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

RESPONDENTS.

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Supreme Court Case No. 86676  
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Dist. Ct. Case No. A-18-767242-C  
Consolidated with A-16-738444-C

**EDGEWORTH APPELLANTS' APPENDIX TO  
OPENING BRIEF**

**VOLUME I  
BATES AA0001-AA0223**

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***EDGEWORTH FAMILY TRUST, ET AL. vs.  
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON  
SUPREME COURT CASE NO. 86676  
APPELLANTS' APPENDIX***

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2020-12-30	Nevada Supreme Court Order Affirming in Part, Vacating in Part Remanding	I	AA0072-86
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***EDGEWORTH FAMILY TRUST, ET AL. vs.  
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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;  
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

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

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

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Q What were you billing at per hour?  
2 A \$150 --  
3 Q That's what I said. I'm sorry, I said buck-fifty.  
4 A That's not what you said that I was doing. You said I billed  
5 on the case on \$150 an hour. Just to clarify what I billed on.  
6 Q And in fact -- and if you want to look at what you think  
7 attorneys should be paid at, I mean, you're paying very fine lawyers, Mr.  
8 Greene and Mr. Vannah 975 bucks an hour, right?  
9 THE COURT: 925, Mr. --  
10 MR. CHRISTIANSEN: 925. Sorry. My eyes are terrible,  
11 Judge. I apologize.  
12 THE WITNESS: Correct.  
13 MR. CHRISTIANSEN: Mr. Vannah wishes it was 975.  
14 MR. VANNAH: Probably should be, but I'm not trying to get  
15 quantum meruit here.  
16 BY MR. CHRISTIANSEN:  
17 Q Now, you're willing to pay lawyers to come sort of button up  
18 a settlement at 925 an hour, fair?  
19 A When somebody threatens me, yes.  
20 Q Okay. And that wasn't litigating a complex product case,  
21 fair?  
22 A Pardon me?  
23 Q Mr. Vannah and Mr. Greene didn't come in to litigate a  
24 complex products defect case. Isn't that true?  
25 A They're litigating a pretty complicated case.

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

3 A I had little choice.

4 Q And Mr. Greene as well?

5 A Correct.

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

9 A Late summer.

10 Q I'm sorry?

11 A Yeah, later summer, early fall.

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

13 A Okay.

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

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

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

18 A Can I see the words, please?

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

20 A No, I do --

21 Q I'll show them to you.

22 A -- not remember.

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

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

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

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

5 A No.

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

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

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

9 MR. CHRISTIANSEN: This 87, John.

10 BY MR. CHRISTIANSEN:

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

13 A Correct.

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

19 A Correct.

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

23 A I'm sorry?

24 Q Sure. You had a claim against Lange?

25 A Lange Plumbing, yeah. They --

1 Q Yeah --

2 A -- installed it. Yeah, yeah.

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

5 A Correct.

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

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

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

14 A I guess so.

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

18 A Correct.

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

21 A Correct.

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

25 A Correct.

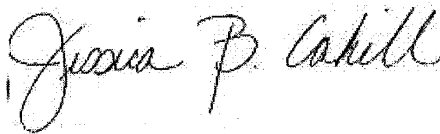
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MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: See you guys tomorrow.

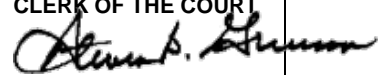
[Proceedings concluded at 4:33 p.m.]

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



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



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
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13 EDGEWORTH FAMILY TRUST;  
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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.

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1 Q Okay. Now, on the last page of the fee agreement, which is  
2 Edgeworth Exhibit 4, Bate 009, you've got a signature line for Brian  
3 Edgeworth and you have a signature line for Angela Edgeworth; is that  
4 correct?

5 A Correct.

6 Q Why did you have a signature line for Angela Edgeworth?

7 A Because Angela would have to be included, obviously, in any  
8 settlement. She's a 50% owner on all of the Edgeworth Family Trust and  
9 American Grating.

10 Q So she would have to be involved in any agreement that was  
11 reached on fees?

12 A Correct.

13 Q Whether that agreement was reached on November 17th,  
14 November 27th, or any other date?

15 A Correct.

16 Q What's the next contact that you had from Brian and Angela  
17 Edgeworth?

18 A I never had any contact with them again, other than a few  
19 emails from Angela after that.

20 Q Well, I hate to take issue with you, but I'd like to show you  
21 what's been marked as the Office Exhibit 43. Do you recall this fax of  
22 November 29, 2017?

23 A I do.

24 Q And this is signed by Brian Edgeworth?

25 A Yes.

1 Q This was entitled Letter of Direction?

2 A Yes.

3 THE COURT: What exhibit is that, Mr. Christensen?

4 MR. CHRISTENSEN: That's the Office Exhibit 43.

5 THE COURT: 43. And what is the date on that? Can you  
6 push it down a little bit? Okay, thank you.

7 MR. CHRISTENSEN: Woops. November 29, 2017.

8 THE COURT: And this is a fax? Okay, I see it at the top.

9 MR. CHRISTENSEN: It has a fax header on it.

10 THE COURT: Yeah, I see it at the top. Okay.

11 BY MR. CHRISTENSEN:

12 Q The fax header actually indicates that it was sent on  
13 November 30, 2017, at 9:35 a.m., assuming that was calibrated correctly.  
14 Mr. Simon, what did you think this letter meant when you read it?

15 A I was fired.

16 Q Why did you think that?

17 A Because in the practice of law when your clients go and meet  
18 with other attorneys and then you get a letter saying hey, the other  
19 attorney is involved in this case, it pretty much means that I'm not the  
20 attorney anymore.

21 Q I'd like to show you what's been marked as Office Exhibit 90.  
22 This has been previously discussed. This is the fee agreement between  
23 Vannah and Vannah and Brian Edgeworth. I don't see Angela's  
24 signature on here, but at least Brian signed it. The highlighted  
25 paragraph indicates, client retains attorneys to represent him as his

1 attorneys regarding Edgeworth Family Trust and American Grating, The  
2 All Viking Entities, all damages, including, but not limited to, all claims in  
3 this matter and empowers him to do all things, and it goes on, to effect a  
4 compromise in said matter or to institute such legal action as may be  
5 advisable in their judgment and agrees to pay them on some conditions.

6 The sprinkler case that we've been referring to, the case in which  
7 there's an offer for \$6 million from Viking, that was the American Grating  
8 versus all Viking entities case, correct?

9 A Yes.

10 Q When you saw this, what did this do to your belief of what  
11 the November 29th letter meant?

12 A This made it crystal clear that I was fired as of November  
13 30th when I received notice of his Letter of Direction, because he's now  
14 retained these lawyers for the exact action in which I was representing  
15 them for.

16 Q Now, there were still a lot of things going on in the case at  
17 this time; is that correct?

18 A A lot.

19 Q Well, for example, we're not going to spend a whole lot of  
20 time on it, but Office Exhibit 80, re bate 4552, is an email from Mr.  
21 Nelson that seems to be sent to you, lead counsel, at least he thought,  
22 for the Edgeworth's and Janet Pancoast, who was lead counsel for  
23 Viking at the time?

24 A Yes.

25 Q And attached to this was Mr. Parker's letter of November 29,

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 bate -- I believe the Bate is 36; do you see that?

7           A     Yes.

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

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

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

16          A     Yes.

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

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

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

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

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

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

9 BY MR. CHRISTENSEN:

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

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

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

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

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

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

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

24 THE COURT: Okay.

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

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

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

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

13                 THE WITNESS: Before I was fired, yeah.

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

15                 THE WITNESS: Yes.

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

18                 THE WITNESS: Nope.

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

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

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

23                 THE WITNESS: Correct.

24                 THE COURT: Okay.

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



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 and that represents my risk of loss right there.

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

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

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

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

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

22 MR. VANNAH: And my --

23 MR. CHRISTENSEN: -- fair number.

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

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

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

5 THE COURT: Right.

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

10 THE COURT: Okay.

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

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

23 THE COURT: Right.

24 MR. VANNAH: He's --

25 THE COURT: He billed 550 an hour.

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

4 THE COURT: Okay.

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

11 THE COURT: Okay.

12 MR. CHRISTENSEN: May I, Your Honor?

13 THE COURT: Yes.

14 MR. CHRISTENSEN: Thank you, Your Honor.

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

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

24 THE COURT: I've read the agreement.

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

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

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

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

6 BY MR. CHRISTENSEN:

7 Q May I repeat it?

8 A You may.

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

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

15 Q Would you have suffered a risk of loss?

16 A No.

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

20 A I recall the question.

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

22 A Not so much.

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

25 A Closer to 35, 36 percent.

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

5           MR. VANNAH: Two --

6           THE WITNESS: Makes sense.

7           MR. VANNAH: Two objections.

8           THE COURT: Okay.

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

15          THE COURT: Mr. Christensen?

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

18          THE COURT: No.

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

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

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MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

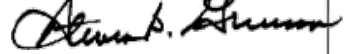
[Proceedings adjourned at 4:16 p.m.]

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



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



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 ADJUDICATE LIEN**

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

21 Defendants.

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

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

Hon. Tierra Jones  
DISTRICT COURT JUDGE

DEPARTMENT TEN  
LAS VEGAS, NEVADA 89155



1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James  
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or  
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their  
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John  
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully  
6 advised of the matters herein, the **COURT FINDS:**  
7

### 8 9 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

(Def. Exhibit 27).

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

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

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

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

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

22  
23 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
24 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
25 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
26

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

1 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

19 //

20 //

21 //

22 //

23 //

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

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

12 (Def. Exhibit 43).

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

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

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

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

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

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

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

## CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

1. An attorney at law shall have a lien:
  - (a) Upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in the attorney's hands by a client for suit or collection, or upon which a suit or other action has been instituted.

Nev. Rev. Stat. 18.015.

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

1 is enforceable in form.

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

### 8 *Fee Agreement*

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

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

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

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

10 (Def. Exhibit 27).

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

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

### 22 *Constructive Discharge*

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

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



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

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

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

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

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

Id.

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

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

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

19 Id.

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

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

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

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

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

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

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

14 NRS 18.015 states:

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

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

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

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

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

4. A lien pursuant to:

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

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

1 received from the client have been returned to the client, and authorizes the  
2 attorney to retain any such file or property until such time as an adjudication  
is made pursuant to subsection 6, from the time of service of the notices  
required by this section.

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

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

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

9 Nev. Rev. Stat. 18.015.

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

### 18 *Implied Contract*

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

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

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

9 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP  
10 16.1 disclosures and computation of damages; and these amounts include the four invoices that were  
11 paid in full and there was never any indication given that anything less than all the fees had been  
12 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees  
13 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of  
14 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the  
15 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must  
16 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the  
17 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law  
18 Office retained the payments, indicating an implied contract was formed between the parties. The  
19 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the  
20 date they were constructively discharged, November 29, 2017.  
21  
22  
23

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

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

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for  
2 fees was formed, the Court must now determine what amount of fees and costs are owed from  
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the  
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted  
5 billings, the attached lien, and all other evidence provided regarding the services provided during  
6 this time.  
7

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

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

1 bill.”

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

13 The amount of attorney’s fees and costs for the period beginning in June of 2016 to  
14 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016  
15 which appears to indicate that it began with the initial meeting with the client, leading the court to  
16 determine that this is the beginning of the relationship. This invoice also states it is for attorney’s  
17 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This  
18 amount has already been paid by the Edgeworths on December 16, 2016.<sup>2</sup>  
19  
20

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

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

---

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



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

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

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

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

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

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

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

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

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

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

4  
5 ***Costs Owed***

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

16  
17 ***Quantum Meruit***

18 When a lawyer is discharged by the client, the lawyer is no longer compensated under the  
19 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*  
20 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*  
21 *quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing, Gordon v.*  
22 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);  
23 and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*  
24 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on  
25 November 29, 2017. The constructive discharge terminated the implied contract for fees. William  
26  
27  
28

1 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award  
2 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees  
3 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion  
4 of the Law Office's work on this case.

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

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

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

25 *1. Quality of the Advocate*

26 Brunzell expands on the "qualities of the advocate" factor and mentions such items as  
27  
28

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

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

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

18  
19 *3. The Work Actually Performed*

20  
21 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,  
22 numerous court appearances, and deposition; his office uncovered several other activations, that  
23 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved  
24 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the  
25 other activations being uncovered and the result that was achieved in this case. Since Mr.  
26 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions  
27  
28

1 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by  
2 the Law Office of Daniel Simon led to the ultimate result in this case.

3 4. The Result Obtained

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

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

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

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

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

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

(4) The amount involved and the results obtained;

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

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

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

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

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

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

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

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

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

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

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

22 NRCP 1.5.

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

### 9 10 CONCLUSION

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

4 **ORDER**  
5

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

10 IT IS SO ORDERED this 10<sup>th</sup> day of October, 2018.  
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13 \_\_\_\_\_  
14 DISTRICT COURT JUDGE  
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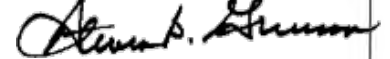


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Electronically served to:

V. D.

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Department 10



1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

**Consolidated with**

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (Def. Exhibit 27).

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

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

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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



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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9  
10 *Implied Contract*

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

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

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRC  
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were  
26 paid in full and there was never any indication given that anything less than all the fees had been  
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees  
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1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of  
2 the NRC 16.1 disclosures, however the billing does not distinguish or in any way indicate that the  
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must  
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the  
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law  
6 Office retained the payments, indicating an implied contract was formed between the parties. The  
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the  
8 date they were constructively discharged, November 29, 2017.

9  
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

1 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



IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

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

vs.

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

No. 77678

**FILED**

DEC 30 2020

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

No. 78176

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

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

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

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

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

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

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

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

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

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

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

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

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

Although we conclude that the district court correctly found that Simon was entitled to quantum meruit for work done after the constructive discharge, *see Gordon v. Stewart*, 74 Nev. 115, 119, 324 P.2d 234, 236 (1958) (upholding an award in quantum meruit to an attorney after breach of contract), *rejected on other grounds by Argentina Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 537-38, 216 P.3d 779, 786 (2009), we agree with the Edgeworths that the district court abused its discretion by awarding \$200,000 in quantum meruit<sup>4</sup> without making findings regarding the work Simon performed after the constructive discharge. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 82, 319 P.3d 606, 616 (2014) (reviewing district court's attorney fee decision for an abuse of discretion).

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

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

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

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

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

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

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

While the district court should have given proper notice under NRCP 12(d) that it was converting the NRCP 12(b)(5) motion to one for summary judgment, it did not err by applying its findings from the evidentiary hearing when ruling on the NRCP 12(b)(5) motion, as it had told the parties it was waiting to rule on this motion until after the lien adjudication hearing. Under the law-of-the-case doctrine, a district court generally should not reconsider questions that it has already decided. See *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.<sup>5</sup> See *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 623, 173 P.3d 707, 714 (2007) (upholding a district court’s decision where the district court held a bench trial to resolve equitable claims and then applied those findings to dismiss the remaining legal claims). Similarly, the district court’s finding that Simon properly perfected the attorney lien became the law of the case and thus bound the district court during its adjudication of the NRCP 12(b)(5) motion. Accordingly, because the district court properly applied its past

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

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

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

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

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

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<sup>6</sup>In his cross-appeal in Docket No. 77678, Simon argues that the district court erred by denying his anti-SLAPP special motion to dismiss as moot. However, Simon failed to present cogent arguments and relevant authority in his opening brief. Accordingly, we do not consider his argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 380 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).



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

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

#### *The costs award*

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

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

For the reasons set forth above, we

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

Pickering C.J.  
Pickering

Gibbons J.  
Gibbons

Hardesty J.  
Hardesty

Parraguirre J.  
Parraguirre

Stiglich J.  
Stiglich

Cadish J.  
Cadish

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

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

vs.

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

No. 77678

**FILED**

MAR 18 2021

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

No. 78176

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).

It is so ORDERED.

*[Signature]* C.J.  
Hardesty

*[Signature]* J.  
Parraguirre

*[Signature]* J.  
Cadish

*[Signature]* J.  
Pickering

*[Signature]* J.  
Stiglich

*[Signature]* J.  
Silver

*[Signature]* J.  
Herndon

71-07874

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

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

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

**Supreme Court No. 77678**  
District Court Case No. A738444

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

**Supreme Court No. 78176**  
District Court Case No. A738444

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze  
Administrative Assistant

cc (without enclosures):

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

**RECEIPT FOR REMITTITUR**

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

HEATHER UNGERMANN  
Deputy District Court Clerk

**RECEIVED  
APPEALS  
APR 13 2021  
CLERK OF THE COURT**

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

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

14 Defendants.

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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

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

16 (Def. Exhibit 27).

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

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

### 28 *Constructive Discharge*

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

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

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

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

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

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

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

*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  
claims against the SETTLING PARTIES set forth in, or arising from, the  
INCIDENT and hereby assume full responsibility for any injuries, damages,  
losses or liabilities that hereafter may occur with respect to the matters  
released by this Agreement.

14 Id.

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

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

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

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

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

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

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

6 NRS 18.015 states:

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

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

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

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

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

22 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

2 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  
26  
27  
28

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

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

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

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

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

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

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

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

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

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

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

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

### *Costs Owed*

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

### *Quantum Meruit*

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

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



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

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

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

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

21 *Quality of the Advocate*

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

work product and results are exceptional.

*The Character of the Work to be Done*

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

*The Work Actually Performed*

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

*The Result Obtained*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11  
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 NRPC 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  
28

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

### 10 11 CONCLUSION

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

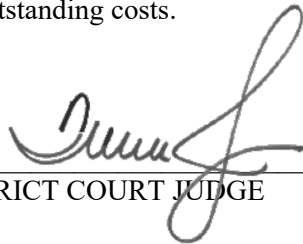
27 //

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3 //  
4 //

**ORDER**

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

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

  
DISTRICT COURT JUDGE

B7B 840 B8A7 FF62  
Tierra Jones  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Edgeworth Family Trust,  
Plaintiff(s)

CASE NO: A-16-738444-C

7 vs.

DEPT. NO. Department 10

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/16/2021

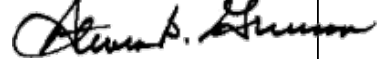
16 Daniel Simon .	lawyers@simonlawlv.com
17 Rhonda Onorato .	ronorato@rlattorneys.com
18 Mariella Dumbrique	mdumbrique@blacklobello.law
19 Michael Nunez	mnunez@murchisonlaw.com
20 Tyler Ure	ngarcia@murchisonlaw.com
21 Nicole Garcia	ngarcia@murchisonlaw.com
22 Bridget Salazar	bsalazar@vannahlaw.com
23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

1	Michael Nunez	mnunez@murchisonlaw.com
2		
3	Gary Call	gcall@rlattorneys.com
4	J. Graf	Rgraf@blacklobello.law
5	Robert Vannah	rvannah@vannahlaw.com
6	Christopher Page	chrispage@vannahlaw.com
7	Jessie Church	jchurch@vannahlaw.com
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

11	Theodore Parker	2460 Professional CT STE 200
12		Las Vegas, NV, 89128
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28		





1 **MTRC**

2 Lauren D. Calvert, Esq.

3 Nevada Bar No. 10534

4 Christine L. Atwood, Esq.

5 Nevada Bar No. 14162

6 David M. Gould, Esq.

7 Nevada Bar No. 11143

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16 *Attorneys for Plaintiffs Edgeworth*

17 *Family Trust and American Grating, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **EDGEWORTH FAMILY TRUST, and**  
14 **AMERICAN GRATING, LLC,**

15 **Plaintiffs,**

16 **v.**

17 **LANGE PLUMBING, LLC; THE VIKING**  
18 **CORPORATION, a Michigan Corporation;**  
19 **SUPPLY NETWORK, INC., dba VIKING**  
20 **SUPPLYNET, a Michigan Corporation; and DOES**  
21 **1 through 5; and, ROE entities 6 through 10;**

22 **Defendants.**

23 **EDGEWORTH FAMILY TRUST; AMERICAN**  
24 **GRATING, LLC**

25 **Plaintiffs,**

26 **vs.**

27 **DANIEL S. SIMON; THE LAW OFFICE OF**  
28 **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.: X**

**Consolidated with**

**CASE NO.: A-16-738444-C**

**DEPT NO.: X**

**DEFENDANT'S MOTION FOR**  
**RECONSIDERATION REGARDING**  
**COURT'S AMENDED DECISION**  
**AND ORDER GRANTING IN PART**  
**AND DENYING IN PART SIMON'S**  
**MOTION FOR ATTORNEY'S FEES**  
**AND COSTS AND SECOND**  
**AMENDED DECISION AND**  
**ORDER ON MOTION TO**  
**ADJUDICATE LIEN**

**(HEARING REQUESTED)**

1 COME NOW, Defendants EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC by  
2 and through their attorneys of record, LAUREN D. CALVERT, ESQ., and CHRISTINE L. ATWOOD  
3 ESQ., of MESSNER REEVES LLP, and hereby submit Defendants' Motion For Reconsideration  
4 Regarding Court's Amended Decision And Order Granting In Part And Denying In Part Simon's Motion  
5 For Attorney's Fees And Costs and Second Amended Order on Motion to Adjudicate Lien.

6 DATED this 30<sup>th</sup> day of March, 2021.

7  
8 **MESSNER REEVES LLP**

9  
10 */s/ Christine Atwood*

11 

---

Lauren D. Calvert, Esq.  
12 Nevada Bar No. 10534  
Christine L. Atwood, Esq.  
13 Nevada Bar No. 14162  
David M. Gould, Esq.  
14 Nevada Bar No. 11143  
8945 W. Russell Road Ste 300  
15 Las Vegas, Nevada 89148  
*Attorneys for Plaintiffs*  
16 *Edgeworth Family Trust and American*  
*Grating, LLC*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 This matter arises from a complex litigation arising from water damage to a property being built  
20 by Brian and Angela Edgeworth (hereinafter "Edgeworth" and "Angela Edgeworth" respectively). The  
21 Edgeworths, by and through the Edgeworth Family Trust, and their company American Grating  
22 (collectively hereinafter "the Edgeworths"), were represented by Daniel Simon of the Law offices of  
23 Daniel Simon (hereinafter "Simon") in case A-16-738444-C (hereinafter referred to as the "flood  
24 litigation"). At the conclusion of the flood litigation, a dispute arose between Simon and Edgeworth  
25 regarding the remaining attorney's fees owed to Simon. After an evidentiary hearing on the motion to  
26 adjudicate lien – during which Simon's case file for the Edgeworth litigation had not been turned over to  
27

1 the client and still has not been turned over to the Edgeworths, in apparent contravention of NRS 7.055 –  
2 this Court ordered additional fees paid to Simon by Edgeworth and dismissed the Edgeworth Complaint.  
3 The matters were appealed, and in the consolidated case before the Nevada Supreme Court, an order was  
4 issued on December 30, 2020, stating “we vacate the district court's order awarding \$50,000 in attorney  
5 fees and \$200,000 in quantum meruit and remand for further findings regarding the basis of the  
6 awards.” After the matter was remanded, on March 16, 2021, this Court issued a Second Amended  
7 Decision and Order on Motion to Adjudicate Lien, and Amended Decision and Order Granting in Part  
8 and Denying in Part, Simon’s Motion for Attorney’s Fees and Costs, despite the fact that the full case file  
9 had still not been provided to the Edgeworths or this Court for evaluation, in apparent contravention of  
10 NRS 7.055. The Edgeworths now seek reconsideration on matters related to the Amended Orders as  
11 outlined below.

12 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

13 This matter arises out of two civil cases that have since been consolidated. On April 10, 2016, a  
14 house the Edgeworths were building suffered a flood. The house was still under construction, but the cost  
15 of repairs was approximately \$500,000. Simon represented the Edgeworths in the resulting case of  
16 Edgeworth Family Trust and American Grating LLC vs. Lange Plumbing, LLC, the Viking Corporation,  
17 Supply Network Inc., dba VikingSupplynet, which was assigned case No. A-16-738444-C. Over the  
18 course of his representation of the Edgeworths Simon was paid \$368,588.70 in attorney fees and  
19 \$114,864.39 in litigation costs, making the total amount paid out of pocket by the Edgeworths to Simon  
20 \$483,453.09 through September 25, 2017. These bills were billed at the rate of \$550.00 per hour, and  
21 were found by this court to be an implied contract between Simon and Edgeworth.

22 On or about November 15, 2017, the Edgeworths accepted a mediator’s proposal to settle with  
23 Viking for \$6,000,000 (hereinafter “Viking Settlement”). On November 17, 2017, Simon called the  
24 Edgeworths to his office to discuss the settlement. During that meeting, Simon indicated that he believed  
25 he was entitled to compensation over and above the hourly rate he was being paid. He supported his  
26 argument by stating that a judge would automatically award him forty (40) percent of the Viking  
27

1 settlement, so taking anything less was cheating himself. Simon further stated that if the Edgeworths did  
2 not agree to additional compensation for Simon, the Viking Settlement would fall apart because it required  
3 his signature and there were many terms to still be negotiated. In the following days, Simon, who was  
4 on vacation in Peru, placed numerous phone calls to the Edgeworths, asking them to commit to additional  
5 compensation. On November 21, 2017, counsel for Viking Janet Pancoast, Esq., sent a draft of the  
6 settlement agreement for the Viking settlement to the other counsel for Viking, Dan Polsenberg, Esq.,  
7 which indicated that issues had arose with the confidentiality and non-disparagement clauses proposed  
8 therein.<sup>1</sup> This email and the attached version of the settlement agreement, are evidence irreconcilable  
9 with Simon's testimony that he negotiated regarding the confidentiality clause on November 27, 2017.

10  
11 A bill from James Christensen indicates that Simon hired him on November 27, 2017 to represent  
12 Simon regarding the "Edgeworth Fee Dispute,"<sup>2</sup> a dispute that notably did not exist at that time.<sup>3</sup> That  
13 same day Simon sent correspondence to the Edgeworths detailing his position and asking them to sign a  
14 fee agreement entitling him to nearly \$1,200,000 in additional attorney's fees.<sup>4</sup> Based upon this and other  
15 new evidence, which was not presented at the time of evidentiary hearing, it appears that many facts as  
16 presented by Simon are irreconcilable with the facts contained in the documents and, as such, the  
17 Edgeworths respectfully request that this Court reconsider the new evidence in order to make a  
18 determination regarding whether what was testified to as the evidentiary or the documentary new evidence  
19 is more credible in this Court's resolution of the matter and corresponding orders.<sup>5</sup>

20 In the November 27 letter to the Edgeworths, Simon indicated that there was a lot of work left to  
21 be done on the settlement, including the language, "which had to be very specific to protect everyone."

22  
23 <sup>1</sup> See Email from Pancoast to Polsenberg dated November 21, 2017, including attached draft settlement agreement, attached  
hereto as **Exhibit A**.

24 <sup>2</sup> See Billing Invoice from James Christensen, attached hereto as **Exhibit B**.

25 <sup>3</sup> Although no conclusive response was provided to questions at the lien adjudication hearing regarding when he hired James  
Christensen, we now know from Christensen's own bill that Simon retained him on or before November 27, 2017, to represent  
him for the Edgeworth Fee Dispute.

26 <sup>4</sup> See Letter of Daniel Simon, Esq. dated November 27, 2017, attached hereto as **Exhibit C**.

27 <sup>5</sup> See Exhibits A, B and C; see also December 12, 2017 Email from Janet Pancoast, without attachments, **Exhibit D**; see also  
28 Full Version of December 12, 2017 Email from Janet Pancoast, with attachments, attached hereto as **Exhibit E**. The Edgeworths  
further note that there are many other instances of irreconcilable "facts" as testified to by Mr. Simon at the evidentiary hearing  
and as found in the record and/or newly discovered evidence. The Edgeworths believe that more irreconcilable purported "facts"  
will come to light upon Simon finally turning over his entire, unredacted case file for his representation of the Edgeworths  
apparently compliance to NRS 7.055. The Edgeworths hereby specifically reserve any and all rights and/or objections in this  
regard.

1 He claimed that this language must be negotiated, and if that could not be achieved, there would be no  
2 settlement. He asked the Edgeworths to sign the fee agreement so that he could proceed to attempt to  
3 finalize the agreement. Simon went on to assert that he was losing money working on the Edgeworths'  
4 matter despite being paid \$550 per hour. Interestingly, at the time Simon drafted the November 27, 2017  
5 Letter he had been paid \$368,588.70 in attorney fees plus costs over 16 months. Simon further claimed  
6 that he had thought about it a lot, and the proposed fee agreement was the lowest amount he could accept,  
7 and if the Edgeworths were not agreeable he could no longer "help them." Simon claimed he would be  
8 able to justify the attorney's fee in the attached agreement in any later proceeding, as any court will look  
9 to ensure he was fairly compensated for the work performed and the exceptional result achieved. The  
10 first time the Edgeworths ever saw this agreement was after the \$6,000,000 settlement was agreed upon,  
11 and after Simon had hired James Christensen to represent him in the "Edgeworth Fee Dispute."<sup>6</sup> Simon  
12 conceded in the letter that he did not have a contingency agreement and was not trying to enforce one.<sup>7</sup>  
13 Simon concluded the letter by indicating to Brian and Angela that if they did not agree to the modified  
14 fee arrangement entitling him to an additional \$1.2mil, that he would no longer represent the Edgeworths.<sup>8</sup>  
15 At this point the Edgeworths were unaware that Simon had retained Christensen to represent him.  
16

17 On November 27, 2017, Angela Edgeworth requested a copy of the settlement agreement.<sup>9</sup> Simon  
18 replied that he did not have the agreement, likely because of the holidays.<sup>10</sup> Angela responded, requesting  
19 that she be informed of all settlement discussions both verbal and in writing so she could run it by her  
20 personal attorney.<sup>11</sup> No response was received.

21 On November 29, 2017, the Edgeworths' engaged Robert Vannah, Esq. and the firm of Vannah  
22 & Vannah. On that same day, November 29, 2017, at approximately 9:35 a.m., Mr. Simon received a  
23 faxed letter from Brian Edgeworth advising that the Edgeworths had retained Vannah to assist in the  
24

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25 <sup>6</sup> See **Exhibits B and C**.

26 <sup>7</sup> See **Exhibit C**, at page 4.

27 <sup>8</sup> See **Exhibit C**, at p. 5.

28 <sup>9</sup> See **Email String Between Angela Edgeworth Simon dated November 27, 2017**, attached hereto as **Exhibit F**.

<sup>10</sup> *Id.* Interestingly, according to the email from Pancoast on November 21, 2017, we now know that the agreement did exist at that time. Further, Simon testified at the hearing that he had the agreement as soon as he returned from Peru, which occurred on November 25, 2017.

<sup>11</sup> *Id.*

1 litigation and cooperate with Simon.<sup>12</sup> This email was followed up with a phone call between Simon and  
2 John Greene, Esq., of Vannah and Vannah (hereinafter “Greene”).

3       On November 30, 2017, at 8:39am, Simon sent a proposed Viking Settlement agreement to the  
4 Edgeworths.<sup>13</sup> The proposed agreement included an edit identified with track changes, that would add  
5 Simon’s name on the settlement check and included a confidentiality agreement.<sup>14</sup> Interestingly, Simon  
6 testified at the lien adjudication hearing that the settlement terms were all negotiated on November 27,  
7 2017, including removal of the confidentiality agreement and that the final settlement agreement was not  
8 reached until December 1, 2017, despite the fact that Simon sent Greene and the Edgeworths what Simon  
9 called the “final settlement agreement” via email on November 30, 2017 at 5:31 p.m., as discussed  
10 below.<sup>15</sup> Further, a draft of the original settlement agreement shows that Simon’s name was not originally  
11 slated to be included on the settlement check.<sup>16</sup> The change was made without the consent of the  
12 Edgeworths sometime between when the original settlement agreement was drafted by Viking and when  
13 it was presented as the proposed settlement agreement to the Edgeworths on the morning of November  
14 30, 2017, notably after Angela had asked to be involved in negotiation of any and all terms of the  
15 agreement.  
16

17       On November 30, 2017, at 5:31pm that day, Simon sent a “final settlement agreement” to  
18 Vannah.<sup>17</sup> Simon confirmed that Vannah would advise the Edgeworths of the effects of the release and  
19 confirmed that the Edgeworths had desired to sign the settlement agreement “as is” as it was sent that  
20 morning. Regardless of the Edgeworths wanting to sign the agreement as drafted, without their knowledge  
21 or consent, Simon negotiated terms that only benefited him. Simon confirmed this in the email stating  
22 that he had negotiated to “omit the confidentiality provision, provide a mutual release and allow the  
23 opportunity to avoid a good faith determination from the court if the clients resolve the Lange claims,  
24

25 <sup>12</sup> See November 29, 2017 Faxed Correspondence from B. Edgeworth to Simon, attached hereto as **Exhibit G**.

26 <sup>13</sup> See Email from Simon to the Edgeworths dated Nov. 30, 2017 at 8:39am, attached hereto as **Exhibit H**.

27 <sup>14</sup> *Id.* at Simon’s “Proposed” Settlement Agreement as attached to the Email Simon sent to the Edgeworth on Nov. 30, 2017 at 8:39 a.m.

28 <sup>15</sup> See Transcript of Day 4 of Evidentiary, dated August 30, 2019, at 15:19-24, 16:6-8, 16:17-17:18, 82:16-85:5, 38:14-23, attached hereto as **Exhibit I**.

<sup>16</sup> See **Exhibit A**.

<sup>17</sup> See Email from Simon to Greene, Dated November 30, 2017, at 5:31pm, attached hereto as **Exhibit J**.

1 provided Lange agreed to dismiss its claims against Viking.”<sup>18</sup> Simon claimed that these were substantial  
2 and additional beneficial terms to the Edgeworths. However, the Edgeworths never agreed to these  
3 changes, and were not in agreement with the removal of the confidentiality agreement.

4 Later that day, on November 30, 2017, Simon contacted Ruben Herrera (hereinafter “Herrera”),  
5 club director and coach of the Las Vegas Aces Volleyball Club, where both Simon and Edgeworth’s  
6 daughters played. In his email Simon stated that due “ongoing issues with the Edgeworths,” Simon was  
7 requesting that his daughter be released from her player’s contract with the Club.<sup>19</sup> On December 4, 2017,  
8 Simon sent a second email to Herrera, stating “[a]s for the other issue with the Edgeworths, just as you,  
9 we believed we were friends. However, as parents, we must do everything in our power to protect our  
10 children. This is why she could not have come to the gym.” The statements in these emails clearly implied  
11 wrongdoing by the clients Simon allegedly still represented, and had a duty to act in their best interest.  
12

13 Without providing any further invoices for payment of his fees under the hourly agreement, and  
14 without an agreement by the Edgeworths to pay any additional compensation outside the hourly  
15 agreement, on November 30, 2017, Simon filed a Notice of Attorney’s Lien against the Viking Settlement,  
16 claiming by supporting affidavit that \$80,326.86 was allegedly outstanding and had not been paid by the  
17 Edgeworths.<sup>20</sup> On January 2, 2018, Simon filed a second Notice of Amended Attorney’s Lien wherein  
18 he claimed outstanding costs of \$76,535.93 and entitlement to a sum total of \$2,345,450 in attorney’s  
19 fees, less payments received in the sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80 in total  
20 attorneys’ fees against the Viking Settlement.<sup>21</sup>

21 On December 1, 2017, the Edgeworths fully executed the Viking settlement agreement even  
22 though it contained terms they were not in agreement with.<sup>22</sup> On December 7, 2017, the Edgeworths fully  
23 executed the Lange settlement agreement.<sup>23</sup> On December 12, 2017, Janet Pancoast emailed Simon and  
24

25 <sup>18</sup> Negotiation of the removal of this term was unbeknownst to the Edgeworths, and without their consent. Further, Simon  
26 testified at the evidentiary hearing that he had negotiated that term out days before.

27 <sup>19</sup> See Emails Between Simon and Herrera, Attached hereto as **Exhibit K**.

28 <sup>20</sup> See November 30, 2017 Notice of Attorney’s Lien, attached hereto as **Exhibit L**.

<sup>21</sup> See Notice of Amended Attorney’s Lien, attached hereto as **Exhibit M**.

<sup>22</sup> See Executed Viking Settlement Agreement, attached hereto as **Exhibit N**.

<sup>23</sup> See Executed Lange Settlement Agreement attached hereto as **Exhibit O**.

1 informed him that the checks had arrived but were not certified as previously agreed upon.<sup>24</sup> Pancoast  
2 indicated that she wanted to exchange the checks that day for a limited Stipulation and Order for dismissal  
3 of the claims against Viking only to ensure they cleared and the Edgeworths received the funds by  
4 December 21, 2017, as agreed. The Edgeworths were never notified that the checks were available at that  
5 time, and this fact is irreconcilable with Simon's testimony that he did not have access to the checks much  
6 later in support of his argument that conversion was a legal impossibility.

7  
8 On January 4, 2018, Vannah filed a Complaint in case A-18-767242-C alleging breach of contract,  
9 declaratory relief and conversion.<sup>25</sup> In response to this and the Amended Complaint later filed, Plaintiffs  
10 filed a Motion to Dismiss and a Special anti-SLAPP Motion to Dismiss. The Edgeworths filed Oppositions  
11 to same. On January 24, 2018, Simon filed a Motion to Adjudicate Lien. This Court held a five (5) day  
12 evidentiary hearing on the Motion to Adjudicate the Lien between August 27, 2018 and September 18,  
13 2018.<sup>26</sup> On November 19, 2018, this Court granted Plaintiffs' Motion to Adjudicate Attorney's Lien,  
14 finding that Simon was entitled to attorney's fees totaling \$484,982.50 under the hourly agreement.<sup>27</sup>  
15 Simon's Special Anti-SLAPP Motion to Dismiss was specifically denied as moot and the Edgeworths'  
16 Complaints were dismissed. On August 8, 2019, the Edgeworths filed an appeal challenging this Court's  
17 Order Adjudicating the Lien. Plaintiffs also filed a Petition for Writ of Prohibition or Mandamus on  
18 October 17, 2019, challenging the amount adjudicated by Judge Jones. The Appeal and Writ were  
19 consolidated by the Nevada Supreme Court.<sup>28</sup>

20 On December 30, 2020, the Nevada Supreme Court issued an order Affirming in Part, Vacating  
21 in Part and Remanding the case to address how this Court arrived at its decision to award \$50,000 in fees,  
22 and \$200,000 in quantum meruit to Simon, pursuant to *Brunzell*.<sup>29</sup> On March 16, 2021, this Court issued  
23 the Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's  
24

25 <sup>24</sup> See Exhibits D and E.

26 <sup>25</sup> See pleadings on file herein.

27 <sup>26</sup> See Transcript of Proceedings in its entirety, on file herein.

28 <sup>27</sup> Notably, this amount is nearly \$1,500,000 less than the amount Simon was exercising dominion and control over by refusing  
to provide his signature for it to be released.

29 <sup>28</sup> See Pleadings and exhibits related to docket 78176, and 79821 respectively.

<sup>29</sup> See December 30, 2020 Supreme Court Order, attached hereto as **Exhibit P**.



1 Fees and Costs, and Second Amended Decision and Order on Motion to Adjudicate Lien. This Motion  
2 for Reconsideration follows for the reasons outlined *infra*.

3  
4 **III. LEGAL STANDARD**

5 Courts have the discretion and power to “mend, correct, resettle, modify, or vacate, as the case  
6 may be, an order previously made and entered on a motion in the progress of the cause or proceeding.”

7 *Trail v. Faretto*, 91 Nev. 401, 403 (1975). EDCR 2.24, which governs rehearing and reconsideration of  
8 motions, states:

9 (b) A party seeking reconsideration of a ruling of the court, other than any  
10 order which may be addressed by motion pursuant to N.R.C.P.  
11 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days  
12 after service of written notice of the order or judgment unless the time is  
shortened or enlarged by order. A motion for rehearing or reconsideration  
must be served, noticed, filed and heard as is any other motion. A motion  
for reconsideration does not toll the 30-day period for filing a notice of  
appeal from a final order or judgment.

13 The trial judge is granted discretion on the question of a rehearing. *See, Harvey’s Wagon Wheel,*  
14 *Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 1095 (1980). In *Harvey’s Wagon Wheel, Inc.* the District Court  
15 denied the first motion for partial summary judgment without prejudice, initially concluding that the  
16 contract language was not clear and thus summary judgment was not warranted. *Id.* Later, the District  
17 Court reconsidered the motion for partial summary judgment, finding that although the facts and the law  
18 were unchanged, the judge was more familiar with the case by the time the second motion was heard, and  
19 he was persuaded by the rationale of the newly cited authority. *Id.* at 218. The Nevada Supreme Court  
20 found that the district judge did not abuse his discretion by rehearing the motions for partial summary  
21 judgment. *Id.* A rehearing is appropriate when “the decision is clearly erroneous.” *See, Masonry & Tile*  
22 *Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 941 P.2d 486 (1997)(emphasis added); *see also,*  
23 *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244 (1976); *Mustafa v. Clark County School Dist.*,  
24 157 F.3d 1169, 1179 (9th Cir. 1998)(holding reconsideration is appropriate when “district court  
25 committed clear error or manifest injustice”).

26 In *Trail v. Faretto*, the Nevada Supreme Court explained it is well-within this Court’s inherent  
27 authority to amend, correct, reconsider or rescind any of its prior orders. 91Nev. 401, 403, 536 P.2d 1026,  
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1 1027 (1975); *accord Goodman v. Platinum Condo. Dev., LLC*, 2012 WL 1190827, \*1 (D. Nev. Apr. 10,  
2 2012) (“the court has inherent jurisdiction to modify, alter or revoke [a non-appealable order]”); *Sussex*  
3 *v. Turnberry/MGM Grand Towers, LLC*, 2011 WL 4346346, at \*2 (D. Nev. Sept. 15, 2011) (court has  
4 “inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it  
5 to be sufficient”). Further, in deciding this dispute, Nevada jurisprudence has long held a “policy of  
6 favoring adjudication on the merits.” *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1059, 194 P.3d  
7 709, 716 (2008); *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 645, 837 P.2d 1354, 1359 (1992);  
8 *Blanco v. Blanco*, 129 Nev. 723, 730, 311 P.3d 1170, 1174 (2013).

#### 9 10 **IV. LEGAL ARGUMENT**

##### 11 **A. A SECOND AMENDMENT TO THE AMENDED ORDERS IS WARRANTED** 12 **BASED ON NEW INFORMATION**

13 A motion to reconsider must provide a court with valid grounds for reconsideration by: (1)  
14 showing some valid reason why the court should reconsider its prior decision, and (2) setting forth facts  
15 or law of a strongly convincing nature to persuade the court to reverse its prior decision. *Frasure v. United*  
16 *States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). “Reconsideration is appropriate if the district court  
17 (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was  
18 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Id.* In this case,  
19 reconsideration of the Court’s Amended Decision and Order Granting in Part and Denying in Part Simon’s  
20 Motion for Fees and Costs is necessary due to the discovery of significant new evidence since the time of  
21 the Evidentiary hearing and due to erroneous statements of fact set forth in the Court’s Order, as follows.

##### 22 **i. New Evidence Shows That Simon Had Access to The Settlement** 23 **Proceeds As Early As December 12, 2018 And Failed To Notify The** 24 **Edgeworths Of Same**

25 The Edgeworths Respectfully Request Reconsideration Regarding the Court’s Finding that  
26 Simon did not have access to the settlement funds when the conversion claim was made due to new  
27 evidence that indicates that Simon had access to the funds as early as December 12, 2017. The Court’s  
28

1 award of Attorney's Fees was granted pursuant to NRS 18.010(2)(b), which allows the Court to assess  
2 attorney's fees:

3 Without regard to the recovery sought, when the court finds that the claim,  
4 counterclaim, cross-claim or third-party complaint or defense of the  
5 opposing party was brought or maintained without reasonable ground or to  
6 harass the prevailing party. The court shall liberally construe the provisions  
7 of this paragraph in favor of awarding attorney's fees in all appropriate  
8 situations. It is the intent of the Legislature that the court award attorney's  
9 fees pursuant to this paragraph and impose sanctions pursuant to Rule 11  
of the Nevada Rules of Civil Procedure in all appropriate situations to  
punish for and deter frivolous or vexatious claims and defenses because  
such claims and defenses overburden limited judicial resources, hinder the  
timely resolution of meritorious claims, and increase the costs of engaging  
in business and providing professional services to the public.

10 Here, the Court determined that the Edgeworths' conversion claim was not maintained on  
11 reasonable grounds because "it was an impossibility for Simon to have converted the Edgeworth's  
12 property at the time the lawsuit was filed." Specifically, the Court reasoned that Simon could not have  
13 converted the Edgeworth's funds as of the date the complaint was filed on January 4, 2018, because Simon  
14 "was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the  
15 trust account."<sup>30</sup>

16 Here, however, evidence not presented at the lien adjudication hearing conclusively establishes  
17 that Simon had the ability to access to the settlement proceeds as early as December 12, 2017. The  
18 Edgeworths recently received an email sent by Janet C. Pancoast, Esq., (hereinafter "Pancoast"), counsel  
19 for the Viking entities, on December 12, 2017, showing that Simon had access to the settlement funds and  
20 critical information regarding the settlement agreement which he intentionally withheld from the  
21 Edgeworths and Vannah at that time, and concealed from the Court thereafter.<sup>31</sup> In this email Pancoast  
22 informed Simon that the Viking entities had issued two standard, non-certified settlement checks in breach  
23 of the settlement agreement, which contained a specific provision requiring certified checks Pancoast  
24 attached scanned copies of the settlement checks to her correspondence stating that she was willing to  
25 provide the same to the Edgeworths that very day should Simon provide a signed stipulation for dismissal.

27 <sup>30</sup> See Amended Decision and Order Granting in Part and Denying in Part, Simon's Motion for Fees and Costs, Dated March  
16, 2021, at Finding No. 2, p.2: 5 – 12, on-file herein.

28 <sup>31</sup> See Exhibits D and E.

1 Simon did not inform the Edgeworths nor Vannah of the Viking entities breach nor was Ms.  
2 Pancoast's correspondence ever forwarded to the Edgeworths. In fact, the Edgeworths were not even  
3 aware of the existence of the email until Simon provided an edited copy of the same as part of thousands  
4 of pages provided years later. The copy of the email was however, stripped of its attachments in what can  
5 only be considered a deliberate attempt to conceal or bury this fact. Simon did not inform the Edgeworths  
6 or Vannah of any of this extremely pertinent information until December 28, 2017. In withholding  
7 information related to the status of the settlement funds and a significant breach in the terms of the  
8 settlement agreement, Simon deprived the Edgeworths of their right to determine how to proceed. It  
9 cannot be overstated that this right belonged to the Edgeworths exclusively as the clients in the  
10 relationship. Simon's omission thus rendered the Edgeworths unable to choose to sign the stipulation and  
11 order and obtain the checks on December 12, 2017, should they have wished to do so, and was in direct  
12 controversy with their best interests.  
13

14 In light of this newly discovered evidence, the Court's factual findings with respect to the  
15 Edgeworth's conversion claim are misguided. It was not an "impossibility for Simon to have converted  
16 the Edgeworth's property" at the time the lawsuit was filed on January 4, 2018 because such a conversion  
17 could have and indeed did occur as of December 12, 2017. Conversion occurs where "one exerts wrongful  
18 dominion over another person's property or wrongful interference with the owner's dominion." *Bader v.*  
19 *Cerri*, 96 Nev. 352, 609 P.2d 314 (1980). The Nevada Supreme Court has defined conversion as "a distinct  
20 act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with  
21 his title or rights therein or in derogation, exclusion or defiance of such title or rights." *Wantz v. Redfield*,  
22 794 Nev 196, 198, 326 P.2d 413, 414 (1958) (emphasis added).

23 In failing to inform the Edgeworths that the checks were available, of the breach to the settlement  
24 agreement, and the Viking entities proposed solution to exchange a stipulation for dismissal for the  
25 settlement checks on December 12, 2017, Simon undeniably asserted wrongful dominion over the  
26 Edgeworths' property and acted inconsistent with their rights with respect to the same. Nevada's Rules  
27 of Professional conduct delineate specific rights to all clients, including the right to determine whether to  
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1 settle a matter as secured by Rule 1.2(a). Furthermore, NRPC 1.4 required Simon to “[r]easonably consult  
2 with the client about the means by which the client’s objectives are to be accomplished” and to “[K]eep  
3 the client reasonably informed about the status of the matter.” See NRPC 1.4 (2), (3).

4 Simon’s failure to timely inform the Edgeworths or Vannah of Ms. Pancoast’s offer to provide  
5 the non-certified settlement checks in exchange for a signed Stipulation and Order deprived the  
6 Edgeworths of their decision-making authority in violation of the aforementioned rules of professional  
7 conduct. Additionally, it deprived them of access to the settlement proceeds that could have been secured  
8 as early as December 12, 2017. Simon assured Ms. Pancoast that he would communicate her proffered  
9 solution to the Viking entities breach to the Edgeworths yet completely failed to do so for weeks. In doing  
10 Simon he deprived the Edgeworth’s access to the settlement proceeds and their decision-making power  
11 in determining how to address a breach of contract that occurred, which standing alone carries significant  
12 potential rights and remedies. As such, the Edgeworths maintain that Simon asserted unlawful dominion  
13 over the settlement proceeds, thus the conversion occurred well before the filing of their January 4, 2018  
14 Complaint. Considering this new evidence, the Edgeworths respectfully request that the finding in the  
15 Amended Order is reconsidered to correct the Court’s finding that their conversion claim was an  
16 impossibility and not maintained upon reasonable grounds.

17  
18 Furthermore, the complete version of Ms. Pancoast’s email demonstrates that Simon is likely in  
19 possession of further evidence supporting the Edgeworth’s conversion claim that has been withheld. As  
20 is noted above, the copy of Ms. Pancoast’s December 12, 2017 email correspondence provided in the file  
21 disclosed by Simon in June of 2020 was incomplete in an apparent attempt to conceal the fact that the  
22 proposed stipulation and order and settlement checks were attached thereto. As there is no conceivable  
23 reason why Simon would have provided an incomplete version of the email other than to mislead the  
24 Edgeworths and the Court, one must assume that this withholding was intentional. That Simon provided  
25 an edited version of the email is proof positive that Simon has intentionally withheld documents from the  
26 Edgeworths and the Court, and that the evidence withheld likely provides further proof in support of the  
27 Edgeworth’s conversion claim.

1 In this case, the reasonableness of the Edgeworth's conversion claim goes to the very heart of the  
2 Court's decision to award significant attorney's fees and costs to Simon. As such, the Edgeworths  
3 respectfully request that, at a minimum, the Court issue an Order compelling Simon to disclose the full,  
4 complete and unredacted Edgeworth file prior to issuing a revised determination on Plaintiff's Motion for  
5 Attorney's Fees and Costs. Alternative, the Edgeworths request that this finding is amended to conform  
6 to the facts.

7 **ii. New Evidence Shows That James Christensen Was Retained On Or**  
8 **Before November 27, 2017**

9 The Edgeworths Respectfully Request Reconsideration Regarding the Court's Finding that James  
10 Christensen was retained after the filing of the lawsuit against Simon on January 4, 2018. The Court's  
11 Order only grants Simon's request for those attorney's fees and costs incurred in defending against the  
12 Edgeworth's conversion claim, and explicitly denies Simon's request for fees as to any other claims,  
13 including the Motion to Adjudicate Lien.<sup>32</sup> The Court granted Simon's request for attorney's fees related  
14 to James Christensen, Esq.'s defense of the conversion claim, , finding that his services "were obtained  
15 after the filing of the lawsuit against Simon, on January 4, 2018."<sup>33</sup> The Edgeworths respectfully submit  
16 that this finding is erroneous given the billing records disclosed by Mr. Christensen as well as testimony  
17 given at the evidentiary hearing.

18 Mr. Christensen's billing statement from November and December of 2017, titled "Simon Law  
19 Group-Edgeworth Fee Dispute" provides clear evidence to this Court that he was retained by Simon on  
20 November 27, 2017.<sup>34</sup> He had multiple meetings, email exchanges and telephone conference with Simon,  
21 who is identified as "client" in the billing statement, thus evidencing that an attorney-client relationship  
22 had been formed at that time. This Court has unfortunately been misled regarding the date of Mr.  
23 Christensen's retention on several occasions. During day four (4) of the evidentiary hearing Simon  
24 implied that he did not consult with any counsel until December 1, 2017 when he forwarded the  
25

26 

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<sup>32</sup> See Amended Decision and Order Granting in Part and Denying in Part, Simon's Motion for Fees and Costs, dated March 16,  
27 2021, at Finding No. 2, p.2: 13 – 22, on-file herein.

28 <sup>33</sup> *Id.*

<sup>34</sup> See **Exhibit B**.

1 contingency email of August 22, 2017 to Mr. Christensen.<sup>35</sup> This deception is significant as it implies that  
2 Simon did not seek counsel until after he learned the Edgeworths had retained Vannah, allegedly leading  
3 Simon to believe he was “out” of the case. In reality, however, Simon conferred with Mr. Christensen  
4 days before he was aware of Vannah’s involvement, as plainly evidenced by the bill from Christensen.  
5 While this erroneous testimony may seem more easily explained by accidental oversight or forgetfulness,  
6 the totality of Simon’s testimony at the evidentiary hearing demonstrates that the discrepancy is more than  
7 a mishap. Simon testified that he consulted with Mr. Christensen because he felt he was terminated  
8 because the Edgeworths were consulting with Vannah.<sup>36</sup>

9  
10 This explanation regarding Simon’s motivation to consult with Mr. Christensen is incredulous  
11 given that the representation began days prior on November 27, 2017, and the two had communicated  
12 regarding the “Edgeworth fee dispute” multiple times prior to November 30, 2017, when the Edgeworth’s  
13 sent Simon the letter of direction first advising him of Vannah’s involvement. Mr. Christensen then  
14 pursued additional questioning to further solidify December 1, 2017 as the date of retention, despite  
15 knowing he was retained days prior, by asking Simon if his retention of Mr. Christensen occurred the  
16 same day that Simon’s first attorney’s lien was filed.<sup>37</sup> As Simon’s first attorney’s lien was filed on  
17 December 1, 2017, this testimony only served to mislead the Court regarding the date of and motivation  
18 behind Simon’s retention of Mr. Christensen.

19 In this case, whether or not Simon retained Christensen in response to the lawsuit is central to the  
20 Court’s decision to award related attorney’s fees and costs to Simon. Considering this new evidence, the  
21 Edgeworths respectfully request that the finding in the Amended Order is reconsidered to reflect that  
22 Christensen was retained on or before November 27, 2017, and not after the January 4, 2018 Complaint  
23 was filed.

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27 <sup>35</sup> See **Exhibit I** at 164-165.

<sup>36</sup> *Id.* at p. 164:21 – 165:3.

<sup>37</sup> *Id.* at p. 165:19 – 21.

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1 Clark was retained on or before November 27, 2017, and not after the January 4, 2018 Complaint was  
2 filed.

3 **A. SIMON HAS FAILED TO ESTABLISH THAT THE *BRUNZELL* FACTORS**  
4 **WERE MET TO JUSTIFY THE FEES AWARDED**

5 The Edgeworths respectfully request that this Court reconsider its Second Amended Order  
6 awarding Simon \$200,000.00 in quantum meruit for legal fees for the period between November 30, 2017  
7 and January 8, 2018, as well as this Court's Order granting Simon \$50,000.00 in attorney's fees for the  
8 representation Simon received from his counsel in the lawsuit brought by the Edgeworths. This  
9 reconsideration is appropriate because the *Brunzell* factors, and *Logan* do not support an award for same,  
10 in direct controversy with the Nevada Supreme Court precedent.

11 A district court abuses its discretion when it bases its decision on an erroneous view of the law or  
12 clearly disregards guiding legal principles. *See Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563  
13 (1993), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.*, 133  
14 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017). "Rifle proper measure of damages under a *quantum*  
15 *meruit* theory of recovery is the reasonable value of [the] services." *Flamingo Realty, Inc. v. Midwest*  
16 *Dev., Inc.*, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994) (alteration in original) (internal quotation marks  
17 omitted). A district court must consider the *Brunzell* factors when determining a reasonable amount of  
18 attorney fees. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). The *Brunzell* factors are:  
19 (1) the quality of the advocate; (2) the character of the work; (3) the work actually performed by the  
20 advocate; and (4) the result. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33  
21 (1969). An order of a district court which indicates it considered the *Brunzell* factors must also  
22 demonstrate that its awarding of attorney's fees is supported by substantial evidence. *Logan* at 266-267,  
23 350 P.3d at 1143 (*citing Uniroyal Goodrich Tire*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995)  
24 (*superseded by statute on other grounds as stated in RTTC Communications, LLC v. Saratoga Flier, Inc.*,  
25 121 Nev. 34, 110 P.3d 24 (2005))).

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1                   **i.       The Edgeworths Request Reconsideration as To The Court's**  
2                   **Application Of The *Brunzell* Factors And *Logan* To The Facts**

3               In this case, the Edgeworths respectfully request reconsideration regarding the Court's award of  
4 attorney's fees to Simon based on the application of *Brunzell* factors and *Logan* to the facts at hand. The  
5 Viking settlement was reached on November 15, 2017. Simon sent Vannah what he called the finalized  
6 Settlement Agreement on November 30, 2017. As such, the work claimed to have been done by Simon  
7 between November 30, 2017 and January 8, 2018 (a total of 39 days) is not in furtherance of the settlement  
8 and does not warrant an award of fees, especially when viewed in the context of the ruling that Simon  
9 was constructively discharged on November 29, 2017. It must also be noted that Simon himself was on  
10 vacation and unavailable between December 19, 2017 and January 2, 2018, meaning that there were only  
11 a total of 25 days that Simon could have worked on the Edgeworth matter in this same time period.

12               Despite the reduced time period, Simon's vacation days, and the holidays, Simon billed 51.85  
13 hours (\$28,517.50) and his associate Ashley Ferrell (hereinafter "Ferrell") billed 19.25 hours (\$5,293.75)  
14 for a total billing on the file of 71.1 hours (\$33,811.25) after this Court adjudicated, he had been  
15 constructively discharged and was no longer representing the Edgeworths. As such, the *Brunzell* factors  
16 specifically demonstrate that Simon should not have been awarded anywhere near the \$200,000.00 this  
17 Court awarded in attorney's fees for the period between November 30, 2017 and January 8, 2018, if  
18 anything.

19               Further, Simon failed to adequately address most, if not all, of the *Brunzell* factors within his  
20 Motion for Attorney's Fees upon which this Court granted \$50,000.00 in attorney's fees.<sup>41</sup> As such, while  
21 this Court's Order states that this Court considered the *Brunzell* factors, the Order could not be based upon  
22 substantial evidence provided to the Court, requiring reconsideration per *Logan* because they were not  
23 sufficiently presented to the Court for consideration. More concerning and supporting the need for  
24 reconsideration, is Simon's continuing refusal to provide the Edgeworths with their case file as required  
25 by NRS 7.055 to allow for a full evaluation of the work done between November 30, 2017 and January  
26 8, 2018. As such, a full, proper and accurate evaluation of the *Brunzell* factors cannot properly be  
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28 <sup>41</sup> See, Simon's Motion for Attorney's Fees and Court's Amended Order, on-file herein.

1 accomplished by the Edgeworths or the Court until the full, unredacted version of the case file is finally  
2 provided by Simon. Based upon this alone, this Court should grant reconsideration and require that Simon  
3 provide a full, unredacted version of his case file to the Edgeworths and/or this Court to allow for a full,  
4 proper and adequate evaluation of the *Brunzell* factors to be accomplished through additional briefing  
5 once provided.

6 Therefore, based upon the argument above and below, the Edgeworths respectfully request that  
7 this Court reconsider its positions regarding attorney's fees awarded in both of its Orders do one of the  
8 following: (1) award no attorney's fees; (2) award a minimal amount of attorney's fees commensurate  
9 with the *Brunzell* factors; or (3) require Simon to provide a full version of the Edgeworths' case file to  
10 allow same to be analyzed in the context of the *Brunzell* factors.

11 a. *The Quality of the Advocate*

12 The Edgeworths further request reconsideration of the Court's findings because the Court was not  
13 presented sufficient evidence to adequately determine the quality of the advocates pursuant to prong 3 of  
14 *Brunzell*. This Court's Order addresses only Simon's quality as an advocate in making its award of  
15 attorney's fees based upon billings done by not only Simon, but other attorneys in his firm. See Second  
16 Amended Order at 18-19. As stated above, the amount of hours billed was wholly excessive and much if  
17 not all of the work claimed is not of the character, difficulty or importance required. Therefore, there are  
18 questions about what work was actually performed and the reasonableness of the amount of hours billed  
19 for work that was completed. Further, the result of that work could be minimal at best, considering that  
20 Simon billed \$28,517.50 for the period between November 30, 2017 and January 8, 2018. Despite, this,  
21 this Court awarded Simon \$200,000.00 in quantum meruit for work claimed to be done during this period.  
22 No evidence was presented regarding the quality of the advocate with respect to any attorneys other than  
23 Simon whose work was billed during this time. Having been presented no evidence to this end, this Court  
24 could not make any findings as to the quality of the work provided by Simon's associates or staff.

25 Specifically, the "Superbill" presented to this Court included time billed for in the subject time  
26 period by Ferrell (19.2 hours billed for a total of \$5,293.75 in claimed attorney's fees). There was no  
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1 finding made upon substantial evidence regarding the quality of Ferrell as an advocate, nor analysis  
2 regarding whether Ferrell's claimed hourly rate of \$275.00 is supportable. As such, this Court based its  
3 award of \$200,000.00 in attorney's fees either upon only Simon's claimed work totaling \$28,517.50 (for  
4 which there is a lack of substantial evidence to support an award of \$200,000.00, approximately 7 times  
5 the amount of claimed billing) or upon all attorney's claimed billings for the time period in question, for  
6 which there is no substantial evidence supporting the quality of advocacy, nor substantial evidence to  
7 support the award, which is approximately 6 times the total amount of claimed billing by all attorney's in  
8 the Superbill.

9  
10 Additionally, this Court prevented the Edgeworth's from fully developing the quality of the  
11 advocate at the evidentiary hearing when Mr. Vannah began questioning Mr. Simon regarding Mr.  
12 Simon's failure to obtain a formal fee agreement from the Edgeworths.<sup>42</sup> Specifically, after Mr. Simon  
13 testified that Mr. Kemp would not have been the IDIOT I was in performing work for a client without a  
14 fee agreement in place, Mr. Vannah then questioned Mr. Simon about whether Mr. Simon had violated  
15 "Bar Rules, Section 1.5" by not doing what the Edgeworths had asked of Mr. Simon regarding the fee  
16 agreement.<sup>43</sup> Despite this line of questioning being specifically pertinent to the quality of Mr. Simon as  
17 an advocate – as it can be safely assumed that allegedly violating bar rules and the rules of professional  
18 conduct would weigh negatively upon an attorney's quality as an advocate – this Court specifically  
19 instructed Mr. Simon not to answer that question in case a bar complaint was later filed against Mr. Simon  
20 and/or his firm.<sup>44</sup> As such, the Edgeworths were deprived of their due process rights to question Mr.  
21 Simon regarding his quality as an advocate due to this Court's stopping of that line of questioning and  
22 specifically instructed Mr. Simon not to answer the question at issue regarding violations of Bar Rules.

23 Further, Simon failed to provide any information regarding the quality of his counsel in his Motion  
24 for Attorney's Fees. All that was attached to that Motion were vague billing invoices where James  
25 Christensen, Esq., billed at a rate of \$400.00 per hour and Pete Christiansen, Esq. billed at the exorbitant  
26

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27 <sup>42</sup> See **Exhibit I**, at 132:25-134:9.

28 <sup>43</sup> *Id.*

<sup>44</sup> *Id.*

1 rate of \$850.00 per hour. While Simon attached the CVs of his counsel to the Reply in Support of his  
2 Motion for Attorney's Fees, the only analysis regarding these CVs is the conclusory, five (5) word  
3 statement that, allegedly, "[r]etained counsel are highly qualified."<sup>45</sup> Given the amount of fees sought,  
4 and especially the exorbitant hourly rate charged by Pete Christiansen, much more was required to  
5 demonstrate that awarding \$50,000.00 in costs was appropriate. As such, there simply is not substantial  
6 evidence to support the awarding of fees to Simon based upon the exorbitant billing rates of both Peter  
7 Christiansen and James Christensen, nor to support the fee award of \$50,000.00. This lack of evidence is  
8 the basis for the foregoing request for reconsideration.

9  
10 A reasonable hourly rate should reflect the "prevailing market rates in the relevant community,"  
11 with "community" referring to "the forum in which the district court sits." *Tallman*, 23 F. Supp. 3d at  
12 1257 (quoting *Gonzales v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013) and *Prison Legal News*  
13 *v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010)). A district court must ensure that an attorney's  
14 rate is "in line with those prevailing in the community for similar services by lawyers of reasonably  
15 comparable skill, experience and reputation." *Chaudhry v. City of L.A.*, 751 F.3d 1096, 1110 (9th Cir.  
16 2014). The Nevada Supreme Court has previously found that in Nevada, "the hourly rates of \$450 and  
17 \$650 per hour are well over the range of hourly rates approved in this district." *Gonzalez-Rodriguez v.*  
18 *Mariana's Enters.*, No. 2:15-cv-00152-JCM-PAL, 2016 WL 3869870, at \*9 (D. Nev. July 14, 2016)  
19 (emphasis added). Further, the Court in *Gonzalez-Rodriguez*, found that these rates could not be justified  
20 as counsel's "affidavit does not aver that these rates are usual or customary for this type of work in this  
21 locality, only that these rates are what each lawyer typically charges." *Id.*

22 When an attorney does not actually bill a client, the requested hourly rate and billing entries are  
23 more suspect. See, *Betancourt v. Giuliani*, 325 F. Supp. 2d 330, 333 (S.D.N.Y. 2004) ("Defendants  
24 persuasively argue that those rates far exceed the typical rates at which a civil rights attorney would  
25 actually charge a paying client.... [T]he fact that the fees here were not actually charged by [Plaintiff's law  
26 firm] to any client suggests that the Court must take a closer look as to whether the hourly rates are

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28 <sup>45</sup> See Reply to MTN for Attorney's Fees at 9:6, on-file herein.

1 reasonable.”). A court should take a closer look because, with paying clients, an attorney's bills are  
2 generally scrutinized to avoid unreasonable or excessive charges, but such scrutiny does not exist with a  
3 client that is not responsible for, and likely even sent, an attorney's billing record. *Cf. Fed. Deposit Ins.*  
4 *Corp. v. Martinez Almodovar*, 674 F. Supp. 401, 402 (D.P.R. 1987) (recognizing that billing entries were  
5 reasonable because “such bills were zealously scrutinized by a client who is very cost conscious.  
6 Unreasonable or excessive charges would have not been tolerated.”).

7  
8 Here, there are no affidavits of counsel or anyone else regarding the rates charged by Simon’s  
9 counsel regarding whether the hourly rates of \$400.00 and \$850.00 per hours are reasonable and  
10 customary in this community. See Motion and Reply, on-file herein. This is likely because Simon is  
11 aware that the hourly rates charged by his counsel are well over the range for hourly rates approved of in  
12 this community. Regardless, this Court did not have substantial evidence upon which to base its awarding  
13 of fees to Simon’s in regard to the hourly rate charged by Simon’s counsel and, as such, the finding was  
14 erroneous and, if not corrected, will lead to manifest injustice against the Edgeworths who will be forced  
15 to pay an exorbitant award of attorney’s fees not based upon substantial evidence.

16 Further, the Superbill is even more suspect here as Simon has admitted the firm did not bill  
17 everything to the Edgeworths regularly and had to go back from memory to create billing entries after the  
18 fact.<sup>46</sup> Specifically, Ms. Ferrell testified she was not a good biller, she has no billing software to utilize,  
19 she had to go back and bill many things from memory, that there were days of billing of some 22 hours  
20 on the file, that she assist Mr. Simon in producing timesheets for HIS billing on the file and that Mr.  
21 Simon despised billing and left post-it notes all over his office which purportedly was his billing.<sup>47</sup> As  
22 such, this Court should have required a higher level of evidentiary proof and scrutinized the billing entries  
23 at a stricter standard given the admitted practice by Simon of not billing everything at the time it was  
24 accomplished on the Edgeworths’ file.

25  
26  
27 <sup>46</sup> See Transcript of Evidentiary Hearing Day 3, at 105:21-106:3, attached hereto as **Exhibit R**.

28 <sup>47</sup> *Id.* at 105:21-106:3, 111:5-15, 112:16-114:8 and 115:10-116:13.

1 In either case, based upon *Brunzell* and *Logan* as discussed above, this Court's Order awarding  
2 Simon \$200,00.00 in quantum meruit for attorney's fees for the time period between November 30, 2017  
3 and January 8, 2018, and awarding Simon \$50,000.00 in attorneys' fees for his counsel's work on the  
4 lawsuit brought by the Edgeworths were misguided as there is simply not substantial evidence to support  
5 the amount of the award, nor the quality of the other advocate within Simon's law firm or his counsel's  
6 exorbitant hourly rates.

7  
8 Based on the evidence presented above, the Edgeworths respectfully request reconsideration of  
9 this Court's Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not  
10 presented sufficient evidence to adequately determine the quality of Ferrell, James Christiansen and Pete  
11 Christiansen as advocates, or the amount of the award when analyzed against the actual amount Simon  
12 claimed was billed by his firm between November 30, 2017 and January 8, 2018, under the first prong of  
13 *Brunzell*.

14 *b. The Character of The Work to be Done*

15 The Edgeworths further request reconsideration of the Court's findings because the Court was not  
16 presented sufficient evidence to adequately determine the character of the work done under prong 2 of  
17 *Brunzell*. As of November 30, 2017, at 5:31 p.m., the settlement terms were finalized and, as such, there  
18 was nothing left for Simon to do regarding the Viking settlement other than send an email to opposing  
19 counsel with the signed agreement, finalize a stipulation for dismissal of the litigation, receive the  
20 settlement drafts and deposit the funds.<sup>48</sup> There was no longer any negotiations regarding language in the  
21 settlement agreement, the amount of the settlement had been agreed to and, despite this, Simon continued  
22 billing for things such as undefined email chains (with no explanation regarding the subject), analyzing  
23 emails regarding mediation, and telephone calls (again, without any context regarding subject).

24 Even more concerning are Ferrell's entries for things such as 2.5 hours to draft a notice of  
25 attorney's lien and then, on that same day, another 0.30 hours to download, review and analyze that same  
26

27  
28 <sup>48</sup> See **Exhibit J**.

1 notice of attorney lien which she drafted earlier that same day.<sup>49</sup> The Attorney Lien filed by Simon consist  
2 of a total of approximately one (1) page of written content, with no legal analysis and a half-page of a  
3 declaration from Simon.<sup>50</sup> Thereafter, Ferrell billed another 1.5 hours to draft the Amended Lien, which  
4 was the same document with only the amount sought by Simon through the attorney's lien changed.<sup>51</sup>

5 As such, the character of the work claimed to have been performed by Simon between November  
6 30, 2017 and January 8, 2018, was minimal at best and – regarding the Notices of Liens –not in any way  
7 in furtherance of the clients' interest. Despite this, the Superbill demonstrates that this minimal work  
8 resulted in highly inflated billing hours which are simply not indicative of the amount of time and work  
9 that would actually have been required to complete the tasks which were billed. Additionally, given that  
10 the Superbill does not give context or subjects for most of the entries therein, it was impossible for this  
11 Court to determine whether the character of the work was such that Simon was entitled to \$200,000.00  
12 for 39 total days, including Christmas and New Year's, and Simon was unavailable for 14 of those days.

13 The Court's awarded of fees is specifically supported by Ferrell's testimony that allegedly Simon  
14 has documentation to backup all entries in the Superbill for this period. Simon has continuously refused  
15 to provide this alleged supporting documentation to the Edgeworths or this Court so same can be reviewed  
16 and evaluated.<sup>52</sup> Further, nothing within the Superbill for this period constituted any difficult work for  
17 Simon, as same was simply telephone calls, emails, and the drafting of the, at most, two (2) total pages  
18 for the Notice of Attorney's Lien. Again, the Viking settlement agreement had been finalized and there  
19 was simply nothing complex, difficult, or important that Simon should have reasonably been doing on  
20 behalf of the Edgeworths – who were no longer his clients regarding Viking – beginning on November  
21 30, 2017 and moving forward. Further, the bills from Simon's counsel regarding their defense of the  
22 Edgeworth's lawsuit are likewise vague and ambiguous and wholly failed to provide this Court with an  
23 understanding of what was actually accomplished and for what purpose. As was the case with the  
24 Superbill, many of the entries from Jim Christiansen say nothing other than "[e]mail exchange with  
25

26 <sup>49</sup> See Ferrell Invoice, at SIMONEW0000340, attached hereto as **Exhibit S**.

27 <sup>50</sup> See **Exhibit L**.

28 <sup>51</sup> See **Exhibit M**.

<sup>52</sup> See **Exhibit R** at 112:18-20, 23-24 and 116:15-16.



1 client[,]” “meeting with client[,]” telephone call with client and “[w]ork” on various documents. See  
2 Exhibit 9 to Motion for attorney’s fees. Likewise, the invoices from Pete Christiansen contain exorbitant  
3 billed hours for vague entries such as “[a]ssist with findings of fact and conclusions of law; conference  
4 with client[,]” for 7.5 hours billed; and “[a]ssist in preparation of reply[.]”<sup>53</sup>

5 The Court has not required Simon nor his counsel to provide supporting documentation to  
6 demonstrate that substantial evidence confirms the tasks billed for and the character, difficulty, and  
7 importance of those tasks to Simon’s representation of the Edgeworths and Simon’s counsels’  
8 representation of the firm in the suit brought by the Edgeworths. As such, this Court’s findings are in  
9 contravention of the Nevada Supreme Court’s holdings in *Brunzell* and *Logan*.

10 Based on the evidence presented above, the Edgeworths respectfully request reconsideration of  
11 this Court’s Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not  
12 presented sufficient evidence to adequately determine the character of the work billed under the second  
13 prong of *Brunzell*.

14 *c. The Work Actually Performed by the Advocate*

15 The Edgeworths further request reconsideration of the Court’s findings because the Court was not  
16 presented sufficient evidence to adequately determine the work actually performed by the advocate under  
17 *Brunzell*. Specifically, as stated above, despite Ferrell testifying that allegedly Simon has documentation  
18 to backup all entries in the Superbill for this time period, Simon has not, and continues to refuse to, provide  
19 claimed supporting documentation to the Edgeworths or this Court so it can be reviewed and evaluated.<sup>54</sup>  
20 Further, there are billing entries for items that are inappropriate in the context of the timeline as laid out  
21 herein, such as Ferrell billing a full half-hour to review the Viking Settlement Agreement the day **AFTER**  
22 the finalized version of that Agreement was provided to the Edgeworths.<sup>55</sup>

23 Further, the exorbitant amount of time billed by Ferrell to allegedly draft and file the Notice of  
24 Attorney’s Liens, and then review the filing she had just drafted – a total of 3.8 hours (2.8 hours for the  
25

26 <sup>53</sup> See Exhibit 10 to Simon’s Motion for Attorney’s Fees, on-file herein.

27 <sup>54</sup> See **Exhibit R**.

28 <sup>55</sup> See **Exhibit S** at SIMONEW0000341.

1 Original Notice and 1.5 hours for the Amended Notice) – is wholly unreasonable for documents consisting  
2 of less than a full page of double-spaced content. This calls into question all of the work Simon claimed  
3 to have done following November 30, 2017, as the same is simply not reasonable nor commensurate with  
4 the documents which are actually available to review.

5        Additionally, given that Simon has never provided the documentary evidence demonstrating the  
6 many email chains, reviewed email attachments, reviewed documents and drafted documents, this Court’s  
7 finding regarding the work actually performed is not supported by much evidence at all, let alone  
8 substantial evidence. The justification given by this Court regarding the work actually performed is all  
9 in regard to work claimed to be performed prior to November 30, 2017.<sup>56</sup> As of November 30, 2107, the  
10 settlement with Viking had been agreed upon and the settlement agreement was finalized. As such, the  
11 work claimed by Simon actually at issue for this time period does not include any of the claimed efforts  
12 which led to the Viking settlement or the reduction of the terms of the Viking settlement to writing within  
13 the settlement agreement. Likewise, there are exorbitant amounts of billable hours on the invoices from  
14 Simon’s counsel. Specifically, Pete Christiansen billed 72.9 hours over the course of seven (7) workdays  
15 (10.414 hours per day) to prepare for the evidentiary hearing. See Exhibit 10 to Motion for Attorney’s  
16 Fees. While the Edgeworths appreciate that time would have to be spent to prepare for the hearing, more  
17 than 10 hours per day, for seven straight days is simply not conceivable, nor can it be justified given that  
18 it would be the Edgeworths assumption that Christiansen did have other cases active at the time of this  
19 hearing.<sup>57</sup> Further, Christensen billed 3.8 hours for two (2) entries stating nothing more than “MSC  
20 Brief[.]”<sup>58</sup> In this same vein of vagueness, Christensen billed 11 total hours for undefined “work on  
21 motion to adjudicate lien[.]” *Id.* These entries require further specification and support in order to comply  
22 with *Brunzell*.

23  
24        Finally, it is concerning that secretarial tasks were billed as attorney time, which wholly  
25 inappropriate. Specifically, as an example, Christiansen billed for reviewing a calendar, assisting in

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27 <sup>56</sup> See Second Amended Order, at 19:12-21, on-file herein.

<sup>57</sup> In the event Simon is claiming that Pete did not have any other matters active at the time of the evidentiary, the Edgeworths would then argue that this fact goes directly against the quality of the advocate and his exorbitantly charged rate of \$850.00.

28 <sup>58</sup> See Exhibit 9 to Motion for Attorney’s Fees, on-file herein.

1 preparing a subpoena and faxing a letter, all which are secretarial tasks for which it was even more  
2 inappropriate for Pete to bill at the extraordinarily exorbitant rate of \$850.00 per hour.<sup>59</sup>

3 Based on the evidence presented above, the Edgeworths respectfully request reconsideration of  
4 this Court's Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not  
5 presented sufficient evidence to adequately determine the work actually performed by the advocates under  
6 the third prong of *Brunzell*.

7  
8 *d. The Result of the Work Performed*

9 The Edgeworths further request reconsideration of the Court's findings because the Court was not  
10 presented sufficient evidence to adequately determine the result of the work performed under prong 4 of  
11 *Brunzell*. This Court's Order awarding \$200,000.00 in fees to Simon must also be reconsidered regarding  
12 the fourth *Brunzell* factor, which concerns the result obtained by the advocate. Based upon the record  
13 placed before the Court, there was simply no result achieved by Simon on behalf of the Edgeworths on  
14 and following November 30, 2017. Again, the Settlement Agreement had been finalized and all that  
15 Simon reasonably had left to do – especially following the constructive discharge regarding the Viking  
16 matter – was to exchange the fully executed Settlement Agreement with Viking's counsel, finalize and  
17 potentially file a stipulation for dismissal, receive the settlement checks and deposit the settlement checks.  
18 As such, the case had concluded other than settlement documents and the sending of emails, receiving of  
19 mail, drafting and/or reviewing and/or filing a stipulation to dismiss and notice of entry of the order of  
20 dismissal, and depositing of the settlement checks. This is certainly not the type of result which *Brunzell*  
21 contemplated would support an award of attorney's fees through the theory of quantum meruit, especially  
22 in an amount as exorbitant for such work as \$200,000.00.

23 Further, just as was the case regarding the third *Brunzell* prong discussed above, the Court's  
24 findings regarding the fourth *Brunzell* factor were based upon a misapplication of the facts and law, thus  
25 requiring reconsideration. Specifically, as of and after November 30, 2017, the result had no connection  
26

27  
28 <sup>59</sup> See Exhibit 10 to Motion for Attorney's Fees, on-file herein.

1 to the Viking settlement amount or the Viking settlement agreement. As such, neither the final amount  
2 for which Viking settled, the statements by the Edgeworths that they were made more than whole as a  
3 result of the settlement with Viking itself, nor the testimony of Mr. Kemp regarding the result in the  
4 context of the Edgeworths settlement with Viking itself, should have been taken into consideration by this  
5 Court when resolving whether Simon was entitled to attorney's fees for the time period between  
6 November 17, 2017 and January 8, 2018. This Court's finding in that regard was clearly erroneous as  
7 Simon did not provide this Court with the required substantial evidence to support said finding, requiring  
8 reconsideration. Further, the fact that Simon may have obtained a result in the Lange lawsuit of an  
9 additional \$75,000.00 over the course of that same period in no way demonstrates that Simon was entitled  
10 to more than twice that amount in attorney's fees for four (4) to five (5) weeks of work.

12 The Nevada Bar Association previously reprimanded an attorney for seeking an unreasonable fee  
13 for two (2) weeks of work.<sup>60</sup> Within the Bar Counsel Report, a Screening Panel of the Southern Nevada  
14 Disciplinary Board found that an attorney seeking compensation in the amount of \$12,328.44 for two  
15 weeks of work was unreasonable and a violation of NRPC 1.5 requiring reprimand. *Id.*

16 Here, the amount sought by Simon and awarded by this Court for claimed work done over a period  
17 39-days (between four [4] and five [5] weeks) – which, again, included both the Christmas and New  
18 Year's holidays and Simon's vacation when he was not working between December 19, 2017 and January  
19 2, 2018 – is disproportionally excessive when compared against the fee which the State Bar determined  
20 was unreasonable and required reprimand. Specifically, Simon was awarded \$200,000.00 for a period of  
21 four (4) or five (5) weeks, while the State Bar determined that less than \$12,500.00 was an unreasonable  
22 fee for work done by an attorney over the course of two (2) weeks. Extrapolating the bar Counsel's  
23 report's unreasonable fee out to the period at issue here, this Court's award is more than 8 times the  
24 amount found unreasonable over a four (4) week period ( $\$200,000.00/\$24,656.88 = 8.11\%$ ) and is nearly  
25 6.5 times the amount found unreasonable over a five (5) week period ( $\$200,000.00/\$30,821.10 = 6.49\%$ ).  
26

27  
28 <sup>60</sup> See, Bar Counsel Report regarding Crystal L. Eller, dated July 2020, attached hereto **Exhibit T**.

1 Based on the evidence presented above, the Edgeworths respectfully request reconsideration of  
2 this Court's Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not  
3 presented sufficient evidence to adequately determine result of the work performed by the advocates under  
4 the fourth prong of *Brunzell*.

5  
6 **ii. Reconsideration of All of the Brunzell Factors is Warranted**

7 The Edgeworths respectfully request reconsideration of this Court's orders. Here, all four (4) of  
8 the *Brunzell* factors, when evaluated correctly against the context and background of the matter, weigh  
9 heavily in favor of the Edgeworths and against Simon being awarded any attorney's fees for himself or  
10 his counsel for that time period. Thus, this Court's finding that Simon was entitled to an award of  
11 \$200,000.00 in attorney's fees for this time was an unfortunate misapplication of the facts and law. If this  
12 decision is allowed to stand, it will lead to manifest injustice being done upon the Edgeworths who will  
13 be forced to pay \$200,000.00 to Simon for 39-days of claimed work after the finalizing of the Viking  
14 settlement agreement.<sup>61</sup>

15 Given the foregoing, the Edgeworths respectfully request that this Court reconsider its Second  
16 Amended Order regarding the attorney's fees awarded to Simon for the time period between November  
17 30, 2107 and January 8, 2018, and its Amended Order awarding attorney's fees to Simon for their  
18 counsels' representation during the lawsuit brought by the Edgeworths, as same is warranted based upon  
19 the misapplication of facts and law which, if not corrected, will directly lead to manifest injustice against  
20 the Edgeworths.

21 **V. CONCLUSION**

22 It is for the foregoing reasons that the Edgeworths submit that reconsideration is appropriate, and  
23 request that the court act accordingly. First, the Edgeworths request that based on new evidence, this  
24 court amend its finding that the conversion claim was not maintained on reasonable grounds because it  
25 was an impossibility for Simon to have converted the Edgeworths' property at the time the lawsuit was  
26

27 <sup>61</sup> See Court Order, dated March 16, 2021, at 21-22, on-file herein.

1 filed. This request is based on newly discovered information that Simon had access to the funds as early  
2 as December 12, 2017, well before the suit was filed on January 4, 2018. Second, the Edgeworths request  
3 that, based on new evidence, this court amend its finding that James Christensen's services were obtained  
4 after the filing of the lawsuit against Simon on January 4, 2018. Christensen's bill, which was not  
5 presented at the evidentiary hearing, is in direct controversy with the finding of the court, and the  
6 Edgeworths request that the finding be amended to conform to the facts. Finally, the Edgeworths request  
7 that, based on new evidence, this court amend its finding that the costs of David Clark were solely for the  
8 purpose of defending the lawsuit filed against Simon by the Edgeworths. Billing records indicate that  
9 Clark was being consulted as early as December 5, 2017, a month before the Edgeworth complaint was  
10 filed on January 4, 2018. The Edgeworths therefore request that the finding is amended to conform to the  
11 facts. As to the *Brunzell* factors, the Edgeworths request that the court ***EITHER*** find (1) there was  
12 insufficient evidence presented to the Court to establish conformity with the *Brunzell* factors and therefore  
13 the Plaintiff is awarded no attorney's fees for failure to comply with Nevada law; OR (2) there was  
14 insufficient evidence presented to the Court to establish conformity with the *Brunzell* factors and therefore  
15 the Plaintiff must produce the entirety of the case file from the representation of the Edgeworths such that  
16 the *Brunzell* factors can be analyzed.

17  
18 DATED this 30<sup>th</sup> day of March, 2021.

19 **MESSNER REEVES LLP**

20 /s/ Christine Atwood

21 Lauren D. Calvert, Esq. #10534

22 Christine L. Atwood, Esq. #14162

23 David M. Gould, Esq. #11143

24 *Attorneys for the Edgeworths*

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Employee of MESSNER REEVES LLP

# **EXHIBIT A**



**From:** [Janet Pancoast](#)  
**To:** [dpolsenberg@lrrc.com](mailto:dpolsenberg@lrrc.com)  
**Cc:** [Jessica Rogers](#); [robinson \(robinson@mhrs-law.com\)](mailto:robinson@mhrs-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](#)

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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 Edgeworth Family Trust & American Grating, LLC

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

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

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

APPROVED AS TO FORM AND CONTENT:

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

SIMON LAW

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

# **EXHIBIT B**



James R. Christensen Esq.  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
Ph: (702)272-0406 Fax: (702)272-0415  
E-mail: jim@jchristensenlaw.com  
*Admitted in Illinois and Nevada*  
TIN: 26-4598989

**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

November/December 2017 Billing Statement

I. ATTORNEY

11.27.17	Meeting with client	.50
	Email exchange and [REDACTED]	.30
11.28.17	Email exchange with client	n/c
11.29.17	Meeting with client	n/c
11.30.17	T/C with client	.50
	Email exchange with client & review attachments	.30
12.1.17	T/C #1 with client	.50
	T/C #2 with client	.20
12.4.17	T/C with client	n/c
	V/M for Robert Vannah	n/c
	Meeting with client	.50
12.5.17	T/C with David Clark	.20
	Meeting with client	n/c
	T/C with John Green	n/c
	T/C with Dave Clark	n/c

12.7.17	Westlaw research re: [REDACTED]. Meeting with client w/conference call with Vannah. Draft and edit letter to Vannah.	1.0
12.11.17	Review of [REDACTED]; and, t/c with client re: same	.20
12.12.17	T/C with client	.30
12.19.17	Review recent email re check endorsement and undisputed amount. T/C with client. E-mail to Vannah's office.	.30
12.26.17	Review Vannah email of 11.23. T/C with client. Draft reply email.	.50
12.27.17	Multiple calls with client/review and respond to Vannah email of 12.26.17	1.5
12.28.17	Forward Vannah email of 12.28.17 to client.	n/c
	T/c with client re: [REDACTED]	.40
	Review of [REDACTED] and t/c with David Clark re: separate trust account	.20

TOTAL Attorney Time: 7.4 hours @ \$400.00 = \$2,960.00

## II. PARALEGAL

N/A

TOTAL Paralegal Time: -0- hours @ \$100.00 = \$ -0-

III. COSTS

Postage	\$ -0-
Copies	\$2.20
Wiznet filing fees	\$ -0-

TOTAL Costs	\$ 2.20
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IV. TOTAL DUE THIS INVOICE	\$2,962.20
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V. RETAINER SUMMARY

Beginning balance	\$10,000.00
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Payment of this Invoice	- 2,962.20
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<b>RETAINER BALANCE</b>	<b>\$7,037.80</b>
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TIN: 26-4598989

**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

January – February 2018 Billing Statement

I. ATTORNEY

1.4.18	T/C with client	.20
	Review of recent email. Reply to Greene et al. Call to Sarah G.	.30
1.5- 1.9.18	Multiple phone calls	n/c
1.9.18	Call from John Greene re: service. Discussion with client. Email back to John.	.30
1.10.18	Meeting at Simon law.	.50
1.12.18	T/C w/ David Clark. Email documents to DC	.30
1.15.18	Work on motion to adjudicate lien	3.0
1.16.18	Work on motion to adjudicate lien	8.0
1.17.18	Discussion with client. Work on motion to adjudicate. Telephone discussion with D. Clark.	4.0 .20
1.18.18	Work on motion to adjudicate	2.0
1.24.18	Review emails from J. Greene. Calls to and from J. Greene.	.40

1.26.18	Review of emergency motion to continue/setting and change of hearing dates	.20
	T/C with client	.40
	Work on motion to dismiss	1.0
1.27.18	Work on motion to dismiss	2.0
1.29.18	T/c with client (x2)	.50
	Research and final MTD	1.3
1.30.18	Additional research. Review. Email to client	1.6
2.3.18	Review Kemp declaration. Work on supplement provided by Client.	2.0
2.5.18	Review opposition. Research and draft reply. Multiple t/c with client	5.0
2.6.18	Prepare and attend court hearing on motions to Consolidate/adjudicate	3.4
2.9.18	Read minute order re: motion to consolidate	.20
2.10.18	T/c with Westlaw and [REDACTED]	.40
2.12.18	Edit draft Order	.20
2.12.18	Research and draft Anti-SLAPP motion. T/C with client	6.0
2.13.18	Edit Anti-SLAPP motion	1.4
2.13.18	Review email from J. Greene	.20
2.14.18	Review emails from client re: [REDACTED]	.40
2.15.18	Final Anti-SLAPP motion	.40

2.15.18	Edit supplement to motion to adjudicate. T/C with client	1.0
2.19.18	Review email from J. Greene	.20
2.20.18	Prep for, travel to and attend hearing	1.0
2.20.18	Multiple emails (#11) regarding 100k check and MSC. Related T/C with client	.50
2.26.18	T/c with client (x2)	.20
	Emails to Vannah (x2). Email to client	.20

TOTAL Attorney Time: 48.9 hours @ \$400.00 = \$19,560.00

## II. PARALEGAL

1.9.18	Receipt and review of Complaint, calendar, copy, forward to client	.20
1.16.18	Review and format Motion to Adjudicate	.55
1.18.18	Review and final Motion to Adj., Motion to Dismiss, Motion to Consolidate	1.5
1.24.18	Review, process, file, Motion to Dismiss, Motion to Adjudicate and Motion to Consolidate	1.1
1.26.18	Review and revise Motion to Dismiss	.50
1.29.18	Review and revise Motion to Dismiss	N/C
2.5.18	Review, revise, format, file Reply	1.4
2.7.18	Attempts to obtain brief filed in Beheshti v. Bartley	.50
2.12.18	Prep Order for attorney review	.20

2.13.18	Contact Vannah re: Order	.20
2.15.18	Review, revise and format MTD Anti-Slapp	1.3
2.26.18	Review ltr from District Court and calendar	.20
3.2.18	Serve and calendar MTD Anti-Slapp	.20

TOTAL Paralegal Time: 7.85 hours @ \$100.00 = \$785.00

### III. COSTS

Postage	\$ -0-
Copies	\$ 52.60
Wiznet filing fees	\$250.69

TOTAL Costs	\$303.29
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IV. TOTAL DUE THIS INVOICE	\$20,648.29
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### V. RETAINER SUMMARY

Beginning balance	\$7,037.80
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Retainer applied to this invoice	\$7,037.80
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RETAINER BALANCE	\$ -0-
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VI. BALANCE DUE	\$13,610.49
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James R. Christensen Esq.  
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*Admitted in Illinois and Nevada*  
TIN: 26-4598989

**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

March - April 2018 Billing Statement

I. ATTORNEY

3.1.18	Review latest proposed amended complaint	.20
3.2.18	Multiple calls with client and E-mail to adverse re: checks	.30
3.5.18	T/c with client	.20
3.8.28	Start on MSC draft	.70
3.12.18	MSC brief	1.8
3.15.18	MSC brief	2.0
3.20-21.18	Read opposition and draft reply to special MTD	3.5
3.23.18	Meet client, and attend MSC	5.0
4.3.18	Prep/attend hearing on MTDs and Adjudication	1.5
4.7.18	Work on MTD AC	2.0

TOTAL Attorney Time: 17.2 hours @ \$400.00 = \$6,880.00



II. PARALEGAL

3.5.18	Begin Settlement brief draft	.20
3.21.18	Review, revise, format, serve and file Reply re Anti-Slapp MTD	1.3
4.9.18	Review/revise MTD Amended Complaint	.75

TOTAL Paralegal Time: 2.25 hours @ \$100.00 = \$225.00

III. COSTS

Postage	\$ -0-
Copies	\$ 83.20
Wiznet filing fees	\$ 14.00

TOTAL Costs \$97.20

IV. TOTAL DUE THIS INVOICE \$7,202.20

V. RETAINER SUMMARY

Beginning balance	\$1,389.51
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Retainer applied to this invoice	\$1,389.51
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RETAINER BALANCE	\$ -0-
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VI. BALANCE DUE \$5,812.69

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**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

May - June 2018 Billing Statement

I. ATTORNEY

5.3.18	Meeting with client	.60
	Telephone conference with potential hearing witness 1 and t/c with client	.40
5.7.18	Edit SLAPP for re-filing	.80
	Call to potential witness 1 and call to potential witness 2	.20
5.15.18	Meeting with Will Kemp	1.2
5.16.18	Research on [REDACTED] Email to client	.40
5.18.18	Draft Adjudication hearing brief	2.0

TOTAL Attorney Time: 5.6 hours @ \$400.00 = \$2,240.00

II. PARALEGAL

5.8.18	Review, revise and format Anti-slapp MTD and amended Complaint	.60
5.10.18	Final, prep, file, serve Anti-slapp MTD and calendar	1.5
5.18.18	Review, revise, format, final, prep, file, serve Evidentiary Brief	1.1

TOTAL Paralegal Time: 3.2 hours @ \$100.00 = \$320.00

III. COSTS

Postage	\$ -0-
Copies	\$ 63.80
Wiznet filing fees	\$ 3.50

TOTAL Costs \$67.30

IV. TOTAL DUE THIS INVOICE \$2,627.30

V. BALANCE DUE \$2,627.30

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**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

July - August 2018 Billing Statement

I. ATTORNEY

8.20.18	Meeting with client	1.0
8.21.18	Email exchange with John Greene & t/c with client	.20
8.22.18	Meeting with client	1.0
	Meeting with client and expert	2.0
8.23.18	email exchange with Vannah office	.20
	t/c(s) with client	.20
8.24.18	Meeting at client's office	1.5
8.25.18	Telephone conversations with Vannah and client	.50
8.26.18	Meeting at client's office	5.0
8.27.18	Draft Vannah agreement bench brief	1.0
	Hearing attendance and preparation – Day 1	7.0
8.28.18	Hearing preparation and attendance – Day 2	8.0
8.29.18	Hearing preparation and attendance – Day 3	8.0

8.30.18	Hearing preparation and attendance – Day 4	8.0
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8.31.18	Work on Offer of Judgment	.20
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TOTAL Attorney Time: 43.80 hours @ \$400.00		= \$17,520.00
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II. PARALEGAL

N/A

III. COSTS

N/A

IV.	TOTAL DUE THIS INVOICE	\$17,520.00
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V.	<b>BALANCE DUE</b>	<b>\$17,520.00</b>
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TIN: 26-4598989

**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

September - October 2018 Billing Statement

I. ATTORNEY

9.10-11.18	Review and draft party correspondence to Judge Jones and review reply	.30
9.16.18	Review and edit findings of fact; and, add conclusions of law	3.5
9.17.18	Work on proposed orders, findings and conclusions	1.0
	Hearing preparation with client	2.0
9.18.18	Attend evidentiary hearing-day 5	5.0
9.23.18	Review closing brief	2.0
	Review of findings and discussion with client	1.0
10.24.18	Review and reply to adverse email	.20
10.25.18	Work on Rule 52 motion	2.0
10.26.18	Continue work on Rule 52 motion.	2.0
10.26.18	Took call from John Greene, email to client following	.30

10.27.18	Continue work on Rule 52 motion	2.0
10.29.18	Final Rule 52 motion	2.0
10.30.18	Review emails from law clerk re: OST and respond.	.20
	Review emails from Vannah office and respond.	.20
10.31.18	Review and reply to emails from adverse, t/c with client.	.30
10.31.18	Review and edit motion for attorney fees.	3.0

TOTAL Attorney Time: 27.0 hours @ \$400.00 = \$10,800.00

## II. PARALEGAL

10.24.18	File Notice of Entry of Order	.20
10.25.18	Review/format/Motion for reconsideration	1.1
10.29.18	Final Motions, regular and OST	.40
10.31.18	Review/revise/Motion for Attorney Fees	1.4

TOTAL Paralegal Time: 3.1 hours @ \$100.00 = \$ 310.00

## III. COSTS

Wiznet	\$ 14.00
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IV. TOTAL DUE THIS INVOICE	\$11,124.00
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V. <b>BALANCE DUE</b>	<b>\$11,124.00</b>
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TIN: 26-4598989

**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

Through November 15, 2018 Billing Statement

I. ATTORNEY

11.1.2018	Reply to adverse emails (2) and forward to client (3)	.20
11.1.2018	Review of Plaintiffs closing	.40
11.12.2018	Read opposition and draft reply	1.4
11.13.18	Final reply	1.5
11.15.18	Attend motion hearing	1.0

TOTAL Attorney Time: 4.5 hours @ \$400.00 = \$1,800.00

II. PARALEGAL

11.13.18	Review/revise/final Motion to Amend	1.1
11.14.18	File and serve Motion to Amend	n/c

TOTAL Paralegal Time: 1.1 hours @ \$100.00 = \$ 110.00

III. COSTS

N/A



IV.	TOTAL DUE THIS INVOICE	\$1,910.00
V.	<b>BALANCE DUE</b>	<b>\$1,910.00</b>

# **Exhibit 10**



# INVOICE

Invoice # 15648  
Date: 11/29/2018  
Due On: 12/29/2018

## Christiansen Law Offices

810 S. Casino Center Boulevard, Suite 104  
Las Vegas, Nevada 89101  
United States  
Phone: 702-240-7979  
www.christiansenlaw.com

Law Office of Daniel S. Simon  
810 S. Casino Center Boulevard  
Las Vegas, NV 89101

### 2018-03891-Law Office of Daniel S. Simon-Simon adv Edgeworth

#### Simon adv Edgeworth

Type	Date	Attorney	Description	Quantity	Rate	Total
Service	01/10/2018	PSC	Meeting with Client re: case history	2.50	\$850.00	\$2,125.00
Service	02/01/2018	PSC	Review file; Discussions with Client.	3.80	\$850.00	\$3,230.00
Service	02/03/2018	PSC	Review Motions to Adjudicate Lien.	1.30	\$850.00	\$1,105.00
Service	02/04/2018	PSC	Review motion to Dismiss; Discussions with Client.	2.30	\$850.00	\$1,955.00
Service	02/06/2018	PSC	Notice to Associate in on case	0.10	\$850.00	\$85.00
Service	02/06/2018	PSC	Attend Hearing on Motion for Determination of Good Faith Settlement, Simon's Motion to Adjudicate the Lien, Motion to Consolidate/New Lawsuit.	2.50	\$850.00	\$2,125.00
Service	02/14/2018	PSC	Review of hearing transcript	0.50	\$850.00	\$425.00
Service	02/15/2018	PSC	Assist in preparing, revising and finalizing Supplement to Motion to Adjudicate Attorney Lien	3.50	\$850.00	\$2,975.00
Service	02/21/2018	PSC	Review Vannah's Opp to Defendant's Motion to Dismiss and Countermotion to Amend; conference with client	2.30	\$850.00	\$1,955.00
Service	02/26/2018	PSC	Draft and fax letter to Williams re settlement conference	0.50	\$850.00	\$425.00

Service	03/01/2018	PSC	Review Vannah's Supplement to their Countermotion to amend Complaint; conference with client	1.80	\$850.00	\$1,530.00
Service	03/02/2018	PSC	Review and revise Special Motion to Dismiss- Anti-Slapp on OST	1.30	\$850.00	\$1,105.00
Service	03/15/2018	PSC	Review Amended Complaint filed by Vannah; conference with client	1.30	\$850.00	\$1,105.00
Service	03/16/2018	PSC	R&R MSC brief; conference with client	3.50	\$850.00	\$2,975.00
Service	03/16/2018	PSC	Review Opp to Special motion to Dismiss: Anti-Slapp; conference with client	1.80	\$850.00	\$1,530.00
Service	03/21/2018	PSC	Assist R&R Reply to Motion to Dismiss: Anti-Slapp	1.30	\$850.00	\$1,105.00
Service	03/22/2018	PSC	Assist R&R Reply to Motion to Dismiss 12(b)(5)	1.80	\$850.00	\$1,530.00
Service	03/23/2018	PSC	Meeting re settlement conference with Jim, DS and AF; Prepare for and Attend Mandatory Settlement Conference	5.00	\$850.00	\$4,250.00
Service	04/09/2018	PSC	Assist R&R Motion to Dismiss Plaintiff's Amended Complaint; meet with client.	1.80	\$850.00	\$1,530.00
Service	04/24/2018	PSC	Review Opp to Defendants' (Third) Motion to Dismiss; conference with client	1.30	\$850.00	\$1,105.00
Service	05/09/2018	PSC	Assist R&R Special Motion to Dismiss Amended Complaint: Anti-Slapp	2.30	\$850.00	\$1,955.00
Service	05/15/2018	PSC	Meeting with Will Kemp	1.50	\$850.00	\$1,275.00
Service	05/18/2018	PSC	Assist R&R Bench Brief on Evidentiary Hearing	3.50	\$850.00	\$2,975.00
Service	05/19/2018	PSC	Review Plaintiffs' bench brief on evidentiary hearing; conference with client	1.50	\$850.00	\$1,275.00
Service	05/23/2018	PSC	Review calendar and scheduling issues and draft letter to Judge Jones re: evidentiary Hearing regarding continuing the evidentiary hearing due to trial conflict	0.50	\$850.00	\$425.00
Service	05/24/2018	PSC	Review Opposition to Defendants' 2nd Motion to Dismiss: Anti-Slapp	1.50	\$850.00	\$1,275.00
Service	08/10/2018	PSC	Assist in preparing subpoena to Floyd Hale; finalize and email same.	0.90	\$850.00	\$765.00
Service	08/18/2018	PSC	Reviewed file in preparation for evidentiary hearing.	8.50	\$850.00	\$7,225.00
Service	08/19/2018	PSC	Reviewed file in preparation for evidentiary hearing.	10.50	\$850.00	\$8,925.00
Service	08/20/2018	PSC	Meeting with Jim, DS and AMF; prepare for hearing	7.50	\$850.00	\$6,375.00

Service	08/21/2018	PSC	Review of file and prepare for hearing	9.50	\$850.00	\$8,075.00
Service	08/23/2018	PSC	Started reviewing exhibits AMF put in dropbox and continue preparing for hearing	8.50	\$850.00	\$7,225.00
Service	08/24/2018	PSC	Review case and exhibits and prepare for hearing.	8.50	\$850.00	\$7,225.00
Service	08/25/2018	PSC	Prepare for Hearing--Brian and Angela as witness	10.10	\$850.00	\$8,585.00
Service	08/26/2018	PSC	Prepare for Hearing--Brian as witness	9.80	\$850.00	\$8,330.00
Service	08/27/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	12.20	\$850.00	\$10,370.00
Service	08/28/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	11.90	\$850.00	\$10,115.00
Service	08/29/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	12.00	\$850.00	\$10,200.00
Service	08/30/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel.	11.80	\$850.00	\$10,030.00
Service	08/31/2018	PSC	Conference with client; prepare and serve OOJ and cover letter	1.50	\$850.00	\$1,275.00
Service	09/02/2018	PSC	Assist with Findings of Fact and Conclusions of Law; conference with client	7.50	\$850.00	\$6,375.00
Service	09/10/2018	PSC	Review letter from Vannah re continuing hearing and discuss with client	1.30	\$850.00	\$1,105.00
Service	09/10/2018	PSC	Review and discuss production of cell phone records with client	0.80	\$850.00	\$680.00
Service	09/11/2018	PSC	Prepare response and serve to Vannah letter re continuing hearing; conference with client	0.80	\$850.00	\$680.00
Service	09/13/2018	PSC	Assist R&R updated findings of fact and conclusions of law for motions to dismiss; meet with client re: same	2.50	\$850.00	\$2,125.00
Service	09/14/2018	PSC	R&R updated draft findings of fact and conclusions of law for motion to adjudicate and Motions to Dismiss review of record with respect to evidentiary support of same	2.20	\$850.00	\$1,870.00
Service	09/15/2018	PSC	Assist R&R findings of fact and conclusions of law for motion to adjudicate; Motion to dismiss/proposed order to dismiss complaint.	3.20	\$850.00	\$2,720.00
Service	09/15/2018	PSC	Prepare for Hearing	4.00	\$850.00	\$3,400.00
Service	09/16/2018	PSC	Prepare for Hearing	2.80	\$850.00	\$2,380.00

Service	09/16/2018	PSC	Assist R&R spousal privilege brief; Discuss with client.	1.80	\$850.00	\$1,530.00
Service	09/17/2018	PSC	Prepare for hearing (prepping for Angela and closing)	2.50	\$850.00	\$2,125.00
Service	09/18/2018	PSC	Prepare for and attend Evidentiary Hearing	7.50	\$850.00	\$6,375.00
Service	09/19/2018	PSC	Discussion with client and prepare closing	2.20	\$850.00	\$1,870.00
Service	09/23/2018	PSC	Review and revise closing arguments	1.20	\$850.00	\$1,020.00
Service	10/11/2018	PSC	Review of Court's decision on Motion to Adjudicate, Motion to Dismiss 12(b)(5) and Motion to Dismiss: Anti-Slapp; meet with client and discuss necessary action re: same	2.50	\$850.00	\$2,125.00
Service	10/12/2018	PSC	Discussion with client re: orders; legal research and assess options in light of same	3.00	\$850.00	\$2,550.00
Service	10/26/2018	PSC	Review motion to reconsider; discuss with AF and client re: same	2.20	\$850.00	\$1,870.00
Service	11/02/2018	PSC	Assist with preparing Motion for Attorney Fees	3.00	\$850.00	\$2,550.00
Service	11/09/2018	PSC	Review Opposition to Motion for Reconsideration	1.00	\$850.00	\$850.00
Service	11/12/2018	PSC	Assist in preparation of Reply.	1.50	\$850.00	\$1,275.00
Service	11/13/2018	PSC	Meeting with client re hearing and prepare for same.	1.00	\$850.00	\$850.00
Service	11/14/2018	PSC	Prepare for hearing on Motion for Reconsideration; Disc. with client	1.50	\$850.00	\$1,275.00
Service	11/15/2018	PSC	Prepare for and attend hearing on Motion for reconsideration	2.50	\$850.00	\$2,125.00
Service	11/25/2018	PSC	Final review and revision of Motion for Attorneys Fees	2.00	\$850.00	\$1,700.00
					<b>Subtotal</b>	<b>\$199,495.00</b>
					<b>Total</b>	<b>\$199,495.00</b>

## Detailed Statement of Account

### Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
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Invoice # 15648 - 11/29/2018

15648	12/29/2018	\$199,495.00	\$0.00	\$199,495.00
			<b>Outstanding Balance</b>	<b>\$199,495.00</b>
			<b>Total Amount Outstanding</b>	<b>\$199,495.00</b>

Please make all amounts payable to: Christiansen Law Offices  
Tax Identification Number: 88-0497171

# **EXHIBIT C**



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.

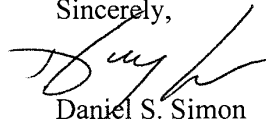
### **Conclusion**

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**

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

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

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

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

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

4 SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2017.  
5

6 LAW OFFICES OF DANIEL S. SIMON Brian Edgeworth on behalf of Edgeworth Family  
7 Trust and American Grating  
8

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)

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

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

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

---

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

---

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



# **EXHIBIT D**

**Daniel Simon**

---

**From:** Janet Pancoast <janet.pancoast@zurichna.com>  
**Sent:** Tuesday, December 12, 2017 11:51 AM  
**To:** Daniel Simon; Henriod, Joel D. (JHenriod@lrrc.com)  
**Cc:** Jessica Rogers  
**Subject:** Edgeworth - Checks -  
**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

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SIMONEH0004535

AA0185

# **EXHIBIT E**

**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](#)

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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](mailto:janet.pancoast@zurichna.com)

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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

5 Fax: (702) 233-9665

[janet.pancoast@zurichna.com](mailto: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

10 Tel: 1-310-312-0772

Fax: 1-310-312-0656

11 [kershaw@mmrs-law.com](mailto: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 )

AMERICAN GRATING, LLC )

19 Plaintiffs, )

20 vs. )

21 LANGE PLUMBING, LLC; THE VIKING )

22 CORPORATION, a Michigan corporation; )

SUPPLY NETWORK, INC. d/b/a VIKING )

23 SUPPLYNET, a Michigan corporation; and )

DOES I through V and ROE CORPORATIONS )

24 VI through X, inclusive, )

25 Defendants. )

**CASE NO.: A-16-738444-C**

**DEPT. NO.: X**

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

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 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, )  
13 inclusive. )  
Counter-Defendant )

14 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, )  
21 Third Party Defendant. )

22  
23  
24  
25  
26 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al.* Case No. A-16-738444-  
27 Stipulation and Order for Dismissal of Viking Entities by Plaintiffs

1 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  
28

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

Each party shall bear their own fees and costs.

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

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

SIMON LAW

CISNEROS & MARIAS

\_\_\_\_\_  
Daniel S. Simon, Esq.  
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*

### **ORDER**

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

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

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

\_\_\_\_\_  
DISTRICT COURT JUDGE

//

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



Submitted by:

CISNEROS & MARIAS

BY:

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

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

# **EXHIBIT F**

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

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

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

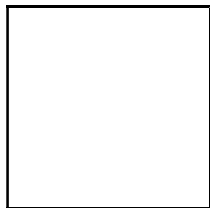
Danny,

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

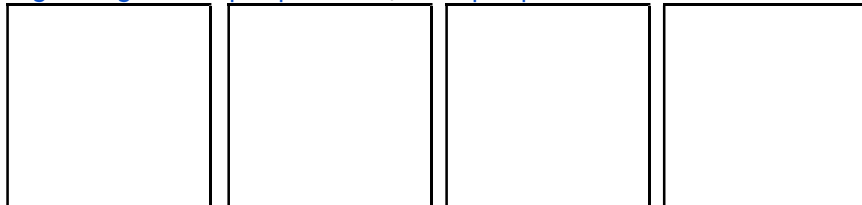
We would need to have our attorney look at this agreement before we sign.

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

Angela Edgeworth



Angela Edgeworth  
D 702.352.2585 | T 702.567.0311 | F 702.567.0319  
1191 Center Point Drive | Henderson, NV 89074  
[angela.edgeworth@pediped.com](mailto:angela.edgeworth@pediped.com) | [www.pediped.com](http://www.pediped.com)



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

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



Brian Edgeworth &lt;brian@pediped.com&gt;

---

**Re: Edgeworth v. Viking, et al**

1 message

---

**Angela Edgeworth** <angela.edgeworth@pediped.com>

Mon, Nov 27, 2017 at 5:31 PM

To: Daniel Simon &lt;dan@simonlawlv.com&gt;

Cc: "Brian Edgeworth (brian@pediped.com)" &lt;brian@pediped.com&gt;

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 G**

# FAX

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

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

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

**NOTE:**

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, looped flourish at the end.

Brian Edgeworth

# **EXHIBIT H**



**brian@pediped.com**

---

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

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

## SETTLEMENT AGREEMENT AND RELEASE

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

### I. RECITALS

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

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

### II. DEFINITIONS

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

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

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

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

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

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

### III. SETTLEMENT TERMS

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

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

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

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

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

### IV. AGREEMENT

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

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

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

## **V. RELEASE**

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

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

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

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

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

## **VI. GOOD FAITH SETTLEMENT**

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

## **VIII. MISCELLANEOUS**

### **A. COMPROMISE:**

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

### **B. CONFIDENTIALITY:**

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

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

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

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

**D. GOVERNING LAW:**

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

**E. INDIVIDUAL AND PARTNERSHIP AUTHORITY:**

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

**F. GENDER AND TENSE:**

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

**G. ENTIRE AGREEMENT:**

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

**H. INDEPENDENT ADVICE OF COUNSEL:**

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

**I. VOLUNTARY AGREEMENT:**

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

**J. ADMISSIBILITY OF AGREEMENT:**

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

**K. COUNTERPARTS:**

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

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

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

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

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

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

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

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

SIMON LAW

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

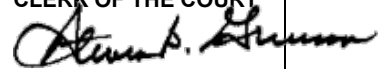
On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

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

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

# **EXHIBIT I**





RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC, ET AL.,

Defendants.

CASE#: A-16-738444-C

DEPT. X

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON, ET AL.,

Defendants.

CASE#: A-18-767242-C

DEPT. X

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

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

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

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

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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DANIEL SIMON

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WILLIAM KEMP

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1           A     Correct.

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

4           A     Yes.

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

7           A     Yes.

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

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

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

16          A     Yes.

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

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

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

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

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

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

9 BY MR. CHRISTENSEN:

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

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

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

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

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

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

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

24 THE COURT: Okay.

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

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

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

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

13           THE WITNESS: Before I was fired, yeah.

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

15           THE WITNESS: Yes.

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

18           THE WITNESS: Nope.

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

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

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

23           THE WITNESS: Correct.

24           THE COURT: Okay.

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

1 a very expert, intensive type of case. We had to hire engineers, we had  
2 to hire metallurgists.

3 The Defense had multiple experts. Ultimately we ended up hiring  
4 weather experts, other engineers that were familiar with weather, then  
5 we had to hire experts, we didn't have to, but we did, regarding the loss  
6 of value of the house, which was another expert.

7 They had plenty of experts on their side because we were dealing  
8 with two defendants, and they all had engineers, and they all had  
9 metallurgists, they had weather experts. They had --

10 Q When was the Defense expert disclosure?

11 A I believe it was in August.

12 Q Was it staggered?

13 A I don't think so.

14 Q Okay.

15 A I don't allow that, typically.

16 Q All right.

17 A I don't think it was this time.

18 THE COURT: And, Mr. Simon, you hired all these experts in  
19 August?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 THE WITNESS: Well, not every expert was in August. After  
23 we got some reports, I went and retained some rebuttal experts a little  
24 bit later, but --

25 THE COURT: A little bit later in '17?

1 witness and provide him with my copy of Exhibit 12 --

2 THE COURT: Okay.

3 MR. CHRISTENSEN: So that he can read the whole thing  
4 easily.

5 THE COURT: Sure.

6 MR. VANNAH: That's a great idea. Thank you. Thank you  
7 very much.

8 UNIDENTIFIED SPEAKER: Almost there? Oh, yes.

9 THE COURT: This might assist you.

10 MR. GREENE: That's all of it. Okay.

11 THE COURT: Okay. It looks like it's all on there now.

12 MR. GREENE: All right. Beautiful.

13 MR. VANNAH: We're probably all looking at the regular  
14 document.

15 BY MR. VANNAH:

16 Q So what do you say to, and I think mainly this is Mr. Greene,  
17 but you do -- you do carbon, cc Brian Edgeworth and Angela Edgeworth  
18 in this too, right?

19 A Yes.

20 Q All right. And it says: Please find attached, the final  
21 settlement agreement.

22 A Correct.

23 Q And that's forwarded to -- all right, it says: Please have  
24 clients sign as soon as possible to avoid any delay in processing  
25 payment. This shall also confirm that your office -- that would be

1 Vannah and Vannah, right?

2 A Right.

3 Q Is advising them about the effects of their release and  
4 representing them to finalize settlement through my office. We're going  
5 to explain the effects of release to them. Because you're not going to  
6 talk to them, right? And you're saying that we're going to represent  
7 them to finalize settlement through your office.

8 Right? Is that what you're saying?

9 A Through your office.

10 Q No, it says -- I'll read it to you again.

11 A Oh, through my office, okay.

12 Q Through your office.

13 A Oh, yes. Okay.

14 Q We're going to finalize --

15 A I'm with you.

16 Q -- the settlement through your office. Also, I first received a  
17 call from you this morning advising the clients wanted to sign the initial  
18 draft of the settlement agreement as is.

19 So, what that meant was, that morning, we had advised you that,  
20 you know what, the settlement agreement is fine as is, the way it is,  
21 they're willing to sign it as is, but you made some modifications, right?

22 A Yep.

23 Q All right. And you -- and you state: Since, this time, and that  
24 would -- when I say since this time, that would be on November 30th,  
25 from that morning, you had gotten involved and made some



1 modifications, right?

2       You said: Since that time, I spent substantial time negotiating  
3 more beneficial terms to protect the clients. Specifically, I was able to  
4 get the Defendants to agree to omit the confidentiality provision  
5 providing mutual release and allow the opportunity to avoid a good faith  
6 determination of the Court if the clients resolve the Lange claims,  
7 providing Lange will dismiss his claims against Viking. Just so we are  
8 clear, your office did not ask for these substantial additional beneficial  
9 terms to protect the client.

10       Do you see that? Did I read that right?

11       A     Yep.

12       Q     So, what you're saying is, look, this morning, you told me  
13 that the clients were ready to sign the agreement as it is, but guess what,  
14 I did a great job. I spent substantial time -- and that's fine -- I spent  
15 substantial time working on the case, meeting with the other side, and  
16 getting them to take some provisions out of the original settlement  
17 agreement that you were already willing to sign. I got them to take the  
18 confidentiality agreement out. I got a mutual release. And I got in a  
19 position where everybody's going to agree to waive the good faith  
20 settlement if you -- if we settle with Lange, right? And that was  
21 beneficial to the clients, right?

22       A     I guess, based on

23       Q     What --

24       A     Yeah, based on this email that's -- the email says what it  
25 says.

1           Q     Well, it says here, this is very beneficial. You guys didn't ask  
2 for it. I went and did it and I did a great job, and I got a better deal on the  
3 release on the one you were willing to sign, right? And that's what  
4 you're saying?

5           A     Yep.

6           Q     Okay. Additionally, this morning -- and that would be the  
7 morning of November 30th -- you asked me to approach Lange to accept  
8 the \$25,000 offer from mediation.

9           Do you see that?

10          A     Yes.

11          Q     All right. So there had been an offer from Lange for 25,000 at  
12 the mediation, and your recollection of the conversation, I'm not  
13 disputing it, was that we had said look, we want the Lange case settled,  
14 take the 25,000, we want the Lange case settled, right?

15          A     Yep.

16          Q     All right. And by the way, don't let me -- I don't want to  
17 digress yet. All right. Since this time, now that would be the same  
18 morning, right, the same day, because that morning I said, go ahead and  
19 accept it if that's what you do. Do better, do better, but whatever, we'll  
20 accept it if that's what it is. Since that time, and that -- that would be the  
21 same day, I was able to secure a \$100,000 offer, less all money Lange is  
22 claiming they are owed.

23          Do you see that?

24          A     Yes.

25          Q     Lange would then dismiss their claims against Viking,

1 MR. VANNAH: It's page 3.

2 THE COURT: -- starts on page 3.

3 MR. VANNAH: Yeah, that's my --

4 BY MR. VANNAH:

5 Q Let's just go through this letter. The -- on the first page, you  
6 talked about -- you have headings. I helped you with your case and went  
7 above and beyond for you because I considered you close friends and  
8 treated you like family, right?

9 A Yes.

10 Q And then that, you talk about what a -- well, on Page 4 of that  
11 exhibit, you talk about, I was an exceptional advocate for you. I was an  
12 exceptional advocate for you. It is my reputation with the judiciary, who  
13 know my integrity, as well as my history of big verdicts, that persuaded  
14 the Defense to pay such a big number. Did you write that?

15 A Yes.

16 Q And I don't like to talk braggy about yourself, but here we  
17 are, right? Your bragging a little here?

18 A I'm bragging to the extent that --

19 Q I'm not saying that's bad. I'm just saying you -- but you're  
20 surely touting yourself as you've got big verdicts, a history of big  
21 verdicts. You've got a great reputation with the Judges. They know how  
22 honest you are, and no other lawyer would give you this attention. Do  
23 you see that a little further down?

24 A I definitely agree with that.

25 Q Do you think Mr. Kemp wouldn't have given him this

1 attention if he was paying Mr. Kemp hourly?

2 A Mr. Kemp wouldn't have been the idiot that I was, to give this  
3 guy full access to me 24/7, and if you would just start reading those  
4 emails, it tells the entire story, Mr. Vannah.

5 Q All right.

6 A And if you want me to continue, because --

7 Q No.

8 A -- I feel so bad right now for my entire staff, to even let this  
9 guy invade my office and abuse our time the way he did, and then treat  
10 us like this at the end of the case. Mr. Kemp would have never ever let  
11 that happen.

12 Q No, he would have had a written fee agreement, so would  
13 Mr. Vannah, and so would Mr. Christiansen, so would Mr. Christensen.

14 A Well, I don't know that.

15 Q Okay. Well --

16 A Because they -- I'm sure they treat friends and family similar  
17 to me.

18 Q Okay. You violated the Bar Rules by not doing what they  
19 asked you to do on the fee agreement, right? You just flat out and do it,  
20 right?

21 MR. CHRISTENSEN: Objection, Your Honor. There's no  
22 foundation for that. There's been no Bar complaint.

23 MR. VANNAH: I'm not doing a Bar complaint, it's a Bar rule.

24 THE COURT: Hold on. Only one of you is speaking at any  
25 given time. Mr. Vannah, is there a question included in that?

1 MR. VANNAH: There was. I said you had violated the Bar  
2 rules, Section 1.5, when you didn't have a clear understanding of where  
3 the client is to what the fee was going to be, correct?

4 THE COURT: Well, I mean, Mr. Vannah, I think that those are  
5 allegations that I don't want Mr. Simon answering that question at this  
6 point in time, because if there was some Bar complaint or something out  
7 there, which I know absolutely nothing about, I don't want him  
8 answering that question.

9 Mr. Simon, don't answer that question.

10 THE WITNESS: All right.

11 THE COURT: Mr. Vannah, can you ask him another  
12 question?

13 MR. VANNAH: I will.

14 BY MR. VANNAH:

15 Q Going on further with this, it says, one major reason they are  
16 likely willing to pay the exceptional result of six million, is that the  
17 insurance company factored in my standard fee of 40 percent, 2.4  
18 million, because both the mediator and the Defense have to presume the  
19 attorney fees so it can get settled. Do you see that?

20 A I do.

21 Q Well, you know, that's interesting. Why would they presume  
22 that, that you earn 40 percent, when you are submitting invoice after  
23 invoice after invoice after invoice totaling your hourly fee? You're telling  
24 them you're charging hourly at 550 an hour. Isn't that what those fee  
25 invoices show to the other side?

1 Q When you receive that fax and/or when you received the call  
2 did you just drop everything on the file?

3 A What do you mean?

4 Q Did you stop work on the file?

5 A No, of course not.

6 Q Could stopping work place the clients in jeopardy?

7 A It depends on the situation.

8 Q But at any rate you continued to do some work on the file  
9 and actually increased offers for them, correct?

10 A Yes.

11 Q Now that work all occurred on November 30th, correct?

12 A Yes.

13 Q We were shown, this is Edgeworth Exhibit 3, this is Bate 1,  
14 this is that infamous contingency email of August 22, 2017?

15 A Yes.

16 Q And the forward on this indicates that you sent it to me on  
17 December 1, 2017?

18 A Yes.

19 Q So you went out and consulted your own lawyer?

20 A Yes.

21 Q Why did you do that?

22 A Because I felt that I was terminated, when he's meeting with  
23 other lawyers, and I'm getting letters that I'm supposed to be talking to  
24 other lawyers about a case that I had been representing on for a  
25 substantial time and did amazing work on and gave amazing advice.

1 And the only reason for that would -- for another law firm to get involved  
2 is if I'm out.

3 Q And you were in an awkward position, weren't you? As I  
4 think Mr. Vannah made abundantly clear you never did move to  
5 withdraw?

6 A Right.

7 Q Why not.

8 A Number one, I'm not going to just blow up any settlements,  
9 number one. I've never done that, never will. I continue to work, and I  
10 always put the client's interest above mine, which I did in this case, even  
11 after I'm getting all of these letters.

12 Number two, even later, Mr. Vannah was making it abundantly  
13 clear that they were coming after me, if I decided to do something that  
14 might even remotely be considered adverse to the client.

15 So, I'm in an awkward position, I'm going to fulfill my duties  
16 regardless, and it was clear they didn't want to pay me. But I'm still  
17 going to do it, and do my job for the client regardless, and payment is  
18 going to be an issue that we deal with later.

19 Q And that's the same day I believe you filed your first  
20 attorney's lien?

21 A Yes.

22 THE COURT: And what was the first day you consulted with  
23 Mr. Christensen to represent you? Do you remember?

24 THE WITNESS: I don't, but it would have been around that  
25 time, or a few days or more, before, when I felt that I wasn't getting

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MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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



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



## CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 4<sup>th</sup> day of December, 2023, a true and correct copy of the foregoing **EDGEWORTH APPELLANTS' APPENDIX TO OPENING BRIEF (VOLUME I)** was served by the following method(s):

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DATED this 4th day of DECEMBER, 2023.

By: /s/ CATHY SIMICICH