

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.

Electronically Filed
Dec 04 2023 09:09 PM
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 86676
Dist. Ct. Case No. A-18-767242-C
Consolidated with A-16-738444-C

**EDGEWORTH APPELLANTS' APPENDIX TO
OPENING BRIEF**

**VOLUME VII
BATES AA1266-AA1508**

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
MORRIS LAW GROUP
801 South Rancho Dr., Ste. B4
Las Vegas, NV 89106
Phone: 702-474-9400
Fax: 702-474-9422
sm@morrislawgroup.com
rsr@morrislawgroup.com

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

CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL	BATES NOS.
2018-08-27	Excerpts of Evidentiary Hearing Transcript (Day 1)	I	AA0001-06
2018-08-30	Excerpts of Evidentiary Hearing Transcript (Day 4)	I	AA0007-22
2018-10-11	Decision and Order on Motion to Adjudicate Lien (original)	I	AA0023-48
2018-11-19	Decision and Order on Motion to Adjudicate Lien (Amended)	I	AA0049-71
2020-12-30	Nevada Supreme Court Order Affirming in Part, Vacating in Part Remanding	I	AA0072-86
2021-03-16	Second Amended Decision and Order on Motion to Adjudicate Lien	I	AA0087-111
2021-03-30	Defendant's Motion for Reconsideration of Lien & Attorney's Fees & Costs Orders and Second Amended Decision and Order on Motion to Adjudicate Lien	I/II	AA0112-406
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	AA0407-423
2021-04-13	Opposition to Motion to Reconsider & Request for Sanctions; Counter Motion to Adjudicate Lien on Remand	III	AA0424-626
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	IV	AA0627-651

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DATE	DOCUMENT TITLE	VOL	BATES NOS.
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	IV	AA0652-757
2021-05-13	Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of Complete Client File	IV	AA0758-832
2021-05-13	Opposition to the Second Motion to Reconsider Counter Motion to Adjudicate Lien on Remand	V	AA0833-937
2021-05-20	Edgeworths' Reply ISO Motion for Reconsideration of Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Third Amended Decision and Order on Motion to Adjudicate Lien	V	AA0938-978
2021-05-20	Opposition to Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of File	V	AA0979-1027
2021-05-21	Reply ISO Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of Complete Client File	V	AA1028-1047

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DATE	DOCUMENT TITLE	VOL	BATES NOS.
2021-05-24	Notice of Entry of Order Re Second Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs	VI	AA1048-1056
2021-05-27	Transcript of 05-27-21 Hearing Re-Pending Motions	VI	AA1057-1085
2021-06-18	Notice of Entry of Order of Decision & Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Counter Motion to Adjudicate Lien on Remand	VI	AA1086-1093
2021-07-22	Notice of Appeal	VI	AA1094-1265
2021-08-13	Docketing Statement (83260)	VII	AA1266-1277
2021-08-16	Docketing Statement (83258)	VII	AA1278-1289
2021-09-19	Amended Docketing Statement	VII	AA1290-1301
2021-12-13	Order Consolidating and Partially Dismissing Appeals	VII	AA1302-1306
2022-09-16	Order on Edgeworths' Writ Petition (Case No. 84159)	VII	AA1307-1312
2022-09-16	Order Vacating Judgment and Remanding (Case No. 83258-83260)	VII	AA1313-1317
2022-09-27	Fourth Amended Decision & Order on Motion to Adjudicate Lien	VII	AA1318-1343
2022-09-27	Order to Release to the Edgeworth's Their Complete Client File	VII	AA1344-1347
2022-12-15	Remittitur (signed and filed)	VII	AA1348-1351

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2023-02-09	Simon's Motion for Adjudication Following Remand	VII	AA1352-1376
2023-02-23	Edgeworths' Response to Motion for Adjudication Following Remand	VII/VI II	AA1377-1649
2023-03-14	Reply ISO Motion for Adjudication Following Remand	VIII	AA1650-1717
2023-03-28	Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1718-1748
2023-04-24	Notice of Entry of Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1749-1781
2023-05-24	Notice of Appeal	IX	AA1782-1784

***EDGEWORTH FAMILY TRUST, ET AL. vs.
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PETITIONERS' APPENDIX

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2018-11-19	Decision and Order on Motion to Adjudicate Lien (Amended)	I	AA0049-71
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2023-02-23	Edgeworths' Response to Motion for Adjudication Following Remand	VII/VIII	AA1377-1649
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2023-03-28	Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1718-1748
2022-09-27	Fourth Amended Decision & Order on Motion to Adjudicate Lien	VII	AA1318-1343
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	AA0407-423
2020-12-30	Nevada Supreme Court Order Affirming in Part, Vacating in Part Remanding	I	AA0072-86
2021-07-22	Notice of Appeal	VI	AA1094-1265
2023-05-24	Notice of Appeal	IX	AA1782-1784
2023-04-24	Notice of Entry of Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1749-1781
2021-06-18	Notice of Entry of Order of Decision & Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Counter Motion to Adjudicate Lien on Remand	VI	AA1086-1093
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2021-05-27	Transcript of 05-27-21 Hearing Re-Pending Motions	VI	AA1057-1085

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Aug 13 2021 07:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

v.

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

Respondents.

Supreme Court Case Nos. 83260

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

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department X

County Clark Judge Tierra Jones

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

2. Attorney filing this docketing statement:

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

Firm: MORRIS LAW GROUP

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

Client: Edgeworth Family Trust and American Grating, LLC

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

3. Attorneys representing respondents:

Attorney: Peter S. Christiansen and Kendelea L. Works

Firm: Christiansen Law Offices

Address: 810 S. Casino Center Blvd., Ste. 104, Las Vegas, Nevada
89101

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

Attorney: James R. Christensen

Firm: n/a

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

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

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default Judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify) Failure to Properly Adjudicate Lien Amount on Remand and Denial of Motion to Release Client Funds Not Subject to Lien and Client File |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify)___ |

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

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

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

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

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

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

This appeal, like the proceedings referenced in #6 above, arise from the attorney lien adjudication proceedings that followed settlement of the underlying action. This Court affirmed the district court's lien adjudication, its finding that the attorney, Daniel Simon, was constructively discharged, and remanded for the district court to (1) explain the basis of the \$200,000 quantum meruit award of an attorney fee and its reasonableness under *Brunzell*; and (2) to also explain the reasonableness under *Brunzell* of the \$50,000 attorney's fees award entered by the district court.

On remand, the district court entered an order explaining the basis of the \$50,000 attorney fee award and remitted the \$5,000 in costs to the actual amount incurred (\$2,520). With respect to No. 1, however, the district court entered an amended order awarding the same \$200,000 in quantum meruit that was the subject of remand without offering any explanation as to its basis or its reasonableness under *Brunzell*, as the Supreme Court expressly directed it to do. The district court also refused to enter an order releasing the excess between the more than \$2M in funds being withheld from Appellants since 2018, and the unpaid judgments arising out of liens as adjudicated by the district court. The district court also refused to order Respondents to turn over the complete Edgeworth client file to Appellants, despite the fact that Respondent Simon's fees were fully secured.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Did the district court err in merely restating its prior decision rather than responding to this Court's mandate to state the basis for and the reasonableness of its \$200,000 *quantum meruit* award in the face of evidence provided by the respondent that a "reasonable" fee under *Brunzell* would not be more than \$33,811.25.

2. Did the district court err in refusing to release to the Appellants the \$1.5M+, which is the difference between funds withheld from the client due to the amount of the amended charging lien and \$484,982.50, which is the amount that the district court entered as a judgment on the lien after hearing Respondent Simon's evidence.
3. Did the district court err in refusing to release, pursuant to NRS 7.055, the complete client file to the appellants, who have provided more than adequate security for the attorney fees in dispute and who are bound by the protective order in the substantive action.
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issue raised:

Appellants are not aware of any pending proceedings raising the same or similar issues.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
☐ Yes
☐ No

If no, explain:

12. **Other Issues.** Does this appeal involve any of the following issues?
- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
☐ An issue arising under the United States and/or Nevada Constitutions.
☒ A substantial issue of first impression
☒ An issue of public policy

- ☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
☐ a ballot question

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

The Nevada Supreme Court should retain this appeal under NRAP 17(a)(12), because it involves the district court's failure to adhere to this Court's mandate in Case Nos. 77678 and 78176. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (table) 2020 WL 7828800 (unpublished) (Nev. 2020). This appeal also raises important questions of first impression and statewide importance that the Court has not previously reached concerning two issues. First, what is the length of time that an attorney can encumber client funds under NRS 18.015 when the lien amount claimed was not based on a written agreement, was unreasonable when filed, and was adjudicated by the district court in a five-day hearing for a fraction of the amount for which the lien was filed. Second, whether NRS 7.055 permits an attorney who is adequately secured for his/her attorney fees to refuse to produce a complete client file under the guise that he has not been paid or that portions of the file are protected under a standard confidentiality and protective order to which he and his client are parties.

NRS 18.015 allows attorneys the protection of a charging lien. The statute tries to balance the rights of the attorney and client by requiring that liens be imposed only for the amount of the fee agreed to by the parties or, if no agreement, for a reasonable amount *and* by requiring prompt adjudication of the parties' respective rights. NRS 18.015(2) (lien may be for amount agreed or reasonable amount); and

NRS 18.015(6) (the "court shall, **after five days** notice to all interested parties, adjudicate the rights of the attorney, client, or other parties and enforce the lien."). The purpose of the lien is not to give license to lawyers to tie up client funds **for years** when they do not acquiesce to an attorney's unreasonable demands for more money than he agreed to accept as a fee, as Respondent threatened and has done here.

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

Was it a bench or jury trial? N/A

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

TIMELINESS OF NOTICE OF APPEAL

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

The district court entered its decision and orders on June 17, 2021 and notice of entry of the orders was given on June 18, 2021.

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

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

June 18, 2021.

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

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

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing: Motion for Reconsideration

- ☐ NRCP _____
☐ NRCP 52(b)

Date of filing _____
Date of filing _____

☐ NRCP 59

Date of filing: N/A

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

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

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

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal filed

July 17, 2021.

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

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

- (a) ☒ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☐ Other (specify) NRAP 3A(b)(8) _____

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

Under NRAP 3A(b)(1), an appeal may be taken from a "final judgment entered in an action . . . commenced in the court in which the judgment is rendered." The Edgeworth Family Trust and American Grating, LLC (collectively the "Edgeworths") commenced this case in the Eighth Judicial District Court. On June 18, 2021, the district court entered its Decision and Order Denying the

Edgeworth's motion styled Plaintiff's Renewed Motion for Reconsideration of April 19, 2021 Third-Amended Decision and refusing to obey the mandate this Court expressed in its Order of December 30, 2020 (Remittitur Issued April 13, 2021) in Case Nos. 77678/78176). Also on June 18, 2021, the district court entered its order denying the Edgeworths' Motion for Order Releasing Client funds in Excess of the Judgment and Requiring Production of Complete Client File.

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

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

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

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

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

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

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

Plaintiffs' Claims for Relief:

- (1) Plaintiff's original claims for conversion, declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing were dismissed, and that dismissal was affirmed in the prior appellate proceedings; the case was remanded in part for reconsideration of the basis and reasonableness of the

quantum meruit award for an attorney fee and a separate attorney fee award. The issues that remain and that form the basis for this appeal are from the dispute between plaintiffs and their original attorney that arose following settlement of the substantive claims.

- (2) Motion to Release Client Funds and Client File – appellants challenge the district court's refusal to release amounts in excess of the judgments she entered, and refusal to order the release of the complete client file.

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

☒ Yes
☐ No

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

N/A

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

N/A.

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

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

VERIFICATION

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

Edgeworth Family Trust;

American Grating, LLC

Name of Appellant

Steve Morris

Name of counsel of record

August 12, 2021

Date

/s/ STEVE MORRIS

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

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

TO:

James R. Christensen, Bar No. 3861
601 S. 6th Street
Las Vegas, NV 89101

Peter S. Christiansen, Bar No. 5254
Kendele L. Works, Bar No. 9611
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101

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

Dated this 13nd day of August, 2021.

/s/ GABRIELA MERCADO

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 16 2021 12:24 p.m.
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Clerk of Supreme Court

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AMERICAN GRATING, LLC,

Appellants,

v.

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

Respondents.

Supreme Court Case Nos. 83258

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

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department X

County Clark Judge Tierra Jones

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

2. Attorney filing this docketing statement:

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

Firm: MORRIS LAW GROUP

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

Client: Edgeworth Family Trust and American Grating, LLC

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

3. Attorneys representing respondents:

Attorney: Peter S. Christiansen and Kendelea L. Works

Firm: Christiansen Law Offices

Address: 810 S. Casino Center Blvd., Ste. 104, Las Vegas, Nevada
89101

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

Attorney: James R. Christensen

Firm: n/a

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

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

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default Judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify) Failure to Properly Adjudicate Lien Amount on Remand and Denial of Motion to Release Client Funds Not Subject to Lien and Client File |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify)___ |

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

- ☐ Child custody
☐ Venue
☐ Termination of parental rights

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

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

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

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

This appeal, like the proceedings referenced in #6 above, arise from the attorney lien adjudication proceedings that followed settlement of the underlying action. This Court affirmed the district court's lien adjudication, its finding that the attorney, Daniel Simon, was constructively discharged, and remanded for the district court to (1) explain the basis of the \$200,000 quantum meruit award of an attorney fee and its reasonableness under *Brunzell*; and (2) to also explain the reasonableness under *Brunzell* of the \$50,000 attorney's fees award entered by the district court.

On remand, the district court entered an order explaining the basis of the \$50,000 attorney fee award and remitted the \$5,000 in costs to the actual amount incurred (\$2,520). With respect to No. 1, however, the district court entered an amended order awarding the same \$200,000 in quantum meruit that was the subject of remand without offering any explanation as to its basis or its reasonableness under *Brunzell*, as the Supreme Court expressly directed it to do. The district court also refused to enter an order releasing the excess between the more than \$2M in funds being withheld from Appellants since 2018, and the unpaid judgments arising out of liens as adjudicated by the district court. The district court also refused to order Respondents to turn over the complete Edgeworth client file to Appellants, despite the fact that Respondent Simon's fees were fully secured.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Did the district court err in merely restating its prior decision rather than responding to this Court's mandate to state the basis for and the reasonableness of its \$200,000 *quantum meruit* award in the face of evidence provided by the respondent that a "reasonable" fee under *Brunzell* would not be more than \$33,811.25.

2. Did the district court err in refusing to release to the Appellants the \$1.5M+, which is the difference between funds withheld from the client due to the amount of the amended charging lien and \$484,982.50, which is the amount that the district court entered as a judgment on the lien after hearing Respondent Simon's evidence.
 3. Did the district court err in refusing to release, pursuant to NRS 7.055, the complete client file to the appellants, who have provided more than adequate security for the attorney fees in dispute and who are bound by the protective order in the substantive action.
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issue raised:

Appellants are not aware of any pending proceedings raising the same or similar issues.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
☐ Yes
☐ No

If no, explain:

12. **Other Issues.** Does this appeal involve any of the following issues?
- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
☐ An issue arising under the United States and/or Nevada Constitutions.
☒ A substantial issue of first impression
☒ An issue of public policy

- ☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
☐ a ballot question

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

The Nevada Supreme Court should retain this appeal under NRAP 17(a)(12), because it involves the district court's failure to adhere to this Court's mandate in Case Nos. 77678 and 78176. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (table) 2020 WL 7828800 (unpublished) (Nev. 2020). This appeal also raises important questions of first impression and statewide importance that the Court has not previously reached concerning two issues. First, what is the length of time that an attorney can encumber client funds under NRS 18.015 when the lien amount claimed was not based on a written agreement, was unreasonable when filed, and was adjudicated by the district court in a five-day hearing for a fraction of the amount for which the lien was filed. Second, whether NRS 7.055 permits an attorney who is adequately secured for his/her attorney fees to refuse to produce a complete client file under the guise that he has not been paid or that portions of the file are protected under a standard confidentiality and protective order to which he and his client are parties.

NRS 18.015 allows attorneys the protection of a charging lien. The statute tries to balance the rights of the attorney and client by requiring that liens be imposed only for the amount of the fee agreed to by the parties or, if no agreement, for a reasonable amount *and* by requiring prompt adjudication of the parties' respective rights. NRS 18.015(2) (lien may be for amount agreed or reasonable amount); and

NRS 18.015(6) (the "court shall, **after five days** notice to all interested parties, adjudicate the rights of the attorney, client, or other parties and enforce the lien."). The purpose of the lien is not to give license to lawyers to tie up client funds **for years** when they do not acquiesce to an attorney's unreasonable demands for more money than he agreed to accept as a fee, as Respondent threatened and has done here.

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

Was it a bench or jury trial? N/A

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

TIMELINESS OF NOTICE OF APPEAL

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

The district court entered its decision and orders on June 17, 2021 and notice of entry of the orders was given on June 18, 2021.

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

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

June 18, 2021.

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

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

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing: Motion for Reconsideration

- ☐ NRCP _____
☐ NRCP 52(b)

Date of filing _____
Date of filing _____

☐ NRCP 59

Date of filing: N/A

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

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

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

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal filed

July 17, 2021.

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

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

- (a) ☒ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☐ Other (specify) NRAP 3A(b)(8) _____

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

Under NRAP 3A(b)(1), an appeal may be taken from a "final judgment entered in an action . . . commenced in the court in which the judgment is rendered." The Edgeworth Family Trust and American Grating, LLC (collectively the "Edgeworths") commenced this case in the Eighth Judicial District Court. On June 18, 2021, the district court entered its Decision and Order Denying the

Edgeworth's motion styled Plaintiff's Renewed Motion for Reconsideration of April 19, 2021 Third-Amended Decision and refusing to obey the mandate this Court expressed in its Order of December 30, 2020 (Remittitur Issued April 13, 2021) in Case Nos. 77678/78176). Also on June 18, 2021, the district court entered its order denying the Edgeworths' Motion for Order Releasing Client funds in Excess of the Judgment and Requiring Production of Complete Client File.

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

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

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

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

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

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

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

Plaintiffs' Claims for Relief:

- (1) Plaintiff's original claims for conversion, declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing were dismissed, and that dismissal was affirmed in the prior appellate proceedings; the case was remanded in part for reconsideration of the basis and reasonableness of the

quantum meruit award for an attorney fee and a separate attorney fee award. The issues that remain and that form the basis for this appeal are from the dispute between plaintiffs and their original attorney that arose following settlement of the substantive claims.

- (2) Motion to Release Client Funds and Client File – appellants challenge the district court's refusal to release amounts in excess of the judgments she entered, and refusal to order the release of the complete client file.

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

☒ Yes
☐ No

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

N/A

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

N/A.

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

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

VERIFICATION

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

Edgeworth Family Trust;

American Grating, LLC

Name of Appellant

Steve Morris

Name of counsel of record

August 16, 2021

Date

/s/ STEVE MORRIS

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

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

TO:

James R. Christensen, Bar No. 3861
601 S. 6th Street
Las Vegas, NV 89101

Peter S. Christiansen, Bar No. 5254
Kendele L. Works, Bar No. 9611
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101

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

Dated this 16th day of August, 2021.

/s/ GABRIELA MERCADO

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 19 2021 04:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

v.

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

Respondents.

Supreme Court Case Nos. 83258

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

**AMENDED DOCKETING
STATEMENT
CIVIL APPEALS¹**

GENERAL INFORMATION

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

WARNING

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

¹ Amended #21 on pages 8-9 to add additional reference to NRAP 3A(b)(8) as the basis for review of the special order entered on the same day as the district court's final judgment. The supporting documents to this docketing statement remain the same and are being omitted from this filing in the interest of efficiency.

constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

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

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

1. Judicial District Eighth Department X
County Clark Judge Tierra Jones
District Court Case No. A-16-738444-C consolidated with A-18-767242-C

2. Attorney filing this docketing statement:

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

Firm: MORRIS LAW GROUP

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

Client: Edgeworth Family Trust and American Grating, LLC

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

3. Attorneys representing respondents:

Attorney: Peter S. Christiansen and Kendelea L. Works

Firm: Christiansen Law Offices

Address: 810 S. Casino Center Blvd., Ste. 104, Las Vegas, Nevada 89101

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

Attorney: James R. Christensen

Firm: n/a

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

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

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default Judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify) Failure to Properly Adjudicate Lien Amount on Remand and Denial of Motion to Release Client Funds Not Subject to Lien and Client File |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify)_____ |

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

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

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

- (1) *Edgeworth Family Trust; and American Grating, LLC, Appellants v. Daniel S. Simon and Law Office of Daniel S. Simon, Appeal, Respondents*, Case No. 77678;
- (2) *Edgeworth Family Trust; and American Grating, LLC, Appellants*

v. Daniel S. Simon and Law Office of Daniel S. Simon, Appeal Case No. 78176; and
(3) *Law Office of Daniel S. Simon, Petitioner; Eighth Judicial District Court, the Hon. Tierra Jones, Respondent*, Writ Proceeding, Case No. 79821.

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

This appeal, like the proceedings referenced in #6 above, arise from the attorney lien adjudication proceedings that followed settlement of the underlying action. This Court affirmed the district court's lien adjudication, its finding that the attorney, Daniel Simon, was constructively discharged, and remanded for the district court to (1) explain the basis of the \$200,000 quantum meruit award of an attorney fee and its reasonableness under *Brunzell*; and (2) to also explain the reasonableness under *Brunzell* of the \$50,000 attorney's fees award entered by the district court.

On remand, the district court entered an order explaining the basis of the \$50,000 attorney fee award and remitted the \$5,000 in costs to the actual amount incurred (\$2,520). With respect to No. 1, however, the district court entered an amended order awarding the same \$200,000 in quantum meruit that was the subject of remand without offering any explanation as to its basis or its reasonableness under *Brunzell*, as the Supreme Court expressly directed it to do. The district court also refused to enter an order releasing the excess between the more than \$2M in funds being withheld from Appellants since 2018, and the unpaid judgments arising out of liens as adjudicated by the district court. The district court also refused to order Respondents to turn over the complete Edgeworth client file to Appellants, despite the fact that Respondent Simon's fees were fully secured.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):
 1. Did the district court err in merely restating its prior decision

rather than responding to this Court's mandate to state the basis for and the reasonableness of its \$200,000 *quantum meruit* award in the face of evidence provided by the respondent that a "reasonable" fee under *Brunzell* would not be more than \$33,811.25.

2. Did the district court err in refusing to release to the Appellants the \$1.5M+, which is the difference between funds withheld from the client due to the amount of the amended charging lien and \$484,982.50, which is the amount that the district court entered as a judgment on the lien after hearing Respondent Simon's evidence.
 3. Did the district court err in refusing to release, pursuant to NRS 7.055, the complete client file to the appellants, who have provided more than adequate security for the attorney fees in dispute and who are bound by the protective order in the substantive action.
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issue raised:

Appellants are not aware of any pending proceedings raising the same or similar issues.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A
☐ Yes
☐ No

If no, explain:

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

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

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

The Nevada Supreme Court should retain this appeal under NRAP 17(a)(12), because it involves the district court's failure to adhere to this Court's mandate in Case Nos. 77678 and 78176. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (table) 2020 WL 7828800 (unpublished) (Nev. 2020). This appeal also raises important questions of first impression and statewide importance that the Court has not previously reached concerning two issues. First, what is the length of time that an attorney can encumber client funds under NRS 18.015 when the lien amount claimed was not based on a written agreement, was unreasonable when filed, and was adjudicated by the district court in a five-day hearing for a fraction of the amount for which the lien was filed. Second, whether NRS 7.055 permits an attorney who is adequately secured for his/her attorney fees to refuse to produce a complete client file under the guise that he has not been paid or that portions of the file are protected under a standard confidentiality and protective order to which he and his client are parties.

NRS 18.015 allows attorneys the protection of a charging lien. The statute tries to balance the rights of the attorney and client by

requiring that liens be imposed only for the amount of the fee agreed to by the parties or, if no agreement, for a reasonable amount *and* by requiring prompt adjudication of the parties' respective rights. NRS 18.015(2) (lien may be for amount agreed or reasonable amount); and NRS 18.015(6) (the "court shall, **after five days** notice to all interested parties, adjudicate the rights of the attorney, client, or other parties and enforce the lien."). The purpose of the lien is not to give license to lawyers to tie up client funds **for years** when they do not acquiesce to an attorney's unreasonable demands for more money than he agreed to accept as a fee, as Respondent threatened and has done here.

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

Was it a bench or jury trial? N/A

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

TIMELINESS OF NOTICE OF APPEAL

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

The district court entered its decision and orders on June 17, 2021 and notice of entry of the orders was given on June 18, 2021.

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

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

June 18, 2021.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing: Motion for Reconsideration

- ☐ NRCP _____
☐ NRCP 52(b)
☐ NRCP 59

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

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

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

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

Was service by:

- ☐ Delivery
☐ Mail/electronic/fax

19. Date notice of appeal filed

July 17, 2021.

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

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

- (a) ☒ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☒ Other (specify) NRAP 3A(b)(8) Special order entered after final judgment.

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

Under NRAP 3A(b)(1), an appeal may be taken from a "final judgment entered in an action . . . commenced in the court in which the judgment is rendered." The Edgeworth Family Trust and American Grating, LLC (collectively the "Edgeworths") commenced this case in the Eighth Judicial District Court. On June 18, 2021, the district court entered its Decision and Order Denying the Edgeworth's motion styled Plaintiff's Renewed Motion for Reconsideration of April 19, 2021 Third-Amended Decision and refusing to obey the mandate this Court expressed in its Order of December 30, 2020 (Remittitur Issued April 13, 2021) in Case Nos. 77678/78176). Also on June 18, 2021 following entry of final judgment, the district court entered a special order denying the Edgeworths' Motion for Order Releasing Client funds in Excess of the Judgment and Requiring Production of Complete Client File. This special order is reviewable under NRAP 3A(b)(8).

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

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

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

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

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

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

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

Plaintiffs' Claims for Relief:

- (1) Plaintiff's original claims for conversion, declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing were dismissed, and that dismissal was affirmed in the prior appellate proceedings; the case was remanded in part for reconsideration of the basis and reasonableness of the *quantum meruit* award for an attorney fee and a separate attorney fee award. The issues that remain and that form the basis for this appeal are from the dispute between plaintiffs and their original attorney that arose following settlement of the substantive claims.
- (2) Motion to Release Client Funds and Client File – appellants challenge the district court's refusal to release amounts in excess of the judgments she entered, and refusal to order the release of the complete client file.

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

- ☒ Yes
☐ No

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

N/A

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

N/A.

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

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

- on appeal.
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

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

Edgeworth Family Trust;
American Grating, LLC
Name of Appellant

Steve Morris
Name of counsel of record

September 20, 2021
Date

/s/ STEVE MORRIS
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

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

TO:

James R. Christensen, Bar No. 3861
601 S. 6th Street
Las Vegas, NV 89101

Peter S. Christiansen, Bar No. 5254
Kendele L. Works, Bar No. 9611
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101

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

Dated this 20th day of September, 2021.

/s/ GABRIELA MERCADO

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,

Respondents.

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,

Respondents.

No. 83258

FILED

DEC 13 2021

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

No. 83260

ORDER CONSOLIDATING AND PARTIALLY DISMISSING APPEALS

These are appeals from district court orders (1) denying a motion for reconsideration of a third-amended order on a motion to adjudicate an attorney lien and (2) denying a motion for an order to release client funds in excess of a judgment and require production of the complete file. Appellants have filed motions to consolidate these appeals. The motions are unopposed. Cause appearing, we grant the motions to consolidate.

In addition, the parties have responded to this court's order to show cause in Docket No. 83258 as to why that appeal should not be partially dismissed for lack of jurisdiction. As explained in the order, although appellants' docketing statement characterized their challenge to

the district court's order denying a motion for an order to disperse funds and compel production of the client file as an appeal from a final judgment, the order is plainly not a final judgment. The parties have filed responses to the order to show cause. In appellants' response, they contend that the district court's order denying the motion to disperse funds and compel production of the client file is appealable as a special order entered after final judgment. We disagree.

This court has limited jurisdiction and may only consider appeals authorized by statute or court rule. *Brown v. MHC Stagecoach*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). "[T]he burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction." *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001).

NRAP 3A(b)(8) allows an appeal from "[a] special order entered after final judgment." However, "not all post-judgment orders are appealable." *Burton v. Burton*, 99 Nev. 698, 700, 669 P.2d 703, 705 (1983). To qualify as an appealable special order entered after final judgment, the order "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered." *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

For example, in *Gumm v. Mainor*, this court concluded that a postjudgment order that distributed a significant portion of the appellant's judgment proceeds to certain lienholders was appealable because it altered his rights under the final judgment. *See id.* at 920, 59 P.3d at 1225. This court noted, in contrast, that a postjudgment order merely directing a portion of the appellant's judgment proceeds to be deposited with the

district court clerk pending resolution of the lien claims was not appealable. *See id.* at 914, 59 P.3d at 1225.

In a number of similar contexts, this court has consistently reiterated that postjudgment orders that do not affect the rights incorporated in the judgment are not appealable as special orders after final judgment. *See, e.g., Murray v. A Cab Taxi Service LLC*, No. 81641, 2020 WL 6585946 (Nev. Nov. 9, 2020) (Order Dismissing Appeal) (postjudgment order denying motions to allow judgment enforcement, distribute funds held by class counsel, and require the turnover of certain property of the debtor and granting a countermotion for a stay of collection activities pending appeal and reactivating a special master was not appealable); *Superpumper, Inc. v. Leonard Tr. for Morabito*, Nos. 79355 & 80214, 2020 WL 1129882 (Order Dismissing Appeal and Regarding Motions) (Nev. March 6, 2020) (orders denying claims of exemption asserted by appellants in post-judgment enforcement proceedings were not appealable); *Zandian v. Margolin*, No. 69372, 2016 WL 885408 (Order Dismissing Appeal) (Nev. March 4, 2016) (postjudgment order requiring appellant to appear for a debtor's examination and produce documents was not appealable).

Here, the district court's order denying the motion to disperse funds and compel production of the client file did not alter any judgment nor distribute any portion of any judgment. Instead, the order simply preserved the status quo during the pendency of the parties' fee dispute. Indeed, as noted in the district court's order and as reflected by the Edgeworths' appeal from the district court's adjudication of the attorney lien, the parties' underlying fee dispute is ongoing. Thus, because the district court's order did not affect the rights incorporated in any judgment, it is not appealable as a special order entered after final judgment. *See* 15B

Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3916 (2d ed. 1992 and Supp. 2020) (an “appeal ordinarily should not be available as to any particular post-judgment proceeding before the trial court has reached its final disposition”).

Accordingly, as it does not appear that the order denying the motion to disperse funds and compel production of the client file is otherwise appealable at this time, we conclude that this court lacks jurisdiction, and partially¹ dismiss the appeals in these cases as they relate to that order.

The briefing schedule in Docket No. 83258 is reinstated. The briefing schedule in these consolidated appeals shall proceed as follows. Appellants shall have 45 days from the date of this order to file and serve a single opening brief and appendix. Thereafter, briefing in these consolidated appeals shall proceed as provided in NRAP 31(a)(1). The motion for extension of time filed on November 19, 2021, in Docket No. 83260 is denied as moot.

It is so ORDERED.


Parraguirre


Stiglich


Silver

¹Although the Edgeworths’ couched their appeal, in part, as one from an order denying a motion for reconsideration, an order denying such a motion is not separately appealable. See *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Such a motion does, however, toll the underlying ruling, see *id.*, and we construe the Edgeworths’ appeal as challenging the district court’s order adjudicating the attorney lien on remand, which is an appealable determination. See *Gumm*, 118 Nev. at 919, 59 P.3d at 1225.

cc: Hon. Tierra Danielle Jones, District Judge
Morris Law Group
James R. Christensen
Christiansen Trial Lawyers
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
TIERRA DANIELLE JONES, DISTRICT
JUDGE,
Respondents,
and
DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON,
Real Parties in Interest.

No. 84159

FILED

SEP 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER GRANTING PETITION IN PART AND DENYING PETITION IN
PART*

This is an original petition for a writ of mandamus to release client funds in excess of an adjudicated lien amount and to direct the real parties in interest to release to petitioners their client file.

This petition stems from the ongoing dispute regarding real party in interest Daniel Simon's fee for services he provided to petitioners Edgworth Family Trust and American Grating, LLC (collectively, the Edgworths) as part of the settlement of a products liability action. The Edgworths challenge two separate issues in their petition: (1) the district court's decision to decline to release client funds being held in trust jointly by the parties for the purpose of satisfying Simon's fee above the amount it adjudicated during the pendency of appellate adjudication, and (2) the

district court's refusal to compel Simon to produce to the Edgeworths their complete client file. The Edgeworths seek a writ of mandamus to compel both acts.

We consider the Edgeworths' petition only with respect to the file production issue

Writ relief is an extraordinary remedy appropriate when no plain, speedy, or adequate legal remedy exists. *See* NRS 34.170. Generally, we consider a party's ability to appeal from a final judgment an adequate legal remedy that precludes writ relief. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 225, 88 P.3d 840, 841 (2004). It is the petitioner's burden to demonstrate that writ relief is appropriate, *id.* at 228, 88 P.3d at 844, and it is within this court's sole discretion to decide whether to entertain a petition for writ relief, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

Having considered the petition and its supporting documentation, as well as the answer and reply, we are not persuaded that it is necessary to entertain the Edgeworths' petition with respect to the district court's refusal to release a certain portion of the Edgeworths' client funds being held jointly in trust. Namely, we are unpersuaded that no adequate legal remedy exists to address the district court's decision. Instead, we conclude the opposite is true in that pending a final decision regarding the fee dispute matter and, after all appellate remedies are exhausted, any funds not awarded to Simon will be disbursed to the Edgeworths. Because the issue of Simon's appropriate fee is still being litigated, and because the Edgeworths have not proffered any compelling reason that access to those funds is presently needed, extraordinary intervention is unwarranted.

Regarding the second issue, we conclude that the Edgeworths' have satisfactorily shown that an adequate legal remedy does not exist to challenge the district court's refusal to compel Simon to produce their complete client file and therefore choose to entertain their petition regarding this issue. We previously dismissed the Edgeworths' appeal with respect to the file production issue, concluding that the order in which the district court denied production was not a final order from which an appeal could be taken. *See Edgeworth Fam. Tr. v. Simon*, Nos. 83258/83260 (Nev. Dec. 13, 2021) (Order Consolidating and Partially Dismissing Appeals). Thus, no adequate legal remedy exists to address this issue. Further, Simon's argument regarding the possibility of potential further motion practice before the district court is unpersuasive in demonstrating that an adequate legal remedy exists.

Therefore, we deny the Edgeworths' petition with respect to the withholding of excess funds but entertain the petition regarding Simon's production of the Edgeworths' complete client file, which we address next.

The district court erred in failing to require Simon to produce the complete client file to the Edgeworths under NRS 7.055

This court may issue a writ of mandamus to correct or otherwise "compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station." NRS 34.160. Here, the district court declined to compel Simon to produce the complete client file to the Edgeworths, relying on a previous protection order the parties entered into during discovery in the underlying products liability action.

The Edgeworths aver that the district court's reliance on the protection order was erroneous because the protection order did not apply. Namely, they assert that Simon and the Edgeworths were considered to be the same party under the order and therefore production of the file from

Simon to the Edgeworths was not subject to the order. Alternatively, and not addressed by the district court, they argue that the district court had a duty to produce to them their complete file after they appropriately made a motion to the court under NRS 7.055.

In response, Simon argues that the district court properly determined that the protection order applied to Simon and the Edgeworths and that the Edgeworths were required to properly comply with the agreement prior to Simon's duty to disclose. Alternatively, Simon rebuts the Edgeworths' argument that NRS 7.055 required production by arguing the prerequisite, that an attorney be paid before production becomes compelled, has not been satisfied because he has not yet received actual payment for his services.

Addressing the protective order argument first, after reviewing the order and based on the totality of the circumstances, we conclude that the order does not prevent Simon from disclosing any portion of the Edgeworths' file, including those confidential portions subject to the order. Specifically, at least to a certain extent, the order treats Simon and the Edgeworths as being one-in-the-same as opposed to being separate parties. We reject Simon's argument that he is "disclosing" confidential information in contravention of the protection order. Thus, we conclude that the district court's reliance on the protective order was erroneous.

We further conclude that the district court had a statutory duty to compel Simon to produce to the Edgeworths their complete file after such a demand was made under NRS 7.055. NRS 7.055(2) states:

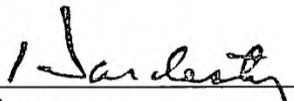
A client who, after demand therefor and payment of the fee due from the client, does not receive from his or her discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at

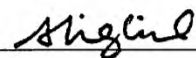
least 5 days' notice to the attorney, obtain an order for the production of his or her papers, documents, pleadings and other property.

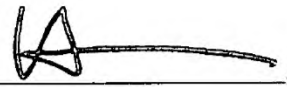
To the extent Simon argues that the Edgeworths have not complied with NRS 7.055(2)'s language that production is required only "after . . . payment of the fee due," we conclude that Simon reads the requirement of payment too narrowly. Payment is defined as "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation." *Payment*, *Black's Law Dictionary* (11th ed. 2019). Moreover, we have previously construed the term broadly by considering the requirement satisfied when a party, even without making an actual transfer of money, provides sufficient security evidencing their intent to pay. *See Figliuzzi v. Eighth Judicial Dist. Court*, 111 Nev. 338, 343, 890 P.2d 798, 801 (1995) (stating a "district court's power is limited to ordering the attorney to return papers upon the client's presentment of adequate *security*" (emphasis added)). Here, Simon made a demand of \$2 million in attorney fees. The Edgeworths, although contesting the amount owed, placed \$2 million of their settlement proceeds into a trust account that is jointly managed by themselves and Simon. Funds in the account can only be removed with authorization by both Simon and the Edgeworths. Based on the foregoing facts, we conclude that Simon was sufficiently secured that the Edgeworths would pay and therefore the district court had a duty under NRS 7.055 to compel Simon to produce to the Edgeworths their complete client file. Thus, mandamus relief is available to correct the district court's failure to compel Simon to produce the file. *See* NRS 34.160. Accordingly, we

ORDER the petition with respect to the release of the Edgeworth's funds DENIED and the petition with respect to the production

of the client file GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF mandamus instructing the district court to require Simon to produce the complete client file to the Edgeworths.

 J.
Hardesty

 J.
Stiglich

 J.
Herndon

cc: Hon. Tierra Danielle Jones, District Judge
Hon. Jerry A. Wiese, Chief Judge
Morris Law Group
James R. Christensen
Christiansen Trial Lawyers
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,

Respondents.

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

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,

Respondents.

No. 83258

FILED

SEP 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. 83260

ORDER VACATING JUDGMENT AND REMANDING

These consolidated appeals challenge the district court's adjudication of an attorney lien and award of quantum meruit fees. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

We previously issued an order between the same parties based on the same issue, which is whether the district court's award of \$200,000 in quantum meruit to respondent Daniel Simon was reasonable. *See Edgeworth Family Tr. v. Simon*, Nos. 77678/78176, 2020 WL 7828800, at *2 (Nev. Dec. 30, 2020) (Order Affirming in Part, Vacating in Part and Remanding). In our order, we vacated the district court's award, concluding that the district court's order was unclear with respect to whether the award

was properly limited to solely the work Simon completed after he was constructively discharged by appellants Edgeworth Family Trust and American Grating, LLC (collectively, the Edgeworths). *Id.* Accordingly, we vacated the award, remanded the issue to the district court to make specific factual findings regarding what work Simon completed after his constructive discharge, and instructed the district court that any quantum meruit award should only compensate Simon for services provided post-discharge. *Id.* On remand, the district court again awarded Simon \$200,000 in quantum meruit fees.

The Edgeworths argue that the district court erred by failing to comply with our previous order on remand. They contend that the district court failed to make specific findings reflecting that its award was limited to the work Simon completed after he was constructively discharged by the Edgeworths. We agree.

Although “[w]e review an award of attorney fees for an abuse of discretion,” *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015), we review de novo “[w]hether the district court has complied with our mandate on remand,” *State Eng’r v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017). When this court remands a case, “the district court must proceed in accordance with the mandate and the law of the case as established on appeal.” *Id.* (internal quotation marks omitted). Further, a disposition from this court serves as mandatory authority in subsequent stages of the case. *See* NRAP 36(c)(2).

As stated, we previously vacated the district court’s award of quantum meruit fees to Simon because the order did not make specific findings that its award was limited to services Simon provided post-discharge. *Edgeworth Family Tr.*, 2020 WL 7828800, at *2. Specific factual findings regarding what work Simon completed pre-discharge versus post-

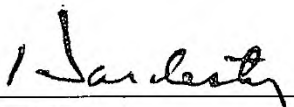
discharge is critical because a quantum meruit award can only properly compensate Simon for the services he provided post-discharge. *Id.*

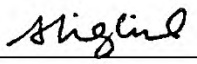
Turning to the district court's post-remand order, we conclude that the district court's order suffers from the same flaw as its previous order—the order does not make specific findings that clearly reflect that the quantum meruit award is limited to only services Simon provided post-discharge. Specifically, the district court's quantum meruit award is premised on the work Simon performed relating to the Edgeworths' settlement agreements. However, the district court's order notes that Simon began working on those settlement agreements before he was discharged. Thus, while Simon's work on the settlement agreements may consist of work he did both pre- and post-discharge, the district court's order does not make clear, nor include any specific findings of fact, that demonstrate that the quantum meruit fee is limited only to Simon's post-discharge services relating to the settlements. Further, the district court does not make any other findings of fact regarding work Simon completed post-discharge that would otherwise support the quantum meruit fee. For these reasons, it remains unclear whether the award of \$200,000 in quantum meruit fees is reasonably limited only to the services Simon provided post-discharge. The district court therefore erred by failing to comply with our previous order which was mandatory authority. Thus, we again vacate the district court's award of \$200,000 in quantum meruit fees.

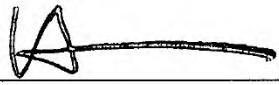
Insofar as the Edgeworths argue that we should award Simon \$34,000 in quantum meruit fees based on Simon's billing statement that purportedly shows that he completed 71 hours of post-discharge work, we decline to do so. The district court found that the billing statement may not accurately reflect Simon's post-discharge work. Further, we decline to make factual findings on appeal. *See Ryan's Express Transp. Servs., Inc. v.*

Amador Stage Lines, Inc., 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (“An appellate court is not particularly well-suited to make factual determinations in the first instance.”). Because we will not make factual findings in the first instance, we also decline Simon’s invitation to affirm the district court’s order on the ground that the record supports an award of \$200,000 in quantum meruit fees. Because no new findings were made on remand explaining the basis for such an award, we remain unable to determine whether \$200,000 was a reasonable quantum meruit fee for Simon’s post-discharge work.

Accordingly, we ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order. We further instruct the district court to make specific and express findings as to what work Simon completed after he was constructively discharged and limit its quantum meruit fee to those findings.

 J.
Hardesty

 J.
Stiglich

 J.
Herndon

cc: Hon. Tierra Danielle Jones, District Judge
Morris Law Group
James R. Christensen
Christiansen Trial Lawyers
Eighth District Court Clerk

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

16 Defendants.

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

19 Plaintiffs,

20 vs.

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

25 Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: X

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

FOURTH AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE
LIEN

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

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2
3
4 **CONCLUSION OF LAW**

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

6 **Court**

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

10 NRS 18.015(1)(a) states:

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

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

15 Nev. Rev. Stat. 18.015.

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

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

1 *Fee Agreement*

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

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

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

25 (Def. Exhibit 27).

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

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

10 11 *Constructive Discharge*

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

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

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

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

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

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

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

17 Id.

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

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

1 Id.

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

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

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

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

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

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

20 NRS 18.015 states:

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

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

5 4. A lien pursuant to:

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

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

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

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

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

25 Nev. Rev. Stat. 18.015.

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

Implied Contract

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
5 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
10 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

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

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

18 *Costs Owed*

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

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

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

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

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

3 4 *Quantum Meruit*

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

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

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

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

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

23
24 *1. Quality of the Advocate*

25 Brunzell expands on the "qualities of the advocate" factor and mentions such items as
26 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
27 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
28

1 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
2 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
3 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's
4 work product and results are exceptional.

5
6 2. The Character of the Work to be Done

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

15
16 3. The Work Actually Performed

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

25
26 4. The Result Obtained

27 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
28

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

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

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

17 (1) The time and labor required, the novelty and difficulty of the
18 questions involved, and the skill requisite to perform the legal service
19 properly;

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

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

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

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

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

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

(8) Whether the fee is fixed or contingent.

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

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

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;

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

(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

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

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

NRCP 1.5.

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

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

Instead, the Court must determine the amount of a reasonable fee. In determining this amount of a reasonable fee, the Court must consider the work that the Law Office continued to provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the

1 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
2 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
3 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
4 continued to work on the Viking settlement until it was finalized in December of 2017, and the
5 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
6 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
7 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
8 himself were continuing, even after the constructive discharge. Though the previous agreement
9 between Simon and the Edgeworths was for \$550 per hour, the Court must take into consideration
10 that the Edgeworths' fee agreement with Vannah & Vannah was for \$925 per hour.

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

16 17 CONCLUSION

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

1 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
2 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
3 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
4 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
5 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.
6

7 **ORDER**

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

11 IT IS SO ORDERED.

Dated this 27th day of September, 2022

12
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14 
DISTRICT COURT JUDGE

15
16 4AA 825 C06C AB5C
17 Tierra Jones
18 District Court Judge
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28

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: 9/27/2022

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

1	Daniel Simon	dan@danielsimonlaw.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	Steve Morris	sm@morrislawgroup.com
8	Rosa Solis-Rainey	rsr@morrislawgroup.com
9	Traci Baez	tkb@morrislawgroup.com
10		
11	Gabriela Mercado	gm@morrislawgroup.com
12	Zeairah Marable	zmarable@vannahlaw.com
13	Laysha Guerrero	lguerrero@vannahlaw.com

14
15 If indicated below, a copy of the above mentioned filings were also served by mail
16 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 9/28/2022

17	Theodore Parker	2460 Professional CT STE 200
18		Las Vegas, NV, 89128

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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-16-738444-C

DEPT NO.: X

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

14 Defendants.

Consolidated with

CASE NO.: A-18-767242-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

**ORDER TO RELEASE TO THE
EDGEWORTHS THEIR COMPLETE
CLIENT FILE**

22 **ORDER TO RELEASE TO THE EDGEWORTHS THEIR COMPLETE CLIENT FILE**

23 Pursuant to the Nevada Supreme Court's Writ of Mandamus, issued on September 16, 2022,
24 the Court hereby ORDERS Defendants Daniel Simon and the Law Office of Daniel S. Simon d/b/a
25 Simon Law ("Simon") to release to the Edgeworth's the complete client file for case A-16-738444-
26 C.
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28

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IT IS FURTHER ORDERED that the complete client file shall be produced to the Edgeworths within 14 days of the entry of this Order.

Dated this 27th day of September, 2022



DISTRICT COURT JUDGE

3DA 090 7E16 4CD0
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)

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17 Rhonda Onorato .	ronorato@rlattorneys.com
18 Mariella Dumbrique	mdumbrique@blacklobello.law
19 Michael Nunez	mnunez@murchisonlaw.com
20 Tyler Ure	ngarcia@murchisonlaw.com
21 Nicole Garcia	ngarcia@murchisonlaw.com
22 James Christensen	jim@jchristensenlaw.com
23 John Greene	jgreene@vannahlaw.com
24 James Christensen	jim@jchristensenlaw.com
25 Michael Nunez	mnunez@murchisonlaw.com

1	Daniel Simon	dan@danielsimonlaw.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	Steve Morris	sm@morrislawgroup.com
8	Rosa Solis-Rainey	rsr@morrislawgroup.com
9	Traci Baez	tkb@morrislawgroup.com
10		
11	Gabriela Mercado	gm@morrislawgroup.com
12	Zeairah Marable	zmarable@vannahlaw.com
13	Laysha Guerrero	lguerrero@vannahlaw.com

14
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17	Theodore Parker	2460 Professional CT STE 200
18		Las Vegas, NV, 89128

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

Supreme Court No. 83258/83260

District Court Case No. A738444 1A767242

FILED

DEC 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY D. Smith
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

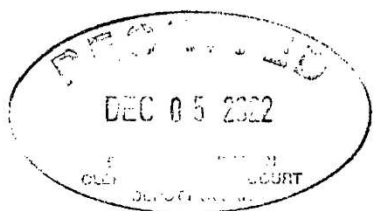
DATE: November 28, 2022

Elizabeth A. Brown, Clerk of Court

By: Brittany Cowden
Administrative Assistant

cc (without enclosures):

Hon. Tierra Danielle Jones, District Judge
Morris Law Group
Christiansen Trial Lawyers
James R. Christensen
Steven D. Grierson, Eighth District Court Clerk



RECEIPT FOR REMITTITUR

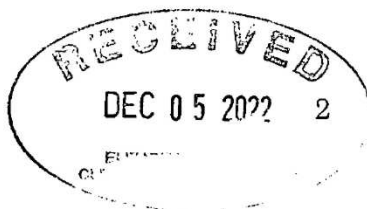
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on NOV 29 2022.

Deputy

Heather McGowan
District Court Clerk

RECEIVED
APPEALS
NOV 29 2022

CLERK OF THE COURT



22-36962

AA1349

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 83258/83260
District Court Case No. A738444

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

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

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

Judgment, as quoted above, entered this 16th day of September, 2022.

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

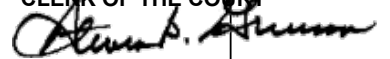
"Rehearing Denied."

Judgment, as quoted above, entered this 31st day of October, 2022.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
November 28, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Brittany Cowden
Administrative Assistant



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

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

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

**MOTION FOR ADJUDICATION
FOLLOWING REMAND**

(Hearing Requested)

Notice of Intent to Appear Via
Simultaneous Audio Visual
Transmission Equipment

I. Introduction

The Supreme Court issued a decision on the Edgeworths' limited appeal and vacated the portion of this Court's Adjudication Order which granted fees to Simon under *quantum meruit*. The Supreme Court remanded the case to this Court for further findings on the amount of fees due Simon under *quantum meruit* and then the Supreme Court denied

1 Simon's Writ Petition seeking additional fees under *quantum meruit* as
2 moot, based on its earlier remand decision. While this Court responded to
3 the decision on appeal with a new Adjudication Order, this Court's Order
4 predated the Remitter and Notice in Lieu of Remittitur issued by the
5 Supreme Court. Accordingly, Simon files this motion, respectfully
6 requesting this Court again address the matter of *quantum meruit*. Further,
7 Simon submits that the Court is not limited to its prior award and that the
8 information and arguments set forth herein support an increased *quantum*
9 *meruit* award.
10

11
12 The following motion only addresses this Court's finding of *quantum*
13 *meruit* due Simon for work done after discharge which was challenged on
14 appeal by the Edgeworths. Based on the appellate decisions to date, it
15 appears that Simon will need to pursue a broader *quantum meruit* award
16 via Writ.
17

18 **II. Relevant Procedure**

19 The facts and procedure of this case are well known to this Court.
20 Therefore, only the latest events relevant to this motion are listed below.
21

22 On September 16, 2022, the Supreme Court decided the
23 Edgeworths' appeal and issued an Order Vacating Judgment and
24 Remanding.
25

1 On September 27, 2022, this Court issued the Fourth Adjudication
2 Order.

3 On October 31, 2022, the Supreme Court denied the Edgeworths'
4 request to rehear their appeal.

5 On November 16, 2022, the Supreme Court denied Simon's Writ
6 Petition as moot.

7 On November 29, 2022, this Court received the Receipt for Remittitur
8 regarding the Edgeworths' Appeal.

9 On December 15, 2022, the Remittitur for the Edgeworths' Appeal
10 was filed by the Clerk of the Supreme Court.

11 On December 20, 2022, the Supreme Court denied Simon's request
12 to rehear the Simon Writ Petition.

13 On January 17, 2023, the Supreme Court issued a Notice in Lieu of
14 Remittitur regarding the Simon Writ Petition.

15
16
17
18 **III. The Court's *Quantum Meruit* Fee Award**

19 The September of 2022 Supreme Court decision instructed the
20 district court to provide specific and express findings regarding the
21 *quantum meruit* award of fees to Simon. This Court's Fourth Adjudication
22
23
24
25

Order contained additional language regarding the issue. *In addition*,

Simon offers the following:

On November 29, 2017, Simon was constructively discharged by the Edgeworths. (*E.g.*, Adjudication Order of 4.19.21 at 12:16-17.)

On January 24, 2018, Simon filed a motion to adjudicate the Simon attorney lien. Time sheets were attached to the motion. January 8, 2018, was the last date work was noted on the time sheets. (Simon Adjudication Motion of 1.24.18 at Ex. 19.)

The following work occurred on or after November 19, 2017, as noted on the time sheets:

Daniel S. Simon

11/29/17	Receive and analyze email from Ogilvie	1.5
11/29/17	Email Chain with EN, JP, TP; Re: Letter from Parker	.50
11/29/17	Email Chain with JP, AF; Re: Discovery Motions	.15
11/29/17	Draft and send email to AF re drafting reply to Lange's supplemental Opposition	1.5
11/29/17	Draft and send email to AF re drafting notice of attorney lien	.15
11/29/17	Draft and send email to AF re letter from Pancoast to Simon	.15
11/29/17	Review and analyze Lange's supplemental brief	2.5
11/29/17	Email from client Angela Edgeworth	.15
11/29/17	Email response to client Angela Edgeworth	.25
11/29/17	Review and analyze email from Ogilvie re: contractor's license legal arguments and response email to Ogilvie; Discussion with AF	1.5

1	11/29/17	Draft reply to Lange's Supplemental Opposition to Plaintiffs' MSJ	2.75
2	11/29/17	Discussions w/ J. Henriod re moving hearings and settlement	.65
3	11/29/17	TIC with T. Parker	.50
4	11/29/17	Draft letter to Parker	.50
5	11/30/17	Review release; TIC J. Greene; TIC T. Parker; revise release	1.25
6	11/30/17	Call with Teddy Parker	.15
7	11/30/17	Call with Teddy Parker	.15
8	11/30/17	Call with Teddy Parker	.10
9	11/30/17	Call with AMF	.25
10	11/30/17	Call with Teddy Parker	.15
11	11/30/17	Call with AMF	.10
12	11/30/17	Call with AMF	.10
13	11/30/17	Call with AMF	.20
14	11/30/17	Call with AMF	.10
15	11/30/17	Review file for Lange bills, TIC to Parker re: settlement	.75
16	11/30/17	Negotiate release w/ Henriod (his office)	3.5
17	11/30/17	Conversation w/ Green; draft email, send release	.75
18	11/30/17	Receive and review letter dated 11-30-17	.25
19	11/30/17	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	.75
20	11/30/17 & 12/2/17	Email chain with AF re attorney lien	.15
21	12/1/17	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	.15
22	12/1/17	Receive and review release email to Defendant	.75
23	12/1/17	Receive and review release email from Pancoast & discussion with AF	.50
24	12/1/17	Review Viking's 19th ECC Supplement	.25
25			

12/4/17	Received and reviewed DCRR; LIM for Green/Vannah	.75
12/4/17	Review notice vacating UL Depos	.25
12/4/17	Discussion with AF	.40
12/5/17	T/c with John Green; Email from John Green; Discussion with staff	.40
12/5/17	Review subpoena to Dalacas	.25
12/5/17	Emails to client and John Greene messages	.50
12/5/17	Draft and Send Email to Client and Response	.15
12/6/17	Draft and send email to AF re notice to vacate Caranahan depo	.15
12/6/17	Review file and gather materials requested by Vannah; email from John Greene	2.25
12/6/17	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	.50
12/6/17	Review notice of vacating depo of Carnahan	.35
12/6/17	Receive and review email from Janet Pancoast; discussion with AF; response; forward to Vannah	.35
12/6/17	Received and reviewed Lange's 13th ECC Supplement	.50
12/6/17	Email Chain with JP, AF; Re: Carnahan Deposition	.15
12/7/17	Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	.35
12/7/17	TIC with Vannah	.50
12/7/17	Draft and revise letter; Review of file to Vannah w/ attachment	1.75
12/8/17	Received and reviewed Lange 14th ECC Supplement	1.25
12/8/17	Review Motion for Good faith settlement; discussion with AF	.75
12/8/17	Received and review order granting Giberti Motion for Good Faith Settlement; TIC with Parker	.50
12/8/17	Email chain with AF re Order Granting Giberti MGFS	.15
12/11/17	Email from Zamiski; Response email	.15

1	12/11/17	Review/ Analyze Lange 15th ECC Supplement	.50
2	12/11/17	TIC Parker & Pancoast; Email from T. Parker; Email from Crt	.75
3	12/11/17	Review client's release of claims; emails to J. Greene; Discussions with AF	.50
4	12/11/17	Draft and send email to AF re Lange's 15th ECC Supplement and review AF response	.25
5	12/12/17	Draft and send email to AF re Stip to Dismiss and review AF response	.15
6	12/12/17	Attend hearing on Viking Motion for Good Faith Settlement	1.75
7	12/6/17-12/12/17	Messages; Returned messages; discussions with Floyd Hale	.50
8	12/12/17	Email from J. Pancoast; Received/Reviewed/Analyze Stip to dismiss; order on Good faith settlement; discussion with AF	1.25
9	12/12/17	Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	.50
10	12/14/17	Review both stips to dismiss; send to J. Pancoast; TIC to M. Nunez; Review email from J. Pancoast	.50
11	12/15/17	Review email from T. Ure; TIC to J. Pancoast re 2nd stip to dismiss and arrange pick up of settlement checks	.50
12	12/18/17	Pick up settlement checks; exchange for stip; contact Vannah' s office re signature	1.5
13	12/18/17	T/C and emails to J. Greene re checks; TIC to Pomerantz office re bill; emails; review bills from Pomerantz	1.0
14	12/18/17	Received, reviewed and analyze email from B. Vannah	.50
15	12/19/17	Emails to B. Vannah and J. Greene re checks	.25
16	12/19/17	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and response from B. Vannah	.25
17	12/20/17	Request return of sprinklers from Volmer Grey	.25
18	12/20/17	Receive and review draft Motion for Good Faith Settlement; Lange release for \$100k and release for \$22k	1.5
19			
20			
21			
22			
23			
24			
25			

12/21/17	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	.75
12/21/17	Receive, review and analyze email from B. Vannah (3:21pm)	.50
12/23/17	Received, reviewed and analyzed email from B. Vannah (10:45pm)	.50
12/26/17	Receive, review and analyze email from J. Christensen to B. Vannah (10:46am)	.25
12/26/17	Receive, review and analyze email from B. Vannah (12:18pm)	.75
12/26/17	Receive, review and analyze email from J. Christensen	.25
12/27/17	Receive, review and analyze email from JC w/e letter attached	.75
12/28/17	Receive, review and analyze email from B. Vannah (3:07pm)	.75
12/28/17	Receive, review and analyze email from B. Vannah (2:03pm)	.25
12/28/17	Receive, review and analyze email from B. Vannah (4:17am)	.75
12/29/17	Received and reviewed email re joint motion and revised joint motion	.40
1/2/18	Revise Lange release and send back to T. Parker	.75
1/2/18	Received/reviewed Viking stip to dismiss	.35
1/2/18	Received/reviewed email from J. Pancoast and T. Parker	.35
1/2/18	Received/reviewed and analyzed letters from Zurich re settlement checks	.25
1/2/18	Received, reviewed and analyzed email from J. Greene (3:45pm)	.25
1/2/18	TIC with S. Guindy at Bank of Nevada	.50
1/3/18	TIC w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze, review schedule and additional emails from S. Guindy	.50

1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.5
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	TIC with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5

Ashley M. Ferrel

11/29.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 19 th Supplemental NRCP 16.1 Disclosure	.30
11/29/17	Review, Download & Save Correspondence to Counsel, dated November 29, 2017	.30
11/29/17	Review Ogilvie response to Lange's Supplement to MSJ; Discussion with DSS re Reply	.50
11/29/17	Review email from DSS re drafting reply to Lange's supplemental Opposition	1.5
11/29/17	Review email from DSS re drafting notice of attorney lien	.15
11/29/17	Review email from DSS re letter from Pancoast to Simon	.15
11.29.17	Email to Pancoast re hearing dates I front of DC Bulla in light of negotiations	.15

1	11/30/17	Email to George Ogilvie instructing him to stop working on the case	.15
2	11/30/17	Review, Download & Save Letter to Counsel	.30
3	11/30/17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	.30
4	11/30/17	Review Viking's 19th ECC Supplement	1.0
5	11/30/17	Review Letter from Lange regarding discovery scheduling and discussion with DSS	.75
6	11/30/17 & 12/2/17	Email chain with DSS re attorney lien	.15
7	12/1/17	Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.5
8	12/1/17	Review, Download & Save Lange Plumbing Verification to Rogs	.30
9	12/1/17	Review, Download & Save Notice of Attorney Lien	.30
10	12/1/17	Review Release from Viking and discussion with DSS re release	.50
11	12/4/17	Draft and serve notice to vacate deposition of UL Laboratories	.25
12	12/4/17	Review Lange written discovery responses	1.5
13	12/4/17	Discussion with DSS re scheduling and status of case	.40
14	12/4/17	Review, Download & Save Notice Vacating the 2 nd Amended Video Depo of NRCP30(b) (6) Designees of Underwriters Laboratories	.30
15	12/4/17	Review, Download & Save Discovery Commissioners Report and Recommendations	.30
16	12/5/17	Email chain with UL re vacating depo	.15
17	12/6/17	Review Lange's I 3u1 ECC Disclosure	2.5
18	12/6/17	Review email from DSS re notice to vacate Caranahan depo	.15
19	12/6/17	Draft and serve Notice to Vacate Robert Carnahan Deposition	.50
20	12/6/17	TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	.50

1	12/6/17	Review, Download & Save Service Only- Lange Plumbing 13 th Supp to NRCP 16.1 ECC	.30
2	12/6/17	Review, Download & Save Service Only - Notice of Vacating the Continued Video Depo of Robert Carnahan	.30
3	12/7/17	Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	.30
4	12/8/17	Review Viking Motion for Good Faith Settlement, Analyze and discussion with DSS	.75
5	12/8/17	Review Lange's 14 th and 15 th ECC Disclosure	.50
6	12/8/17	Email chain with DSS re Order Granting Giberti MGFS	.15
7	12/8/17	Review Stipulation to Dismiss from Viking and discussion with DSS	.50
8	12/8/17	Review, Download & Save Lange Plumbing 15 th Supplement to 16.1 ECC List Witnesses and Docs	.30
9	12/8/17	Review, Download & Save Lange Plumbing 14th Supp to 16.1 ECC List of Witnesses and Docs	.30
10	12/11/17	Discussion with DSS re client's release of claims	.20
11	12/11/17	Review email from DSS re Lange's 15 th ECC Supplement and response	.25
12	12/11/17	Review email from DSS re Lange's 15 th ECC Supplement and response	.25
13	12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	.25
14	12/12/17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	.30

12/13/17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5

(Defendants' evidentiary hearing exhibits 13 & 14.)

The Simon time sheets did not capture all the effort expended on behalf of the Edgeworths through January 8, 2018. (See, e.g., August 29, 2018, transcript at 109-126 & 192-193.) For example, Simon also performed the following work through January 8, 2018:

11.29.17 Exchanged emails with Joel Henriod regarding resolution.

11.30.17 Emailed a proposed release to the client.

11.30.17 Exchanged emails with Joel Henriod regarding resolution.

(Ex. 1.)

There is substantial evidence that Simon continued to work on behalf of the Edgeworths after the last date on the time sheets of January 8, 2018. On February 6, 2018, Simon appeared before the Court and was actively engaged in effectuating the settlement and helping his former clients. (See, *generally*, February 6, 2018, hearing transcript.)

The February 6 transcript shows that at the hearing the defense attorneys did not turn to Vannah but instead relied upon Simon. Simon did

1 not refuse to assist his former friends and clients - *who had frivolously sued*
2 *him for conversion to punish him* - rather, Simon upheld the highest
3 standards of the profession and helped. (Transcript of 2.6.2018 hearing.) In
4 addition to the hearing appearance, the transcript reflects that Simon was
5 working on behalf of the Edgeworths outside the presence of the Court.
6 (E.g., 2.6.2018 transcript at 6:15, "MS PANCOAST: -- Mr. Simon's
7 facilitating wrapping this up.")
8

9 On February 20, 2018, Simon again appeared before the Court. On
10 February 20, 2018, Simon addressed the district court regarding the status
11 of resolution and discussed ongoing efforts to resolve the case which were
12 taking place outside the presence of this Court. The transcript confirms that
13 three months after retention to resolve the case, Vannah continued to deny
14 any knowledge or involvement and most matters were still being handled
15 by Simon:
16
17

18 THE COURT: Mr. Vannah?

19 MR. SIMON: --that they'll sign that.
20

21 MR. VANNAH: Why do we have to have anything on form and
22 content? That is not required, it's for the lawyers to sign.

23 MR. SIMON: Then if --

24 MR. VANNAH: -- I'm asking that question.

25 MR. SIMON: -- he's ok with that, then I'm fine with that.

1 MR. VANNAH: *If you take out the form and content, I don't know*
2 *anything about the case, and I want -- I don't know anything about the*
3 *case -- I mean, we're not involved in a case. You understand that,*
4 *Teddy?* (Italics added.)

5 (2.20.2018 hearing transcript at 3:15-25. Italics added.)

6 In addition to court appearances Simon did the following work after
7 January 8, 2018:

8 1.17.2018 Drafted an email to Teddy Parker regarding release
9 language

10 1.19.2018 Reviewed an email string from Janet Pancoast and sent
11 replies regarding the upcoming hearing schedule.

12 1.19.2018 Contacted the Court regarding the upcoming hearing
13 schedule

14 1.20.2018 Reviewed email from J. Pancoast regarding the upcoming
15 hearing schedule

16 1.22.2018 Reviewed email from T. Parker regarding the upcoming
17 hearing schedule

18 1.22.2018 Reviewed an email from the Court regarding the
19 upcoming hearing schedule

20 1.25.2018 Reviewed an email from J. Pancoast¹

21 2.18.2018 Reviewed an email from J. Pancoast regarding check
22 exchange and the stipulation to dismiss.

23
24 ¹ Ms. Pancoast wrote: "I just read the Motion to Adjudicate the attorney lien.
25 But for your determination, Edgeworths would have significantly less in
their pocket." (Ex. 2.)

1 2.20.2018 Reviewed an email from J. Pancoast regarding hearing
2 attendance and the Court's reply (Includes Vannah)

3 3.8.2018 Reviewed an email from E. Nunez regarding a proposed
4 order for good faith settlement.

5 3.8.2018 Reviewed email and replied to an email from E. Nunez
6 regarding the proposed order for the motion for good faith settlement
7 and releases.

8 3.12.2018 Reviewed emails from E. Nunez regarding the order for
9 good faith settlement and reply

10 3.12.2018 Reviewed emails with R. Vannah regarding the order for
11 good faith settlement

12 3.12.2018 Reviewed emails from J. Pancoast regarding the order for
13 good faith settlement

14 3.16.2018 Reviewed group emails (including Vannah) and reply
15 regarding the order for good faith settlement.

16 On 1.22.2018 Ashley Ferrell sent an email to the Court requesting a
17 change to the upcoming hearing schedule as agreed upon by
18 counsel.

19 (Ex. 1.)

20 The communications listed above involve the Vannah firm only where
21 specifically noted. It is significant that scheduling and the process of
22 drafting and submission of orders and releases went almost exclusively
23 through Simon and did not include Vannah, and that the work extended into
24 March of 2018, months after Simon's discharge on November 29, 2017.
25

1 The work performed by Simon after discharge was of substantial
2 value. Simon acted to protect the interests of his former clients, even after
3 being frivolously sued, by addressing the details of resolution of their
4 complex case. Finalizing resolution of a complex case that settled in the
5 aggregate for more than Six Million Dollars has a substantial value.
6

7 Simon's work went beyond finalizing resolution, for example,
8 following discharge Simon negotiated better terms with Lange. The former
9 client and new counsel instructed Simon to settle with Lange for
10 \$25,000.00; however, Simon was able to negotiate a larger settlement for
11 \$100,000.00. Simon's post discharge negotiation also removed a
12 confidentiality clause from the Lange settlement agreement. Removal of a
13 confidentiality clause has value not just because a confidentiality clause
14 can create future liability, but also because such clauses can have tax
15 consequences. *See, e.g., Amos v. Commissioner of Internal Revenue*,
16 2003 WL 22839795 (U.S.T.C. 2003)(40% of a settlement paid by Dennis
17 Rodman following a kicking incident during an NBA game pursuant to a
18 settlement agreement which contained a confidentiality clause found to be
19 taxable as a payment for confidentiality).
20
21
22

23 Notably, the Edgeworths admitted to the value of Simon's post-
24 discharge work. On January 4, 2018, the Edgeworths frivolously sued
25

1 Simon for conversion. Following service of the frivolous complaint,
2 replacement counsel Robert Vannah directed/threatened Simon via email
3 to continue working for the Edgeworths. Vannah stated that Simon's
4 withdrawal would result in the Edgeworths spending "lots more money to
5 bring someone else up to speed". (Defendants' evidentiary hearing exhibit
6 53.) As Vannah & Greene billed the Edgeworths at \$925.00 an hour,
7 Vannah's email demonstrates that Simon provided a substantial monetary
8 savings to the Edgeworths post discharge. Saving a client money is a
9 benefit which may be considered in reaching a reasonable fee. See,
10 *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 664 F.3d 282 (9th. Cir.
11 2011)(*Crockett & Myers II*)(the court considered fee savings as a factor to
12 consider in reaching a *quantum meruit* award). Further, the
13 contemporaneous assertion of Vannah regarding the value of Simon's
14 services to resolve the case contradicts the current Edgeworth *post hoc*
15 claim that Simon's post discharge work was of little value.

16 Further, Simon was integral to finalizing resolution as evidenced by
17 the hearings of February 6 and 20, 2018. The transcripts reveal that Simon
18 was the attorney that the defense turned to for resolution of the
19 Edgeworths' case and that Simon provided material and substantial
20 assistance. And, again, the record and the Edgeworths' first substitute
21
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1 attorney contradict the current *post hoc* claim that resolution of a complex
2 case is simple or of little value.

3 Finally, as late as August 8, 2019, the Edgeworths argued to the
4 Supreme Court that Simon was still their attorney. (Appellants' Opening
5 Brief filed 8.8.2019 at 25-26.) Accordingly, there is no basis for the
6 Edgeworths to argue that consideration of Simon's work which forms the
7 basis of the *quantum meruit* award should be limited to work that occurred
8 on or before January 8, 2018. Simon submits the work continued into
9 March of 2018, and the Edgeworths contended on appeal in 2019 that
10 Simon was still their lawyer as late as 2019.
11
12

13 **IV. Conclusion**

14 The foregoing pages of this motion provide additional information
15 regarding Simon's post discharge work which can be added to an
16 Adjudication Order to further demonstrate the sound foundation upon which
17 this Court's *quantum meruit* award is based. There is ample foundation for
18 the Court's previous post discharge *quantum meruit* award of \$200,000.00.
19
20
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25

1 Further, in the discretion of this Court, there is also support for an
2 upward adjustment of the *quantum meruit* award for post discharge work.

3 DATED this 9th day of February 2023.

4
5 /s/James R. Christensen
6 James R. Christensen Esq.
7 Nevada Bar No. 3861
8 James R. Christensen PC
9 601 S. Sixth Street
10 Las Vegas NV 89101
11 (702) 272-0406
12 (702) 272-0415 fax
13 jim@jchristensenlaw.com
14 Attorney for LAW OFFICE OF
15 DANIEL S. SIMON, P.C.

11 **CERTIFICATE OF SERVICE**

12 I CERTIFY SERVICE of MOTION FOR ADJUDICATION
13 FOLLOWING REMAND was made by electronic service (via Odyssey) this
14 9th day of February 2023, to all parties currently shown on the Court's E-
15 Service List.
16

17
18 /s/ Dawn Christensen
19 an employee of
20
21
22
23
24
25

EXHIBIT 1

Declaration of Counsel Re: Fees

1. I, Daniel S. Simon, make this declaration of my own personal knowledge and under the penalty of perjury pursuant to NRS 53.045.

2. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

3. I am an attorney duly licensed to practice law in the State of Nevada. I

4. I and my firm performed work needed to finalize the releases and other documents required to resolve the Edgeworths' complex litigation beyond that which is noted on the time sheets or is apparent from the hearing transcripts including the following:

11.29.2017 Exchanged emails with Joel Henriod regarding resolution

11.30.2017 Emailed a proposed release to the client

11.30.2017 Exchanged emails with Joel Henriod regarding resolution

1.17.2018 Drafted an email to Teddy Parker regarding release language

1.19.2018 Reviewed an email string from Janet Pancoast and sent replies regarding the upcoming hearing schedule

1.19.2018 Contacted the Court regarding the upcoming hearing schedule

1.20.2018 Reviewed email from J. Pancoast regarding the upcoming hearing schedule

1.22.2018 Reviewed email from T. Parker regarding the upcoming hearing schedule

1.22.2018 Reviewed an email from the Court regarding the upcoming hearing schedule

1.25.2018 Reviewed an email from J. Pancoast

2.18.2018 Reviewed an email from J. Pancoast regarding check exchange and the stipulation to dismiss.

2.20.2018 Reviewed an email from J. Pancoast regarding hearing attendance and the Court's reply (Includes Vannah)

3.8.2018 Reviewed an email from E. Nunez regarding a proposed order for good faith settlement.

3.8.2018 Reviewed email and replied to an email from E. Nunez regarding the proposed order for motion for good faith settlement and releases

3.12.2018 Reviewed emails from E. Nunez regarding the order for good faith settlement and reply

3.12.2018 Reviewed emails with R. Vannah regarding the order for good faith settlement

3.12.2018 Reviewed emails from J. Pancoast regarding the order for good faith settlement

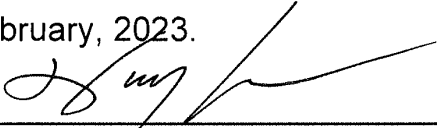
3.16.2018 Reviewed group emails (including Vannah) and reply regarding the order for good faith settlement

On 1.22.2018 Ashley Ferrell sent an email to the Court requesting a change to the upcoming hearing schedule as agreed upon by counsel.

I also performed substantive work achieving a settlement of 100k instead of the 25k settlement the Edgeworths gave authority for only a few days prior. I also spent time providing more substantive work reviewing and revising releases with Lange Plumbing that omitted valuable confidentiality clauses in favor the Edgeworth's, and separately omitted a non-disparagement clause protecting the Edgeworth's even more, along with other favorable terms. These releases were then reviewed by the Vannah lawyers, who secured signatures. Settlement checks were then obtained so the Edgeworth's could receive their money immediately.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

DATED this 9th day of February, 2023.



DANIEL S. SIMON

EXHIBIT 2

Daniel Simon

From: Janet Pancoast <janet.pancoast@zurichna.com>
Sent: Thursday, January 25, 2018 9:06 PM
To: Daniel Simon
Subject: Edgeworth -

Danny –

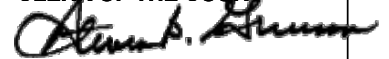
I just read the Motion to Adjudicate the attorney lien. But for your determination, Edgeworths would have significantly less in their pocket. If I can be of any assistance to you, let me know.

Good luck.

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

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RSPN
MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
801 S. Rancho Dr., Ste. B4
Las Vegas, NV 89106
Telephone: (702) 474-9400
Facsimile: (702) 474-9422
Email: sm@morrislawgroup.com
Email: rsr@morrislawgroup.com

Attorneys for Plaintiffs
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;)	Case No: A-16-738444-C
AMERICAN GRATING, LLC,)	Dept. No: X
)	
Plaintiffs,)	EDGEWORTHS' RESPONSE TO
v.)	MOTION FOR ADJUDICATION
)	FOLLOWING REMAND
LANGE PLUMBING, LLC)	
ET AL.,)	
)	HEARING REQUESTED
Defendants.)	
)	
)	

Plaintiffs Edgeworth Family Trust and American Grating, LLC
(hereafter collectively referred to as "Edgeworths") respectfully respond to
Simon's motion for adjudication following remand.

INTRODUCTION TO RELEVANT HISTORY

As a threshold matter, the Edgeworths' agree that a post-
remittitur adjudication is necessary, as the Court filed its Fourth Amended
Decision and Order on Motion to Adjudicate Lien dated September 27, 2022
before jurisdiction was returned by remittitur. On September 16, 2022, the

1 Nevada Supreme Court *again* reversed and remanded the case to this Court
2 for the limited purpose of explaining the basis and reasonableness of its
3 quantum meruit award for the limited post-remand services that Simon
4 performed. Remittitur issued on November 28, 2022 and this Court
5 acknowledged receipt of the remittitur on November 29, 2022.

6 In asking this Court for adjudication following remand, Simon
7 now seems to adopt the identical portions of his "super bill" that the
8 Edgeworths presented, summarized, and asked the Court to consider in
9 2021. *See* Ex. A, Summary of Post-Discharge Work; *see also* Exs. B and C,
10 Simon's "Time Sheets." As he did in 2018 with respect to billings he issued in
11 2016 and 2017, Simon again attempts to belatedly revise his post-discharge
12 billing records, which his office claimed were prepared after carefully going
13 through their entire file including "all of the emails." *See* Ex. D, Excerpts of
14 8/29/17 Hrg. at 111:5 – 17.

15 The additional work that Simon now improperly tries to add to
16 his "super bill," more than five years too late, appears to be based on emails
17 he *purposely withheld* and turned over *only* after the Court's denial of the
18 Edgeworths' motion for an order to show cause why he should not be held
19 in contempt for withholding portions of the client file and after the Supreme
20 Court again made clear that his quantum meruit award had to be based on
21 specific findings of post-discharge work. In denying the OSC motion, the
22 Court said:

23 While the Edgeworths argue that they are missing documents,
24 there has been no evidence presented to demonstrate the specific
25 documents that are missing from the file productions. As such,
26 the court is unable to determine the extent, if any, of missing
27 documents. Without said specifics, the Court cannot find that
28 Daniel Simon is in contempt of this Court's order.

1 Ex. W, Dec. 13, 2022 Order at 2. Simon's counsel has now presented "specific
2 documents," previously presumed to be missing but not specifically known
3 to the Edgeworths, "that were missing from the file productions." *Id.*

4 Furthermore, this Court previously rejected Simon's efforts to
5 revise his billings *two years after-the-fact*. There is no reason the Court
6 should now accept his effort to revise his post-discharge billings *more than*
7 *five years after-the-fact*. His current efforts to amend billing records are not
8 only unreliable, as the Court previously found, but if accepted would
9 reward Simon for intentionally withholding portions of his file that show he
10 lied to the Edgeworths and to the Courts.

11 For this and the reasons more fully set forth below, the Court
12 should follow the Nevada Supreme Court's mandate, but do so based on the
13 billing records Simon created somewhat contemporaneously with his post-
14 mandate work in late 2017 – 18 (Exs. B & C), *not* on additions he proposes
15 now, more than five years later based on portions of the Edgeworths' client
16 file he purposefully withheld to conceal his untruthfulness with his clients
17 and the Court.

18 This response is based on the papers and pleadings in the
19 Court's record, the declaration of Rosa Solis-Rainey and any exhibits
20 referenced therein, and any argument the Court may consider.

21 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
22 **EDGEWORTHS' RESPONSE TO SIMON'S MOTION FOR ADJUDICATION**
23 **FOLLOWING REMAND**

24 This case has a long and tortured history that the Court is
25 familiar with. It is briefly recited below only to the extent relevant to the
26 instant motion. The Court has previously found that Simon, in whom the
27 Edgeworths misplaced their trust, was constructively discharged on
28 November 29, 2018. His failure to document the terms of his engagement,
and provide timely invoices has allowed him to keep the Edgeworths tied

up in Court for years, as he promised them he would do, for more than five years after the underlying litigation was resolved.

A. RELEVANT FACTS

1. Simon Presented the Record of His Post-Discharge Work in 2018.

From April 10, 2016 to September 18, 2017, his firm billed the Edgeworths \$368,588.70 in attorney's fees, and \$114,864.39 in costs. The bills were based on *Simon's* requested hourly rate of \$550 and \$275 for his associates. Despite the Edgeworths repeated requests for outstanding invoices for services he provided after his last billed date of September 18, 2017, Simon would not provide such an invoice. *See e.g.*, Ex. V, Nov. 19, 2018 Order on Mot. to Adjudicate Lien at ¶ 14; Ex. T. In fact, Simon did not provide any billing records until he submitted a "super bill" to the Court by which he attempted to add to prior invoices he issued from 2016 to September 18, 2017 that the Edgeworths had paid. *See* Ex. D at 109:11 – 116 (discussing 2018 efforts to create "super bill"); 166 – 167 (discussing Ms. Ferrel's understanding of the 2018 add-ons);¹ 172 – 177 (testimony that Simon never informed the Edgeworths or the Viking and Lange parties that his original invoices were incomplete); 182; 184:7 – 10. In his "super bill" Simon also billed for his post-discharge services. Exs. B & C.

¹ Ms. Ferrel may have been kept in the dark about Simon's reasons for producing the "super bill" as her understanding that it was for purpose of the Lange litigation is the polar opposite of what Mr. Simon's counsel had described to Vannah: the "super bill" was created to justify how Simon's November 27, 2017 demand was less than an hourly invoice. Ex. T. The \$200K in costs he says had accrued as of that date is more than double the \$80K+ he claimed seven days before in his lien and nearly 200% more than the approximate \$68K in costs Simon would ultimately be able to prove. Simon has not offered any evidence that he had a reasonable belief of the amount of costs claimed in his letter, or the \$80K+ in his November 30, 2017 lien. *See, e.g.*, Ex. N at 1 (#2).

1 This Court rejected Simon's effort to add to his prior billings,
2 finding his efforts to rewrite history unreliable. *See* Ex. V at 14:19-27
3 (pointing to testimony that the "'super bill' was not necessarily accurate"
4 because it was created after the fact); Ex. V at 15:5 – 9 ("The court reviewed
5 the billings of the 'super bill' in comparison to the previous bills and
6 determined that it was necessary to discount the items that has not been
7 previously billed; such as text messages, reviews with the court reporter,
8 and reviewing, downloading, and saving documents because the Court is
9 uncertain of the accuracy of the 'super bill'"); Ex. V at 15:19 ("This argument
10 does not persuade the court of the accuracy of the 'super bill.'").

11 For the unbilled period of September 19, 2017 through
12 November 29, 2017 (the date of Simon's constructive discharge), the Court
13 *credited Simon for every minute that he recorded on his "super bill"* and
14 awarded him fees for that time at the hourly rates he set (\$550/275 per
15 hour). *Id.* at 16 - 17. For post-discharge services, the Court awarded Simon
16 \$200,000 without specifying the basis or explaining the reasonableness of the
17 award. That awarded him fees at a rate of more than \$2,800 per hour for
18 Simon and his associate.

19 This post-discharge award has been the subject of two appeals
20 and two remands with the same instruction: the Court must specify the
21 basis of the award, and explain its reasonableness by reference *only* to post-
22 discharge work, not to work that was performed pre-discharge.

23 In its December 30, 2020 Order, the Supreme Court held that this
24 Court erred in making the award "without making findings regarding the
25 work Simon performed after the constructive discharge." *Edgeworth Family*
26 *Trust v. Simon*, 477 P.3d 1129 *2 (Nev. 2020) (Table). The Supreme Court
27 emphasized that the proper measure of recovery is the "*reasonable* value of
28 [the] services." *Id.* at *2 (emphasis added, citations omitted). The Supreme

1 Court reiterated that in determining the reasonable value, the District Court
2 must consider the *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455
3 P.2d 31, 33 (1969) factors, focused on the post-discharge work. It said:

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

14 *Id.* at *2. The Supreme Court provided guidance to this Court by directing it
15 to look at the record; it said "[a]lthough there is evidence in the record that
16 Simon and his associates performed work after the constructive discharge,
17 the district court did not explain how it used that evidence to calculate its
18 award." *Id.*

19 As the Edgeworths brought to this Court's attention in 2021, the
20 *only* evidence in the record of work Simon claims to have performed post-
21 discharge was set forth in the "super bill" that he admits he provided on
22 January 24, 2018 with his motion to adjudicate his lien. Mot. at 4; *see*
23 Excerpts Showing Post-Discharge Portions of "super bill" Ex. B and C. The
24 post-discharge work described in Simon's "super bill"² totals 71.10 hours and
25 includes one hearing and several administrative tasks, including over seven
26 hours of Simon's time post discharge to open the bank account for deposit of
27 the Viking settlement checks. Ex. A at 3 (entries in green on Jan 2, 3 4, 5 and
28 8, 2018). Simon's Motion, at pages 4 – 12, finally recognizes that the evidence

² Simon's instant motion now characterizes his "super bill" as "time sheets." Simon's Mot. at 4 ("Time sheets were attached to [Simon's motion to adjudicate]"); at 12 (claiming "[t]he Simon timesheets did not capture all the effort expended . . .").

1 the Supreme Court referenced in its 2020 Order and the Edgeworths
2 specifically detailed in their 2021 briefing is the only evidence in the record
3 of his post-discharge work. *Compare* Simon's Mot. at 4 – 12 *with* Exs. B & C
4 (listing the identical work for the period between 11/30/17 to 1/2/18
5 totaling 71.10 hours).³ Even if Simon is credited for the post-discharge time
6 outlined in his "super bill," applying the *Brunzell* factors to that work does
7 not justify the extraordinary bonus payment the Court awarded him.

8 **2. Simon's Attempt to Re-write and Enlarge his Post-Discharge**
9 **Billing Invoice Should be Rejected.**

10 Just as he did in 2018 when he tried to go back to enlarge
11 invoices he had billed in 2016-17, Simon again tries to enlarge his 2017-18
12 post-discharge work in 2023 by adding-on to his previous billing record.
13 *See* Mot. at 12 – 15. Shockingly, all of the add-ons Simon now asks the Court
14 reward him for appear to be based on documents he *intentionally withheld*
15 from the Edgeworths, notwithstanding this Court's (and the Supreme
16 Court's) Order that he provide the Edgeworths with their *complete* client
17 file.

18 On September 27, 2022, this Court ordered Simon to release the
19 Edgeworths' client file within 14 days. *See* Court Doc. ID #348, Sept. 27, 2022
20 Order. On the last of day of this period, Simon produced portions of the file
21 he claimed to have withheld based on the stipulated protective order in the
22 Viking/Lange litigation, including some email plus expert documents that
23 had nothing to do with the protective order. *See* Court Doc. ID #360, Mot.
24 for OSC. When confronted with the fact this production did not constitute
25

26 ³ Simon's motion incorrectly includes billing entries for 11/29/17,
27 which was already included in the period for which the Court compensated
28 him under the implied contract. *See* Ex. V at 16 – 17 (awarding Simon
\$284,982.50 "for the period of September 19, 2018 [sic] to November 29,
2017")

1 the complete file, Simon's counsel said "[t]he file is quite large; accordingly
2 the Simon office will be producing the file in a rolling fashion." *Id.* at Ex. D
3 thereto. He again produced the portion of the file he had turned over in 2020
4 which included over 5,000 pages of email. When the promised "rolling
5 productions" did not come and Simon would not specify what remained or
6 when it would be produced, the Edgeworths moved for an order to show
7 cause why he should not be held in contempt, which this Court later denied.
8 Ex. W, Dec. 13, 2022 Order.

9 The Edgeworths have for years maintained that Simon's
10 production had gaps in the email produced, particularly around the time of
11 settlement, and that the partial file Simon produced was missing the earlier
12 drafts of the Viking settlement and even the fully-executed copy. *See*, Ex F
13 and 4 and Ex. I thereto (stating that "among the items missing" was email
14 with third-parties regarding the settlement of the Viking and Lange
15 Plumbing claims, as well as earlier drafts of the settlement agreements); . .
16 "); Ex. G at 6 (referencing Simon's claim that he had produced all email); Ex.
17 I at 18 (referencing Simon's withholding of emails transmitting settlement
18 drafts and the fully executed settlement agreements).⁴ In prior testimony
19 and briefing, Simon dismissed the Edgeworths demand for drafts of the
20 settlement agreements because he suggested he conducted all negotiations
21 in person. *See* Ex. E at 18:18 – 19:2; Ex. J at 6 (criticizing and dismissing the
22 Edgeworths' contention that they expected email to include exchange of
23 drafts by pointing to his testimony that the settlement was negotiated in
24 person); *but see* Ex. K (emails produced 12/6/22 confirming the email
25

26 ⁴ With respect to drafts of the settlement agreement, Simon in prior
27 briefing pointed to the drafts the Edgeworths acknowledged he produced
28 on November 30, 2017 to avoid his failure to produce the earlier drafts he
withheld from them. *See* Ex. I at 19 (referencing his tactics).

1 exchanges "expected" by the Edgeworths did in fact exist but *had been*
2 *withheld*).⁵ He also ridiculed the Edgeworths' complaint that his partial file
3 did not include the fully-executed settlement agreement, claiming he was
4 not involved in the settlement, perhaps forgetting he had insisted that the
5 settlement documents be routed through his office. Ex. H at 18; *but see* Ex. L
6 (Simon's 11/30/27 email requiring that settlement drafts be routed through
7 him), Ex. E at 18 (Simon's testimony confirming the settlement agreements
8 were routed through him); and Ex. M (email Simon produced 12/6/22
9 confirming the Edgeworths complied with Simon's demand that signed
10 agreements be routed through his office).⁶

11 Since the dispute regarding the complete file arose, Simon
12 defined his file as including email and claimed the email was produced yet
13 in 2022, after he was forced to admit he intentionally stripped all
14 attachments from the email he had produced, he switched course and for
15 the first time began claiming that email was not a part of his file. Ex. J. at 18
16 (stating without support that "email is not typically part of any lawyer's case
17 file . . . ");⁷ *but see* Ex. D at 197 ("Q: Okay. And on the entries that describe
18 emails, those have all been produced, right? A: Yes. Q: Anybody can go look
19

20 ⁵ Simon's December 6, 2022 production included exchanges referencing
21 versions 1, 2 and 4 of the Viking settlement agreement were provided. Ex. K.
22 A transmittal with version 3 of the agreement has not been located.

23 ⁶ Transmittals with the fully-executed settlement agreement still could
24 not be located. *See* Ex. N (#6).

25 ⁷ Perhaps in an effort to prop-up his new argument about producing
26 documents that were not part of his case file, Simon falsely claimed that "he
27 voluntarily produced cell phone records, which are not part of the case file."
28 Ex. J at 7. That production, however, was required by *the Court* to allow Mr.
Vannah to review the basis for Simon's attempt to enlarge his "super bill."
Ex. D at 189:5 – 13.

1 them up themselves and confirm that they occurred? A: Yes, sir."). After
2 nearly five years of claiming he'd produced all email, both before this Court
3 and the Supreme Court, it is disingenuous for Simon to now contend that
4 email is not part of his file. Simon latched on to this new argument when on
5 December 6, 2022,⁸ after this Court had orally denied the Edgeworths' OSC
6 Motion, he "found" over 280 pages of withheld email with attachments
7 (much of it between November 28, 2017 and January 7, 2018, the *exact*
8 *period* that he was told, but denied, was a gap in his prior email
9 production). Ex. Q.

10
11 Simon's belated production confirmed (1) that he was not
12 truthful when he told the Edgeworths on November 27, 2017 that he had not
13 yet heard anything about the Viking settlement (*compare* Ex. S (Simon's 4:58
14 p.m. email suggesting the settlement draft was not started before November
15 27th "due to the holidays") *with* Ex. K at 1 (showing that at least one version
16 of the draft settlement agreement has been sent to Simon by 4:48 p.m. on
17 that day); (2) that he was not truthful when he suggested no exchanges or
18 other settlement drafts existed because all negotiations were in person
19 (*compare* Ex. E at 18:18 – 19:2 (claiming no redlines circulated) *with* Ex. K
20 (showing redlines were circulated); (3) that he was not candid with the
21 Nevada Supreme Court when he mocked the Edgeworths' suggestion that
22 the fully-executed version of the settlements agreements should be in his
23 file, suggesting he would not have had them since he was no longer counsel
24 of record (*compare* Ex. H at 18 (mocking suggestion he had the executed
25 agreements) *with* Ex. M (email Simon produced 12/6/22 confirming the

26
27 ⁸ Simon's self-serving review of his file also came after the Nevada
28 Supreme Court's September 16, 2022 Order instructing the district court to
make specific findings of the post-discharge work Simon performed and
limit her quantum meruit award to those findings.

1 executed drafts were routed through Simon). Through other documentary
2 evidence, Simon's testimony to this Court that he negotiated the
3 confidentiality provision out of the Viking settlement at the Edgeworths'
4 request was debunked. Ex. U. In denying the Edgeworths' Motion for an
5 OSC, this Court said that "Any specific requests for production of missing
6 items from the file can be made directly to Simon's counsel." *Id.* at 2.
7 Requests made to his counsel prior to and since the order have gone
8 unanswered except for a response to the Edgeworths' initial request stating
9 he would forward the request to Simon. Exs. N, O, and P.

10 The Court should not reward Simon, as his motion asks, by
11 allowing him to enlarge his billing for periods he or his colleagues claimed
12 years ago had been thoroughly reviewed. Ex. D at 111. Additionally, Simon
13 neither supports nor specifies the time he claims to have spent on the
14 alleged add-ons he lists on pages 12 – 15 of his instant motion. The Court
15 should consider the only the record it was provided in 2018 to obey the
16 Supreme Court's latest mandate that it specify the basis for the quantum
17 meruit award, and explain its reasonableness under *Brunzell* based only on
18 post-discharge services. NSC Sept. 16, 2022 Order at 4 ("instruct[ing] the
19 district court to make specific and express findings as to what work Simon
20 completed after he was constructively discharged and limit its quantum
21 meruit fee to those findings.").

22
23 **B. THE BASIS FOR THE *QUANTUM MERUIT* MUST BE SPECIFIED
24 AND REASONABLE BASED ONLY ON POST-DISCHARGE WORK.**

25 The Supreme Court's 2022 mandate, just as its 2021 mandate,
26 requires the Court to specify the work it is considering in the quantum
27 meruit period. Simon's instant motion attempts to modify and enlarge "time-
28 sheets" he admittedly produced *more than five years ago* with additional
entries he lists in a self-serving declaration that does not even assign time to

1 the alleged tasks performed. *See* Mot. at 12 -15. Among his add-on entries,
2 Simon on page 12 lists "11.30.17 Emailed a proposed release to the client."
3 But Simon's somewhat contemporaneously prepared "time sheets" already
4 include an entry for which he billed 3/4 hour for sending the release:
5 "11/30/17 Conversation w/Green; draft email; send release" (page 5, eighth
6 entry from the bottom). This Court previously rejected Simon's 2018
7 "attempt to recreate billing and supplement/increase previously billed
8 work" as unreliable. Ex. V at 15. Simon's motion fails to explain how his
9 latest effort to "recreate billing and supplement/increase previously billed
10 work" is any more reliable, especially since the time elapsed is more than
11 double what it was when the Court properly rejected his last effort to
12 modify his billing records.

13 Simon's motion also fails to explain how any significant work to
14 finalize the Viking or Lange settlement agreements was reasonably necessary
15 when he himself testified that the agreements were signed on December 1,
16 2017 for Viking and December 7, 2018 for Lange. *See* Ex. E at 144:14 – 146:6;
17 *see also* Ex. V at ¶ 13 (Viking settlement signed 12/1/17) and at ¶ 23 (finding
18 consent to settle Lange was signed 12/7/17). Simon's November 30, 2017
19 email claims he negotiated the increase in the Lange settlement from \$25K to
20 \$100K that same day,⁹ although he appears not to have produced the third-
21 party communications to confirm when those negotiations took place. Ex. L.
22 Given that his latest productions confirm he lied when the Edgeworths
23 inquired about the status of the Viking settlement, presumably to pressure
24 them into accepting his increased fee demand, it is probable he likewise
25 withheld information about the Lange settlement to pressure the Edgeworths
26 into accepting his demands.

27
28 ⁹ The \$100K Lange settlement provided for a setoff of \$22K; thus the
net settlement amount was \$78K.

1 Although Simon's motion claims "he upheld the highest
2 standards of the profession," the Court should consider the tone of his
3 November 27, 2017 fee demand (Ex. R), and the misrepresentations he made
4 to his clients (and the Courts) in furtherance of his efforts to obtain more
5 money from the Edgeworths. When Mrs. Edgeworth requested the status of
6 the agreement on November 27, 2017, Simon suggested that because of the
7 holidays, he had not yet heard anything about the settlement agreement. Ex.
8 S. But the email he appears to have intentionally withheld shows otherwise.
9 Ex. K (first draft received before his last email to Mrs. Edgeworth). Simon also
10 falsely testified to the Court that he negotiated the confidentiality provision
11 in the agreement at Brian Edgeworth's request. Ex. D at 216 – 18.
12 Documentary evidence, however, establishes the Edgeworths had *no*
13 *problem* accepting a confidentiality clause, and such evidence has been
14 presented to the Court.¹⁰ See Ex. U. He is not entitled to any bonus he seeks
15 for ignoring his client's wishes. Simon also suggested to the Edgeworths and
16 the Courts that he could not produce back-and-forth exchanges with redline
17 drafts of the settlement agreements because all negotiations were done in-
18 person. But the documentary *evidence* shows otherwise. See Ex. K.
19 Intentionally lying or withholding information from a client to pursue the
20 lawyer's own objectives is a relevant factor when evaluating the "quality of
21 the advocate" under the *Brunzell* analysis.

22
23
24 ¹⁰ Simon's motion also touts the alleged value added by negotiating the
25 removal of the confidentiality clause in the *Lange* agreement, (Mot. at 16).
26 Simon does not present any evidence of these alleged negotiations, and as
27 already demonstrated, Simon *knew* the Edgeworths did not object to a
28 confidentiality clause. Ex. U. His continued negotiations with Lange are not
reasonable since his November 30th email confirms that Simon understood
his client's desire to be done with the litigation accept the Lange settlement
as it was. Ex. L.

1 Simon's motion also invites this Court to commit the same error
2 twice reversed on appeal by suggesting the "more than Six Million" settlement
3 amount or the opinion of other lawyers about the amount of that settlement
4 should be considered. Mot. at 16 and at Ex. 2. Whether the settlement was
5 \$100 or \$100M is irrelevant, the Supreme Court has twice reiterated that it is
6 only the *actual work Simon performed post-discharge* that the Court can
7 consider. Simon was compensated for work in furtherance of the settlement,
8 through November 29, 2017 in his pre-discharge award. The Court found the
9 Viking settlement offer was accepted on November 15, 2017 and the
10 agreement was signed on December 1, 2017. Ex. V at ¶ 13. By Simon's
11 unequivocal testimony in response to questions from the Court, the Viking
12 Settlement Agreement was finished *before* November 30. Ex. E at 15-17.

13 Notwithstanding Simon's gamesmanship in withholding information
14 about the status of the settlement from the Edgeworths, it is reasonable to
15 conclude that his testimony to the Court is accurate on this point: *all*
16 *negotiations were complete by November 27*, and little, if anything, of
17 substance remained to be done *after* the claimed notice of termination to
18 obtain the payment and dismiss the Viking claims. This conclusion is
19 supported by the fact the Viking Settlement Agreement was executed the
20 next day, December 1. Likewise, Simon's own email with respect to the
21 Lange settlement confirms the net \$53K increase in the settlement amount
22 was negotiated, at the latest, by November 30, 2017. *See* Ex. L.

23 Little else of substance remained after that date, as shown by Simon's
24 own "time sheet" entries. For the period starting November 30 to the end of
25 his lien, Simon's "super bill" details a total of 71.10 hours (51.85 hours for
26 Simon; and 19.25 for his associate). Using the hourly rates established by
27 Simon himself and confirmed by the parties' course of conduct, that number
28 of hours translates to \$33,811.25 in fees at his *agreed* rates which would be

1 reasonable under a *Brunzell* analysis. But valuing that work at \$200,000, as
2 the Court did, is *nearly six times* that amount and is *not* reasonable.

3 As previously presented to the Court, much of the claimed work
4 was not justified as having been done for the benefit of the Edgeworths. It is
5 also not work requiring special skill such that a "bonus" of \$166,188.75
6 would be justified.¹¹ A summary of the post-discharge work "billed" is
7 depicted in the following table:

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

15 A consolidated summary of the hours Simon's firm billed post-
16 termination is attached hereto as Exhibit A; Simon's actual time-sheets are
17 included as Exhibits B and C.¹² The Court is free to determine the

19 ¹¹ Since Simon failed to memorialize the terms of the engagement, he is the
20 one that should bear the risk of receiving lower fee under quantum meruit.
21 Restatement (Third) of the Law Governing Lawyers § 39 cmt. b (2000)
22 ("Where there has been no prior contract as to fee, *the lawyer* presumably
23 did not adequately explain the cost of pursuing the claim and *is thus the*
24 *proper party to bear the risk of indeterminacy*. Hence, the fair-value
25 standard assesses additional considerations and starts with an assumption
26 that the lawyer is entitled to recovery only at the lower range of what
27 otherwise would be a reasonable negotiated fee.") (emphasis added).

28 ¹² And as previously noted, a substantial portion of Simon's bill for
post-termination work does not provide adequate descriptions to enable
informed evaluations of work performed. Furthermore, the Edgeworths'
ability to challenge the validity of the work Simon claims to have performed
is also limited because Simon has still not produced a complete file; he does

1 reasonable value of the services outlined, but it must explain how that value
2 is reasonable under *Brunzell*, without reference to the pre-termination work.
3 Billing over seven hours to set up a simple local bank account with two
4 signers and deposit two checks, for example, is not facially reasonable under
5 *Brunzell*. See Ex. A, entries coded in green. Likewise, billing the
6 Edgeworths 4.60 hours for the preparation of Simon's own attorney lien was
7 of no benefit to the Edgeworths and therefore not facially reasonable. *Id.*,
8 entries coded in pink. And even if the Court determined the hours were
9 justified, a reasonable rate for that work must be explained; valuing simple
10 administrative work at over \$2,800 per hour, as the Court's prior awards
11 have done, cannot be justified under *Brunzell*.¹³

12 C. CONCLUSION

13 Simon's motion should be granted only to the extent that it
14 provides a valid post-mandate order in accord with the Supreme Court's
15 instructions. Simon's attempt to expand his billings by asking the Court
16 consider add-ons to the "time sheets" he prepared somewhat
17 contemporaneously with the work should be rejected for the same reasons
18 the Court rejected Simon's similar attempts in 2018.

19 The basis for the *quantum meruit* award should be specified,
20 and its reasonableness under *Brunzell* should be explained solely in regards
21 to the post-termination work. Even if the time detailed in Simon's "super
22 bill" was credited – and it should not be since the work listed was not for the
23 . . .
24

25 _____
26 it out piece-meal as it suits his own interests in his situational motion
27 practice.

28 ¹³ Simon's continued reference to the "Vannah & Greene" \$925 hourly
rate (Mot. at 17) is irrelevant because it has nothing to do with what Simon
did post-discharge.

1 Edgeworths' benefit – the value of the largely ministerial work listed is not
2 reasonably worth more than \$33,811.25.
3

4 MORRIS LAW GROUP

5 By: /s/ STEVE MORRIS

6 Steve Morris, Bar No. 1543
7 Rosa Solis-Rainey, Bar No. 7921
8 801 S. Rancho Dr., Ste. B4
9 Las Vegas, Nevada 89106

10 Attorneys for Plaintiffs
11 Edgeworth Family Trust and
12 American Grating, LLC
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: EDGEWORTHS' RESPONSE TO MOTION FOR ADJUDICATION FOLLOWING REMAND

DATED this 23rd day of February, 2023.

By: /s/ CATHY SIMICICH

An employee of Morris Law Group

**DECLARATION OF ROSA SOLIS-RAINEY IN SUPPORT OF
RESPONSE TO MOTION FOR ADJUDICATION FOLLOWING REMAND**

1. I am an attorney at Morris Law Group, counsel for the Edgeworths in this matter. I make this declaration upon my own personal knowledge except where stated on information and belief, and as to those matters, I believe them to be true. I am competent to testify to these matters.
2. Attached as Exhibit A is a compilation and summary of post-discharge work taken from "time sheets" produced by Simon as part of the "super bill" he submitted to the Court in late, January, 2018. The respective portions of the "superbill are included as Exhibits B and C. The summary and the corresponding portions of the superbill were included in the Edgeworths' 2021 motion as Exhibits JJ, KK and LL.
3. Attached as Exhibit D and E are excerpts of hearing transcripts for August 29, 2018 (Ex. D) and August 30, 2017 (Ex. E).
4. Attached as Exhibits F and G are excerpts from the Edgeworths May 13, 2021 Motion for Order Releasing Client funds and Requiring the Production of Complete Client File (Ex. F) and the reply in support thereof (Ex. G).
5. Attached as Exhibit H and I are excerpts of Simon's March 11, 2022 answer to the Edgeworths' writ petition regarding the case file (Ex. H), and the Edgeworths' 4/8/22 reply in support of their writ petition re case file (Ex. I).
6. Attached as Exhibit J is Simon's Opposition to the Edgeworths' motion for an order to show cause why Simon should not be held in contempt, without exhibits.

7. Attached as Exhibit K are exchanges regarding the Viking settlement agreement. These documents were produced by Simon' on December 6, 2022.
8. Attached as Exhibit L is an email from Simon dated November 30, 2017.
9. Attached as Exhibit M is an email from Simon transmitting the Viking settlement agreement signed by the Edgeworths to counsel for Viking.
10. Attached as Exhibit N is a November 16, 2022 email to James Christensen taking him up on his offer to provide assistance locating a document in the file portion of the Edgeworths' client file received from Simon, as well as his November 23, 2022 acknowledgement of request saying he would forward it to Simon.
11. Attached as Exhibit O is a letter to James Christensen dated December 21, 2022 following up on the November 16, 2022 request and asking for additional assistance. I did not receive any response or acknowledgement of this request.
12. Attached as Exhibit P is a letter to James Christensen dated February 17, 2023 following up on the November 16, 2022 and December 21, 2022 requests. I did not receive any response or acknowledgement of this request.
13. Attached as Exhibit Q is a December 6, 32022 letter from J. Christensen producing approximately 280 pages of documents, which were made available through a Dropbox link.
14. Attached as Exhibit R is Simon's November 27, 2017 demand letter to the Edgeworths.

15. Attached as Exhibit S are email exchanges on November 27, 2017 between Angela Edgeworth and Simon.
16. Attached as Exhibit T is a December 7, 2017 letter from Simon to the Edgeworths' counsel suggesting fees would exceed the \$1.5 million demanded and claiming costs were already over \$200,000. From my review of the Court record, the final amount of costs substantiated was less than \$70,000.
17. Attached as Exhibit U is a 11/16/17 text message from B. Edgeworth to Simon confirming the Edgeworths accepted the confidentiality clause proposed for the Viking settlement agreement.
18. Attached as Exhibit V is a copy of the Court's November 19, 2018 order.
19. Attached as Exhibit W is a copy of the Court's December 13, 2022 order.
20. To the best of my knowledge, the foregoing exhibits are true and correct copies of the documents described.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the state of Nevada.

Dated this 23rd day of February, 2023.

/s/ Rosa Solis-Rainey

EXHIBIT A

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

(Note: Identical exhibit (labeled Exhibit LL) was submitted with the Edgeworths' 5/3/21 Motion to Reconsider 3rd Lien Order in Accord with Mandate)

B C

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
DSS	11/30/2017 Review release; T/C J. Greene; T/C T. Parker; revise release	1.25
DSS	11/30/2017 Call with Teddy Parker	0.15
DSS	11/30/2017 Call with Teddy Parker	0.15
DSS	11/30/2017 Call with Teddy Parker	0.10
DSS	11/30/2017 Call with AMF	0.25
DSS	11/30/2017 Call with Teddy Parker	0.15
DSS	11/30/2017 Call with AMF	0.10
DSS	11/30/2017 Call with AMF	0.10
DSS	11/30/2017 Call with AMF	0.20
DSS	11/30/2017 Call with AMF	0.10
DSS	11/30/2017 Review file for Lange bills, T/C to Parker re: settlement	0.75
DSS	11/30/2017 Negotiate release w/Henriod (his office)	3.50
DSS	11/30/2017 Conversation w/Green; draft email, send release	0.75
DSS	11/30/2017 Receive and review letter dated 11-30-17	0.25
DSS	11/30/2017 Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	0.75
	11/30/2017 &	
DSS	12/2/2017 Email chain with AF re attorney lien	0.15
DSS	12/1/2017 Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	0.15
DSS	12/1/2017 Receive and review release email to Defendant	0.75
DSS	12/1/2017 Receive and review release email from Pancoast & discussion with AF	0.50
DSS	12/1/2017 Review Viking's 19th ECC Supplement	0.25
DSS	12/4/2017 Received and reviewed DCRR; L/M for Green/Vannah	0.75
DSS	12/4/2017 Review notice vacating UL Depos	0.25
DSS	12/4/2017 Discussion with AF	0.40
DSS	12/5/2017 T/c with John Green; Email from John Green; Discussion with staff	0.40
DSS	12/5/2017 Review subpoena to Dalacas	0.25
DSS	12/5/2017 Emails to client and John Greene messages	0.50
DSS	12/5/2017 Draft and Send Email to Client and Response	0.15
DSS	12/5/2017 Draft and send email to AF re notice to vacate Caranahan depo	0.15
DSS	12/6/2017 Review file and gather materials requested by Vannah; email from John Greene	2.25
DSS	12/6/2017 Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	0.50
DSS	12/6/2017 Review notice of vacating depo of Carnahan	0.35
DSS	12/6/2017 Receive and review email from Janet Pancoast; discussion with AF; response, forward to Vannah	0.35

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
DSS	12/6/2017 Received and reviewed Lange's 13th ECC Supplement	0.50
DSS	12/6/2017 Email Chain with JP, AF; Re: Carnahan Deposition	0.15
DSS	12/7/2017 Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	0.35
DSS	12/7/2017 T/C with Vannah	0.50
DSS	12/7/2017 Draft and revise letter; Review of file to Vannah w/ attachment	1.75
DSS	12/8/2017 Received and reviewed Lange 14th ECC Supplement	1.25
DSS	12/8/2017 Review Motion for Good faith settlement; discussion with AF	0.75
DSS	12/8/2017 Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker	0.50
DSS	12/8/2017 Email chain with AF re Order Granting Giberti MGFS	0.15
DSS	12/11/2017 Email from Zamiski; Response email	0.15
DSS	12/11/2017 Review/ Analyze Lange 15th ECC Supplement	0.50
DSS	12/11/2017 T/C Parker & Pancoast; Email from T Parker; Email from Crt	0.75
DSS	12/11/2017 Review client's release of claims; email to J. Green Discussion with AF	0.50
DSS	12/11/2017 Draft and send email to AF re Lange's 15th ECC Supplement and review AF response	0.25
DSS	12/12/2017 Draft and send email to AF re Stip to Dismiss and review AF response	0.15
DSS	12/12/2017 Attend hearing on Viking Motion for Good Faith Settlement	1.75
DSS	12/6/2017- 12/12/2017 Messages; Returned messages; discussions with Floyd Hale	0.50
DSS	Email from J. Pancoast; Received/Reviewed/ Analyze stip to dismiss order on Good faith settlement; discussion with	
DSS	12/12/2017 AF	1.25
DSS	12/12/2017 Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	0.50
DSS	12/14/2017 Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review mail from J. Pancoast	0.50
DSS	12/15/2017 Review email from T.Ure; T/C to J. Pancoast re 2nd stip to dismiss and arrange pick up of settlement checks	0.50
DSS	12/18/2017 Pick up settlement checks; exchange for stip; contact Vannah's office re signature	1.50
DSS	12/18/2017 T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomerantz	1.00
DSS	12/18/2017 Received, reviewed and analyze email from B. Vannah	0.50
DSS	12/19/2017 Emails to B. Vannah and J. Greene re checks	0.25
DSS	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and	
DSS	12/19/2017 response from B. Vannah	0.25
DSS	12/20/2017 12/20/17 Request return of sprinklers from Volmer Grey .25	0.25

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. ^B J and ^C KK)			
DSS	12/20/2017	Receive and review draft Motion for Good Faith Settlement; Lange release for 100k and release for \$22k	1.50
DSS	12/21/2017	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	0.75
DSS	12/21/2017	Receive, review and analyze email from B. Vannah (3:21pm)	0.50
DSS	12/21/2017	Received, reviewed and analyzed email from B. Vannah (10:45pm)	0.50
DSS	12/26/2017	Receive, review and analyze email from J. Christensen to B. Vannah (10:45am)	0.25
DSS	12/26/2017	Receive, review and analyze email from B. Vannah (12:18pm)	0.75
DSS	12/26/2017	Receive, review and analyze email from J. Christensen	0.25
DSS	12/27/2017	Receive, review and analyze email from JC w/e letter attached	0.75
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (3:07pm)	0.75
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (2:03pm)	0.25
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (4: 17am)	0.75
DSS	12/29/2017	Received and reviewed email re joint motion and revised joint motion	0.40
DSS	1/2/2018	Revise Lange release and send back to T. Parker	0.75
DSS	1/2/2018	Received/reviewed Viking stip to dismiss	0.35
DSS	1/2/2018	Received/reviewed email from J. Pancoast and T. Parker	0.35
DSS	1/2/2018	Received/reviewed and analyzed letters from Zurich re settlement checks	0.25
	1/2/2018	Received, reviewed and analyzed email from J. Greene (3:45pm)	0.25
DSS	1/2/2018	T/C with S. Guidy at Bank of Nevada	0.50
DSS	1/3/2018	T/C w/ S. Guidy at Bank of Nevada; Received, reviewed and analyzed email with attachments	0.75
DSS	1/3/2018	Analyze, review schedule and additional emails from S. Guidy	0.50
		Analyze, receive and send emails to S. Guidy at Bank of Nevada; Review emails from J. Christensen and bank, J.	
DSS	1/4/2018	Greene	0.75
DSS	1/4/2018	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	0.50
DSS	1/4/2018	Email to T. Parker and E. Nunez regarding revisions to release	0.50
DSS	1/4/2018	Travel to Bank of Nevada for bank account requested by client	1.50
DSS	1/4/2018	Email E. Nunez releases again per her request	0.25
DSS	1/5/2018	Email from S. Guidy and response	0.25
DSS	1/5/2018	Email from Nunez	0.15
DSS	1/5/2018	Review Court filing of MGFS Lange	0.25
DSS	1/8/2018	T/C with S. Guidy; receive, review and analyze letter from Vannah	0.50
DSS	1/8/2018	Travel to Bank of Nevada 2x re Trust deposit	2.50

B C

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
AMF	11/30/2017 Email to George Ogilvie instructing him to stop working on the case	0.15
AMF	11/30/2017 Review, Download & Save Letter to Counsel	0.30
AMF	11/30/2017 Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	0.30
AMF	11/30/2017 Review Viking's 19th ECC Supplement	1.00
AMF	11/30/2017 Review Letter from Lange regarding discovery scheduling and discussion with DSS	0.75
	11/30/2017-	
AMF	12/2/2017 Email chain with DSS re attorney lien	0.15
AMF	12/1/2017 Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.50
AMF	12/1/2017 Review, Download & Save Lange Plumbing Verification to Rogs	0.30
AMF	12/1/2017 Review, Download & Save notice of Attorney Lien	0.30
AMF	12/1/2017 Review Release from Viking and discussion with DSS re release	0.50
AMF	12/4/2017 Draft and serve notice to vacate deposition of UL Laboratories	0.25
AMF	12/4/2017 Review Lange written discovery responses	1.50
AMF	12/4/2017 Discussion with DSS re scheduling and status of case	0.40
	Review, Download & Save Notice Vacating the 2nd Amended Video Depo of NRCP30(b) (6) Designees of	
AMF	12/4/2017 Underwriters Laboratories	0.30
AMF	12/4/2017 Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
AMF	12/5/2017 Email chain with UL re vacating depo	0.15
AMF	12/6/2017 Review Lange's 13th ECC Disclosure	2.50
AMF	12/6/2017 Review email from DSS re notice to vacate Caranahan depo	0.15
AMF	12/6/2017 Draft and serve Notice to Vacate Robert Carnahan Deposition	0.50
AMF	12/6/2017 TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	0.50
AMF	12/6/2017 Review, Download & Save Service Only -- Lange Plumbing 13th Supp to NRCP 16.1 ECC	0.30
AMF	12/6/2017 Review, Download & Save Service Only -- Notice of Vacating the Continued Video Depo of Robert Carnahan	0.30
AMF	12/7/2017 Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	0.30
AMF	12/8/2017 Review Viking Motion for Good Faith Settlement, Analyz and discussion with DSS	0.75
AMF	12/8/2017 Review Lange's 14th and 15th ECC Disclosure	0.50
AMF	12/8/2017 Email Chain with DSS re Order Granting Giberti MGFS	0.15
AMF	12/8/2017 Review Stipulation to Dismiss from Viking and Discussion with DSS	0.50
AMF	12/8/2017 Review, Download & Save Lange Plumbing 15th Supplement to 16.1 ECC List Witnesses and Docs	0.30

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
AMF	12/8/2017 Review, Download & Save Lange Plumbing 14th Supp to 16,1 ECC List of Witnesses and Docs	0.30
AMF	12/11/2017 Discussion with DSS re client's release of claims	0.20
AMF	12/11/2017 Review email from DSS re Lange's 15th ECC Supplement and response	0.25
AMF	12/11/2017 Review email from DSS re Lange's 15th ECC Supplement and response	0.25
AMF	12/12/2017 Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
AMF	12/12/2017 Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
AMF	12/13/2017 Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
AMF	1/8/2018 Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.50
DSS	HOURS BILLED FOR DANIEL S. SIMON @ \$550 RATE	51.85
AMF	HOURS BILLED FOR ASHLEY M. FERRELL @ \$275 RATE	19.25
	TOTAL HOURS BILLED	71.10
	SIMON FEES	28517.50
	FERRELL FEES	5293.75
	TOTAL POST-DISCHARGE FEES	33811.25
	SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW	
	Admin tasks re Lange Settlement	21.55
	Admin tasks re Viking Settlement, including one hearing (1)	26.65
	Preparation of Attorney Lien	4.85
	Opening Bank Account & Depositing Settlement Checks	7.25
	Undetermined - not sufficient description	10.80
		71.10
	(1) For purpose of estimating category, all T/C with Vannah were added to this category.	

EXHIBIT B

EXCERPTS FROM "SUPERBILL" WITH SIMON'S POST-DISCHARGE ENTRIES

(Note: Identical exhibit (labeled Exhibit JJ) was submitted with the Edgeworths' 5/3/21 Motion to Reconsider 3rd Lien Order in Accord with Mandate)

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

EXCERPTS FROM "SUPERBILL" WITH FERREL'S POST-DISCHARGE ENTRIES

(Note: Identical exhibit (labeled Exhibit KK) was submitted with the Edgeworths' 5/3/21 Motion to Reconsider 3rd Lien Order in Accord with Mandate)

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

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

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

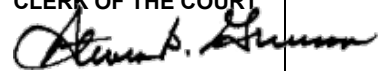
12.1.17	Review, Download & Save Notice of Attorney Lien	0.30
12/1/17	Review Release from Viking and discussion with DSS re release	0.50
12/4/17	Draft and serve notice to vacate deposition of UL Laboratories	0.25
12/4/17	Review Lange written discovery responses	1.5
12/4/17	Discussion with DSS re scheduling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

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

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

EXHIBIT D

EXCERPTS FROM 8/29/18 HEARING



1 RTRAN

2
3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

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 WEDNESDAY, AUGUST 29, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 A No, sir.

2 Q Exhibits attached to depositions?

3 A No, sir.

4 Q Research?

5 A No, sir.

6 Q And of course, the emails, we know were in a whole bunch of

7 additional boxes behind those?

8 A Yes, sir.

9 Q Okay. So that would be in addition to the 25 boxes?

10 A Yeah, that's just the discovery produced in the case.

11 Q I'd like to talk a little bit about the timesheets that were

12 submitted during the adjudication process.

13 A Okay.

14 Q I think we've been calling them superbills today.

15 A Yes, sir.

16 Q Okay.

17 A I understand what you're talking about.

18 Q All right. Those are exhibits 13, 14, and 15?

19 A Yes. I believe so, yes.

20 Q Did you have a role in the creation of those --

21 A Yes, sir.

22 Q -- timesheets?

23 A Yes.

24 Q What was your role?

25 A Well, I did all of mine, and then I also helped with Mr.

1 Simon's.

2 Q I think there was an allegation that you all sat around a
3 conference table and dreamed up the numbers contained in the
4 timesheets; is that true?

5 A No, sir. We did not do that.

6 MR. VANNAH: I'm going to object to that. I don't remember,
7 and I'm pretty good at reading, but I don't remember anybody saying
8 anybody sat around a conference table and dreamed up anything. Can
9 we just come up with crap like that with no background? Can we not do
10 that?

11 THE COURT: Well, I mean, I don't recall that, Mr.
12 Christiansen, anybody saying that.

13 MR. VANNAH: Yeah. If you want to show me where I ever
14 alleged in a pleading that you guys sat around the table holding hands,
15 praying, and coming up with a time out of the blue, I'd like to see that.

16 MR. CHRISTIANSEN: I will provide it.

17 MR. VANNAH: Okay. Well we'll --

18 MR. CHRISTIANSEN: Tomorrow.

19 MR. VANNAH: Maybe Mr. Simon can --

20 MR. CHRISTIANSEN: I didn't anticipate your standing up and
21 contradicting that, but we'll give it to him.

22 THE COURT: Okay.

23 MR. CHRISTIANSEN: We'll provide it.

24 THE COURT: Okay.

25 MR. VANNAH: All right.

1 BY MR. CHRISTIANSEN:

2 Q So, what went into your timesheets?

3 A What went into my -- the superbill timesheets?

4 Q Correct.

5 A So, basically, we billed -- so, I guess you could kind of split it
6 up into two things. From September 19th, so like September 20th, I think
7 it is, through when we stopped working on the case, which mine is
8 sometime in January 2018. That was all hours that we were working on
9 the case. Everything before that -- and I'm just talking about mine. I
10 don't know if I clarified that. All of mine before that, we went back to
11 May of -- I didn't start working the case until May, until January, except
12 for that one December 20th, 2016 date. In January from that point to
13 September 19th, all of those bills were emails, and telephone calls, and
14 downloads -- WIZnet downloads, that I did that I had not billed for
15 previously. And --

16 Q Was that a time consuming process?

17 A Yes, sir. I had to go through all of the emails.

18 THE COURT: Okay. I'm sorry, Mr. Christiansen. I have a
19 question. So, your bills, in this superbill --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: -- everything from January of 2017 to
22 September 19th of 2017, is for emails, telephone calls, and WIZnet
23 downloads that you hadn't previously billed for?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay. And that's what's included in this

1 superbill?

2 THE WITNESS: Yeah. And I believe if you look at mine,
3 that's all that's in there are telephone calls for my cell phone --

4 THE COURT: Okay.

5 THE WITNESS: -- and WIZnet downloads, and also emails.

6 THE COURT: But from September 20th to January 2018,
7 that's the hours you worked on this case?

8 THE WITNESS: Well, that's the hours I worked on this case,
9 including -- but I also incorporated in my downloads, also my emails,
10 and my telephone calls in there, as well.

11 THE COURT: So, that's in that calculation --

12 THE WITNESS: Yes, ma'am.

13 THE COURT: -- on the superbill? Okay.

14 BY MR. CHRISTIANSEN:

15 Q Do the timesheets capture all the work?

16 A No. So, the timesheets -- when we had to go back and do it
17 for this adjudication process, we had to show -- because it's my
18 understanding we had to show the Court how much work we did on the
19 file, and so we went back, and we only put entries on there that we could
20 support with documentation.

21 So, that's why the emails were added, that's why the cell phone
22 records were added, and that's also why the WIZnet filings were added,
23 as well. And so, basically -- and because we had a hard document. If we
24 didn't have a hard document, we didn't capture it on the bill. We didn't
25 put it on there. Any discussions with Mr. Simon that I had, you know, 10

1 minute discussions -- there are a few discussions on the bills that are on
2 there, those aren't captured.

3 Any calls from the office that we did with regard to this case,
4 whether it be with Mr. Edgeworth, whether it be with experts, whether it
5 be whoever, any calls from the office we weren't able to get, we
6 subpoenaed the records from Cox and were not able to obtain those, so
7 those aren't include on there -- included on there.

8 But what we did to get those dates on that superbill was we had to
9 choose a landmark date. So, with regard to the WIZnet filings, because I
10 needed something -- I needed a landmark date for each of those filings, I
11 went to the date that that thing was filed, the date that the pleading was
12 filed and that's the date that I put it in on.

13 I know there's been some allegations about a 22 hour day, which I
14 know we're going to talk about in detail, but that kind of explains that
15 because I -- and I mean, again, I talked about it in detail. Everything that
16 was filed, for example, on September 13th, I put on September 13th for
17 the WIZnet filings. Every email that was received on September 13th, I
18 put on September 13th, and then I also gave all of the WIZnet documents
19 .3 hours, because what I did was I would review the -- when it came in on
20 WIZnet -- I was the one working on this case. We didn't have a paralegal
21 in this case. I was the one that did it. I would open the WIZnet
22 document, review it, download it, save it, and send it out to wherever it
23 needed to do. Some of these, super quick, maybe not .3. Some of them,
24 way longer than .3.

25 So, we had to have a base mark number for all of the WIZnet

1 filings, so that's why we chose .3 for the WIZnet filings, which are
2 identified as -- I can tell you, if you'd like. On my bills, review, download,
3 and save, and then I put the name of the document, and that's a WIZnet
4 filing. So anytime you see review, download, and save, that's a WIZnet
5 filing.

6 Same thing with emails. Our base calculation, I had to put a base
7 calculation, it was .15, and then if the email was more time consuming,
8 the appropriate number was put on there. This is with regard to my bill.

9 Q So, I heard a couple of things. One, I heard no paralegal.

10 A Yes, sir.

11 Q So that's why there are no paralegal bills?

12 A Yes, sir.

13 Q Okay. Thanks for clearing that up. Let's take the WIZnet
14 filings as an example. What did you do with a WIZnet filing when it was
15 made in this case, in the Edgeworth case?

16 A I would -- like a WIZnet, like any filing?

17 Q Like someone filed a motion. One of the Defendants filed a
18 motion.

19 A When the Defendants filed a motion, I would download it, I
20 mean, review it, save it, and then send it out to Danny, send it out to
21 Brian, send it out to whoever. And I didn't send it to Brian every single
22 time, but some of the more important things, I know Brian was very
23 active in the case, and like he wanted to be in charge -- like not in charge.
24 Informed of the stuff going on. So, I would sometimes send it to him,
25 too.

1 Q Okay. And is that different from any review you would do if
2 you were say taking the lead on drafting an opposition to a motion?

3 A Well, yeah. I would review it to see what it is. I mean, do I --
4 and then I would also have to like calendar it or what not, too. I mean,
5 and if I was supposed to do an opposition, so for example, with your
6 example, a motion. A motion comes in, the review, download, and case
7 only incorporates the review, download, and save. If it was a motion,
8 then I -- and I was going to do an opposition to it, I would review it later.
9 I wasn't reviewing it at that time to draft the opposition.

10 Q Okay. You indicated that you did some -- that you helped Mr.
11 Simon with his timesheets?

12 A Yes, sir; I did.

13 Q What did you do --

14 A Some of it.

15 Q -- for Mr. Simon?

16 A Well, I did -- I took his cell phone records. Again, because we
17 weren't able to get the office records, so I took his cell phone records and
18 I plugged in his cell phone records into the bill, and then I also -- I'm the
19 one that put the infamous, on Exhibit 13, a Plaintiff review of all emails
20 concerning service of all pleadings, (679 emails), without a date. So,
21 would you like me to explain that?

22 THE COURT: I would.

23 THE WITNESS: Okay.

24 MR. CHRISTIANSEN: Yeah, I'd like to hear about it, too.

25 THE WITNESS: So, what that is, is that's the WIZnet filings.

1 If you look at any of Mr. -- if you look at Mr. Simon's superbill, there are
2 no WIZnet filings in his. And so, when I would send the WIZnet filing -- I
3 sent every single WIZnet filing to Mr. Simon.

4 So, what that number is -- or so what is, there were 679
5 emails, and I had multiplied that by .2 because he would have to open it,
6 and then analyze it or whatever, and then that was it. And if he wanted
7 to do more to it, then he could choose to do more to it, but because there
8 was a formatting issue, plugging every one of those 679 emails in -- so
9 those are all WIZnet filings. Those WIZnet filings are for the entire case,
10 679. So, that goes from May -- well, I guess the complaint wasn't filed
11 until June, so June of 2016 through -- I guess the attorney lien is when
12 we kind of stopped counting. That's when we stopped counting any of
13 the WIZnet filings in the case.

14 MR. CHRISTENSEN: Okay.

15 THE COURT: So, that's through the attorney lien?

16 THE WITNESS: Yes, ma'am. The amended attorney lien in
17 January.

18 THE COURT: And do these include some of the same WIZnet
19 filings that are in your bill?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Okay.

22 THE WITNESS: But we would both -- I mean, he would read
23 them as I -- he didn't download them. He just read them when I would
24 send them to him.

25 THE COURT: And what did you -- what was the time per --

1 THE WITNESS: .2.

2 THE COURT: .2. Okay.

3 BY MR. CHRISTIANSEN:

4 Q Did Mr. Simon enjoy billing?

5 A No.

6 Q How do you know?

7 A He was super grumpy about it, and he had lots of Post-Its
8 everywhere, and he just -- he absolutely did not enjoy billing. I don't
9 know how many times he said he didn't know how to bill.

10 Q Let's talk about the Edgeworth Exhibit 9.

11 A Okay.

12 Q Have you seen Edgeworth Exhibit 9?

13 A Yes, sir.

14 Q What did you do when you first received Edgeworth Exhibit
15 9?

16 A Well, I looked at it. I added up -- not that I'm great at math,
17 but I think I'm decent enough. I added up just to make sure their hours
18 were all, and the math -- the chart was right. And then I looked at all of
19 the boxed ones, because I assumed those were the ones that they had
20 issue with, and then I pulled the bills for -- if -- because some of them are
21 prior to the superbill. I pulled the paid hours and the new hours, the
22 superbill hours, and I compared them to see what their issue was or
23 what I thought their issue was with it.

24 Q Okay.

25 A So I could review it.

1 Q And just for clarification of the record, it's Edgeworth Exhibit
2 9, Bate 8 through 12; is that what you have?

3 A I believe it's 7 through 12.

4 Q Oh, did I miss one?

5 THE COURT: Yes, it starts on 7.

6 MR. CHRISTIANSEN: Okay. I apologize. I missed one.

7 THE COURT: Well, Ms. Ferrel starts on 8, but the --

8 THE WITNESS: Oh, I do --

9 THE COURT: Right. There's beginning with Mr. Simon on
10 page 12.

11 THE WITNESS: Sorry, Judge.

12 MR. CHRISTIANSEN: Okay.

13 THE COURT: I mean on 7.

14 BY MR. CHRISTIANSEN:

15 Q So, there was some discussion about email billing for Mr.
16 Simon on 8/20 and 8/21/2017.

17 A Yes, sir.

18 Q Do you recall that earlier today?

19 A Yes, I do.

20 Q Okay. So, what did you find when you took a deeper look
21 into those boxes on this exhibit?

22 A On Mr. Simon's 8/20 and 8/21, or just --

23 Q Correct.

24 A -- all boxes? On those boxes, it was different things. A lot of
25 -- what I think the common error is, and maybe Mr. Vannah can correct

1 me if I'm wrong, but it's the emails, the WIZnet filings, and the telephone
2 calls that were added that put all of these -- that put -- that I think they're
3 questioning these hours, because -- and again, like I just told you, I had
4 to use a landmark date.

5 So, whether I opened, reviewed, and downloaded on that specific
6 day, or whether it was the next day, or the next day, I mean, it happened
7 within a few days of that, but I used a landmark date because again, I
8 wanted to have support for everything I put into the superbill.

9 Q Talking, specifically, about the Sing [phonetic] work old, new,
10 on 8/20/2017, that's listed on Bated page 10 of Exhibit 9 for Mr. Simon.

11 A Oh, I apologize. Yeah. Well, what I found on there is that he
12 had -- they're different. It's actually different stuff.

13 Q Okay. Those are the emails that Mr. Christiansen showed to
14 Mr. Edgeworth earlier today?

15 A I believe so, yes.

16 Q And copies of those emails are in Exhibit 80 that's been
17 submitted to the Edgeworth counsel and to the Court?

18 A Yes, sir. And I believe one of them, and I can't tell you which
19 date right now, one had 10 emails and one had 12 emails.

20 Q Okay.

21 A And on one of those days, I believe it was 8/21, he hadn't
22 billed for any emails at all.

23 Q So, let's take a look at some of these issues on here. There's
24 a 22 hour day on here.

25 A Yes, sir.

1 Q 9/13/2017. That's on page 10 of Exhibit 9.

2 A Yes, sir.

3 Q What's going on there?

4 A Okay. So again, what I think happened, if you look at the --
5 it's the very last entry on that page. On the paid bills, it was -- I had eight
6 hours, 8.75 hours, and then on the new superbill, there's 14.10 hour, and
7 if you look at the new bill, all of the time is review, download, and save
8 the WIZnet filings. But, also, on that day, and I know for a fact because
9 that was right after -- we had to do out-of-state commission. We're like
10 ramping everything up. This case was incredibly fast at the very end.

11 Q Let me interrupt you for just a second.

12 A Okay.

13 Q Did something happen the day before that date on 9/13?

14 Was there a deposition or something that went on?

15 A Well, on 9/7 --

16 Q Okay.

17 A -- Mr. Carnahan -- yeah, Carnahan, he was deposed.

18 Q Okay.

19 A And he was our expert for like seven hours, and so then one
20 of their other complaints they have is the one right above that -- or not
21 complaints. I apologize. One of the other issues that they had boxed
22 was the 9/8/17 date.

23 Q Okay.

24 A And that was the date after Mr. Carnahan's deposition, and
25 there was a ton going on that day because of what Mr. Carnahan had

1 testified to, we were -- I mean, we were resetting depositions, we were
2 starting the motion to strike, we were noticing all these depositions over
3 that course of between the 8th, the 13th. I mean, and it just all happened
4 in a short period of time, Viking people in Michigan.

5 So, on the 13th one, which you were talking about a minute ago, a
6 lot of those downloads were for Michigan people, okay? The Viking
7 counsel refused to accept service on a lot of them, so we had to file
8 applications to take out-of-state commission, deposition, out-of-state -- I
9 think everyone knows what I --

10 THE COURT: Out-of-state depositions?

11 THE WITNESS: Yeah, the commission to take an out-of-state
12 deposition. There we go. So, we had to file that. But then you had to
13 also file all of the paperwork with the Court in that jurisdiction. Well, in
14 Lansing, you have Ingham and Eaton, and that's where some of these
15 were at, and then some of them were in Grand Rapids, which is a
16 different county, and you had to fill out documents each time you did.

17 So, some of these, yeah, it was, you know, an amended
18 deposition notice, okay, but each time I filed that deposition notice, I had
19 to resubmit the paperwork to the Court, which took time. I mean, and it
20 was, yeah, I had some of it filled out. It was a little quicker the next
21 times, but you know, that's why it took so long each time I did it, even
22 whether it was amended or the first notice.

23 BY MR. CHRISTIANSEN:

24 Q We were talking about some of the WIZnet filings with regard
25 to the 22 hour entry on 9/13.

1 A Yes, sir.

2 Q So, you know, I use WIZnet, sort of, right? I get an email, I
3 can open it up, I can download something. I don't always do it that day.
4 Sometimes I do it the following day when I get to it. What were you
5 doing in this case?

6 A What was I doing in the WIZnet --

7 Q Yeah, with the WIZnet.

8 A -- with regard to WIZnet?

9 Q Did you open them every day as soon as they came in? How
10 did that work?

11 A No. I mean, yeah, I would try to do that, but there was,
12 again, a lot of stuff going on with the case. I mean, if I'm working on a
13 motion to strike, I'm not going to stop my motion to strike when I see,
14 you know -- just when I'm downloading, when I know I just filed 10 or 12,
15 you know, deposition notices, especially in the ones Viking counsel's,
16 you know, taking -- that they're accepting service of.

17 I'm not going to stop working on my motion to strike and/or reply,
18 or opposition, or motion to compel, or whatever I'm working on, to
19 download that day. It may have been the next day or the next day, but it
20 would've had to be within two or three days because we had to keep up
21 to date on this case all the time.

22 Q So, I mean, why does it take you to do this work, just to do a
23 WIZnet for a notice of taking deposition?

24 A Okay. So, what happened in this case is they had a
25 confidentiality order, right? A protective order. I know that's super

1 common in these big document cases and things like that, but this one,
2 they had actually threatened us because a document got served that was
3 confidential, and they sent a letter to us threatening to sue us if --
4 because we violated -- not sue us, but they were going to take action
5 against us, because we violated the protective order.

6 And so, they told us to withdraw it and then we had to do all this
7 other stuff from that. So, because of that, I was the one that was doing
8 all of this.

9 Q Well, is calendaring also an important issue in a large
10 complex litigation?

11 A Yes.

12 Q I mean, you have to keep track of all the different parts, right?

13 A Yes.

14 Q But do you keep track of all the different parts and do this
15 kind of labor on a smaller case?

16 A No.

17 Q Only the larger cases?

18 A I mean, this is the only one that I typically do all of it on. I
19 mean, we have a paralegal who is very competent and has done --
20 worked for Mr. Simon for 20 years, so she does most of it, but with
21 regard to this case, because again, it was kind of a -- it was a very -- it
22 was his friend, it was a very fast moving case. We didn't want to miss
23 anything. That's why I was doing all of it.

24 Q When you performed your review of these box entries, did
25 you find any errors?

1 A On?

2 Q On any of the billing? Did you go and see -- like for the 22
3 hour day, did you go back and see, yeah, there were however many
4 WIZnet filings that day and --

5 A Oh, yeah. No. Sorry. I didn't quite --

6 Q Yeah.

7 A -- understand. Yeah. So, no, I did. I took that day, and I
8 pulled -- you know, I pulled the paid hours, and then I also pulled the
9 new hours, and I compared them, and these are an exhibit, if you needed
10 them, but -- and there were no -- I recalculated everything because I
11 anticipated that they were going to talk to me about the ones in the box
12 -- in the boxes.

13 Q Okay.

14 A So, I just wanted to make sure that I didn't screw up, so if I
15 did screw up, I could at least say that it was my fault.

16 Q Okay. Well, are you padding bills?

17 A No, sir.

18 Q Was that your intent?

19 A No, sir.

20 Q Long days happen when you're an attorney?

21 A Yeah. Especially a trial attorney, yes.

22 Q Okay. And especially in document intensive cases?

23 A Yes, sir.

24 Q I think your testimony is that you probably didn't work 22
25 hours on 9/13 because of the WIZnet filings?

1 A Yeah. I don't think I worked 22 hours on 9/13, however --
2 Q And --
3 A -- I do --
4 Q Have you worked 22 hour days before?
5 A I have one hundred percent worked 22 hour days before.
6 Q Okay. Can you --
7 A When I --
8 Q -- explain that a little bit?
9 A Yeah. When I worked over with -- at Mr. Eglet's firm, we did
10 -- I worked hand-in-hand with him and Mr. Adams, and a couple of other
11 attorneys on the endoscopy cases, and those were huge, complex cases,
12 very similar -- I mean, not similar in fact and stuff to this case. I mean,
13 but when we were preparing for it, I mean, we're talking hundreds and
14 thousands of documents. Yeah, we would. We would work, I mean, on
15 average, 15, 16 hour days. That was an average day for us if we were in
16 trial.
17 Q Okay.
18 A There were -- I can think of at least a dozen days where we
19 worked all through the night, me and Mr. Adams, and I went home, I
20 would shower, and I'd come right back to work, and we'd go right to
21 trial. Did it happen on this day? No. I didn't do 22 hours on this day
22 specifically, but again, that -- I have worked 15 hour -- yeah, I have
23 definitely worked 15, 16 hour days on this case.
24 You know, I mean, and so there was a lot of times I would even
25 work from home. I think it was said, and I don't remember who said it,

1 but I heard the testimony, or it may have been in opening that, you
2 know, I was working from my -- there is no way someone could work
3 from their office for that long. Well, I have remote access, and so I'm -- I
4 work a lot of times at home until 1 or 2:00 in the morning. I live by
5 myself with my dogs, so, you know, I mean, I don't have a lot of
6 interruptions.

7 And so, you know, I mean, I work from home a ton. I'm at the --
8 but in this case, I had to be at the office for a lot, and so it was very
9 common for me to be there 12, 13 hour days, and then I would go home
10 and work from home. And I have email on my phone, I have email --
11 remote access on my laptop. So, I mean, I would work long hours.

12 Q Did you do all the work that you billed for?

13 A Yes, sir; I did.

14 Q Did you get the right date on all the work that you billed for?

15 A Well, I mean, I think I did. Yeah, with what we've just talked
16 about, I mean, with the exception of those -- with the WIZnet filings
17 maybe being the next day or the following day within that time range;
18 yes, I did.

19 Q Okay. And on that same theme, we've got a 135 hour block
20 entry for Mr. Simon. How do you know that he was reviewing these
21 emails that you gave him credit for?

22 A Because he would respond back to the email with the WIZnet
23 filing attached.

24 Q Okay.

25 A Like he would -- like I would send the email, and then he

1 would respond to the email, and the WIZnet filing would be at the
2 bottom. You know how an email is.

3 Q So, he was on top of it?

4 A Yes, sir.

5 Q Okay. Let's talk a little bit about the review of these
6 produced documents and the assertion by Mr. Edgeworth that he was
7 solely responsible for the blossoming value of the case. Is it fair to say
8 that you get the first look at any document production?

9 A Yes.

10 Q Was the first major production on July 6th, 2017?

11 A Yeah, that's the first one that was like thousands and
12 thousands of pages. It was a lot more. They had only produced like a
13 couple hundred pages or maybe a thousand pages before that one.

14 Q Okay.

15 A That's the first big one.

16 Q And that was by Viking, I believe?

17 A Yes, sir.

18 Q Okay. So, this is Exhibit 88. It's the law offices, Exhibit 88.

19 So, this appears to be an email from you, Ms. Ferrel, on July 6th; is that
20 correct?

21 A Yes, sir.

22 Q And that's 2017?

23 A Yep. Yes. Sorry.

24 Q And it seems to be a -- as these emails are set up, as we can
25 see, it's a forward on top of an email from Janet Pancoast --

1 A Yes, sir.

2 Q -- to some of the other lawyers in the case, including
3 yourself?

4 A Yes, sir.

5 Q So, first of all, can you tell me a little bit about what had gone
6 on in the case prior to this time about disclosures and attached
7 documents?

8 A Yeah. So, what Viking was doing when they were producing
9 their documents and, actually, Lange was doing it, too, is they'd serve
10 the pleading without any documents attached, unless it was like six
11 pages or something like that, or maybe even like 20 pages. I don't -- you
12 know, but a small amount. And then they'd send a disc in the mail, and
13 so we would wait three days, four days, or however long the mail took to
14 get it. And I mean, that's -- and when a case is moving this case, you
15 kind of need the documents then.

16 So, I said something to Janet -- Ms. Pancoast, and so then that's
17 why she sent the email before they would serve a pleading, or the day
18 they'd serve the pleading, and it let -- she then would email us and tell
19 us, hey, we're going to serve this today. Let me know if your runner is
20 going to come pick it up.

21 So, I would send a runner to pick it up, so then they would put it --
22 so it wouldn't get put in the mail. The runner would come back, bring it
23 to me, so then I could start going through it as soon as I get it.

24 Q Did that happen with this production on July 6th?

25 A Yes, sir.

1 Q So, the runner went and picked up the production on July
2 6th?

3 A Yes, sir.

4 Q And then you started in on it?

5 A I downloaded it and started in on it right as soon as I got it,
6 and this is at 9:12 in the morning, so she went and picked it up pretty
7 early.

8 Q About how much was the -- that download? The July 6th
9 download?

10 A Twenty-two -- 24,000 pages. I don't know exactly, but it was
11 at least 22, but it may have been 24,000.

12 Q I want to show you what's been marked as the Law Office
13 Exhibit Number 89. It's an email. So, it looks like you sent an email on
14 July 10, 2017, at 10:26 a.m.

15 A Could you bring it down just a little bit? Oh, 10:26. Yeah,
16 never mind. I see what you're saying. Yes, sir.

17 Q You see that? Right --

18 A Yeah.

19 Q -- in the middle?

20 A Yes.

21 Q And you wrote, holy crap, two words, punitive damages.

22 A Yeah.

23 Q And then you mention there's a ton of documents, and then
24 you talk about sending a Dropbox link out to folks for their review?

25 A Yes, sir.

1 Q Is that fair?

2 A Yes.

3 Q Okay. What did you find?

4 A In there? I mean, there was so much stuff. So, kind of go
5 back a minute. The reason why I said that was, holy crap, punitive -- two
6 words, punitive damages, is because on May 3rd, Scott Martorano, who
7 was the 30(b)(6) witness for Viking was deposed for the first time, and he
8 had said that there were 46 activations, okay? Activation is something
9 that Mr. Edgeworth testified to, and it's all throughout this entire case.

10 Q It's when a sprinkler brings rain to everyone --

11 A Yes.

12 Q -- below it and everything below it?

13 A Correct.

14 Q It's when one of those sprinklers goes off.

15 A Yes.

16 Q The 457s. Okay.

17 A Correct. And so, in his deposition, he testified 46 activations.

18 So, when reviewing these, there was a ton of emails, and I don't know
19 how many emails there were. There was a ton of emails. There were
20 also a ton of other documents and things like that. Well, in these emails,
21 they kept referencing another activation, another activation, another
22 activation, another activation. Oh, we had two go off this weekend. Oh,
23 we had two go off this weekend, or -- and even some of these emails
24 were from Viking. Some of these -- I mean, they all came from Viking.
25 Some of them were from people, it turns out, in Southern California,

1 talking about other activations. Well, just looking at it, you could tell that
2 it had it up to weigh more than 46. So, he had basically lied under oath
3 or misrepresented, you know, 46 activations. There were definitely more
4 than 46 activations.

5 Q When you reviewed the July 6th documents, were you
6 looking for something to drive some sort of a punitive damages claim?
7 Was that the part of your thinking?

8 A Well, yeah, that's just something that we do. That's
9 something that I've learned as, you know -- that is -- that's kind of how
10 you kind of change a case, I guess, you know, to say -- I don't know how
11 to exactly say it other than that, but when you find out people are hiding
12 things. When you find out, you know, things like that. We're always
13 looking for ways to, you know, change it and get punitive damages in the
14 case.

15 Q You had done that in other cases to drive value?

16 A Yes. Multiple.

17 Q Without violating any confidentiality provisions, is it fair to
18 say that the law office has recovered a number of seven and eight figure
19 cases using this method?

20 A Yes, sir.

21 Q I'd like to show you what's been marked by the Office as
22 Exhibit 80. This is Bates stamp 6751. It's an email from you to Brian
23 Edgeworth; is that correct?

24 A Yes, sir.

25 Q And this is July 10, 2017, at 11:40 a.m.?

1 A Yes, sir.

2 Q And is it fair to say that via this email, you were providing
3 him with a link to the Dropbox where you had loaded that Viking
4 production into?

5 A The sixth supplement; yes, sir.

6 Q Okay. And then again, looking back to -- let's take a look at
7 the time here that's 11:40 on July the 10th, and going back to Exhibit 89,
8 the time here is 10:26 a.m.; is that true?

9 A Yes, sir.

10 Q Okay. So, you'd already looked through these and had
11 located evidence to support the punitive damage claim, or at least get it
12 up and running --

13 A Yes, sir.

14 Q -- before these documents were ever provided to Mr.
15 Edgeworth --

16 A Yes, sir.

17 Q -- is that accurate? Okay. Now, Mr. Edgeworth talked about
18 an email summary in the last couple of days?

19 A Yes, sir.

20 Q Do you recall the email summary?

21 A Yeah. It was based off of that sixth supplement. There --
22 again, there were thousands and thousands of pages of emails, and so
23 we created an email summary. I created an email summary of what
24 those emails said with Bates stamps, and so it was easier for us to
25 locate. And at that point, activations were, I mean, key for us, so I bolded

1 anywhere it kind of referenced something that was activation related.

2 Q Okay. So, the email was sent around on July 19 via -- or the
3 summary was sent to around on July 19 via email?

4 A I believe so; yeah.

5 Q Okay.

6 MR. CHRISTIANSEN: I'd like to mark Plaintiff's next in order,
7 it's 91. This is 91.

8 MR. GREENE: And what is that?

9 MR. CHRISTIANSEN: It's the e-mail summary --

10 MR. GREENE: Okay.

11 MR. CHRISTIANSEN: -- that Brian talked about earlier today,
12 or maybe it was yesterday. I forget.

13 THE COURT: So, this is the email summary that Ms. Ferrel
14 prepared?

15 MR. CHRISTIANSEN: Correct.

16 THE COURT: Okay. Exhibit 91.

17 [Law Office's Exhibit 91 Received]

18 MR. CHRISTIANSEN: Your Honor, if I could -- yes?

19 THE COURT: Defense has got it. Okay.

20 MR. CHRISTIANSEN: If I could approach the witness?

21 THE COURT: Yes.

22 MR. CHRISTIANSEN: I have a courteous copy for you.

23 THE COURT: I was going to say; do I have a copy. Yeah.

24 MR. CHRISTIANSEN: You sure do.

25 THE COURT: This way I can follow along.

1 MR. CHRISTIANSEN: And you can have a Post-It.

2 THE COURT: Well, thank you.

3 MR. CHRISTIANSEN: There you go.

4 BY MR. CHRISTIANSEN:

5 Q When did you put together Exhibit 91?

6 A Well, I started putting it together after we received the -- it
7 was sometime between July 6th -- I probably -- I didn't start it on the 6th.
8 It would've been the 7th, 8th, sometime after that.

9 Q Okay.

10 A After we received the document production. It took a while.
11 It's a lot of emails.

12 Q When did you finish it?

13 A Well, I sent it out on July 19th.

14 Q Okay. Do you recall if you finished on the 19th or on the
15 18th?

16 A It could have been the 18th. It could have even been the 19th
17 depending on what time the email -- I sent the email. I'm sure I sent it
18 out after.

19 Q Fairly quickly?

20 A Yes, sir.

21 Q Okay. So, tell me a little bit about the work that went into
22 this.

23 A Well, I looked at the email, I would write Bates stamp down,
24 any key phrases kind of that would jog my memory. I mean, I guess it
25 was more geared towards me, but it was also for everybody else to look

1 at. Description of the email, date, from, to. I mean, I just kind of filled in
2 the --

3 Q You also had the Bates number of the particular document
4 that you're discussing?

5 A Correct.

6 Q Okay. And this was sent around to everyone, including
7 Brian?

8 A Yeah. Yes.

9 Q All right. It looks like the very first entry addresses Harold
10 Rogers?

11 A That was who the email was to, yes.

12 Q Okay. Was that the same Harold Rogers that we heard Mr.
13 Edgeworth discuss yesterday?

14 A I believe it was, yes.

15 Q Okay. Without going through -- how many pages is this?

16 A Twenty.

17 Q Okay. You counted it?

18 A I just counted it, yeah. I recounted it.

19 Q Okay. Thank you. How many activations were you able to
20 identify that are reflected just on this email summary, Exhibit 91?

21 A Well, so in --

22 MR. VANNAH: I didn't understand your words. How many
23 what?

24 MR. CHRISTIANSEN: Activations.

25 MR. VANNAH: Activations. Thank you. Thank you.

1 MR. CHRISTIANSEN: Sorry.

2 THE WITNESS: So about 83, but the other thing that's in
3 here is there's an email of 91 in the U.K. So, that was something that
4 was -- I mean, 91 in and of itself, that one email. So, it shows that it's
5 over 46, right? But setting that 91 email aside, there was at least, I
6 believe, 83 to 85. I'd have to go back and count exactly again, which is
7 obviously more than 46, so.

8 BY CHRISTIANSEN:

9 Q The 80 some activations were here in the U.S.?

10 A Yeah, those were in the U.S.

11 Q And then we had 91 in the U.K.?

12 A Right. and that was kind of a distinction. I should've made
13 that distinction because whether the U.K. ones were going to come in or
14 not, I mean, that was kind of a fight we were having with -- you know, in
15 the case, but there were definitely over 46, in the 80s referenced in here,
16 you know, at the time I did the summary.

17 Q The Defense were fighting introduction of activations in a
18 different country?

19 A Yes, they were.

20 Q On evidentiary grounds?

21 A Yes, they were.

22 Q Of course, the U.K. is traditionally a little bit colder than the
23 western United States, especially California, southern California?

24 MR. VANNAH: Is that an expert opinion on the weather?

25 Objection. Some days it's colder, some days it's not.

1 THE WITNESS: I'm not an expert on it. I know Southern
2 California gets warm.

3 MR. CHRISTIANSEN: Whenever I see those guys on the golf
4 channel, they always look cold when they're in the U.K.

5 MR. VANNAH: During the summer, it's not as bad.

6 THE COURT: Mr. Vannah is probably pretty much an expert.

7 MR. CHRISTIANSEN: He could be.

8 MR. VANNAH: Mr. Christensen -- he's not here.

9 MR. CHRISTIANSEN: Christiansen.

10 MR. VANNAH: He just got -- yeah, but he just --

11 THE COURT: Oh, he's here.

12 MR. VANNAH: He's an expert because --

13 MR. CHRISTIANSEN: He's in the back.

14 MR. VANNAH: He's got a daughter that's living in Scotland,
15 right?

16 MR. CHRISTENSEN: Yeah, I do.

17 MR. VANNAH: So, he can be an expert, but I don't think she
18 can.

19 MR. CHRISTIANSEN: I hear he sends her sweaters like every
20 week, because it's so cold.

21 MR. VANNAH: Maybe a bikini, too. Who knows?

22 MR. CHRISTIANSEN: Oh, stop.

23 MR. VANNAH: I'm talking about summer.

24 MR. CHRISTIANSEN: You know --

25 THE COURT: Oh, we are so far -- oh, Mr. Greene, just come

1 save us.

2 MR. CHRISTIANSEN: So, moving on, Your Honor. Moving
3 on.

4 BY MR. CHRISTIANSEN:

5 Q Taking a look at Number 91, was that the extent of the work
6 that you did on activations?

7 A No. This was just kind of the beginning of it. I mean, no -- I
8 mean, this is -- the activations turned into a huge thing, and Mr.
9 Edgeworth created -- I believe he's testified to, a big chart that had -- I
10 think he said -- I don't even remember anymore. There was a lot, over a
11 hundred activations on this chart that were broken down, that he
12 testified to in his --

13 Q Did you --

14 A -- direct.

15 Q -- see the chart from Mr. Edgeworth?

16 A Yes. He sent it. Each time he would add stuff to it, he sent it.

17 Q Okay. Was the starting point of the chart some of the
18 activations on Exhibit 91?

19 A I believe it was. That's one of the first times that we got
20 detailed, you know -- we got detailed, like Bate stamps, because in his
21 chart, he had Bate stamps, and like he had the addresses and things like
22 that. Again, other than the emails, there were a couple other things in
23 there.

24 Q Did you send this around -- 91 around in Excel form?

25 A No. No, it was a PDF.

1 Q Oh, okay. Was Mr. Edgeworth's chart useful?

2 A Yeah.

3 Q Okay. Did you discover evidence of more activations during

4 discovery?

5 A Yes, we did.

6 Q And that was through a use of what I would call traditional

7 discovery?

8 A Yes.

9 Q Interrogatories, request for production of documents --

10 A Motions to compel.

11 Q -- motions to compel. Okay. So, that information combined

12 with -- did Mr. Edgeworth ever independently find an activation?

13 A Maybe -- I'm sure he found activation. Yeah, I'm sure --

14 Q Okay.

15 A -- he did. There was lots of them. I mean --

16 Q All right.

17 A -- so yeah.

18 Q So, those were all used?

19 A Yes.

20 Q Okay.

21 A I mean -- yeah. I think -- yeah, we used the chart. So, yes.

22 Q All right.

23 MR. CHRISTIANSEN: Can I have just a moment, Your Honor?

24 THE COURT: Yes.

25 [Counsel confer]

1 MR. CHRISTIANSEN: No more questions, Your Honor.

2 THE COURT: Okay. And, Mr. Vannah, would you mind if we
3 took like 10 minutes before you start so I didn't have to stop in the
4 middle, because I'm going to need use the restroom before you finish
5 with her. So, if we just go now, then we can do it, and I won't have to
6 cut you off in the middle.

7 MR. VANNAH: I think that's a great idea.

8 THE COURT: Okay. So, we'll take 10 minutes. We'll be back
9 at 3:00.

10 [Recess at 2:55 p.m., recommencing at 3:08 p.m.]

11 THE COURT: Okay. Are you guys ready? We're going to go
12 back on the record in 9738444, Edgeworth Family Trust, American
13 Grating, v. Daniel Simon doing business as Simon Law.

14 Mr. Christiansen, you were finished?

15 MR. CHRISTIANSEN: Yeah.

16 THE COURT: Mr. Vannah --

17 MR. CHRISTIANSEN: Yes, Your Honor.

18 THE COURT: -- your witness.

19 CROSS-EXAMINATION

20 BY MR. VANNAH:

21 Q Do you mind if I call you Ashley?

22 A That's fine.

23 Q We've known each other a long time.

24 A Yes, we have.

25 Q You used to work over at the house of Eglet that I helped

1 build, right?

2 A Yes, we did.

3 Q All right.

4 THE COURT: Mr. Vannah, we just actually had a discussion
5 as to whether you were ever partners with Eglet. I wasn't sure.

6 MR. VANNAH: Well, I own half the building, but he put his
7 name on there. He had more votes than I did. I think Mr. Christiansen
8 voted for him; didn't he?

9 THE COURT: You wanted to call him out.

10 MR. GREENE: I think he did.

11 MR. VANNAH: I don't want to get into that. It's now the
12 house of Eglet, though, but I pay half of it. Okay. I think that was the tie.
13 That was before the endoscopy, I think.

14 THE WITNESS: Yeah.

15 MR. VANNAH: It was me they were looking to, not him. All
16 right.

17 BY MR. VANNAH:

18 Q So, if you don't mind if I just call you Ashley? I don't mean
19 any disrespect. I've just known you that way. It's hard to --

20 A That's fine.

21 Q Okay. So, I just wanted to clarify some things. So, do I
22 understand correctly -- we've seen four invoices and the superbill, right?

23 A Yes, sir.

24 Q All right. And I just wanted to clarify and make sure I
25 understand it. Somebody had to actually prepare those; was that you?

1 A Well, so let me -- the superbill -- I prepared my own superbill,
2 or the timesheet, the big one. And then I prepared all my own invoices.
3 So, I started invoicing, is it April? So, I only did the last two, and I would
4 only prepare my own invoices.

5 Q Yeah. And I may be -- so, let me just back up and make sure I
6 understand it. And I'm not trying to confuse you or make -- either one.

7 A Of course.

8 Q So, I think of four invoices that got paid, I think that way.

9 A Yes.

10 Q Are you with me, up through --

11 A Yeah.

12 Q -- September 22, 2017?

13 A Yes, sir.

14 Q Where there was four separate invoices?

15 A Correct.

16 Q All right. So, let's start with that. Somebody actually had to
17 sit down and prepare that, and kind of what I was listening to is that
18 somewhere in late 2016 or so, that you and Danny had a conversation
19 about the fact that, hey, we need to send an invoice out, right?

20 A Yes, sir.

21 Q Is that right?

22 A Yeah. It would have been like the fall. It was in November-
23 ish.

24 Q Okay.

25 A Yes, sir.

1 Q Of 2016?

2 A Yes, sir.

3 Q And that's the invoice number one --

4 A Yeah, that's invoice number one.

5 Q -- can we call it?

6 A Yes, sir.

7 Q Okay. Fair enough. So, my question to you is that

8 somebody, a human -- some human being, prepared that invoice,

9 actually went through and put it together. Was that you?

10 A No.

11 Q Okay. Who did that?

12 A I believe it was Mr. Simon.

13 Q Okay.

14 A I'm not sure. I did not do it.

15 Q Not a problem. Let's talk about invoice number two --

16 A Okay.

17 Q -- that had been paid.

18 A Yes.

19 Q Did you have any input in preparing that invoice?

20 A No, sir. I did not do that invoice either.

21 Q Do you know -- again, was that Mr. Simon, to your

22 knowledge, that did that, or do you know?

23 A I don't know.

24 Q And as to invoice number one, do you actually know or is

25 that just kind of a guess on your part?

1 A I know I've physically seen Danny typing into that invoice,
2 whether the actual final one was the one that was -- you know, he did it
3 all. I don't know.

4 Q Okay. Let me ask you about invoice number three.

5 A Yes.

6 Q Did you have any input in preparing invoice number three?

7 A Yes.

8 Q What -- did you prepare the entire invoice number three?

9 A No, sir. The one that's -- okay, so invoice number three --

10 Q Yes.

11 A -- it had a cover sheet on it, if I remember correctly, and then
12 it had an invoice for Daniel S. Simon, and then it had the chart, and then
13 after that it had invoice for Ashley M. Ferrel. So, everything that was
14 identified as invoice for Ashley M. Ferrel, I prepared.

15 Q All right. I appreciate that.

16 A Uh-huh.

17 Q Now, how did you go about making the document? What do
18 you physically do?

19 A So, I actually used, as I told Mr. Christiansen, we had put
20 together an hourly bill for a case in Mr. Israel's court -- Judge Israel, with
21 regard to hours for that mistrial earlier in 2016, so I actually just used
22 that template. It was a Word document that I -- that had four columns in
23 it -- and I think it's four. Three. I apologize. It had a date -- well, that's
24 Danny's. Yeah, it had three. Date, description, and time.

25 Q Okay. So, if I understand correctly then, that's a two-part

1 document, invoice three?

2 A Yes, sir.

3 Q And one part is Danny's time and one part is your time,
4 right?

5 A Yes, sir.

6 Q And you use that template and you prepared -- completely
7 prepared the portion of invoice number three of your time, right?

8 A Yes, sir.

9 Q Okay. Invoice number four, same question. Tell me -- the
10 same question I'm going to ask you is do you know who prepared that?
11 Is that when you prepared your portion and Danny prepared his?

12 A Yes, sir. And I believe in that one Mr. Miller also had one.

13 Q Okay.

14 A He has like a single sheet, and I believe his format is very
15 similar to mine, and it's just a single sheet, and he did that himself.

16 Q Okay. But you did your share of that --

17 A Yes, sir, I did.

18 Q -- for your time?

19 A Yes, sir.

20 Q And when you say format, I think I sort of get it. So, the
21 format -- normally on a bill that I see from law offices, I've sent a
22 hundred -- probably millions, millions of those, maybe billions of those.

23 A Uh-huh.

24 Q But on bills, normally, you have something that says the date
25 you do the item.

1 A Yes, sir.

2 Q A description of the item, the number of hours, and
3 sometimes off to the right, some people multiply that out, but a lot of
4 times, just at the bottom, they add up the hours and then put down the
5 rate and come up with the amount; is that how you did that?

6 A Yes, sir. It just had three columns. Date, description, time,
7 and then at the bottom, I think the last page had -- I mean, it will say -- I
8 don't have a full copy of it up here, but it had like total hours, and then it
9 would multiply by \$275, because that was for --

10 Q Okay. Very good. Now, I want to kind of back up to a
11 conversation that you and Mr. Simon had when the first invoice was
12 going out. And I may be wrong about that, so I just want to make sure I
13 understood it. My understanding was that in late 2016, whenever that
14 was, that you and Mr. Simon had a conversation where Mr. Simon says,
15 you know, we need to send a bill -- an invoice out to the client. Do you
16 remember that? Am I right about that? Did you have that conversation
17 before the first invoice went out?

18 A It was with regard to creating an invoice for purposes of the
19 calculations of damages because of the attorney's fee provision in the
20 Lange contract. That was the discussion we had for it. I don't recall
21 anything with regard to him sending this to the client or anything like
22 that. The discussion was just with regard to the hourly rate and how we
23 could do the hourly rate, and that's where the *Sarah Ash* case came in.

24 Q Okay. So that conversation -- how did that conversation
25 come about? I mean, why were you having this conversation, because

1 you're not going to be doing it in billing? Why is he talking to you about
2 it?

3 A Well, we talk about all of our cases.

4 Q Okay.

5 A I mean, and so I'm sure I was just talking to him about a case
6 that was going on or a couple issues that I had in other cases not related
7 to this case. And I mean, we just sat down, and we were talking, and I
8 think he just brought it up. It was one of -- because he was working on
9 the Edgeworth case. At that point in time, you know, he wasn't like fully
10 consumed as he was at the end of the Edgeworth case. You know, and
11 so it was kind of more just us talking about it, and he had to put together
12 a bill for that disclosure.

13 Q Yeah, so I'm just trying to get my brain around the whole
14 thing. So, do you remember the conversation?

15 A Yeah. I mean, the verbatim, no, not the exact.

16 Q But you remember the conversation occurring?

17 A Yes, sir.

18 Q Okay. So, here it is. You're not working on the case, but you
19 guys are talking about it, right?

20 A Yes.

21 Q He's telling you; you know, I need to put together an invoice
22 -- a billing invoice on the case, on the Edgeworth matter, right? He tells
23 you; I need to get an invoice put together?

24 A He may have said sprinkler case, but yeah, we all knew it was
25 Edgeworth -- I knew it was the Edgeworth case.

1 Q What did you guys call it?

2 A The sprinkler case. The Edgeworth case.

3 Q That's --

4 A Same thing.

5 Q You're like me. It's easier to think of the sprinkler case. Yes.

6 A Yes, sir.

7 Q Okay. So, you talk about the sprinkler case. I need to do an

8 invoice to the client, right?

9 A Yes, sir.

10 Q All right.

11 A I've got -- sorry. An invoice for the calculation of damages. I

12 don't know whether or not at that point he was sending it. It was -- the

13 hours he was working, I don't know if he was actually going to send it to

14 the client at that time. In the conversation, I don't know.

15 Q That's fair.

16 A Okay.

17 Q So, out of curiosity, there in the firm, people always ask me

18 questions. Did you ask them at that point in time, by the way, what are

19 your -- what are the terms of our engagement in that case? Did you ask

20 him during that period of time? What exactly is our billing arrangement

21 with him?

22 A No. I kind of leave the money stuff to him.

23 Q Okay, and that's fair. So, was there -- okay. So, we know

24 you didn't know anything about the billing arrangements by the end of

25 2016. You don't have any clue what the billing arrangements are, right?

1 A Correct.

2 Q On the sprinkler case?

3 A Other than what I just told you.

4 Q That he needed to put together a bill?

5 A Correct.

6 Q Right, but you didn't talk about whether it was hourly,

7 whether it was contingency, whether it's an hourly plus a contingency, or

8 how much the hourly was if it was; none of that discussion, right?

9 A Well, with regard to the *Sarah Ash*, it was the five -- we chose

10 the 550. We discussed what he should put.

11 Q Okay.

12 A So, the five -- that's where the 550 came from was -- there

13 was a discussion about his hourly rate at that time.

14 Q And that's -- I want to make sure I get all of the parts of the

15 conversation.

16 A Okay. Sorry.

17 Q And then that's why I've been asking you a little more

18 penetrating questions, so.

19 A Okay.

20 Q So, in this conversation in 2016, late two-thousand -- can I

21 call it late 2016?

22 A That's fine. Yes, sir.

23 Q All right. So, now that you thought about it, you do

24 remember, and I think you might've said that earlier -- you do remember

25 that as part of the conversation, there was a discussion about what was

1 going to be the billing of rate? There was a discussion about that?

2 A Yes, sir.

3 Q And let me involve myself on that. Did Mr. Simon tell you, I
4 don't have an agreement with the client on an hourly rate, so I need to
5 come up with something that I can justify or something like that? How
6 did that come up about the hourly rate?

7 A Well, I mean, he didn't specifically -- I just remember he
8 needed to come up with an hourly rate, and so I said, why don't we use
9 the *Sarah Ash* thing, so --

10 Q So, okay, I want to make sure I get it.

11 A Yeah.

12 Q So, Mr. Simon is looking to you for your thoughts and says
13 to you, I don't have an hourly rate, I don't have an agreement with the
14 client for an hourly rate. Does he say, what do you think would be a
15 good hourly rate or just exactly how -- can you remember the details of
16 that conversation?

17 A All I know is we were talking about the case, and that he
18 needed to -- he was coming up with an hourly rate, and I suggested
19 using the *Sarah Ash* order from Judge Israel. And so, in that one -- do
20 you want me to just talk? I'm sorry. I don't --

21 Q Yeah, go ahead.

22 A Okay.

23 Q I don't mind.

24 A In that one, it was \$600. Judge Israel, \$600 for himself. And
25 so, he decided to just knock it off so the Defense wouldn't complain,

1 balk, whatever word you want to use, wouldn't complain about the rate,
2 because Judge Israel -- if they were to complain about the rate, we had
3 an order from Judge Israel saying that the rate was, you know, approved
4 earlier that year.

5 Q Right. So, if I understand correctly, you have a mistrial?

6 A Yes.

7 Q And Judge Israel says, you guys are going to pay for this
8 mistrial, right?

9 A Well, not ask the Defense, but yes.

10 Q Not you.

11 A Yeah.

12 Q But the people that caused the mistrial, the bad boys.

13 A Yes, sir.

14 Q And he says, you guys are going to pay for the mistrial. So,
15 I'm going to give you an hourly fee for how much you guys lost, you
16 come up with what you did in the case, and we'll come up with a fair
17 hourly fee, right?

18 A Yes.

19 Q And Judge Israel eventually approved \$600 an hour to Mr.
20 Simon as a reasonable compensation for his time, given his stature in
21 the community, correct?

22 A Yes, sir.

23 Q Okay.

24 A I mean, I think.

25 Q So, I'm back to the conversation. I get that.

1 A Okay.

2 Q So, Danny and you were talking, and do you call him Danny?

3 A I do.

4 Q Okay. All right. So, Danny and you were talking and
5 somehow, he discusses with you, I need to do a billing, I need to
6 prepare a billing, and does he say to you, what do you think would be a
7 fair billing, or do you just volunteer that number, or does he say, I
8 wonder what I ought to bill? I mean, I'm trying to get my arms around
9 that because that's -- let me tell you why.

10 You've been in the courtroom. My client has a clear, clear
11 recollection of the conversation at the onset of the case, looking at an
12 onset meeting, you know, within a week, you know, a broader term than
13 Mr. Christiansen likes, but at the onset of the case that the billing was
14 going to be for his time, they don't talk about you. I was wrong the other
15 day when I said that, but it wasn't you who was discussed, it was 550 an
16 hour. Do you remember hearing that testimony?

17 A I heard that testimony.

18 Q Okay. So, that's why I'm so interested in your conversation
19 with Danny, in more -- in as much detail as possible. Did Danny say to
20 you, I don't have an agreement with Mr. Edgeworth as to an hourly fee,
21 so I need to come up with something? Did he say that to you?

22 A He didn't talk about the agreement between him and Mr.
23 Edgeworth at all.

24 Q So, see, here's why I'm asking that question, because I mean,
25 if he's going to prepare an hourly bill to Mr. Edgeworth, was it your

1 impression this hourly bill wasn't a "real bill"? It's going to be just a bill
2 that's going to be presented to the Defense to say, hey guys, your
3 damages are getting bigger, and bigger, and bigger under this indemnity
4 agreement to Lange. The more I bill, the more you guys got to pay. Was
5 that kind of what you saw that as the purpose?

6 A That was my -- yes, sir. That was my understanding of it.

7 Q That that was the purpose of the bill?

8 A That was the purpose of the bill.

9 Q So, you know, I find it kind of odd that the bill that he's
10 preparing to show to Lange that he actually sends to Mr. Edgeworth, and
11 that Mr. Edgeworth actually writes checks and pays not only the legal
12 portion of the bill, but all the costs? Do you see -- you understand that
13 happened?

14 A No, I understand that happened.

15 Q Okay. And in invoice number two, that happened again,
16 right? He prepared another bill at 550 an hour, sent -- gave eventually to
17 the Lange people in discovery, but also sent that to Mr. Edgeworth, and
18 Mr. Edgeworth writes a check for the 550 an hour and all the costs, and
19 pays that bill.

20 A I understand that happened.

21 Q And then, eventually, you get involved in the billing process?

22 A Yes, sir.

23 Q And I think that was on invoice number three?

24 A Yes, sir.

25 Q And so, in invoice number three, again, Mr. Simon prepares

1 a bill for 550 an hour, outlines it. You then prepare your portion of the
2 bill for how much?

3 A Two-seventy-five.

4 Q Very reasonable. No complaints. You're worth more than
5 that, probably. So, for 275 an hour, which is more than that other guy on
6 the stand bills, but that's okay. You prepare your share of the bill for 275
7 an hour, and at the time that you did that, were you also under the same
8 thinking that these are just bills being prepared to give to Lange -- the
9 Lange lawyers to say, well, your damages are getting bigger and bigger?
10 Is that --

11 A That's my understanding of what the bills were for.

12 Q But what you had learned is that Mr. Simon took that bill, not
13 only gave it to the Lange people, but gave that to the Edgeworths and
14 the Edgeworths paid all of that bill, plus all of the costs that had been
15 incurred to date, right?

16 A I understand Mr. Edgeworth paid the bill; yes, sir.

17 Q And on the fourth invoice, they got paid. Again, your time's
18 included in that, right?

19 A Yes, sir.

20 Q Mr. Simon's time is included in that?

21 A Yes, sir.

22 Q And there might've been someone else. Ben, was he in
23 there?

24 A Mr. Miller. Yeah, Ben Miller.

25 Q And I don't know him, but I'm sure his bill was reasonable,

1 but he included time in that. That was all presented to the Edgeworths,
2 and they paid that bill again, in full, with all the costs, correct?

3 A That is my understanding, yes.

4 Q All right. Were you ever present at any meeting, or overhear
5 any discussion on the phone, or anything else where you overheard or
6 were present, where Mr. Simon said to Mr. Edgeworth, hey, old buddy,
7 I'm sending you a bill for 550 an hour, but my time is worth a whole lot
8 more than that, and some day we're going to have to reckon this thing
9 out. Did you ever hear him say something like that?

10 A No. That -- I wasn't around for any of those conversations.

11 Q Okay. Did Mr. Simon ever say to you, hey, I'm billing him for
12 550 an hour, but, in actuality, I have a better idea, someday I'm going to
13 bring him in, sit him down, and tell him, you know what, all my options
14 are on the table, and you guys need to come up and agree to pay me
15 more than the agreement we agreed to in the first place? Did you ever
16 heard that kind of a conversation from Mr. Simon or anyone else?

17 A No, sir. I didn't have anything -- discussions with him like
18 that.

19 Q Did Mr. Simon ever tell you that he had planned on bringing
20 the Edgeworths into the office -- and after they had paid four of those
21 invoices in full, did he ever tell you that he planned on calling them into
22 his office and sit down and say, you know what, you paid all your bills
23 faithfully, you've written every check, you've paid every bill I've given to
24 you, but you know what, I'm losing money. I'm losing money and you
25 guys need to pay me more or my options are on the table. Did he ever

1 tell you he was going to do that? Mr. Simon tell you he was going to do
2 that?

3 A No. I wasn't privy to any of those conversations.

4 Q Did you ever have a conversation with Mr. Simon where you
5 said, you know, Mr. Simon, or boss, or Danny, are you aware that there's
6 rules in the Rules of Professional Conduct that actually talk about having
7 an agreement with a client upfront before you do all of this billing,
8 before you charge them, and you get the fee agreement preferably in
9 writing, but certainty clear as a bell, early on or at the very near outset of
10 the case? Did you ever have that conversation with Mr. Simon where
11 you told him, you ought to do that?

12 A No, sir. I wasn't involved in the case in early -- in mid-
13 summer of 2016. So, I --

14 Q I mean, I'm talking about even later have you ever had that
15 conversation with him? Like why didn't you just have an agreement that
16 everybody was familiar with and have somebody signed it, and you
17 wouldn't be here today. Did you ever say that to him?

18 A I don't think I've ever said that. I just -- you know, I don't
19 have any idea what their agreement was, and I have never had any of
20 those conversations with Mr. Simon, so.

21 Q It felt a little uncomfortable telling him that maybe a little
22 preventative medicine might prevent a lot of what we're doing here
23 today?

24 A Well --

25 Q I get that. And you're an associate, right?

1 A I am an associate.

2 Q Okay. And, again, it's not comfortable to go to a partner and
3 say, you know -- I'm just asking if you ever --

4 MR. CHRISTIANSEN: Excuse me, Your Honor. I'm going to
5 object on foundation grounds. From what I've heard, there is no
6 foundation that she knew whether there was or wasn't a fee agreement.
7 So, this is -- there's no evidence in the record to support any of these
8 questions. He has to lay a foundation first before he can ask these
9 questions.

10 MR. VANNAH: I'm laying a foundation for one thing, but I'm
11 asking a separate question. I think that my foundation is well laid here.

12 THE COURT: Well, I mean, what is the -- I mean, you're
13 asking her if she ever had said to Mr. Simon that he could've prevented
14 this?

15 MR. VANNAH: Yeah.

16 THE COURT: Okay.

17 MR. VANNAH: Just by simply having a fee agreement.

18 THE COURT: Right. And I think she already said no.

19 MR. VANNAH: I think she has.

20 THE COURT: So, can you ask her something else until, Mr.
21 Vannah?

22 MR. CHRISTIANSEN: She has to know whether the, you
23 know, was there an agreement.

24 MR. VANNAH: I thinks he said, no, she didn't have that
25 conversation.

1 MR. CHRISTIANSEN: Was there --

2 THE COURT: Okay. Hold on. Only one of you is going to

3 talk at any given time. We're still in court.

4 MR. VANNAH: Well, he's objecting -- okay.

5 THE COURT: We're still having court here.

6 MR. VANNAH: You are. Go ahead.

7 THE COURT: I mean, this is the deal. He asked her if she

8 ever said that to Mr. Simon, which I think she can testify to, but she

9 already said, no, I never said that to him.

10 MR. CHRISTIANSEN: Absolutely, and then the questions --

11 MR. VANNAH: I'm not -- I don't have any other questions.

12 THE COURT: Okay. He's going to move on.

13 MR. VANNAH: So, to make it simple --

14 MR. CHRISTIANSEN: Okay.

15 MR. VANNAH: I mean, I don't have questions about --

16 THE COURT: About that.

17 MR. VANNAH: -- that because --

18 THE COURT: Okay.

19 MR. VANNAH: -- that answered the question.

20 THE COURT: Okay.

21 BY MR. VANNAH:

22 Q Has Mr. Simon ever told you that he actually had a fee

23 agreement with Mr. Edgeworth that he made early on in the case? Has

24 he ever said I actually had a fee agreement?

25 A I have never had any conversations with regard to the fee

1 agreement with Mr. Simon.

2 Q Okay. And so, you know, this is a yes or no question. Has
3 Mr. Simon ever told you -- I just want to make it clear -- that he actually
4 had a fee agreement with Mr. Edgeworth that he entered into at the
5 outset of the case?

6 A No, sir.

7 Q Thank you. Now, I don't want to go through each and every
8 one of your billings, but the ones -- I just pulled out some. Like the
9 9/13/2017.

10 A Yes, sir.

11 Q You billed -- I think you billed -- at least I just added up 22.85
12 hours.

13 THE COURT: And are you referring to the chart that was
14 created by your client, Mr. Vannah?

15 MR. VANNAH: I am because I think that reflects that day.

16 THE COURT: Okay. I'm just -- I just need to follow along
17 with you. I just wanted to know what document we're talking about.

18 MR. VANNAH: Good question. I don't even know that.

19 THE COURT: So, it's your Exhibit 9.

20 MR. VANNAH: 9.

21 THE COURT: Okay. And what date did you say, Mr. Vannah?

22 MR. VANNAH: I just want to take one date and just go to
23 September 13th --

24 THE COURT: '17?

25 MR. VANNAH: -- 2017. That date. Hold that right there. Let

1 me just ask some preliminary questions.

2 THE WITNESS: Okay.

3 BY MR. VANNAH:

4 Q So, what I understand --

5 MR. VANNAH: -- okay. While he's looking for that let me just
6 make sure --

7 THE COURT: It should be Bates stamp page 10, Mr. Greene.

8 MR. GREENE: It sure should.

9 THE COURT: At the very bottom.

10 MR. VANNAH: All right.

11 MR. GREENE: Thank you, Judge.

12 THE COURT: You're welcome.

13 BY MR. VANNAH:

14 Q I want to call it the original invoice.

15 A Yes, sir.

16 THE COURT: Okay. Just so we're clear, Mr. Vannah, this
17 isn't the invoice. This is a chart that your client prepared, not the invoice
18 that was sent out by Mr. Simon's office, right?

19 MR. VANNAH: Right. I'm saying -- I want to talk -- yes.

20 THE COURT: Oh, so you are talking about the original
21 invoice?

22 MR. VANNAH: Yeah. Just keep this in mind.

23 THE COURT: Okay.

24 BY MR. VANNAH:

25 Q We're going to go to this. I want to now go to -- just in my

1 mind. You don't have to look at it, I don't think. What I call the original
2 invoice, would that be invoice number three or invoice number four that
3 would capture this date?

4 A That would be invoice number four.

5 Q Okay. I don't think we have to look at it, because you've
6 already looked at it, but on invoice number four that was eventually sent
7 to Mr. Edgeworth that he paid --

8 A Yes, sir.

9 Q -- on that date, 9/13/2017, had your time on that date been
10 8.75 hours on invoice number four? And if you need to look at it, you
11 can.

12 A Yes, sir. It was 8.75.

13 Q 8.75. And this one you've looked at, so you're pretty sure of
14 what you're saying, right?

15 A Yeah. I actually --

16 THE COURT: Mr. Vannah, I need to follow along, so I'm
17 going to need some page numbers.

18 MR. VANNAH: Okay. Then help me just --

19 MR. GREENE: That's Exhibit 2, page number --

20 MR. VANNAH: We'll do -- help me out here.

21 MR. GREENE: -- 30.

22 THE COURT: Page 30? Okay.

23 MR. GREENE: Yeah.

24 THE COURT: Okay.

25 MR. VANNAH: I'm going to have --

1 THE COURT: Okay. So, 9/13. Okay.

2 MR. VANNAH: I've got this tech genius here next to me. He
3 can't even turn a cell phone on, but --

4 BY MR. VANNAH:

5 Q All right. Just point -- so if you look at -- what's the
6 document number so I say it right? Exhibit what?

7 THE COURT: 2.

8 MR. GREENE: Exhibit 2.

9 MR. VANNAH: Exhibit 2? That's our Exhibit 2?

10 MR. GREENE: Yes, it is.

11 THE COURT: Yes.

12 MR. VANNAH: Page 30. Point to where it says that. So, if
13 you look at line item -- it would be 9/13.

14 THE COURT: The very top two, Mr. Vannah.

15 MR. VANNAH: Thank you.

16 BY MR. VANNAH:

17 Q Yeah, so, if you look at 9/13, the very top two, in detail, you
18 talked about you prepared, and you attended a hearing on Defendant's
19 motion to compel home inspection, right?

20 A Yes, sir.

21 Q And you reviewed the Pancoast letter and discussed it with
22 DSS, and that'd be Danny Simon, I'd take it?

23 A Yes, sir.

24 Q So, your time for that particular task was 6.25 hours, right?

25 A Yes, sir.

1 Q All right. Then you go down to the next item. Finalize and
2 serve Nevada revised civil procedure 30(b)(6), notice of deposition. That
3 time took two-and-a-half hours, right?

4 A Yes, sir.

5 Q Or two-and-a-half, right? So, if we add those two things
6 together on 9/13, on the bill that got paid, you -- the firm got paid for 8.75
7 hours of your time for 9/13/2017, right?

8 A Yes, sir.

9 Q Then if I understand correctly, then you went back, and we've
10 talked about that a little bit, and created among other things -- so this --
11 you created more time for -- that the firm wanted to be reimbursed, for
12 example, on this date, the very same day, 9/13/2017, correct? That's
13 what you entered in timewise, correct?

14 A Yes.

15 Q Okay. Now, let's talk about that. So, the time in addition to
16 the 8.75 hours that you came up with in this task that you undertook was
17 an additional 14.1 hours to bill for on 9/13/2017, right?

18 A Yes, sir.

19 Q Now, when you add that up, I come up with really close to 23
20 hours. Do you see that?

21 A Yes, sir.

22 Q All right. And in all due candor, I think you've said that
23 earlier, and I know you're an honest person, you didn't work anywhere
24 near 23 hours that day, correct --

25 A Likely not that day.

1 Q -- on this case?

2 A Correct.

3 Q Okay. So, when we look at this -- and I'm just not going to

4 go through every entry, okay, because it would -- we would be here, I

5 mean, literally until months from now, and I don't want to do that, but if I

6 look at one entry here, you're clearly telling me that's just erroneous that

7 you know for a fact you did not bill -- you did not work 23 hours plus that

8 day on the sprinkler case, right?

9 A On that day, probably not, but those --

10 Q That's my question.

11 A Okay.

12 Q Because the billing is for that day.

13 A What?

14 Q The billing is for that day, right?

15 A The billing is on -- identified as 9/13/17, correct.

16 Q All right. And you understand, and to be honest and fair to

17 you, you've never sent a bill to another client in your entire life, correct?

18 A Correct.

19 Q You don't have anything to do with billing?

20 A Nope.

21 Q Never had anything to do with billing?

22 A No, sir.

23 Q This is the one and only client that you've ever billed, right?

24 A Well, yeah, that I've -- yeah, that I've ever billed.

25 Q Hourly.

1 A Correct.

2 Q I mean hourly.

3 A Other than the Ash. Putting together hours for the Ash case.

4 Q Okay.

5 MR. GREENE: This is Exhibit 5, Your Honor. This is from --

6 THE COURT: I think it was page --

7 MR. GREENE: That's correct.

8 THE COURT: I don't know what page it was.

9 MR. GREENE: It begins at pages -- page 131 and goes

10 through page 134.

11 THE COURT: Okay.

12 MR. VANNAH: Right.

13 BY MR. VANNAH:

14 Q And if you look at that document, so what you did -- this is

15 the ongoing -- what we've been calling the superbill for that date.

16 There's all those entries about an email chain, et cetera, et cetera, review

17 email, the attachment, review email from documents, and there's just

18 one after another after another, and they're at -- they start at the email

19 chain with DSS, which is Danny Simon. Documents being sent to

20 Zamisky [phonetic], and then it goes -- you go through the next page,

21 and some of them are .15. There's a lot of .30's, right, for review,

22 download, and save, review, download, and save. And then you go to

23 the third page, and you get a lot more review, download, and save, and

24 all at .3, correct?

25 A Correct.

1 Q And then you go to the next page, and you've got a lot more
2 review, download, and save, going all the way down to the last entry,
3 which is review of email from Robinson re deposition dates for Zamisky,
4 Hastings, and Olives [phonetic], and that's .15, right?

5 A Correct.

6 Q So, when you add all that up, that's when you come up with
7 this 14.1 new hours in addition to the 8.75 that you already billed on that
8 day, correct?

9 A Correct.

10 Q Okay. So, was it ever explained to you why Mr. Simon -- did
11 Mr. Simon ever explain to you why he wanted you to go back and create
12 this new billing that had never been presented to the Edgeworths for that
13 period of time in May of 2016 through September 22, 2017? Did he ever
14 tell you why he wanted you to go and come up with all this new -- these
15 new numbers?

16 A Well, the new numbers were all just emails -- things that I
17 could have a hard tie, because I had never billed for any of that time.
18 And it was actually -- I didn't start working on the file until January, so I
19 didn't bill for anything from May until January, but for that one 12/20/16
20 download. So, from that period to the September, so January '17 to
21 September '17, because I had not -- well, January to April, I had not
22 billed for, and so those are emails, phone calls, that kind of thing.

23 Q My question was, did Mr. Simon ever tell you why he wanted
24 you to go back and create all this additional time to put in invoices that
25 had already been sent, reviewed, and paid? Did he ever tell you why he

1 wanted you to do that?

2 A It was my understanding for Lange adjudication process, we
3 had to put together all of our time that we spent on the case.

4 Q Okay. Now, in all fairness, Mr. Edgeworth never said in this
5 courtroom or anywhere that you guys did nothing of any value on this
6 case. Do you understand that? Have you ever heard him say otherwise?
7 Have you ever heard Mr. Edgeworth say you guys never did anything of
8 value on the case?

9 A Not as I sit here right now.

10 Q Do you remember when Mr. Edgeworth said he thought you
11 were very -- you, personally, were very competent, very good at what
12 you did, and he was pleased to work with you. Do you remember him
13 saying that?

14 A I don't know if those were his exact words, but I do -- I wasn't
15 here yesterday when he was testifying.

16 Q Oh, okay.

17 A Yes, sir.

18 Q Did you always have cordial, good relationships with Mr.
19 Edgeworth?

20 A Mr. Edgeworth and I had a cordial relationship.

21 Q Did you find him to be -- it's posed to most clients that I've
22 had at least, did you find him to be more easy -- did you find him more --
23 I don't want to use the word intelligent, but the type of logical mind that
24 could understand the things that you were telling him, as opposed to a
25 lot of clients that I have that -- I mean, personal injuries tend not to get

1 anything.

2 A I mean, he's a smart guy. He's definitely a smart guy. I
3 mean, I have other clients, though, that are engineers, lawyers, things
4 like that. So, I don't want to say he's the only smart guy. I mean, but I
5 won't take away that he's a smart guy.

6 Q I mean, but he -- was he trying to help when he would give
7 you information that he would go out and find? Did you get to -- was
8 some of it helpful to you?

9 A Yeah. Some of it was helpful, yes, sir.

10 Q Did he seem to understand the factual background in the
11 case, the way the failure happened about the different activations, what
12 they had withheld from you guys, and how these things were being
13 activated? Did he seem to understand that?

14 A The factual background to the case with regard to the
15 sprinkler and stuff like that, he was very knowledgeable about that,
16 correct. With holding stuff, I don't understand, but definitely with regard
17 to the factual stuff, yes.

18 Q Yeah, I wasn't suggesting he was withholding anything.

19 A No, no, not him, but I didn't understand that part. That was
20 all I wanted to clarify.

21 Q I understand.

22 A Okay.

23 Q Okay. So -- now, were you at the deposition of Brian
24 Edgeworth?

25 A I was not at Mr. Edgeworth's deposition, no, sir.

1 Q Did you ever read that deposition?

2 A I've read bits and pieces of it, and I haven't read it from cover
3 to -- I have read it, yes, in its entirety, but it was in the middle of the case.

4 Q Did you read the portion of the deposition where Mr. Simon,
5 while, albeit, not under oath, as the attorney said, look, I had given you
6 our billings over and over and over again to billings in this case. Do you
7 remember reading that?

8 A I know that part of the deposition, yes, sir.

9 Q Okay. And when you reviewed that part of the deposition,
10 did you ever see anywhere where Mr. Simon said, well, there's actually
11 more billings for that time, but I'm just giving you the friends and family
12 discount portion of the billing. Did you ever hear him say that to the
13 other side?

14 A Well, no, I don't -- the way -- not the friends and family
15 portion, but my reading of that is that we had supplemented it over and
16 over and over again. That's what he meant by over and over and over
17 again is my understanding. I mean, I don't know, you can ask him,
18 which I'm sure you're going to.

19 Q You're right.

20 A But that we were supplementing, because we did
21 supplement the calculation and the damages over and over and over
22 again, so that's my understanding of that. I don't --

23 Q Did you personally, as working on the case, ever tell the
24 lawyers on the other side, especially the Lange lawyers, or anybody on
25 the other side, hey, you know, these billings that we're submitting as

1 part of the damages, the billings that have been paid by Mr. Edgeworth,
2 these aren't -- this is only a portion of the billings during that time? Did
3 you ever tell anybody on the other side so that they don't get mislead
4 here, that our billings in this case and the damages to Mr. Edgeworth as
5 a result of our legal billings are going to be quite a bit higher than what
6 we've told you so far? Did you ever tell anybody that?

7 A No, sir, I never had that conversation with any of the other
8 defense lawyers or anybody.

9 Q Were you -- did you, during your time you worked in the
10 case, did Mr. Simon ever say to you, you know, these billings that we're
11 giving to the other attorneys, that we're giving to them as our
12 computation of the damages, they really aren't as big as they really are.
13 They're going to be a lot bigger some day when I get a chance to go back
14 and rebill the file? Did they ever tell you that? Did Mr. Simon tell you
15 that?

16 A Not in those words. I knew that the bills, at least mine,
17 specifically -- you would have to ask him. I mean, and I've looked at his
18 bills. It didn't include the emails, the WIZnet filings, and telephone calls,
19 specifically. I knew that, but that conversation -- what you just asked me,
20 did that conversation happen, no, sir.

21 Q So, let me ask you this because I'm trying to understand why
22 you would do something like that. So, it was your belief, was it not, right
23 or wrong, but it was your belief that the larger the bills were that were
24 being paid by the Edgeworths, the more they paid for legal fees, the
25 more Lange would have to reimburse; is that -- that's kind of the thinking

1 that was going on there? At least that's what they told Mr. Edgeworth; is
2 that what you understood?

3 A Well, my understanding is that there was an attorney fee
4 provision in the Lange contract, so whether it was \$1,000 or \$500, or
5 whatever, whatever his attorney's fees were, were recoverable.

6 Q And my point is this, is if those fees were recoverable to the
7 Edgeworths when the case is over. If they're recoverable, wouldn't you
8 want the fees -- if the fees are actually higher than what you're giving
9 them, would you want the fee that you're going to be seeking recovery
10 on to be as high as possible? And not just inflated artificially, but if the
11 fees are really more than what you are giving them in the computation of
12 damages, don't you want to say, hey, we need to get the full amount of
13 the fees that he's eventually going to be responsible for into the
14 computation of damages? Wouldn't you want that to happen?

15 A Well, I mean, yeah, but it was my -- this case was super
16 quick. I mean --

17 Q So, I just want to ask then, when you want that to happen --

18 A Oh, okay. Sorry.

19 Q -- wouldn't you want to get all the damages to the
20 computation of damages, not just part of them?

21 A Yes.

22 Q In fact, you understand, do you not, that if you -- the way the
23 rules work -- I mean, I know you know this, that if you don't do a proper
24 computation of damages, then you leave damages out, at the time of
25 trial, you can't just come up and say, well, we actually had more

1 damages, and we forgot to put them in here, right? You can't just --
2 that's a problem, right?

3 A I understand what NRCP 16.1 says, yes, sir, with regards to
4 computation of damages.

5 Q I bet you know that more than I do, because you're in the
6 trenches doing that and the partner sometimes just relies on the people
7 that really do the good work and know the rules.

8 So, you knew that those computations of damages that in -- that
9 were including the attorney fees of the Edgeworths' pay, you knew that
10 they had a lot of significance to what his damages that he could
11 eventually recover from Lange would be; you knew that, right?

12 A I knew that they were going towards the provision. It was a
13 portion of damages. Yes, sir.

14 Q So if you knew -- if you and Mr. Simon knew that there were
15 going to be additional billings over that four-invoice period, and you
16 knew that the Defense didn't know that, right? They didn't know there
17 was going to be additional billings during that four-invoice period, right?

18 A I don't know what they knew, but I would assume, no; I don't
19 know.

20 Q So, wasn't it incumbent if you had, in your mind and Mr.
21 Simon's mind, you guys had reached the agreement that there's a lot
22 more billing that Mr. Edgeworth's eventually going to have to pay during
23 that period of time that covers those four invoices, we'd better get those
24 supplemented so that we could collect that from Lange? Did you and
25 Mr. Simon ever have a conversation like that?

1 A Not during -- the case was moving so quickly. Like I was
2 saying, none of the emails or telephone calls were captured in those
3 initial bills.

4 Q That's not the question I'm asking you.

5 A Okay.

6 Q My question was if you knew that there was going to be a
7 substantial additional time during the four invoices that you had
8 basically given as a computation of damages to Lange, if you knew there
9 was considerable extra time that wasn't being presented to the Lange
10 defendants, for example, didn't you know that would be a problem in the
11 future when suddenly you say, oh, by the way, you guys have been
12 defending this case for two years, but, here, we have 300,000 more in
13 damages that you weren't aware of that we never bothered to tell you
14 about; didn't you know that would be a problem?

15 A Yeah, it could be a problem at trial. Yes, sir.

16 Q Okay. You knew that -- did you know that you didn't have
17 this case on a contingency fee?

18 A I didn't know what the fee agreement -- or fee arrangement
19 was on this case.

20 Q And you -- were you aware, as you were preparing the billing
21 in the first place, that eventually the Edgeworths would be charged for
22 these additional billings that you were eventually going to come up with
23 at the end of the case?

24 A No, sir. We didn't start doing this, the -- what everyone's
25 called the superbill, until the Lange adjudication process, so I don't think

1 that --

2 Q So, here's what really happened; isn't it? So, what happened
3 is the Edgeworths and the Simons had a little bit of a falling out in
4 November; that would be fair to say, right?

5 A I don't know their relationship. I know they're not talking any
6 more, and I know they used to be friends, so I think that's fair.

7 Q But you learned that working at the office, I assume, that
8 there was some discussion at the office about this Lange adjudication?

9 A Yeah. Yes.

10 Q And then at that point, Mr. Simon said, you know what, I
11 don't know how the Judge is going to rule here, but let's go back and
12 add all the time we can that we can add to -- into the period of time that
13 the Edgeworths were already billed, and even though they had paid
14 those bills in full and even though they paid all the costs in full, let's go
15 back and find more time and add more time so that we can be in a better
16 position with the Judge; isn't that what happened?

17 A No. It's my understanding that they're timesheets, so it's just
18 the hours that were not captured. The purpose of the -- what's been
19 termed the superbill is just a timesheet to show the Judge how much
20 work has been done. Whether or not that's considered a bill, that's
21 something Mr. Simon -- I was told to put my time into a timesheet to put
22 in the motion for adjudication.

23 Q Well, you are aware, are you not, that Mr. Simon is asking
24 the Court to rule and determine that the Edgeworths should pay this
25 extra, what is it, 2-, 300,000?

1 MR. CHRISTIANSEN: Your Honor, I'd like to object as a
2 mischaracterization of a motion for adjudication of Lange.

3 MR. VANNAH: Of what? I haven't asked a question yet.

4 THE COURT: Okay. Only one of you can talk at any given
5 time. And what was the objection, Mr. Christiansen?

6 MR. CHRISTIANSEN: It's a mischaracterization of a motion.
7 We requested quantum meruit, which is a reasonable fee.

8 MR. VANNAH: That would be great.

9 MR. CHRISTIANSEN: But in this case, that was the larger
10 number. That's not what these hours are based upon.

11 THE COURT: Mr. Vannah, your response?

12 MR. VANNAH: I haven't asked the question, so I don't know
13 how to respond. I just started the question.

14 THE COURT: Well, you said are you aware that Mr. Simon is
15 requesting, and then you turned to Mr. Greene to say --

16 MR. VANNAH: Right, so I'd like to finish the question.

17 THE COURT: Okay.

18 MR. VANNAH: Yeah.

19 BY MR. VANNAH:

20 Q Are you aware that Mr. Simon is asking this Court to take
21 into account this additional billing that you guys had come up with,
22 which includes, for example, clearly erroneous billing on one day of
23 almost 23 hours, and they're asking this Court to take -- to factor that in,
24 this additional billing, that had never been presented to Mr. Edgeworth
25 until after December of last year?

1 MR. CHRISTIANSEN: Objection, Your Honor. Compound.

2 MR. VANNAH: It's one question, yes or no, you're aware of it
3 or you weren't aware of it.

4 MR. CHRISTIANSEN: Your Honor, that's not a yes or no
5 question, because he put in a lot of variables and statements into that
6 question. For example, clearly erroneous billings, things of that type.

7 MR. VANNAH: I never said much --

8 MR. CHRISTIANSEN: There's too much in that one question.

9 MR. VANNAH: I never said anybody who had been clearly
10 erroneous.

11 THE COURT: Okay. Well, that's what you said, Mr. Vannah.
12 You said clearly erroneous about the 23 hours that was billed in one day.

13 MR. VANNAH: Oh, I did.

14 THE COURT: Yeah. And you said --

15 MR. VANNAH: I did. I did and that was clearly erroneous.

16 BY MR. VANNAH:

17 Q You didn't bill --

18 A I don't believe it is.

19 Q You didn't work 23 hours in that day on that case, right?

20 A I think I've testified as to why they're --

21 Q I think my question is you didn't work 23 hours on that day
22 on that case, correct?

23 A I don't believe I did.

24 Q Okay. And my question was are you aware that Mr. Simon
25 has taken your work product on these billings and is asking the Court to

1 consider 275,000 in additional billings during that period of time that the
2 Edgeworths have already paid 387,000 in attorney fees; are you aware of
3 that?

4 A That's not my understanding of what the motion is, but so I
5 guess the answer would be no.

6 Q Okay.

7 MR. VANNAH: Let me just go through some of the -- I might
8 have covered a lot of these.

9 BY MR. VANNAH:

10 Q So, at the time of Mr. Edgeworth's deposition, when Mr.
11 Simon said -- do you remember Mr. Simon saying all of these bills -- all
12 of these invoices have been disclosed to you numerous times? You
13 remember him saying that, right?

14 A Yes.

15 Q At any time, did Mr. Simon tell the Defense we've only
16 disclosed a portion of Plaintiff's fees and costs to you. Did he ever say
17 that?

18 A I wasn't at the deposition. That is not in the deposition
19 transcript though.

20 Q You've read it though?

21 A I've read the deposition transcript and --

22 Q And I'm asking you, from your review of the deposition
23 transcript, did Mr. Simon ever say to the Defendants we've only
24 disclosed a portion of Plaintiff's fees and costs to you? Did he ever say
25 that?

1 A I didn't read that in the transcript, no, sir.

2 Q Did Mr. Simon ever say to the Defendants that there are
3 more invoices for additional fees and costs, which will be disclosed that
4 cover that period of time, up to September 22?

5 A I didn't read that in the deposition transcript, but again, it's
6 been a long time since I've read it, so --

7 Q Did Mr. Simon ever say to the Defendants, we're going to be
8 sifting through Plaintiff's invoices and our files and add time and fees
9 that we haven't added or disclosed yet to you; did he say that to the
10 Defendants?

11 A He couldn't have. So, no, sir, that's not in the transcript.

12 Q Did he ever say anything to the Defendants in the transcript
13 to give notice or even an indication that every fee and cost incurred
14 today hadn't been produced to the Defendants?

15 A Not based upon the transcripts that I recall.

16 Q Okay. Now, when you go back and look at the early billings,
17 you see that they go back and even cover the meeting at Starbucks,
18 right?

19 A I believe -- well, it doesn't have a date on it, but that says,
20 yeah -- yes, sir, I've seen that.

21 Q So, the -- in spite of the -- and that's okay. In spite of the
22 friends and family discount, whatever that is, it is apparent when you've
23 reviewed the billings that the billings do cover the meeting at Starbucks
24 and all those things that happened at that point in time, all the way back
25 to the first day that they met?

1 A There are some entries that are in the first bill, yes, sir.

2 Q Okay. Oh, I know one thing I wanted to talk to you about that
3 was kind of interesting. Mr. Christiansen, when he was talking to Mr.
4 Edgeworth was saying that -- pointed out to him that he had said in
5 August of 2017, that he had perceived that the case -- and I can't
6 remember the exact words -- but had blossomed, gotten better,
7 improved greatly? Do you remember that? Did you ever hear that
8 testimony?

9 A I heard the testimony, yes, sir.

10 Q All right. And in fact -- and then Mr. Christiansen said, well,
11 you say that, but had any defendants offered you a dime in this case at
12 that point by August 2017, and his answer was, no, correct?

13 A That was his answer, I believe.

14 Q Is that true? But is that true, I'm sorry?

15 MR. CHRISTIANSEN: Objection, Your Honor. That's a
16 mischaracterization of the record.

17 MR. VANNAH: I don't think so, but --

18 THE COURT: Okay. Would Mr. Christiansen saying that
19 nobody had offered any money by August of 2017?

20 MR. VANNAH: That's what he asked.

21 THE COURT: Right, and isn't that what Mr. Edgeworth
22 testified to?

23 MR. VANNAH: It is.

24 THE COURT: Okay. I recall Mr. Edgeworth saying that.

25 MR. CHRISTIANSEN: Different testimony at different times.

1 MR. VANNAH: I don't understand. I just asked the question
2 very specifically. What am I mischaracterizing?

3 THE COURT: What is the mischaracterization? Because Mr.
4 Christiansen asked Mr. Edgeworth about that blossoming email. We
5 talked about blossoming for about an hour. And then Mr. Edgeworth
6 said, yes, I said blossoming in the email. He finally said that, and then
7 Mr. Christiansen said isn't it true no one had offered any settlement
8 money by August of 2017, and Mr. Edgeworth agreed to that.

9 MR. CHRISTIANSEN: At one point that is correct; however,
10 when they were going over Exhibit 16 of Mr. Edgeworth's deposition, in
11 which he stated under oath to this Court earlier, that there was a
12 significant offer on the table prior to the blossom -- the dreaded
13 blossoming email, he affirmed that and then he got -- he went back and
14 forth on it. It was very confusing testimony. He went back and forth a
15 number of times. So, that's why it's a mischaracterization. And it also
16 ignores what Mr. Edgeworth said in a -- in his declaration under oath.

17 MR. VANNAH: So, we --

18 THE COURT: No, and I mean I know that there's a huge
19 dispute about what was said in the declaration that attached to the
20 motion. What he testified here to today is nobody had offered any
21 money by August of 2017.

22 MR. CHRISTIANSEN: Oh, today?

23 THE COURT: Yes.

24 MR. CHRISTIANSEN: As opposed to yesterday or the day
25 before?

1 THE COURT: Right. But today --
2 MR. CHRISTIANSEN: I withdraw the objection then.
3 THE COURT: Okay.
4 MR. CHRISTIANSEN: Okay.
5 THE COURT: When Mr. Christiansen asked him, he said, no.
6 Okay. Mr. Vannah, you can ask the question.
7 MR. VANNAH: I don't think it was really disputed.
8 BY MR. VANNAH:
9 Q Wasn't he offered -- there was no offer on the table as of
10 August 17th, or whatever that date was, 2017, was there?
11 A I don't believe there were any offers on the table in August of
12 2017.
13 Q Right.
14 THE COURT: Okay. Mr. Vannah, we've moved on.
15 BY MR. VANNAH:
16 Q Right. So, when Mr. Christiansen said, well, you're talking
17 about how this case is blossoming and the offers to you are zero;
18 remember that?
19 A I was here for the testimony.
20 Q Yes. Okay. But, now -- and you're very bright, and you're
21 very perceptive, and in July of 2017, before this August meeting took
22 place --
23 A Okay.
24 Q -- you were very perceptive and wrote, holy crap.
25 A Yes, I did.

1 Q Holy crap with big explanation marks. That's a legal term,
2 right, holy crap?

3 A Completely. Black's law.

4 Q It's a joke, but it's like, wow, and then you wrote something
5 like can you say punitive?

6 A Something like that, yes, sir.

7 Q Something like that. So, in July -- being the perceptive
8 young lawyer you are, with a lot of experience working with good firms,
9 in July, before this August meeting, you recognized that, by your holy
10 crap comment, holy crap, you know, punitives are in play at this point,
11 right?

12 A Yes, sir.

13 Q And that changes the case substantially; doesn't it?

14 A Punitive damages definitely change a case, yes, sir.

15 Q Changes the complexion of negotiations when insurance
16 companies got their insured out there facing a potential punitive claim,
17 the insurance company can be a little more generous, right?

18 A From my experience.

19 Q Okay. So, when Mr. Edgeworth said in August that the case
20 had blossomed, even though there hadn't been any offers on the table,
21 you recognize that the case had greatly changed when you wrote that
22 holy crap memo, right?

23 A Yeah. There was a lot of stuff that happened, but, yes, sir,
24 that was one of the aspects of it.

25 Q Now, did Mr. Simon ever say to you that he had some -- that

1 he was only charging Mr. Edgeworth a fee to collect compensatory
2 damages? Did he ever, like, tell you, well, I have a fee agreement for
3 compensatory damages, but my fee agreement doesn't include
4 exemplary or punitive damage; did Mr. Simon ever tell you that?

5 A No, I don't have any idea what their fee agreement was.

6 Q And isn't it true that it was Brian Edgeworth, if you know,
7 who actually contacted fire marshals and others, both here and abroad,
8 and discovered how extensive these activations were, both before and
9 after Plaintiff's incident, before his activation?

10 A I know that Mr. Edgeworth contacted a fire marshal in
11 California, and I know he contacted some people in Europe.

12 Q And he did that, right?

13 A He's the one that made the phone call.

14 Q So, isn't it true that Brian was the one who found the link that
15 uncovered hundreds of additional activations of these sprinklers? He's
16 the one that actually went out and found that, right?

17 A I believe that he found some additional activations. I'm not
18 going to discredit him for that, but I don't think he found all of them.

19 Q So -- but he found a great many of them?

20 A He found -- he found -- yeah, he found some, yes.

21 Q And brought that to your attention?

22 A Yeah, he -- well, I mean, I think in the documents that we had
23 as well.

24 Q And isn't it true that Brian prepared many of the document
25 productions and other discovery responses in this litigation?

1 A I can't agree with that, no.

2 Q Okay. So, let me --

3 MR. VANNAH: -- if I can confer with the client?

4 THE COURT: Yes.

5 [Pause]

6 BY MR. VANNAH:

7 Q Now, you had mentioned that a part of your efforts -- which
8 are your efforts too, to go back and create this additional billing for that
9 four-invoice period, that you went out and got cell records?

10 A Cell phone records, yes, sir.

11 Q Where did you get the cell records from? From what
12 company?

13 A Well, I got mine from my company and then Mr. Simon
14 obtained his.

15 Q Where are those records?

16 A Where are those records?

17 Q Yes.

18 A On the internet. I mean, I just looked them up.

19 Q Well, do you have -- do you have those so you can show the
20 Court and us?

21 A I'm happy to -- I mean, mine, I don't know -- yeah, I don't
22 have them with me right now.

23 Q No, no, I mean, but could you -- we're going to be here --
24 today's Wednesday. Yeah, and I'd like you to stay available. I don't
25 want to call you back up. I want --

1 MR. CHRISTENSEN: I'm sorry, Your Honor, if Mr. Vannah
2 has a discovery request, he should make it to counsel, not to the person
3 on the witness stand.

4 MR. VANNAH: I guess we're not allowed to do discovery in
5 this case. I mean, all due respect, you told us --

6 THE COURT: Well, I said you weren't allowed to do
7 depositions, Mr. Vannah. I wouldn't allow depositions. I mean, it's my
8 understanding there have been some conversations between the two of
9 you and there's been some documents exchanged.

10 MR. VANNAH: Well, I'd like to see the phone records that
11 she's referring to that she used for both her and Mr. Simon. Yeah, that's
12 a simple request, so we can look at them tomorrow and then -- and
13 compare them to her work, and I may recall her as a witness, depending
14 on what I find from that, since we're now relying on documents that
15 have never been produced in this litigation. Can I have those
16 documents?

17 THE COURT: Mr. Christensen.

18 MR. CHRISTENSEN: Your Honor, do I get an opportunity to
19 respond?

20 THE COURT: Yes.

21 MR. CHRISTENSEN: Thank you, Your Honor. We've actually
22 been working very well on producing documents. For example, Mr.
23 Greene asked late last week for some documents, and we got them right
24 over to him pretty promptly. If this request had come in early after the --
25 I mean, this -- the timesheets were provided in January. Even having

1 said all of that, they waited months and months to bring this up, to raise
2 it during the third day of the hearing. I don't have a base objection to
3 produce any redacted phone records, only the calls that relate to the
4 billings here. That's not going to be done overnight.

5 THE COURT: Well, I mean, and that was my concern,
6 because my concern is we're not entitled to know everybody that Ms.
7 Ferrell is talking to back in 2017.

8 MR. VANNAH: I don't want that.

9 THE COURT: So, we're only entitled to know which calls she
10 used in regards to preparing this -- we'll refer to it as the superbill
11 because everybody knows what we're talking about -- the superbill in
12 this litigation. So, I mean, that's going to have to be redacted.

13 MR. VANNAH: I agree.

14 THE COURT: So --

15 MR. VANNAH: I don't want -- I don't want to know who
16 she's --

17 THE COURT: Well, you had also --

18 MR. VANNAH: She may have somebody we don't want to
19 see. No, I'm just teasing.

20 THE COURT: You would also agree with me, Mr. Vannah,
21 that we can't force her to do that tonight?

22 MR. VANNAH: Yeah. So, here's -- I appreciate Mr.
23 Christiansen, but --

24 THE COURT: Mr. Christensen.

25 MR. CHRISTENSEN: Christensen.

1 THE COURT: It's okay.

2 MR. VANNAH: I'm going back and forth.

3 THE COURT: It's okay.

4 MR. VANNAH: You guys should not work together.

5 MR. CHRISTIANSEN: It's our plan.

6 MR. VANNAH: It's a good plan. If I had known, remember,
7 this is the problem, and I'm not coitizing anybody for that, but if I had
8 been able to -- if I had taken her deposition she would have told me all of
9 this, and I would say, oh, I want those phone records.

10 So, I get it, but I -- that's part of the problems that occur
11 when you're doing discovery in the middle of the hearing. I'd just like to
12 see those phone records and have them redacted so we can see them
13 and be able to compare to what those phone records -- because my --
14 you know, I'd like to be able to compare them and see if those phone
15 records match up to what she's got in here. There's a lot of time for
16 telephone calls.

17 THE COURT: Well, there is a lot of time for --

18 MR. CHRISTENSEN: Your Honor, if I may? I've already said I
19 don't have an objection to producing them. You should have asked
20 earlier.

21 THE COURT: You just have an objection to her staying up all
22 night.

23 MR. CHRISTENSEN: You can't get them tomorrow. I'm not
24 doing that.

25 THE COURT: Well, and I -- we can't expect them tomorrow. I

1 mean, we just cannot.

2 MR. VANNAH: All right. I'm okay.

3 THE COURT: But, I mean, I think then in regards to timing of
4 this case, I mean, if we can get -- I assume we'll finish Ms. Ferrell today
5 because it's only 4:00 right now, so I think we're doing well on her, so if
6 we can get her off the stand today, we then still have Mr. Simon and Mr.
7 Kemp is my understanding that are coming in tomorrow.

8 MR. VANNAH: That's fine.

9 THE COURT: I'm not going to hold out a ton over -- that's not
10 going to leave us a ton of time at the end of the day. So, I mean, we're
11 going to have to come back on this case for something else later
12 anyway, so if you want the phone records, we can produce them, but
13 they're not -- that's not going to be done tomorrow.

14 MR. VANNAH: That's fine, Your Honor. And what Mr.
15 Christensen says, he could have asked earlier, I didn't --

16 MR. CHRISTENSEN: You can call me Jim.

17 MR. VANNAH: When Jim got -- you know, that's a lot easier.
18 Jim and Pete, that's easy. You can call me Bob. So, bottom line is I --

19 THE COURT: I understand the point you're making, Mr.
20 Vannah.

21 MR. VANNAH: I didn't know anything about any phone
22 records or how she did it. I didn't even know she was the one who did it.

23 THE COURT: Right. Well, we found all that out today.

24 MR. VANNAH: It's okay.

25 THE COURT: But you said it at the hearing, Judge, I want to

1 do depositions, and I told you that you and I were going to find out all
2 these stuff at the same time, and that's exactly what's happening here
3 today.

4 MR. VANNAH: And I --

5 THE COURT: So, we're going to -- Ms. Ferrell, we're going to
6 need you to produce those records, you know, timely, but not tonight.

7 THE WITNESS: Okay.

8 THE COURT: Okay. We're not going to ask you to produce
9 them tonight, so we'll address, you know, how we proceed after
10 tomorrow at the end of the day tomorrow, but there is no expectation for
11 you to have those here tomorrow. But they'll be redacted, any personal
12 information, just the records in regards to the calls you made in regards
13 to the Edgeworth's litigation.

14 THE WITNESS: Okay.

15 MR. VANNAH: And the damage records too. His phone.

16 THE COURT: Well, we have to ask Mr. Simon for those,
17 because she just testified that she got them from him, and it's my
18 understanding that it's probably just going into -- I'm using Verizon
19 because that's my carrier.

20 MR. VANNAH: Okay.

21 THE COURT: Probably you went into Verizon's website and
22 pulled up all your old billings. I'm assuming you don't have access to
23 Mr. Simon's cell phone bills, so we can request that of Mr. Simon to get
24 you those, but he's going to have to get you those because what she's
25 saying is there was no court order issued. She went on the website and

1 went through her old bills. So, Mr. Simon would need to sign in, put his
2 password in, and go get his bills.

3 MR. VANNAH: And I -- but I thought you did that?

4 THE WITNESS: I didn't get Mr. Simon's bills.

5 THE COURT: No, she said she didn't.

6 THE WITNESS: I just put them into a bill.

7 BY MR. VANNAH:

8 Q Well, I didn't mean you went and got them, but you had --
9 you had his billing records -- you had his phone bill records.

10 MR. CHRISTENSEN: Your Honor --

11 THE COURT: Yes.

12 MR. CHRISTENSEN: Can I short circuit this, please?

13 THE COURT: Yes.

14 MR. VANNAH: Yeah, sure.

15 MR. CHRISTENSEN: Okay.

16 MR. VANNAH: Anything you can do to help.

17 MR. CHRISTENSEN: My understanding is that Mr. Simon
18 has calls in paper form.

19 MR. CHRISTIANSEN: I think so.

20 MR. CHRISTENSEN: Okay. So whenever appropriate, which
21 we'll address tomorrow --

22 THE COURT: Yes.

23 MR. CHRISTENSEN: At some point in the future we'll do the
24 redaction job, we'll provide them.

25 THE COURT: Okay. And we'll get the timing and everything

1 of that, depending on how things shape up tomorrow by the time we
2 end.

3 MR. VANNAH: Which brings up an additional question, and
4 I'm almost done.

5 BY MR. VANNAH:

6 Q So, the question is, too, when you talked to Mr. Edgeworth, it
7 was usually on your cell phone?

8 A No, both. If I didn't answer my cell phone, he would call the
9 office or vice versa.

10 Q And just out of curiosity, so would your office -- did that keep
11 track of the length of the call with somebody and who you talked you?

12 A No, that's the problem because we subpoenaed the Cox --
13 Cox is our phone provider, and Cox wasn't able to give us the bills for
14 that time period.

15 Q So, what bills you're talking about, you looked at, would be
16 the cell phone records?

17 A The cell phone records, correct.

18 Q Okay.

19 A Yes, sir.

20 Q No, I just want to make sure I'm kind of narrowing it --

21 A Yeah.

22 Q Ashely, thank you very much. It's nice to see you again.

23 A Nice to see you, too.

24 THE COURT: Okay. Mr. Christensen.

25 MR. CHRISTENSEN: Thank you, Your Honor.

1 understand it, it had some additional clauses or contingencies in it; is
2 that correct?

3 A Correct. It wasn't just \$6 million, hey, the case is over. They
4 had stipulations attached to the \$6 million. They wanted a confidentiality
5 clause. They wanted a motion for good faith settlement, and there was a
6 lot to talk about in regard to the settlement itself because it wasn't a
7 done deal just because they said \$6 million. And Brian didn't want a
8 confidentiality. I mean, that was a deal breaker for him the whole way
9 through this case. And every mediation, I'm not signing a
10 confidentiality. So, when that came in with that requirement, it's kind of
11 a problem.

12 Q It's something you had to talk to him about?

13 A Yeah, he wanted to understand how it would affect him, why
14 he would want to do it, why he wouldn't want to do it, and that was just
15 one of the many things that we talked about on November 17th in my
16 office.

17 Q I mean, the \$6 million offer, that's not peanuts.
18 Confidentiality seems like a small thing.

19 A I don't know if it's a small thing or not. I know I don't like
20 confidentiality. I know that as a routine basis, I don't sign off on
21 releases with confidentiality, because with confidentiality comes a lot of
22 invitations for lawsuits. It can create exposure to clients beyond that
23 particular deal.

24 Q Did the settlement agreement with Viking have a
25 confidentiality provision in it in the -- in its final form when it was

1 signed?

2 A It did not.

3 Q Why not?

4 A Because I negotiated that out of there.

5 Q And that was at Brian's request? As well as being your
6 opinion of what should happen?

7 A Yeah.

8 Q So, we talked about the mediator proposal. Was that
9 discussed at the meeting of November 17th?

10 A Yes.

11 THE COURT: And, I'm sorry, Mr. Christensen, but I am the
12 finder of facts, so I have some questions.

13 Mr. Simon, you said that you basically negotiated the
14 removal of the confidentiality agreement you all agreed with because
15 normally you don't do it and Mr. Edgeworth didn't want it, so together
16 you guys agreed to do this. Do you remember when Viking agreed to
17 remove that?

18 THE WITNESS: I do not.

19 THE COURT: Okay.

20 THE WITNESS: But I think it was prior to the final release, so
21 I think it would have been --

22 THE COURT: Was it prior to you going on vacation?

23 THE WITNESS: It would not have been prior. It probably
24 would have been right when I got back.

25 THE COURT: Okay.

1 BY MR. CHRISTENSEN:

2 Q And your vacation was right over Thanksgiving?

3 A Correct.

4 Q Okay.

5 A So, technically, I was back in the office on that Monday.

6 THE COURT: Which is the 27th? Monday is -- of November?

7 THE WITNESS: Yeah.

8 THE COURT: Yeah, Thanksgiving would have been the 23rd,
9 so that following Monday is the 27th.

10 THE WITNESS: Okay. So, when I got back from that,
11 obviously I went -- hard to work on all aspects of the Edgeworth case. I
12 was, you know, negotiating that out, and then obviously preparing my
13 letter and the proposed retainer that I sent to them attached to the letter.

14 THE COURT: Okay. But at this point, you have not had any
15 contact with the Edgeworths since the 17th?

16 THE WITNESS: I never -- no, I think -- I've had some phone
17 call -- I had some -- I had this meeting and I had a few phone calls after
18 this meeting, and then I tried to iron this out a few times over my
19 vacation with him.

20 I think the last full communication ever with -- verbally with
21 either one of them was the 25th when I was boarding a plane, because I
22 never had a lot of time to be available because I was always -- you know,
23 if I was on a plane for five hours, I'm unavailable.

24 So, I tried to get a hold of him, you know, when I could, and I
25 think the last time was when I was boarding the plane to come home.

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MR. VANNAH: Thank you, Your Honor.

THE COURT: Thank you.

[Proceedings concluded at 4:29 p.m.]

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



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 4th day of December, 2023, a true and correct copy of the foregoing **EDGEWORTH APPELLANTS' APPENDIX TO OPENING BRIEF (VOLUME VII)** was served by the following method(s):

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Peter S. Christiansen
Kendele L. Works
CHRISTIANSEN LAW OFFICE
810 S. Casino Center Blvd., Ste 104
Las Vegas, NV 89101

and

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

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

DATED this 4th day of DECEMBER, 2023.

By: /s/ CATHY SIMICICH