IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC Petitioners, vs. DANIEL S. SIMON; AND THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, Respondents.	Supreme Court Case No. 86676 Electronically Filed Mar 05 2024 11:33 AM Elizabeth A. Brown Clerk of Supreme Court (District Court A-16-738444-C)

ANSWER OF RESPONDENTS TO

EDGEWORTH APPELLANTS' OPENING BRIEF

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NRAP 26.1 Disclosure

The undersigned counsel certifies that the following are persons and entities as described in NRAP 26.1 and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

No parent or holding corporations are involved.

Peter S. Christiansen, Esq., Nevada Bar No. 5254, of Christiansen Trial Attorneys has also appeared for the Petitioner.

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I. Introduction

This appeal questions if a district court order and the record provide a sufficient basis for an award of attorney fees under quantum meruit. Because the order and the record demonstrate that the quantum meruit attorney fee award is within the discretion of the district court, the order should be upheld.

Daniel Simon and his law office provided his former friends, Angela and Brian Edgeworth (and their company and trust), with exceptional representation on a half-million-dollar property loss such that the Edgeworths enjoyed the benefits of a phenomenal six-million-dollar recovery, from which the Edgeworths almost immediately received 4 million dollars and have now received well over five million dollars. It is against the backdrop of this enormous recovery that the clients continue to cry foul about paying their lawyer.

Simon worked for his longtime friends as a favor without a fee agreement and advanced costs on their behalf. Simon and the Edgeworths both understood the practical economic difficulties with pursuit of the property loss and Simon always held the position that a

fair and reasonable fee would be reached at the end of the case, based on the result.

Simon was too effective for his own good. As Simon was moving Viking towards a six-million-dollar settlement and positioning Lange for an additional significant recovery for his clients, Simon provided a proposed fee agreement at Brian Edgeworth's request. At about the same time, the Edgeworths stopped speaking with Simon, hired replacement attorneys, and argued Simon was due nothing. Soon after, and despite Simon's attempts to reach a collaborative resolution, the Edgeworths groundlessly sued Simon for conversion to admittedly "punish" Simon.

The Edgeworths have gone to great lengths to carry out their goal of punishing Simon. As one example, the couple's testimony to the district court in the lien adjudication was so plainly false, that the Edgeworths themselves conceded in their first appeal that the district court did not find them to be credible. (I RA 164-94 at 175, 176, 179, 182 & 192.) The Edgeworths are also alleged to have defamed Simon by making out-of-court statements to mutual friends and legal peers that

Simon intended to steal the Viking settlement, a claim which their own attorney and the district court rejected.

The Edgeworths challenge the latest district court order and continue to extend this fee dispute in the same manner by disparaging the district court and Simon, by misrepresenting long settled facts, and by distortion of the record as they seek to hold Simon to an artificially low fee contrary to the record.

An unbiased review of the district court's adjudication order and the record reveals that this Court's instructions were followed. The district court order contains language which explicitly states that the court only considered post discharge work when the court determined the quantum meruit attorney fee. Further, the district court listed specific post discharge work performed by Simon in support of the quantum meruit attorney fee award. Finally, the record supports the amount of the quantum meruit attorney fee determination as well.

The order and the record establish that the quantum meruit attorney fee award is within the wide discretion allowed to a district court to determine an attorney fee. Accordingly, Simon respectfully

requests that the latest adjudication order of the district court be upheld by this Court.

II. Statement of the Issue

A. Should the district court order granting Simon fees for post discharge work under quantum meruit be upheld when the district court followed the instructions of this Court on remand and explained the basis of the attorney fee award to Simon by explicit explanatory language in the order, when there is substantial evidence supporting the findings of the district court, and when the record demonstrates that the attorney fee determination is within the sound discretion of the district court?

III. Statement of the case

On June 14, 2016, Simon filed a complaint against Viking and Lange Plumbing for damages that occurred when a Viking fire sprinkler installed by Lange malfunctioned and caused a $500,000 property loss in a speculation house being built by the Edgeworths. (IX AA 1719-20 at FF#3 & 5.) Simon worked for his friends as a favor without a fee agreement. (IX AA 1719 at FF#1 & 4.)

On November 29, 2017, as Simon was moving the case toward a six-million-dollar settlement with Viking and a significant recovery from Lange, the Edgeworths discharged their friend and hired replacement counsel Bob Vannah and John Greene. (IX AA 1730-33.) On November 30, Simon asserted a valid and enforceable attorney lien. (IX AA 1728.)

On January 4, 2018, the Edgeworths filed a groundless conversion complaint against Simon.

On August 27, 28, 29 & 30, and September 18, 2018, the district court conducted an evidentiary hearing to take evidence to adjudicate the Simon attorney lien and to rule on a pending motion to dismiss the Edgeworths' groundless conversion complaint.

On November 19, 2018, the district court issued a decision and order adjudicating the attorney lien, and in a separate order the court dismissed the groundless conversion complaint. (I RA 153-62.)

On February 8, 2019, the district court sanctioned the Edgeworths over the groundless conversion complaint. The Edgeworths challenged all the district court orders on appeal.

On December 30, 2020, this Court *upheld* the district court's decision to enforce the valid attorney lien, *upheld* the district court's dismissal of the groundless conversion complaint, and *upheld* the district court's decision to sanction the Edgeworths. However, this Court returned the case to the district court for further explanation on the basis for amount of the sanction and the basis for the quantum meruit portion of the attorney lien fee award. *Edgeworth Family Trust v. Daniel S. Simon*, 136 Nev. 804, 477 P.3d 1129 (Table), 2020 WL 7828800 (2020)(unpublished)(*Edgeworth I*).

On April 19, 2021, the district court issued its third amended decision and order on motion to adjudicate lien. The Edgeworths appealed.

On September 16, 2022, this Court issued an order vacating judgment and remanded the case to the district court. This Court stated that, "the order does not make specific findings that clearly reflect that the quantum meruit award is limited to only services Simon provided post-discharge." *Edgeworth Family Trust v. Daniel S. Simon*, 516 P.3d 676 (Table), 2022 WL 4298625 (Nev. 2022) (unpublished)(*Edgeworth II*).

On March 28, 2023, the district court issued its fifth amended decision and order on motion to adjudicate lien ("fifth adjudication order" at IX AA 1718-1748). The Edgeworths appealed.

A. Related matters: Edgeworth attempts to force early disbursement of disputed money held in trust per mutual agreement and lien law

The opening brief comments on the failed attempts to force early release of disputed funds held in trust per the agreement of the parties and under the authority of the attorney lien. The inferences and arguments made by the Edgeworths' regarding their unsuccessful attempts to force early disbursement of disputed money held in trust are not well grounded.

In December of 2017, the Edgeworths proposed the creation of a special trust account to hold disputed funds until the lien dispute was resolved. (I RA 2; RA 149-521; & RA 159:5-160:19.) Simon agreed, and the account was opened on January 4, 2018. (*E.g.*, I RA 7 & RA 159:5-19.).

On January 8, 2018, the Viking checks were deposited in the mutually agreed upon joint account. (I RA 159:5-19.) The funds cleared about a week later. (I RA 159:5-19.) The Edgeworths acknowledge they

were made whole by receipt of $4,000,000.00 in undisputed funds by January 21, 2018. (I RA at 146:9-20.)

On November 19, 2018, the district court held that the settlement funds were properly placed into the joint account at the suggestion of the Edgeworths, the agreement of the parties, and per Simon's valid attorney lien. (I RA 153-62 (the district court order was upheld on appeal in *Edgeworth I*).)

On December 18, 2018, the Edgeworths filed their first motion to force the early release of disputed funds held in trust. The motion was opposed and was denied on February 5, 2019. (I RA 163 (minute order).)

On May 3, 2021, the Edgeworths sent a letter *directly to Simon* demanding early release of disputed funds held in trust per the agreement and the attorney lien by May 5, 2021. (IV AA 786.).

On May 13, 2021, the Edgeworths filed their second motion to force early release of disputed funds held in the mutually agreed upon trust account. (IV AA 758-832.) The motion was opposed. (V AA 979-1027.) On June 17, 2021, the district court again denied the motion. (I RA 198-200.) In part, the district court held it was appropriate for funds to remain in the account per the mutual agreement. (I RA 199-200.) On

September 9, 2021, the district court denied the Edgeworths' motion for reconsideration. (I RA 195-97.)

On February 2, 2022, the Edgeworths sought extraordinary relief to force early release of disputed funds from the mutually agreed upon trust account. On September 16, 2022, this Court declined to entertain the Edgeworths' petition pending resolution of the adjudication dispute. *Edgeworth Family Trust v. Eighth Jud. Dist. Ct.*, 516 P.3d 1111(Table), 2022 WL 4298604 (Nev. 2022)(unpublished). This Court then denied the Edgeworths' petition for rehearing.

The continuing complaints regarding holding disputed money in a joint account which the Edgeworths proposed and agreed to, do nothing more than demonstrate the Edgeworths' continuing efforts to baselessly extend this dispute. (*E.g.*, Appellants opening brief ("AOB") at 7-8 (the Edgeworths' latest unsupported story of why they groundlessly sued Simon, but the district court found that the Edgeworths sued Simon on the claim that they were due all the settlement funds and *not* because Simon would not turn over checks or provide a final invoice as they now argue I RA 153-62); and, AOB 8-9 at fn 6 (the Edgeworths argue that Simon incorrectly portrayed the agreed upon trust, but the district

court clearly held that holding the funds in trust was appropriate and dismissed as a matter of law claims to the contrary. I RA 153-162 & 198-200).)

B. Related matters: Production of the case file

The opening brief comments about the production of the case file. During the adjudication process, Simon provided significant portions of the case file to the Edgeworths. On May 26, 2020, Simon copied the case file to an external drive, redacting documents believed to be subject to a protective order. On May 28, 2020, the drive was delivered to Edgeworths by Fed Ex. (II RA 260-67.)

One year later, on May 13, 2021, the Edgeworths sought production of the client file based on "information and belief" that the Edgeworths did not have their entire file. The motion was opposed and was denied by the district court.

The Edgeworths sought relief by direct appeal which failed, then by petition for extraordinary relief. This Court granted relief finding that the protection order entered in the underlying property loss case did not prevent disclosure of confidential proprietary information to Edgeworths. *Edgeworth Family Trust,* 2022 WL 4298604 at *2. On

October 11, 2022, Simon delivered the redacted portion of the file to the Edgeworths. (I RA 211 at ¶5.) Simon went above and beyond what was required and created and delivered an index of the material provided. (II RA 254-259.)

On November 4, 2022, the Edgeworths filed a motion for sanctions on order shortening time claiming that Simon intentionally withheld portions of the client file. *The Edgeworths asked that Simon be jailed*. (I RA 209-20.) In opposition Simon established that the Edgeworths possessed the alleged withheld information, and that the Edgeworths had not performed a review sufficient to allow them to claim items were missing. (*E.g.*, I RA 221-49 at 242-44[1].) *In reply, the Edgeworths admitted they did not review the Simon file production*. (II RA 272:15-25.) The Edgeworths then made new and different withheld document allegations, continuing the common Edgeworth tactic of moving the goalposts. (II RA 272:26-73:4.) At the hearing, Simon refuted the new claims of withheld documents. (*E.g.*, II RA 301-4.) On November 15, the

[1] A separate appendix of exhibits to the opposition was filed. The appendix included 2 indexes of produced documents to assist the Edgeworths in review of the file and to prevent future complaints. The indexes combined are over 100 pages long. The appendix is over 250 pages long and only portions are provided for sake of brevity.

district court denied the groundless motion. (II RA 313-15.) The district court found that the Edgeworths had failed to present evidence of withheld documents. (II RA 314.)

In the motion to throw Simon in jail, Edgeworths' attorney also declared that the only new material produced in 2022 was the previously redacted portions of the client file. (I RA 211 at ¶3 & 214 at ¶18.) However, in this appeal, the Edgeworths take the contradictory position that settlement agreement drafts were first provided in 2022. (AOB pp 4 at fn. 4.)

Simon later sent safe harbor letters and served (but did not file) a motion for sanctions for pursuing the groundless motion to have Simon jailed. (*E.g.*, VIII AA 1705-06 (safe harbor letter).) In response, counsel for the Edgeworths sent a letter which contained an explanation and an apology of sorts for errors made. (VIII AA 1708-22 (apology for "human error" and failure of recollection, and corrective steps taken at 1709).) Simon accepted the apology (perhaps in error) and did not file the Rule 11 motion. (VIII AA 1715 (noting the apology and responding to more requests for information already possessed by the Edgeworths).)

In sum, the district court found that the Edgeworths did not demonstrate that Simon withheld documents. (II RA 313-315.) Thus, the Edgeworths may not complain about withheld documents on appeal without first establishing that the district court's decision was erroneous, which has not been done.

IV. Statement of relevant facts

Simon was close family friends with Brian and Angela Edgeworth. (IX AA 1719 at FF#1.) In April of 2016, a speculation house being built by Brian Edgeworth flooded, allegedly due to a defective Viking fire sprinkler that was installed by Lange Plumbing. (IX AA 1719 at FF#3.) The flood caused about $500,000 in property damage. (IX AA 1719-20 at FF#5.)

In May of 2016 the Edgeworths turned to their friend Simon, and Simon agreed to help. The representation originally began "as a favor between friends". (IX AA 1719 at FF #1.)

The friends did not discuss fees. (IX AA 1719 at FF#1&4.) The practical economic difficulties of paying an attorney to pursue the property loss were apparent to all. (IX AA 1720:10-20; I RA 122-126; I RA 131-32 (Will Kemp testified he would not have taken the case except

as a friends and family matter); & I RA 142 (Angela agrees that a contingency fee does not "make sense" because "there was no upside to this case"). Simon worked for his friends without a fee agreement. (IX AA 1719 at FF#1 & 4.)

On June 14, 2016, a complaint was filed against Viking and Lange. (IX AA 1719-20 at FF#5.) The case was complex and involved multiple parties and claims. (IX AA 1719 at FF#2; AA 1720 at FF#5; & IX AA 1741 at 3-11.)

During the attorney lien adjudication, Angela and Brian Edgeworth both claimed that they agreed to pay Simon $550 an hour and claimed an express oral fee agreement was formed with Simon in May, then later, June of 2016. (*E.g.*, IX AA 1729; Day 5 at 20:11-25, VIII AA 1666 at ¶ 6, VIII AA 1676 at ¶ 6, VIII AA 1687-1693.) The district court did not agree with the Edgeworths. (IX AA 1728-30.) The Edgeworths repeated their express oral agreement claim during their first appeal in 2019 and told this Court that $550 an hour was an "agreed upon rate". (I RA 167.) In 2024, the Edgeworths now claim the opposite. (*E.g.*, AOB at 5.)

The Viking case was complex, with many parties, claims and issues, and Simon aggressively litigated the complex case for his friends. (IX AA 1719 at FF#2 & AA 1741.)

On August 9, 2017, Simon and Brian Edgeworth discussed a formal fee arrangement, but did not reach an agreement. (IX AA 1720.) On August 22, 2017, Brian admitted in an email to Simon that they did not have an express attorney fee agreement and raised different options for a fee agreement. (IX AA 1720.) The district court found that an express oral fee agreement was never formed. (IX AA 1728-30.)

On or around November 15, 2017, a Viking settlement offer was received via a mediator. (IX AA 1721 at FF#13.) The offer had conditions attached. (I RA 99-100.) The mediator's proposal included 2.4 million earmarked for attorney's fees. (I RA 134-35.)

On November 17, 2017, Angela and Brian Edgeworth met with Simon at Simon's office. (IX AA 1721 at FF#15.) Brian Edgeworth testified that Simon intimidated him, even though he stands six foot four and weighs two hundred and eighty pounds. (I RA 86-87.) Angela Edgeworth admitted that Simon did not try to physically intimidate the couple. (I RA 143.) Angela also contradicted her own lawyer's opening

argument that Simon tried to force the couple to sign a fee agreement at the meeting. (I RA 144-45; & RA 93-94 (Brian admits he does not know if Simon had a fee agreement).)

After November 25, 2017, the Edgeworths stopped speaking with Simon. (IX AA 1732.)

On November 27, 2017, Simon consulted his own attorney on options regarding clients who stop speaking with him. (I AA 0152; I RA 129-30.) The Edgeworths misstate the date of the consultation as November 15. (AOB at 3.)

On November 27, 2017, in response to Brian Edgeworth's request, Simon sent Brian a fee proposal. (I RA 91-92.)

On November 27, 2017, at 3:20 p.m. Angela Edgeworth emailed Simon with a request for the draft of the Viking settlement agreement. (VIII AA 1614.) At 3:50 p.m. Simon replied that he had not received a draft yet. (VIII AA 1614.) At 4:14 p.m. Angela Edgeworth sent a second email about the status of the Viking settlement. (VIII AA 1613.) At 4:48 p.m. Viking emailed a proposed settlement agreement to a *Simon Law Office general email address*. (VIII AA 1558.) (Simon office staff forwarded the email to Simon's inbox the following morning. (VIII AA

1558.) At 4:58 p.m. Simon replied to Angela's second email and stated he would ask for a status the next day. (VIII AA 1613[2].) The opening brief accuses Simon of lying on the 27th about receipt of the proposed Viking settlement agreement, even though the proposed agreement was plainly not sent to Simon's inbox until the next day. (*E.g.*, AOB at 6 (accuses Simon of lying); *but see* VIII AA 1558 (demonstrates Simon did not lie because the draft settlement agreement email was not forwarded to Simon's email box until the next day).)[3]

On November 29, 2017, the Edgeworths hired Robert Vannah and John Greene and constructively discharged Simon. (IX AA 1730-33.) Vannah and Greene were hired to assist with the Viking/Lange litigation at $925 an hour. (IX AA 1722 at FF#18, AA 1730 & AA 1744; *but see*, I RA 138-40 (Angela claims the highest rate the Edgeworths had ever paid an attorney was $475 for a trademark specialist and she

[2] Simon wrote that the draft agreement might have been delayed by the holiday. November 27, 2017, was the Monday after the Thanksgiving holiday.

[3] Simon demonstrated the lying accusation was groundless in Simon's August 14, 2023, writ answer in case 86467 at page 28; yet the Edgeworths repeated the groundless lying accusation on appeal.

agreed to $550 an hour for Simon although the rate was "really expensive").)

On November 29, 2017, Simon requested an edit to the Viking proposed settlement agreement regarding placing his firm's name on the check. (I RA 103-7; & VIII AA 1566.) Viking counsel Joel Henriod made the change and returned the draft agreement to Simon at 4:23 p.m. on the 29th. (VIII AA 1566 - 1573.) The draft settlement agreement was marked and admitted as exhibit 11 at the evidentiary hearing. (I RA 101-14, 115-21 & 127-28.) Vannah questioned Simon about the draft settlement agreement. (I RA 101-14 & 115-21.) Thus, the Edgeworths misstate the record when they claim they did not possess drafts of settlement agreements before 2022. (*E.g.*, AOB, pg 6, fn 4).)

On November 30, 2017, at 8:38 a.m., Simon emailed the draft settlement agreement with the edit to the Edgeworths. (I RA 103-7.) The draft settlement agreement had a confidentiality clause. (I RA 108-9.)

On November 30, 2017, Vannah notified Simon of his hire and instructed Simon to settle the Lange claim for $25,000.00. (IX AA 1722

at FF#19.) Simon served an attorney lien later that day. (IX AA 1722 at FF#20.)

On November 30, 2017, Simon met with Joel Henriod at Joel's office, and they made edits to the draft settlement agreement. (I RA 98.) At 3:13 p.m. Henriod emailed Simon the version they had worked on. (VIII AA 1575.) The November 30 proposed final Viking settlement agreement *did not* have a confidentiality clause and identified Vannah and Greene as lawyers for the Edgeworths. (VIII AA 1577-1582.) At 5:31 p.m., on the 30th, Simon emailed the proposed final settlement agreement to the Edgeworths and to John Greene. (I RA 109-113; and VIII AA 1584.) The proposed final Viking settlement agreement was marked as exhibit 12 at the evidentiary hearing. (I RA 101-14, 115-21 & 127-28.) Vannah questioned Simon regarding the proposed final Viking settlement agreement. (I RA 101-14 & 115-21.)

On November 30, 2017, Simon negotiated a $75,000.00 increase in the Lange offer. (IX AA 1741:25-1742:3; I RA 113; and, VIII AA 1584.)

The district court found that the Viking case settled on or about December 1, 2017. (IX AA 1721 at FF#13; and I RA 120:11-15 (Vannah & Simon agree on a settlement date of December 1).) The opening brief

(*e.g.*, at 5-6) repeatedly misrepresents the Viking settlement date as November 15, 2017, in direct contravention of the district court's longstanding finding of fact. The Edgeworths never challenged the finding via NRCP 52 or 60, and to the extent that the finding was or could have been challenged on the first appeal, it was upheld.

On December 1, 2017, the Edgeworths signed the Viking settlement agreement. (IX AA 1731.) Simon sent the settlement agreement signed by the Edgeworths to Viking counsel Joel Henriod the same day and requested settlement checks. (VIII AA 1586-1593.)

On December 7, 2017, the Edgeworths consented to settle with Lange for $100,000.00. (IX AA 1723 at FF#23.)

On December 12, 2017, Janet Pancoast notified Simon that Viking settlement checks would be exchanged for two stipulations to dismiss. (I AA 187.)

On December 18, 2017, Simon picked up the Viking checks and contacted John Greene to arrange signature and deposit. During a call, Greene indicated the Edgeworths were not available until after the new year. (I RA 5-6.)

On December 26, 2017, the Edgeworths accused Simon of intent to steal the Viking settlement money. (IX AA 1732 & I RA 3.)

On December 28, 2017, Vannah distanced himself from the Edgeworths steal the money accusation. (I RA 2 ("I'm not suggesting I have concerns over Danny stealing the money…").)

On December 28, 2017, the Edgeworths proposed the parties open a joint trust account to hold disputed settlement funds. Simon agreed the same day. (I RA 2.)

On January 4, 2018, the Edgeworths wrote a letter to Bank of Nevada regarding the mutually agreed upon joint account. (I RA 7.)

On January 4, 2018, the parties opened a joint trust account at Bank of Nevada pursuant to their mutual agreement. (I RA 159-60; and I RA 149-51.) Per the mutual agreement, only money subject to the attorney lien was kept in the account, the remainder was given to the Edgeworths as soon as funds cleared. (I RA 159-60; and I RA 149-51.) The account was interest bearing and all earned interest went to the clients, even the interest that accrued on Simon's attorney fees. (I RA 159-60; and I RA 149-51.)

On January 4, 2018, the Edgeworths filed their groundless conversion suit against Simon to punish him. (I RA 158 at FF#24; IX AA 1732; and I RA 146-48 (Angela Edgworth's testimony to the district court that the groundless complaint was filed to punish Simon.) The groundless complaint was dismissed by the district court and a sanction was levied. (*E.g.*, I RA 153-162.) The dismissal and sanction were *upheld* on appeal, although the case was remanded for further findings on the amount of the sanction. *Edgeworth I* at *3 & *4.

On January 8, 2018, the Viking checks were deposited into the agreed upon account. (I RA 159:5-19.)

On January 9, 2018, the groundless conversion complaint was served. (I RA 8.) The Edgeworths alleged in the groundless complaint that Simon was not due any money. (I RA 158-59.) The district court disagreed. (I RA 00153-162.)

On January 9, 2018, Vannah sent Simon an email asserting that withdrawal from representation of the Edgeworths would not be in Simon's best interest, even though Simon had been sued by the Edgeworths. (IX AA 1732.)

On January 21, 2018, the Edgeworths received four million dollars. (I RA 146.) The Edgeworths agree they were made whole when they received four million dollars for their half million-dollar property loss. (I RA 146.)

On February 6, 2018, Simon appeared before the district court and discussed ongoing efforts to resolve the case and obtain Lange's settlement checks. (I RA 9-15.) The parties discussed ongoing efforts by Simon to resolve the complex litigation: "MS. PANCOAST: -- Mr. Simon's facilitating wrapping this up." (I RA 14:15.) The district court hearing included discussion of ongoing out of court efforts involving Simon to resolve the case. (I RA 9-15.)

On February 20, 2018, Simon again appeared and updated the district court regarding resolution. (I RA 55-65.) At the hearing, Vannah disclaimed any knowledge of ongoing events and deferred to Simon: "MR. VANNAH: We -- we're not involved a case in any way, shape, or form." (I RA 57:22-8:3.)

From January 9, through March 2018, Simon also performed out of court work for the Edgeworths as discussed before the district court

and as described in the unrebutted declaration found at VII AA 1372-1374.

Years later, on March 21, 2023, the district court again heard arguments regarding determination of the quantum meruit attorney fee. (II RA 316-39.) At the hearing, the Edgeworths conceded that Simon worked on the case after January 8, 2018, the last date on the super bill, but then still argued Simon should not be paid for any time spent on their behalf after January 8. (II RA 331-335.)

During the litigation, Simon submitted only four hourly bills and advanced substantial costs. (IX AA 1720-21.) The Edgeworths paid the partial bills and repaid costs, at least until the lien dispute arose. (IX AA 1720-21.) Simon indicated the bills were sent to demonstrate damages under the Lange contract. (IX AA 1735.)

The district court found against the Edgeworths post hoc claim of an express oral contract. (IX AA 1728-30.) However, the district court decided that the four bills were sufficient to find an implied contract existed with an hourly payment term. (IX AA 1734-35.) The district court then found that the Edgeworths ended the implied contract by discharging Simon. (IX AA 1730-33.)

Importantly, the district court found that Simon was "an exceptional advocate for the Edgeworths". (IX AA 1743.) The district court found that Simon's lawyering "was extremely significant and the work yielded a phenomenal result for the Edgeworths." (IX AA 1743.) The district court found that Simon continued to work hard for the Edgeworths even after discharge (a period of which after when the Edgeworths groundlessly sued Simon). (*E.g.*, IX AA 1743-44.)

V. Summary of the Argument

The argument is straightforward. In *Edgeworth II*, this Court directed the district court to make clear that the quantum meruit attorney fee award was based only on Simon's post discharge work and to describe the post discharge work. The district court did so in its latest order, and to the extent that it could be reasonably argued that the latest order is unclear, the record provides ample foundation to affirm the district court.

In contrast, the Edgeworths' opening brief does not fairly frame the issue on appeal, raises arguments which were not raised below or are otherwise waived, misstates the record, and engages in rank speculation. Further, by arguing that Simon must work for free after

January 8, 2018, and that the quantum meruit attorney fee determination of the district court is limited to 71.10 hours of work, the Edgeworths ignore the holding of *Edgeworth II* at *2 and thereby the law of this case.

The Edgeworths did not demonstrate that the district court did not follow *Edgeworth II* or otherwise acted in an arbitrary, capricious, or erroneous manner. Therefore, the district court fifth adjudication order may be affirmed.

VI. Argument

The district court's fifth adjudication order follows the instructions of this Court. In *Edgeworth II,* this Court noted the lack of a specific finding "that clearly reflect that the quantum meruit award is limited to only services Simon provided post discharge." *Edgeworth II*, 2022 WL 4298625 at *1. Accordingly, this Court ordered 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". *Id*., at *2.

The question of whether a district court complied with the direction of an appellate court is reviewed de novo. *State Eng'r v.*

Eureka County, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017). The district court complied with *Edgeworth II*. The fifth adjudication order explicitly states the quantum meruit fee award is based on post discharge work and provides express findings regarding the work Simon performed post discharge. Further, to the extent the foundation for the award is not apparent from the four corners of the fifth adjudication order, ample support is found in the record.

In their attack on the latest order, the district court, and Simon, the Edgeworths promote arguments which were not raised before the district court or are otherwise waived, and which misstate the record or this Court's prior holdings. The Edgeworths do not identify and substantiate an error by the district court. Instead, the Edgeworths continue to needlessly extend this dispute, and again engage in the discredited practice of judge shopping.

The district court followed *Edgeworth II* and the latest order is well supported by the record. Simon respectfully requests that this Court affirm the district court.

A. The fifth adjudication order explicitly addresses post discharge work only.

The district court clearly stated that the quantum meruit attorney fee award in the fifth adjudication order was limited to post discharge work.

The fifth adjudication order contains specific limiting language which complies to *Edgeworth II*. Under accepted interpretation canons the specific language of the order controls over more general language. *See, e.g., Mineral County v. State Bd., of Equalization*, 121 Nev. 533, 536, 119 P.3d 706, 707 (2005)(specific statutes control over general statutes); *see also*, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012) (discussing the concept of *generalia specialibus non derogant*, that is, specific language controls over general language).

The fifth adjudication order makes clear that the district court only considered Simon's post discharge work in determining the amount of the quantum meruit fee award:

> The court finds that the Law Office of Daniel Simon is owed attorney's fees under quantum meruit from November 29, 2017, *after the constructive discharge*, to the conclusion of the Law Office's work on this case. (IX AA 1739 at 11-13.) (Emphasis added.)

Thus, the district court specifically stated that the court only considered Simon's post discharge work in making its quantum meruit fee award in compliance with *Edgeworth II*.

While there is some cross over in the *Brunzell* analysis of the fifth adjudication order, any perceived error is cured by another specific finding of the district court:

> However, in this case the Court notes that the majority of the work in this case was complete before the date of the constructive discharge, *and the Court is applying the Brunzell factors for the period commencing after the constructive discharge*. (IX AA 1739 at 25-40 at 1. (Emphasis added.)

Through the specific language above, the district court made two things clear. First, the court acknowledged that most work was done before discharge and two, that the *Brunzell* analysis for the quantum meruit

fee award in the fifth adjudication order is limited to work performed by Simon after discharge only as per *Edgeworth II*.

B. The fifth adjudication order contains findings which describe Simon's post discharge work.

Edgeworth II directed the district court to make specific and express findings regarding Simon's post discharge work. The district court complied by adding factual findings regarding Simon's post discharge work in the body of the quantum meruit section of the fifth adjudication order.

> In this case, the evidence presented indicates that, *after the constructive discharge*, Simon received consent from the Edgeworths, through the Vannah Law Firm, to settle their claims against Lange Plumbing LLC for $25,000.00. Simon continued to work with the attorneys for Lange Plumbing LLC to settle the claims for more than $25,000, and ultimately ended up settling the claims for $100,000. The record indicates that on December 5, 2017, Simon attempted an email to contact Brian Edgeworth regarding settling of the Lange case, as he was continuing to have discussions with Lange's counsel, regarding settling of the claims. However, Simon was told to contact Vannah's office as the Edgeworths were refusing his attempts to communicate. He then, reached out to Vannah's office and continued to work with Vannah's office to settle the Viking and the Lange claims. On December 7, 2017, Sion sent a letter advising Mr. Vannah regarding the Lange claim. Simon had advised the Edgeworths on settling of the Lange claim, but they ignored his advice and followed the advice of the Vannah & Vannah. Upon settlement of all the claims, the Edgeworths made the unusual request to open a new trust account with Mr. Vannah as the signer to deposit the

> Viking settlement proceeds. Mr. Simon complied with the request. Further, there were continued representations from the Edgeworths and the Vannah Law Firm that Simon had not been terminated from representation of the Edgeworths, and no motion to withdraw was filed in this case. (IX AA 1740 at 3-19, the language after "In this case" is new.) (Emphasis added.)

Thus, the district court made specific findings regarding post discharge work by Simon.

In the work performed section of the *Brunzell* analysis, the district court found that:

> The Lange claims were settled for four times the original offer, because Simon continued to work on the case. He continued to make efforts to communicate with the Edgeworths and even followed their requests to communicate with Vannah's office. He also agreed to their request of opening a trust account, though in an unusual fashion. (IX AA 1741 at 16-21.)

Thus, the district court made additional findings regarding post discharge work by Simon. The increase in the amount recovered from Lange is likewise stated in the result obtained section of the *Brunzell* analysis. (IX AA 1741-42.)

The district court also made findings regarding other instances of post discharge work in the discussion section following the *Brunzell* analysis. For example, the district court noted Simon's continuing post discharge work to resolve the Viking settlement (IX AA 1744 at 1-2),

including handling of checks (which was needlessly complicated by the Edgeworths). (IX AA 1744 at 2-3.)

The district court complied with this Court's directions in *Edgeworth II*, as shown by the findings in the fifth adjudication order which describe Simon's post discharge work.

C. The record contains substantial evidence of Simon's post discharge work.

The findings of the district court regarding Simon's work after discharge are supported by substantial evidence and must be upheld. *NOLM, LLC v. County of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-661 (2004) (district court findings are reviewed for an abuse of discretion); *Gibellini v. Klindt*, 110 Nev. 201, 1204, 885 P.2d 540, 542 (1994) (a district court finding must be upheld if it is based on substantial evidence and is not clearly erroneous).

The district court's fifth adjudication order does not explicitly list every single act taken by Simon to assist his former friends after discharge. However, there is no authority which requires a district court to provide an exhaustive listing of every act taken by an attorney to support a quantum meruit award of fees, and such a requirement would

not promote judicial economy. *See, Golightly v. Gassner*, 125 Nev. 1039, 281 P.3d 1176 (2009) (unpublished)(discharged contingency attorney paid by quantum meruit rather than by contingency); *citing, Gordon v. Stewart*, 74 Nev. 115, 324 P.2d 234 (1958)(attorney paid in quantum meruit after client breach of agreement); and *citing, Cooke v. Gove*, 61 Nev. 55, 114 P.2d 87 (1941)(fees awarded in quantum meruit when there was no agreement); *Gonzales v. Campbell & Williams*, 2021 WL 4988154, 497 P.3d 624 (Nev. 2021)(unpublished)(upheld the finding that an attorney without a fee agreement was due a percentage of a case's recovery as the measure of a reasonable fee in quantum meruit in a lien adjudication); *Edgeworth I* (discharged attorney entitled to quantum meruit as the measure of reasonable attorney fees due under a charging lien); and, see, *Fracesse v. Brent*, 494 P.2d 9 (Cal. 1972). That said, the record contains substantial evidence of Simon's post discharge work, including work performed after January 8, 2018, the last date of the superbill.

The record also provides additional grounds for upholding the fifth adjudication order. An appellate court may imply findings that are supported by evidence in the absence of an explicit finding. *Trident*

Construction Corp., v. West Electric Inc., 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989). An appellate court may affirm a decision on any ground found in the record. *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987).

The record contains substantial evidence that Simon negotiated additional settlement terms with Viking on November 30, the day after discharge, and obtained the removal of a confidentiality clause. (*Compare*, VIII AA 1566-73 & 1575-82.)

The record contains substantial evidence of Simon's work to finalize the Viking settlement, obtain the settlement drafts and to provide undisputed funds to the client, despite the Edgeworths' accusations and obstacles. (I RA 9-15; and RA 55-65.)

The record contains substantial evidence of Simon's post discharge work to quadruple the amount of the Lange settlement. (IX AA 1741:14-21.)

The record contains substantial evidence of Simon's post discharge work, after January 8, 2018. On January 9, 2018, Vannah stated that Simon was expected to continue working for the Edgeworths even after being groundlessly sued for conversion and that Simon's continued post

discharge work would save a substantial amount to avoid bringing Vannah up to speed. (*E.g.*, IX AA 1732:25-27; I RA 80-1.)

The February 6, 2018, hearing transcript is substantial evidence that Simon was still in the forefront of finalizing the settlements more than two months after discharge. At the hearing, the defense attorneys and the district court turned to Simon to help finish the case. (I RA 14:9-18 & at RA 14:15 "[Pancoast] Mr. Simon's facilitating wrapping this up".) Vannah confirmed that the Edgeworths expected Simon to continue to work for the Edgeworths (despite the groundless conversion complaint). (I RA 12:9-11 [Vannah] "we want Mr. Simon to finish it off and it's almost done".) The content of the hearing demonstrates that Simon was engaged in out of court work as well.

The February 20, 2018, hearing transcript is substantial evidence of post discharge work. At the hearing, the district court turned first to Simon for an update. (I RA 56.) The transcript clearly establishes that Simon was performing post discharge work for the Edgeworths. (I RA 55-65.) In fact, Vannah deferred to Simon and reminded everyone that "we're not involved". (I RA 57:22-25.) The content of the hearing also demonstrates that Simon was engaged in out of court work.

The record also contains Simon's declaration regarding work done by his office on November 29 & 30 and after January 8, 2018, not including court appearances. The post discharge work described includes discussions with adverse counsel and the court regarding release language, proposed orders, motions and hearing dates and resolution in general. (VII AA 1372-1374.) The Edgeworths cannot challenge the propriety of the declaration because the declaration addresses the basis for the quantum meruit award of fees, which was left open by this Court in *Edgeworth I & II. Wheeler Springs Plaza*, 119 Nev. at 266, 71 P.3d at 1262 (the law of the case doctrine does not apply to "matters left open by the appellate court").

The record contains substantial evidence which supports the findings of the district court and an independent basis for upholding the fifth adjudication order.

D. The valuation of the post discharge work performed.

Adjudication of an attorney lien is reviewed for an abuse of discretion. *Bero-Wachs v. Law Office of Logar & Pulver*, 123 Nev. 71, 80 n.21, 157 P.3d 704, 709 n.21 (2007). A district court decision must be upheld unless it is based on a clearly erroneous factual finding, *NOLM*,

120 Nev. at 739, 100 P.3d at 660-61, or ignores controlling law. *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993). A district court has wide discretion on the method of calculation of the attorney's fee. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006).

The district court found that Simon's post discharge work was valuable and determined that $200,000.00 in attorney fees was due under quantum meruit. The finding is supported by substantial evidence and is within the wide discretion of the district court to determine an attorney fee.

At the outset, it is important to recognize that the district court found that the work performed by Simon after discharge qualified as complex.

> The character of the work done in this case is complex. This case was a very complex products liability case, from the beginning. *After the constructive discharge of Simon, the complications in the case continued*.
> …
> The lack of communication with the Edgeworths made continuation of the case difficult, … (IX AA 1741 at 4-11.)(Emphasis added.)

Thus, the district court *did not* find that the post discharge work was ministerial or administrative. Rather, the district court found that the

post discharge work continued to be complicated, in part caused by the Edgeworths own obstructive acts.

The district court finding of continued complexity is supported by substantial evidence and other authority. The record demonstrates that the Edgeworths complicated Simon's job by groundlessly accusing Simon of an intent to steal six million dollars, by refusing to communicate with Simon, by not adhering to Simon's advice, and by requiring Simon to continue to work post discharge even after the Edgeworths had groundlessly sued Simon for conversion. (IX AA 1722 at FF #17 – 1723 at FF#24, 1730-33, & 1741; & I RA 153-162.)

Common authority recognizes that resolution of a complex case is complex. *See, e.g.*, Federal Judicial Center's *Manual for Complex Litigation*, *Fourth* at §§ 13-13.24. Granted the *Manual for Complex Litigation* addresses such things as class actions and multi district litigation, but the principle still holds, complex cases require care and attention to resolve. The record demonstrates the application of the principle by the fact that district court hearings regarding resolution were taking place in February of 2018, months after the Edgeworths assert all the work was done. (I RA 9-15; and I RA 55-65.)

There is also substantial evidence that the Edgeworths (at one point) agreed that the case continued to be complicated after Simon's discharge. Brian Edgeworth testified that the case post discharge was "pretty complicated" when on cross examination he attempted to rationalize paying $925 an hour to Vannah and Greene. (I RA 84:23-85:5.)

While the Edgeworths made the groundless accusation that Simon intended to steal the Viking settlement, the Edgeworths also argued that Simon's withdrawal would require Vannah to significantly bill to be brought up to speed. (IX AA 1732:19-27; and I RA 82-3 ("And I don't want to call it a veiled threat. I just said look, if you withdraw from the case, and I've got to spend 50, 60 hours bringing it up to speed …").) If Vannah and Greene require 50 or 60 hours to be brought up to speed, then it is a fair inference that more than simple administrative tasks remained. In fact, the Edgeworths valued Simon's work so highly that as late as 2019 the Edgeworths argued to this Court that Simon was still their attorney. (I RA 189-90.) Accordingly, the district court finding of continued complexity in Simon's post discharge work is supported by substantial evidence and is not clearly erroneous.

The district court's quantum meruit valuation finding of $200,000.00 is supported by substantial evidence. The district court specifically noted the retention of Vannah and Greene at $925 an hour in the quantum meruit analysis in its fifth adjudication order. (IX AA 1744 at 5-7.) Moving beyond the order but in reliance on the record, using the midpoint of Vannah's estimate, Simon's post discharge work saved the Edgeworths from over $50,000 in billing from Vannah and Greene. (55 hours x $925 an hour = $50,875.00) Fee savings are appropriately considered by a court in a lien adjudication. *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 664 F.3d 282 (9th. Cir. 2011)(the court considered fee savings as a positive factor in reaching a fee award).

The district court found that Simon's post discharge work was valuable because Simon quadrupled the Lange offer. (IX AA 1741 at 16-17.) The finding is supported by substantial evidence and the Edgeworths seemingly agreed with the district court that consideration of the increased settlement amount was appropriate. (II RA 329:20-30:13.)

The removal of the confidentiality clause from the Viking settlement agreement after discharge is demonstrated by the record and provided significant value. Removal of a confidentiality clause has value because a confidentiality clause can create future liability, and because such clauses can have tax consequences. *See, e.g., Amos v. Commissioner of Internal Revenue*, 2003 WL 22839795 (U.S.T.C. 2003)(40% of a settlement paid by Dennis Rodman following a kicking incident during an NBA game pursuant to a settlement agreement which contained a confidentiality clause found to be taxable as a payment for confidentiality). The benefit to the Edgeworths is real and can be considered regardless of the post hoc argument that they were willing to run the risk of future litigation and tax consequences caused by a confidentiality clause.

Finally, the district court order cannot be challenged on the basis that the court did not apply an hourly rate. The district court is not obligated to determine a quantum meruit fee award on an hourly basis. Nevada has long recognized that it is well within the sound discretion of the district court to grant attorney fees in consideration of factors other than an hourly rate. *Gonzales*, 2021 WL 4988154, 497 P.3d 624

(unpublished) (a district court decision setting a reasonable fee under quantum meruit in the absence of a fee agreement based on a percentage of the recovery upheld); *Albios,* 122 Nev. at 427, 132 P.3d at 1034 (a district court is afforded wide discretion in the method of calculation of attorney fees); *Herbst v. Humana*, 109 Nev. 586, 591, 781 P.2d 762, 765 (1989)(an affidavit regarding work performed was sufficient to determine a reasonable fee without a detailed billing statement); *Brunzell v. Golden Gate Nat. Bank,* 85 Nev. 345, 349, 455 P.2d 32, 33 (1969) (hourly time schedules are not the only significant factor in setting fees).

E. The district court is not obligated to accept the Edgeworths' version of events.

The district court is not obligated to accept the Edgeworths' version of events, especially when the narrative presented runs counter to the record. When sitting as a fact finder, it is the job of the district court to choose between conflicting evidence. *Savini Const., v. A&K Earthmovers*, 88 Nev. 5, 492 P2d 125 (1972). It is also the district court's job to assess credibility. *Beverly Enterprises v. Globe Land, Corp*., 90 Nev. 363, 526 P.2d 1179 (1974). Further, it is improper for the

Edgeworths to try for a second bite at the decision apple by rearguing conflicting facts before this Court. An appellate court does not reassess conflicting evidence or credibility. *Sierra Clark Ranch v. J.I. Case*, 97 Nev. 457, 634 P.2d 458 (1981). An appellate court does not make factual findings on appeal. *Edgeworth II* at *2, *citing, Ryan's Express Transp. Servs. Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012).

This brief will not address all the erroneous positions taken and misrepresentations made by the Edgeworths because as the district court followed the instructions in *Edgeworth II* and made findings which are supported by substantial evidence and the record, the Edgeworths' latest counter narrative is of no consequence. However, Simon will address several of the more glaring problem areas because they serve as a plain defeater to the appeal and/or they are indicative of the Edgeworths improper approach to litigation.

1. The district court is not subject to a 71.10-hour limitation on the post discharge quantum meruit evaluation of attorney fees.

The Edgeworths push the notion that the district court erred and requires replacement because the district court did not evaluate Simon's post discharge work by relying on an hourly calculation of 71.10 hours of work. The premise is faulty. Because the Edgeworths made the decision to discharge Simon, Simon is to be paid for his post discharge work based on quantum meruit, and not on an hourly rate. *Edgeworth I,* at *2.

Further, this Court has already declined to hold that Simon is limited to 71.10 hours of work for his post discharge fees. *Edgeworth II,* at *2.

Moving beyond Nevada law and what is arguably the law of this case, the Edgeworths' position would lead to the absurd result of Simon working for free after January 8, 2018, the last date of the superbill, for the same parties that groundlessly sued him.

In March of 2023 the district court asked the Edgeworths about the undeniable fact that Simon performed post discharge work after January 8, 2018.

> THE COURT: -- Mr. Simon did make additional court appearances in front of this Court. That is part of the court record. There's transcripts that he was here, and that he was making appearances. And as a lawyer, you guys get paid to come in and make appearances for your client. So are you arguing that that wasn't additional work that he was doing?
>
> MR. MORRIS: I was -- that -- I just -- I just told you that's some work that he was doing. That is some work, that it was done and completed by November the 30 – by November 30th, which is evidenced in the e-mails you have. It didn't continue on into December. It didn't continue on --
>
> THE COURT: He made appearances --
>
> MR. MORRIS: -- into --
>
> THE COURT: -- after November 30th. He made appearances on this case --
>
> MR. MORRIS: Correct.
>
> THE COURT: -- after November 30th. So he did not conclude his work on November 30th. This Court can take judicial notice of Mr. Simon standing in front of me, and there's transcripts, and there's Minutes that reflect that he was here on this case.
>
> MR. MORRIS: *I'm not arguing with that*. (II RA 331:24-32:22.)(Emphasis added.)

The Edgeworths seemingly did not argue with the fact that Simon should be paid for the later court appearances and impliedly the out of court work associated with the appearances, but then inexplicably returned later in the hearing to the refrain that Simon should only be

paid for 71.10 hours of work listed on the superbill and before the later court appearances.

> [Mr. Morris] And I think that's one of the -- one of the things the Supreme Court indicated when it sent this back, for you to say, within that 71.10 hours, what is it that Simon did that's consistent with Brunzell, that would produce a recovery of $200,000 in quantum meruit. (II RA 333:14-18.)
>
> MR. MORRIS: No, I think I've -- I -- I think I've said just -- I -- I just want to reemphasize, irrespective of Mr. Christensen's misdescription of what the Supreme Court was looking for, the Supreme Court was not looking for new information, it was looking for you to say, in your order, what it is that you considered, that Simon did in the 71.10 hours that are before you, and were taken from his Super Bill, 2 what it is, consistent with Brunzell, that supports, or would 3 support a $200,000 quantum meruit award. (II RA 335:20-36:3.)

The Edgeworths thus returned to their absurd position that Simon should work for them for free.

The attempt to limit Simon's post discharge quantum meruit attorney fee to only work performed by January 8 is deceptive and wrong. This Court plainly held that the district court must discuss the work Simon did post discharge, and just as plainly did not place a 71.10-hour or January 8 limit on the district court. *Edgeworth II*, at *2. The work performed by Simon after January 8 is clearly compensable and supports the district court's quantum meruit fee award.

The false 71.10-hour limit argument serves as a defeater for the entire appeal. The false argument is fatal to the appeal because the dishonest argument serves as the keystone for the appeal and pervades the entire brief, including the Edgeworths' statement of the issue on appeal.

2. Simon did not have an undisclosed conflict.

Simon consulted an attorney on November 27, 2017, concerning clients who would no longer speak with him. (I RA 129-30.) There is nothing wrong with an attorney consulting another attorney on a client issue. An attorney can consult with another attorney regarding a client that won't speak with them. (*See, e.g.*, NRPC 1.6(b)(4).) And an attorney can ethically seek payment from a client via an attorney lien. *See* NRS 18.015(5)("[a] lien pursuant to paragraph (b) of subsection 1 must not be construed as inconsistent with the attorney's professional responsibilities to the client.").

The factual claim that Simon's consultation with a lawyer and attorney retention a few days later was not disclosed is groundless. The record is replete with contacts between Simon's attorney and Vannah.

(*E.g.*, V AA 860 (Simon testimony regarding a December 7, 2017, conference call with all counsel including his own).)

The claim that an attorney cannot consult with another attorney regarding a non-communicative client without creating a conflict of interest is not supported by authority and is absurd. Thus, this Court need not address the argument. *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 330 at fn 38, 130 P.3d 1280, 1288 at fn 38 (2006) (unsupported claims need not be considered).

Finally, the Edgeworths waived their absurd argument. *Schuck v. Signature Flight Support of Nev. Inc.*, 126 Nev. 434, 437-38, 245 P.3d 542, 544-45 (2011)(a new theory may not be raised on appeal). At the latest, Simon's consultation with an attorney was disclosed at the evidentiary hearing on August 30, 2018. (I RA 129-30.) Yet, the Edgeworths *did not raise* the purported conflict issue before the district court in the *half decade* after the evidentiary hearing despite ample opportunity to do so. (*See, e.g.*, VII AA 1377-1393 (conflict issue *not raised* during the latest remand to the district court).) Therefore, even if the conflict issue had merit-which it does not-the issue was waived

years ago and cannot now be raised for the first time on the Edgeworths' third appeal.

3. The claim of missing and/or destroyed documents.

The Edgeworths argued that Simon withheld client file documents before the district court during the latest remand. (*E.g.*, VII AA 1378-79.) The district court was not obligated to take the Edgeworths' claims at face value or to consider the late and/or groundless claims in its analysis of quantum meruit. Rather, the district court can weigh the latest claims in the light of the Edgeworths' prior false claims of missing documents. (*E.g.*, II RA 314.) Further, the Edgeworths' latest withheld document claims are not due deference on appeal.

a. The attempt to jail Simon

When the Edgeworths tried to have *Simon jailed*, they argued that they did not receive expert contracts and communication. (I RA 209-20.) In opposition, Simon listed the page numbers of the expert

information in the client file. (*E.g.*, I RA 240-44.) In reply, the Edgeworths conceded that:

> …the portions of the file he now says contain email and agreements *have not been reviewed* due to the limited time and the manner in which Simon's file is organized… (II RA 272:18-25.) (Emphasis added.)

In other words, *the Edgeworths did not review Simon's client file production before they accused Simon of withholding documents from the client file production and asked the district court to jail Simon.* Almost as bad, after admitting they did not review Simon's client file production, the Edgeworths then again moved the goal posts and claimed other documents were missing (which was also untrue) instead of withdrawing the motion. (II RA 272:26-73:4.)

When the district court asked why the Edgeworths did not accept Simon's offer to help find documents before filing the motion, the Edgeworths did not directly respond other than to raise a trust issue (II RA 328-29), as if such a concern could apply to a question and answer about a document's page number within the client file production.

The district court watched the Edgeworths' accusations of withheld documents and the attempt to have *Simon jailed* collapse in

real time. As such, the district court was well within its discretion to treat brand new complaints of withheld documents with skepticism.

b. Waived complaints about emails and draft agreements.

It is only after the second appeal that the Edgeworths complained that emails regarding draft settlement agreements were being withheld. (*E.g.*, I RA 205-7 (the Edgeworths discuss the draft settlement agreements and the timeline in their opening brief of their second appeal without a claim of missing emails).) This is true even though the Edgeworths argue that they suspected emails were withheld, but apparently let the issue lie dormant for years.

However, the Edgeworths cannot hide from the fact that Simon was cross- examined by Vannah on August 30, 2018, regarding the draft settlement agreements. (I RA 101-14 & 115-21.) The Edgeworths fail, given this background, to explain how the district court committed an error. The district court received firsthand testimony in 2018 regarding the draft settlement agreements and their timing. Further, arguendo, if emails were missing from an earlier production (the Edgeworths do not explain how intent to withhold can be legitimately argued from the record), the Edgeworths do not explain how the missing emails would

meaningfully enhance the understanding of the district court regarding the post discharge work of Simon given that the timeline of the draft agreements and edits was established during cross examination by Vannah in 2018. Nor do the Edgeworths explain why the issue has not been waived since they undeniably had actual knowledge of the draft settlement agreements and their transmittal in 2018.

c. The "destroyed" accusation

In this third appeal, the Edgeworths raise the new accusation that fully executed agreements were "destroyed" by Simon. This is a new claim on appeal which was not raised before the district court. (*See, e.g.*, VII AA 1377-1393 (the Edgeworth complained the fully executed agreements were missing but did not claim they were destroyed).)

The Edgeworths on appeal now proclaim, **"Simon's recent admission that he destroyed the fully executed agreements"** (bold in original). (*E.g.*, AOB at 19 fn 14.) The opening brief cites VIII AA 1715 in support of the claimed destruction admission. VIII AA 1715 is a letter in which Simon again explained that he did not "retain" the fully executed settlement agreements because he had been fired. Clearly, "retain" and "destroy" have different meanings. Further, the

Edgeworths' destroyed argument must turn on a negative inference drawn from the (perhaps poor) word choice of Simon's counsel. Simon's counsel agrees that "did not obtain" or "did not receive" would have been a clearer choice in the letter because while did not "retain" does not contradict with "did not obtain", it could be interpreted negatively.

When the "destroyed" claim is repeated at page 31 of the brief the citation is to VIII AA 1584, which is an email that does not even mention fully executed agreements. Rather, the email relates a conversation with John Greene including actions tasked to Simon and acts taken by Simon to benefit the clients. (*See, also*, VIII AA 1585-1593 (as per AA 1584, Simon sent the partially executed settlement agreements to Joel Henriod the next day).)

The timeline is that Simon forwarded the agreements signed by the Edgeworths to Viking attorney Joel Henriod and then received an email on December 12 from Viking attorney Janet Pancoast about checks being ready and a request to exchange the checks for a stipulation and order to dismiss. (I AA 187.) As such, Simon was tasked to get the settlement checks for the Edgeworths, which he did. Further, the Edgeworths appear to forget that they "required" Simon to work for

them even after they had groundlessly sued Simon for conversion. (*E.g.*, IX AA 1730-33 & 1740.)

The Edgeworths did not present substantial evidence to the district court or evidence sufficient to demonstrate that the district court must rule in the Edgeworths favor to the effect that Simon ever received fully executed agreements and/or that Vannah did not (or that they cannot get them now, if needed), let alone, that Simon destroyed the agreements. Instead, the Edgeworths only make accusations based on speculation, *just as they did during their attempt to jail Simon*. The district court is tasked with choosing between competing factual claims and narratives. The Edgeworths did not demonstrate that the choice of the court was arbitrary, capricious, or erroneous (especially as the Edgeworths did not present the "destroyed" claim below).

The Edgeworths also did not explain how the issue pertains to the quantum meruit analysis with such weight that it would impact the district court's decision, even though it was not raised for years. The issue of the fully executed agreements is de minimis, at best. The destroyed claim is newly raised and groundless and there is no

demonstration of abuse of discretion by the district court, especially since the "destroyed" claim was not argued to the district court.

d. The Edgeworths used a typo to try to *jail Simon*.

The best that can be said of the just described "destroyed" claim is that the Edgeworths seized on a poor word choice by counsel. This is a pattern with the Edgeworths. On November 14, 2022, in the reply in support of their effort to *jail Simon,* the Edgeworths seized on an obvious typo in Simon's opposition to claim that Simon had withheld "over 1.2 million more pages than the 139,995 he has produced to the Edgeworths". (II RA 273:14-21.) Attempting to jail someone because of an obvious typo is not appropriate, but it is consistent with the Edgeworths ongoing crusade to punish Simon.

VII. Reassignment is not appropriate.

The Edgeworths again request reassignment to a different district court if the case is remanded. The stock request is not well-taken. The Edgeworths did not move for recusal or disqualification at the district court level. The Edgeworths did not demonstrate bias and cannot overcome the presumption that the district court is unbiased. Finally, the Edgeworths did not present a cogent argument for reassignment by

an appellate court. *Valley Health Systems, LLC v. Eighth Jud. Dist. Ct.*, 510 P.3d 777 (Table), 2022 WL 1788220 at *5 (Nev. 2022)(unpublished); *citing*, *California v. Montrose Chem. Corp.*, 104 F.3d, 1507, 1521 (9th Cir. 1997)(*Valley Health* cited and applied the three reassignment factors from *Montrose Chemical*).

If this Court finds that the latest order of the district court does not sufficiently follow *Edgeworth II*, then the fact of a third remand is not sufficient on its own for an appellate court to order reassignment. There is no rule that requires reassignment by an appellate court based on the fact of one or more remands. The Edgeworths do not provide such a rule and allude only to *Wickliffe II* for support. However, *Wickliffe II* does not call for reassignment should this matter be remanded. The reassignment which occurred in *Wickliffe II* rested on a finding of bias. *Wickliffe v. Sunrise Hospital, Inc.*, 104 Nev. 777, 783, 766 P.2d 1322, 1326-27 (1988) (*Wickliffe II*)(the Court agreed with appellants argument that the district court "cannot *fairly* deal with the matters involved" (emphasis added)). *Wickliffe II* did not provide a litmus test for reassignment based on the number of remands.

The record in *Wickliffe II* contained evidence of obvious bias including the district court's approach to qualifying a nursing expert whose testimony was ruled admissible in *Wickliffe I*. *Wickliffe II*, 104 Nev. at fn 1, 766 P.2d at fn.1; *Wickliffe v. Sunrise Hospital*, 101 Nev. 542, 546-48, 706 P.2d 1383, 1388 (1985)(*Wickliffe I*)(the Court applied the clear reversal of the locality rule in *Orcutt v. Miller*, 95 Nev. 408, 412, 595 P.2d 1191, 1193 (1979) to hold that an expert on national nursing standards could testify regarding the standard of care for nursing staffs of accredited Nevada hospitals).

A similar record evidencing bias is not present in this matter. The district court did not exhibit unfair bias for or against any party or counsel, and the district court certainly did not undermine an appellate ruling which established the law of the case before a jury during a wrongful death trial as in *Wickliffe II*.

The amount of the quantum meruit award itself is also not evidence of bias. Simon requested an attorney fee greater than what the district court found. (*E.g.*, II RA 320-23.) Therefore, the amount of the quantum meruit award itself does not demonstrate bias. *Bongiovi v. Sullivan*, 122 Nev. 556, 579, 138 P.3d 433, 449 (2006)(no evidence of

bias when a party requested "$1 million in compensatory damages, but the jury only awarded one-fourth of that amount").

The Edgeworths did not present evidence of bias, and thus did not overcome the presumption that the district court is unbiased. *Millen v. Eighth Jud. Dist. Ct.*, 122 Nev. 1245, 1254, 148 P.3d 694, 701 (2006). Therefore, there is no basis under *Wickliffe II* for reassignment.

If a remand issues, there are no grounds to reassign the case under the *Montrose Chemical* factors. *Montrose Chemical*, 104 F.3d at 1521 (when an appellate court is faced with a reassignment request the court considers "(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness").

Under the first factor, there is nothing in the record which supports reassignment. In *Valley Hospital*, evaluation of the first factor favored reassignment because the district court found a

misrepresentation by a party *before* the court held an evidentiary hearing to determine if a misrepresentation had been made. In addition, the district court expressed its pre-hearing position in charged language, describing statements as "false" and labelling counsel as not "fully honest". The facts in *Valley Hospital* are the exact opposite of the record of this case. The district court below did not take a position or make a finding on lien adjudication or on pending motion practice before hearing the evidence. The district court did not make rulings until after the court conducted a five-day evidentiary hearing and could assess the evidence and the credibility of the witnesses. Finally, the district court below did not make charged comments at any time.

The "appearance of justice" under the second factor does not support reassignment, because the district court did not take pre-hearing positions or engage in critical commentary before the facts were in (or ever). In fact, the district court expressly stated it had an open mind on March 21, 2023, in response to the Edgeworths' baseless argument to the contrary-which itself promoted an incorrect reading of *Edgeworth II*. (II RA 333-34.) Instead, the appearance of justice factor cuts against reassignment because the request appears solely based

upon the district court's disagreement with the Edgeworths' claims. A request to replace a judge after the judge made a decision that a party dislikes is called judge shopping, and judge shopping does not further the appearance of justice.

The third factor looks to judicial economy and due process and is weighted heavily against reassignment. The district court saw firsthand the work of Simon, before *and after* discharge, to resolve the complex litigation in favor of his now former friends. This importantly includes seeing firsthand how the defense attorneys sought the assistance of Simon and how Vannah deferred to Simon on the post discharge work to resolve the complex litigation. (I RA 9-15; and RA 55-65.) The district court saw firsthand the demeanor of the witnesses at the five-day evidentiary hearing, including the evasiveness of Brian Edgeworth as he was cross-examined regarding his changing positions (VIII AA 1666 at ¶ 6; VIII AA 1676 at ¶ 6, VIII AA 1687-1693) and the stark way in which Angela Edgeworth expressed the couple's desire to punish Simon. (I RA 146-48.) The district court evaluated the evidence and heard firsthand the arguments made when the Edgeworths *sought to jail Simon* based on their own incomplete and erroneous review of the

produced client file. (II RA 272-73; and II RA 276-312.) In evaluation of all the factors there is nothing to be gained and much to be lost by reassignment should this case be remanded.

The reality is that the Edgeworths seek reassignment because they do not like the discretionary evidentiary findings made by the district court, especially the court's refusal to accept the post hoc arguments that Simon was a bad or dishonest attorney. (*E.g.*, AOB pg. 43 at fn 24, (expressing the desire for a different court to rule based on the Edgeworths (incorrect) factual narrative of misconduct).) The desire for a different discretionary result is not a basis for reassignment, it is merely judge-shopping. At the absolute worst, the most that can be honestly argued is that the district court did not adequately explain its decision. As such, this case should not be reassigned should this matter be remanded.

VIII. Conclusion

Simon respectfully requests that the fifth adjudication order of the district court *be affirmed*. Alternatively, if this matter is remanded, then the case *should not* be reassigned.

Dated this 5th day of March, 2024.

/s/ James R. Christensen

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VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

I, James R. Christensen, am an attorney for Simon herein. I hereby certify that I have read the foregoing Answering Brief, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

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

/s/ James R. Christensen
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CERTIFICATE OF COMPLIANCE

I hereby certify that this Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft word for office 365 MSO in 14 point Century Schoolbook font. I further certify that this brief complies with the page or type volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 14,000 words and contains approximately 11,900 words.

I hereby certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Answering Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 5th day of March, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of March 2024, I served a copy of the foregoing ANSWERING BRIEF electronically to all registered parties.

/s/ Dawn Christensen
an employee of JAMES R. CHRISTENSEN