

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
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Mar 05 2024 11:36 AM
Elizabeth A. Brown
Clerk of Supreme Court
(District Court A-16-738444-C)

INDEX TO RESPONDENTS' ANSWERING BRIEF APPENDIX

VOLUME II OF II

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INDEX TO RESPONDENTS ANSWERING BRIEF APPENDIX

Date	Document	Page No.
------	----------	----------

Volume I Chronological Order

12.18.17	Email chain between Daniel Simon, John Greene, James Christensen and Robert Vannah regarding bank account (Exhibit 50 admitted in Evidentiary Hearing).....	RA 1-6
1.4.18	Letter from Robert Vannah to Sarah Guindy regarding account, dated January 4, 2018 (Exhibit 51 admitted in Evidentiary Hearing).....	RA 7
1.9.18	Acceptance of Service of Summons and Complaint.....	RA 8
2.6.18	Portions of Hearing Transcript.....	RA 9-54
2.20.18	Portions of Hearing Transcript.....	RA 55-77
8.27.18	Portions of Evidentiary Hearing Day 1.....	RA 78-88
8.29.18	Portions of Evidentiary Hearing Day 3.....	RA 89-95
8.30.18	Portions of Evidentiary Hearing Day 4.....	RA 96-135
9.18.18	Portions of Evidentiary Hearing Day 5.....	RA136-152
11.19.18	Decision and Order on Motion to Dismiss NRCP 12(B)(5).....	RA153-162

2.5.19	Court Minutes.....	RA 163
8.8.19	Portions of Appellants' Opening Brief in Case No. 77678/78176.....	RA164-194
6.17.21	Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand.....	RA195-197
6.17.21	Decision and Order Denying Edgeworths' Motion For Order Releasing Client Funds and Requiring Production of Complete File.....	RA198-200
9.9.21	Decision and Order Denying Edgeworths' Motion For Reconsideration of Order on Motion for Order Releasing Funds and Requiring the Production of Complete Client File and Motion for Stay of Execution of Judgments Pending Appeal.....	RA201-204
1.27.22	Portions of Appellants' Opening Brief in Case No. 83258.....	RA205-208
11.4.22	Edgeworths' Motion for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should not be Held in Contempt and Ex Parte Application to Consider Same on OST...	RA209-220
11.14.22	Opposition to Edgeworths' Motion for Order to Show Cause on OST.....	RA221-249

Volume II Chronological Order

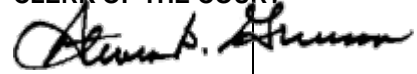
11.14.22	Portions of the Appendix to Opposition to Edgeworths' Motion for Order to Show Cause on OST.....	RA250-267
11.14.22	Edgeworths' Reply ISO Motion for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should not be Held in Contempt.	RA268-275
11.15.22	Portions of Hearing Transcript.....	RA276-312
12.13.22	Order Denying Edgeworths' Motion for Order to Show Cause on OST.....	RA313-315
3.21.23	Portions of Hearing Transcript.....	RA316-339

Volume I and II Alphabetical Order

Acceptance of Service of Summons and Complaint.....	Volume I RA 8
Appendix (portions) to Opposition to Edgeworths' Motion for Order to Show Cause on OST.....	Volume II RA250-267
Court Minutes.....	Volume I RA 163
Decision and Order Denying Edgeworths' Motion For Order Releasing Client Funds and Requiring Production of Complete File (6.17.21).....	Volume I RA198-200

Decision and Order Denying Edgeworths' Motion For Reconsideration of Order on Motion for Order Releasing Funds and Requiring the Production of Complete Client File and Motion for Stay of Execution of Judgments Pending Appeal (9.9.21).....	Volume I RA201-204
Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand (6.17.21).....	Volume I RA195-197
Decision and Order on Motion to Dismiss NRCP 12(B)(5) (11.19.18).....	Volume I RA153-162
Email chain between Daniel Simon, John Greene, James Christensen and Robert Vannah regarding bank account (Exhibit 50 admitted in Evidentiary Hearing).....	Volume I RA 1-6
Letter from Robert Vannah to Sarah Guindy regarding account, dated January 4, 2018 (Exhibit 51 admitted in Evidentiary Hearing).....	Volume I RA 7
Motion (Edgeworth) for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should not be Held in Contempt and Ex Parte Application to Consider Same on OST.....	Volume I RA209-220
Opening Brief of 8.8.19 (portions) in Case No. 77678/78176.....	Volume I RA164-194
Opening Brief of 1.27.22 (portions) in Case No. 83258.....	Volume I RA205-208
Opposition to Edgeworths' Motion for Order to Show Cause on OST.....	Volume I RA221-249

Order Denying Edgeworths' Motion for Order to Show Cause on OST.....	Volume II RA313-315
Reply (Edgeworths) ISO Motion for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should not be Held in Contempt.....	Volume II RA268-275
Transcript of 2.6.18 hearing.....	Volume I RA 9-54
Transcript of 2.20.18 hearing.....	Volume I RA 55-77
Transcript of 11.15.22 hearing.....	Volume II RA276-312
Transcript of 3.21.23 hearing.....	Volume II RA316-339
Transcript (portions) of Evidentiary Hearing Day 1.....	Volume I RA 78-88
Transcript (portions) of Evidentiary Hearing Day 3.....	Volume I RA 89-95
Transcript (portions) of Evidentiary Hearing Day 4.....	Volume I RA 96-135
Transcript (portions) of Evidentiary Hearing Day 5.....	Volume I RA136-152



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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

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

**APPENDIX TO OPPOSITION TO
EDGEWORTHS' MOTION FOR
ORDER TO SHOW CAUSE ON
OST**

Hearing date: 11.15.22
Hearing time: 9:00 a.m.

Document	Page No.
----------	----------

Exhibit 1	Production Chart for Documents That Were Withheld Pursuant to Protective Order.....	1 – 5
Exhibit 2	Production Chart for Documents Produced	6 - 110
Exhibit 3	Receipt of Simon Law’s Production of Cell Phone Records.....	111 - 112
Exhibit 4	Receipt of Original File	113 - 114
Exhibit 5	Photo of external hard drive and FedEx receipts...	115 - 117
Exhibit 6	Declaration of Ashley Ferrel, Esq. in Support of Plaintiffs’ Opposition to Edgeworths’ Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete File – And – Motion to Stay Execution of Judgments Pending Appeal.....	118 – 120
Exhibit 7	Receipt of External Hard Drive (10.11.22).....	121
Exhibit 8	Receipt of External Hard Drive (10.26.22).....	122
Exhibit 9	Excerpts from Recorder’s Transcript of Evidentiary Hearing – Day 4.....	123 – 160
Exhibit 10	Screenshot of file names	161
Exhibit 11	Notice of Association of Counsel.....	162 – 164
Exhibit 12	Morris Law Group letter of May 4, 2021.....	165
Exhibit 13	Reply in Support of Edgeworths’ Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File	166 - 168
Exhibit 14	James R. Christensen letter of May 7, 2021.....	169 – 170

Exhibit 15	Email of 5.11.21.....	171 – 172
Exhibit 16	Declaration of Monica Solis-Rainey in Support of Edgeworths’ Motion for Order Releasing Client Funds and Requiring the Production of the Complete Client File.....	173 – 175
Exhibit 17	Recorders’ Transcript of May 27, 2021	176 – 181
Exhibit 18	Excerpts of the Petition for Writ of Mandamus to Release Client Funds in Excess of Adjudicated Lien Amount and to Release the Complete Client File...	182 – 184
Exhibit 19	Order Granting Petition in Part and Denying Petition In Part.....	185 – 190
Exhibit 20	Edgeworth Proposed Order and Email to the Court	191 – 194
Exhibit 21	Notice of Entry of Order for Simon to Release Edgeworth Client File.....	195 – 201
Exhibit 22	Email string beginning October 11, 2022.....	202 – 205
Exhibit 23	James R. Christensen letter of October 18, 2022..	206 – 207
Exhibit 24	Morris Law Group letter of October 18, 2022.....	208 – 213
Exhibit 25	James R. Christensen letter of October 25, 2022..	214 – 216
Exhibit 26	Morris Law Group letter of October 27, 2022.....	217 – 222

1 Exhibit 27 Excerpts from Recorder's Partial Transcript of
2 Hearing Status Check: Settlement Documents of
3 February 20, 2018..... 223 – 227

4 DATED this 14th day of November 2022.

5 /s/ James R. Christensen

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13 Attorney for Daniel S. Simon

EXHIBIT 1

RA 00254

<u>Document Description</u>	<u>File Name</u>	<u>Folder Location</u>	<u>Batestamp No.</u>
A copy of a folder Brian Edgeworth made containing 30 exhibits relating to Viking, notes and then all documents combined in 1 PDF	Brain's Fraud Binder	Protective Order Documents/Brain's Fraud Binder	LODS039020-LODS039911
Documents from Viking expert Carnahan in FSS and Thorpe litigations	Carnahan Documents from FSS and Thorpe	Protective Order Documents/Brain's Fraud Binder	LODS039912-LODS040726
Lange Plumbing, LLC's Answers to Plaintiffs' 2 nd Set of Interrogatories	Lange Plumbing, LLC's Answers to Plaintiffs' 2 nd Set of Interrogatories	Protective Order Documents/Def Discovery Responses	LODS040727-LODS040744
Confidential Exhibits from Erik Johnson Deposition	170710Johnson CONFIDENTIAL Exhibits	Protective Order Documents/Depositions/ Erik Johnson	LODS040745-LODS040910
Confidential Exhibits from Kyle Mao Deposition	170629Mao Exhibits	Protective Order Documents/Depositions/ Kyle Mao	LODS040911-LODS040924
Confidential Exhibits from Robert Carnahan Deposition	606969-RC-002 606969-RC-005 606969-RC-008 606969-RC-009	Protective Order Documents/Depositions/ Robert Carnahan	LODS040925-LODS041290
Confidential Exhibits from Scott Martorano Deposition	170831Martorano CONFIDENTIAL Exhibits	Protective Order Documents/Depositions/ Scott Martorano	LODS041291-LODS041512
Confidential Exhibits from Shelli Lange Deposition	170315Lange Exhibits	Protective Order Documents/Depositions/ Shelli Lange	LODS041513-LODS041890
Written Discovery to Viking with confidential exhibits attached	5th Set of Interrogatories to Defendants The Viking Corporation	Protective Order Documents/Discovery to Defendants	LODS041891-LODS041913
Written Discovery to Viking with confidential exhibits attached	Plaintiffs' 3 rd Set of Requests for Production to Defendants	Protective Order Documents/Discovery to Defendants	LODS041914-LODS041920
Miscellaneous Notes, Questions and other documents prepared by Brian Edgeworth that	Misc Notes, Questions, Docs prepared by Brian	Protective Order Documents/Docs received from client	LODS041921-LODS042118

contains confidential information			
Defendant Lange Plumbing, LLC's Fourth Supplement to Early Case Conference Disclosure with confidential documents attached	4 th ECC Supp	Protective Order Documents/ECCs/Def/ Lange ECCs/4th ECC Supp	LODS042119-LODS043239
Defendant Lange Plumbing, LLC's Sixth Supplement to Early Case Conference Disclosure with confidential documents attached	6 th ECC Supp	Protective Order Documents/ECCs/Def/ Lange ECCs/6th ECC Supp	LODS043240-LODS046300
Defendant Lange Plumbing, LLC's Ninth Supplement to Early Case Conference Disclosure with confidential documents attached	9 th ECC Supp	Protective Order Documents/ECCs/Def/ Lange ECCs/9th ECC Supp	LODS046301-LODS052528
Defendant Lange Plumbing, LLC's Tenth Supplement to Early Case Conference Disclosure with confidential documents attached	10 th ECC Supp	Protective Order Documents/ECCs/Def/ Lange ECCs/10th ECC Supp	LODS052529-LODS052586
Defendant Lange Plumbing, LLC's Eleventh Supplement to Early Case Conference Disclosure with confidential documents attached	11 th ECC Supp	Protective Order Documents/ECCs/Def/ Lange ECCs/11th ECC Supp	LODS052587-LODS056239
Defendant Viking's Sixth Supplement to Early Case Conference Disclosure with confidential documents attached	6 th ECC Supp	Protective Order Documents/ECCs/Def/ Viking ECCs/6th ECC Supp	LODS056240-LODS062580
Defendant Viking's Seventh Supplement to Early Case Conference	7 th ECC Supp	Protective Order Documents/ECCs/Def/ Viking ECCs/7th ECC Supp	LODS062581-LODS100852

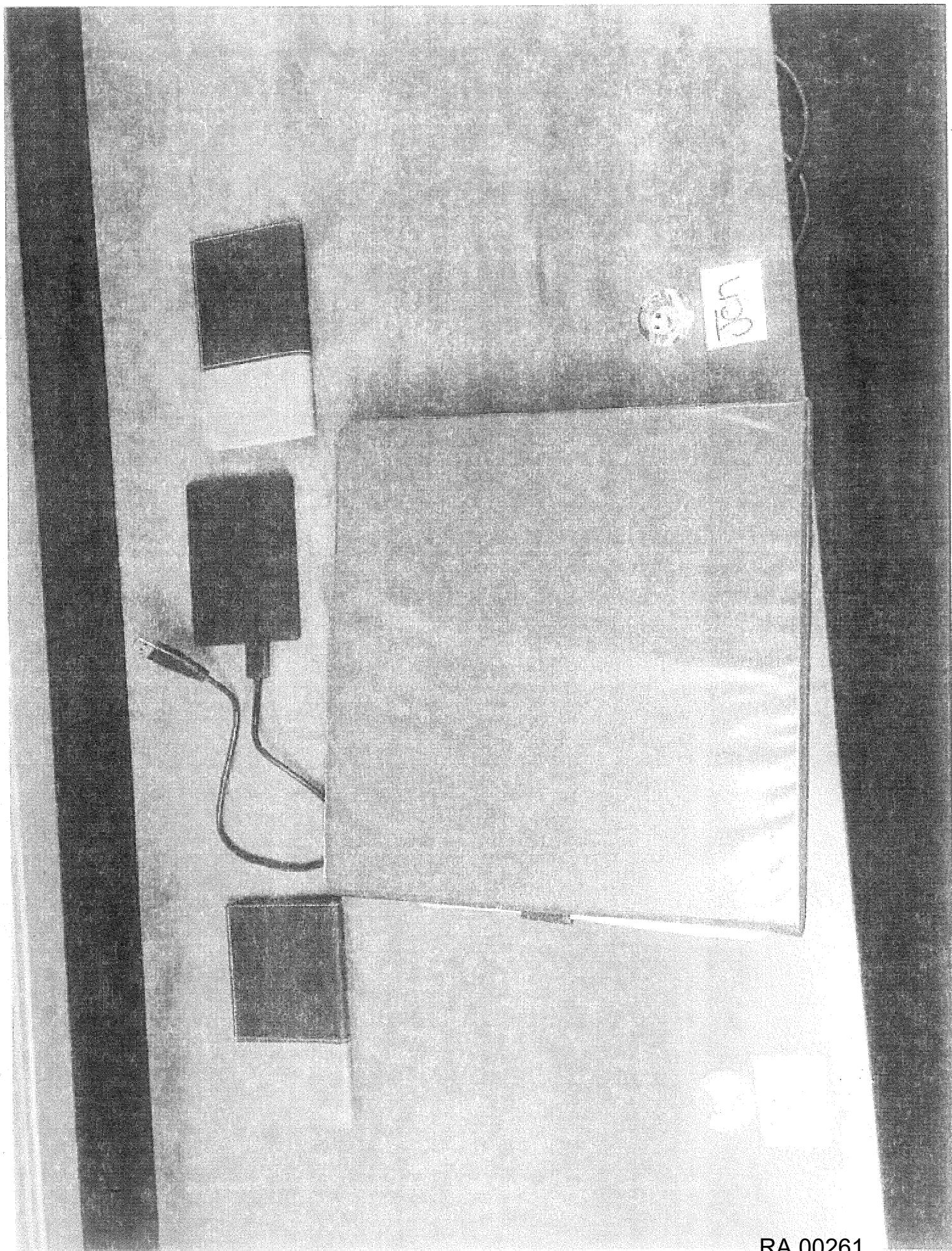
Disclosure with confidential documents attached			
Defendant Viking's Tenth Supplement to Early Case Conference Disclosure with confidential documents attached	10 th ECC Supp	Protective Order Documents/ECCs/Def/Viking ECCs/10th ECC Supp	LODS100853-LODS101195
Defendant Viking's Eleventh Supplement to Early Case Conference Disclosure with confidential documents attached	11 th ECC Supp	Protective Order Documents/ECCs/Def/Viking ECCs/11th ECC Supp	LODS101196-LODS106461
Defendant Viking's Thirteenth Supplement to Early Case Conference Disclosure with confidential documents attached	13 th ECC Supp	Protective Order Documents/ECCs/Def/Viking ECCs/13th ECC Supp	LODS106462-LODS106589
Defendant Viking's Fourteenth Supplement to Early Case Conference Disclosure with confidential documents attached	14 th ECC Supp	Protective Order Documents/ECCs/Def/Viking ECCs/14th ECC Supp	LODS106590-LODS113775
Defendant Viking's Fifteenth Supplement to Early Case Conference Disclosure with confidential documents attached	15 th ECC Supp	Protective Order Documents/ECCs/Def/Viking ECCs/15th ECC Supp	LODS113776-LODS133174
Defendant Viking's Sixteenth Supplement to Early Case Conference Disclosure with confidential documents attached	16 th ECC Supp	Protective Order Documents/ECCs/Def/Viking ECCs/16th ECC Supp	LODS133175-LODS133582
Defendant Viking's Eighteenth Supplement to Early Case Conference Disclosure with confidential documents attached	18 th ECC Supp	Protective Order Documents/ECCs/Def/Viking ECCs/18th ECC Supp	LODS133583-LODS133639

Exhibit 68 from Plaintiff's fourteenth ECC Supplement	68. Pomerantz Supp Report	Protective Order Documents/ECCs/Plaintiff	LODS133640-LODS133646
Certain exhibits to Defendant Giberti's Expert Report and Rebuttal Report with confidential documents	Giberti	Protective Order Documents/Expert Disclosures/Giberti	LODS133647-LODS133659
Certain Defendant Lange Plumbing Expert Reports and Rebuttal Reports with confidential documents	Lange Plumbing	Protective Order Documents/Expert Disclosures/Lange Plumbing	LODS133660-LODS134254
Certain Defendant Viking Expert Reports and Rebuttal Reports with confidential documents	Viking	Protective Order Documents/Expert Disclosures/Viking	LODS134255-LODS134789
Certain Plaintiff Expert Reports and Rebuttal Reports with confidential documents	Plaintiffs	Protective Order Documents/Expert Disclosures/Plaintiffs	LODS134790-LODS135284 (LODS134878-LODS134879 intentionally left blank)
Confidential Exhibits that were attached to Plaintiffs' Mediation Brief	Exhibits	Protective Order Documents/mediation	LODS135285-LODS135726
Email Summary Chart with the Emails from Viking regarding the VK457 sprinklers from the Viking production of documents	Email Summary Chart	Protective Order Documents/Misc	LODS135727-LODS135746
UL 1626 Standard for Safety Residential Sprinklers for Fire-Protection Service produced by Viking	UL 1626 (ocr searchable)	Protective Order Documents/Misc	LODS135747-LODS135825
Plaintiffs' Motion to Compel Viking and for Sanctions and Plaintiffs' Reply to Motion to Compel Viking and for Sanctions and all corresponding exhibits	Motion to Compel Viking and for Sanctions	Protective Order Documents/Motions/Motion to Compel Viking and for Sanctions	LODS135826-LODS136403

Plaintiffs' Motion to De-designate Viking Confidentiality of Their Documents on OST and corresponding exhibits	MOtion to De-Designate Viking Confidentiality	Protective Order Documents/Motions/MOtion to De-Designate Viking Confidentiality	LODS136404-LODS136669
Plaintiffs' Motion to Strike the Viking Defendants' Answer on OST, Plaintiffs' Reply to Motion to Strike Viking Defendants' Answer on OST, Plaintiffs' Second Supplement to Reply and corresponding exhibits	Motion to Strike Vikings Answer	Protective Order Documents/Motions/Motion to Strike Vikings Answer	LODS136670-LODS137630
Exhibits to Plaintiffs' Opposition to Viking's Motion for Protective Order	Viking Motion for PO	Protective Order Documents/Motions/Viking Motion for PO	LODS137631-LODS137759
Notice to the Discovery Commissioner with the Privilege Log for the Viking document production	11-16-17-Edgeworth Notice of Confidentiality Log Production	Protective Order Documents/Priv Log	LODS137760-LODS137784
Rimkus Consulting Group Documents produced by Viking	Rimkus Documents	Protective Order Documents/Rimkus Documents	LODS137785-LODS139843
Letter from T. Parker with Lange Plumbing tax Returns, dated 11.20.17	11.20.17-Correspondence from Parker with Lange Tax Returns	Protective Order Documents	LODS139844-LODS139995

EXHIBIT 5

RA 00260



RA 00261



Dear Customer,

The following is the proof-of-delivery for tracking number: 393277379817

Delivery Information:

Status:	Delivered	Delivered To:	
Signed for by:	M.BRIAN	Delivery Location:	
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday; No Signature Required		HENDERSON, NV,
		Delivery date:	May 28, 2020 10:16

Shipping Information:

Tracking number:	393277379817	Ship Date:	May 27, 2020
		Weight:	
Recipient:		Shipper:	
HENDERSON, NV, US,		LAS VEGAS, NV, US,	

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

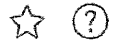
RA 00262



TRACK ANOTHER SHIPMENT

393277379817

ADD NICKNAME



Delivered
Thursday, May 28, 2020 at 10:16 am



DELIVERED

Signed for by: M.BRIAN

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM

LAS VEGAS, NV US

TO

HENDERSON, NV US

Travel History

TIME ZONE

Local Scan Time



Thursday, May 28, 2020

10:16 AM

HENDERSON, NV

Delivered

Shipment Facts

TRACKING NUMBER

393277379817

SERVICE

FedEx Priority Overnight

SPECIAL HANDLING SECTION

Deliver Weekday, No Signature Required

SHIP DATE

5/27/20 ?

ACTUAL DELIVERY

5/28/20 at 10:16 am

EXHIBIT 6

1 **DECLARATION OF ASHLEY FERREL, ESQ. IN SUPPORT OF PLAINTIFFS'**
2 **OPPOSITON TO EDGEWORTHS' MOTION FOR RECONSIDERATION OF ORDER**
3 **ON MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE**
4 **PRODUCTION OF COMPLETE CLIENT FILE -AND-**
5 **MOTION TO STAY EXECUTION OF JUDGMENTS PENDING APPEAL**

6 STATE OF NEVADA)
7) ss.
8 COUNTY OF CLARK)

9 ASHLEY M. FERREL, ESQ., being first duly sworn, under oath, deposes and says that:

10 Declarant is an attorney licensed to practice law in the State of Nevada and was counsel
11 for the Edgeworths in this matter;

12 Declarant is an associate attorney at the Law Office of Daniel S. Simon and has been since
13 January 5, 2015;

14 Prior to working at the Law Office of Daniel S. Simon, Declarant worked at the Eglet law
15 firm as an associate attorney for approximately three and half years and as a law clerk with the
16 same firm for a year and a half working on the trial team preparing cases to go to trial and served
17 on the trial team for all of the Endoscopy litigation and mass tort claims that the firm handled;

18 Since Declarant began working at the Law Office of Daniel S. Simon, she has worked
19 closely on the litigation files with Daniel Simon from case inception through the appellate level,
20 if necessary;

21 Declarant worked closely with Mr. Simon on the Edgeworth matter and was the main
22 person in the office that saved all correspondence, pleadings and anything that related to the
23 Edgeworth file;

24 In late May 2019, Declarant was asked to compile the file for the Edgeworths based upon
25 a request from the Edgeworths' attorneys at Vannah & Vannah and Declarant did so, which was
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27
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1 picked up by employees of Vannah & Vannah on June 10, 2019 from Law Office of Daniel S.
2 Simon.

3 In May 2020, Declarant was instructed to make a copy of the Edgeworth electronic file,
4 based upon a request from the Edgeworth's attorney Patricia Lee and place that file on an external
5 hard drive that could be provided to the Edgeworths;

6 Based upon the request by Ms. Lee, Declarant copied the Edgeworth electronic file directly
7 from the Law Office of Daniel S. Simon server and placed it onto an external hard drive;

8 At that time, Declarant was instructed to remove all documents that contained documents
9 or references that were covered by the protective order and put them in a separate folder on another
10 external hard drive, which Declarant promptly did;

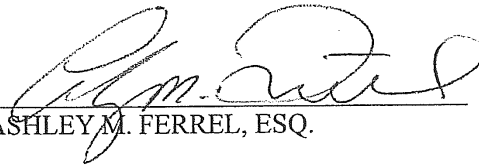
11 The file produced contained 40 folders and many of the folders contained sub-folders. All
12 of the documents contained in the folders are in PDF and a few of the sub-folders also contain
13 .JPG files or excel files.

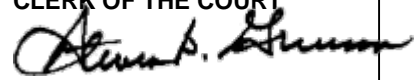
14 All of the folders are clearly identified with what is in each file and any sub-folder is clearly
15 identified as well. One example is the "Pleadings" folder, which contains 75 PDF files that are
16 pleadings that were filed in the underlying litigation. Another example is the "Motions" folder,
17 which contains 30 subfolders clearly titled to identify what the Motion is and each of the sub-
18 folders contains the PDF files of the motion, opposition and/or reply filed for that particular
19 motion. Another example is the "Def ECC & Supp" folder, which contains three subfolders for
20 each of the Defendants in the underlying case (Viking, Lange, Giberti) and then each of those
21 folders contains PDFs and/or sub-subfolders identified as initial ECC, 1st ECC Supp, 2nd ECC
22 Supp, etc., with the exception of the documents that were withheld pursuant to the protective order.
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1 It is Declarant's understanding that the external hard drive with the electronic file, with the
2 exception of the documents covered by the protective order was sent via Fed-Ex to the Edgeworths
3 and was delivered on May 28, 2020.

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

5 Dated this 14th day of July, 2021.

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8 
9 ASHLEY M. FERREL, ESQ.
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RPLY
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Attorneys for Defendant
Edgeworth Family Trust and
American Grating, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

LANGE PLUMBING, LLC ET AL.,

Defendants.

) Case No: A-16-738444-C
) Dept. No: X
)
) **EDGEWORTHS' REPLY ISO**
) **MOTION FOR ORDER TO**
) **SHOW CAUSE WHY**
) **DANIEL SIMON AND THE**
) **LAW FIRM OF DANIEL S.**
) **SIMON SHOULD NOT BE**
) **HELD IN CONTEMPT**

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

)
)
) Case No: A-18-767242-C
) Dept. No. X
)
) **HEARING DATE: 11/15/22**
) **HEARING TIME: 9:00 A.M.**
)
)
)

Simon's opposition is largely a repeat of his opposition to the Edgeworths' opposition in the Supreme Court to avoid producing the *complete file* as ordered by the Supreme Court and this Court. His opposition attempts to cobble together ("spin" would be a better word) pieces of his file he produced for various purposes at various points in time to try to falsely demonstrate compliance with his unambiguous obligation to *produce his complete file* to the Edgeworths.

The Edgeworths and Simon agree on one thing: an evidentiary hearing for Simon to Show Cause Why he should not be Held in Contempt is necessary before an order holding him in contempt can issue.

As a threshold matter, Simon's contention that the Edgeworths wish to extend litigation is ironic, since it was he that threatened to cost them more than the amount he was demanding unless they paid him the bonus he wanted. He has effectively done this by his disingenuous tactics that continue to be evidenced in his opposition to this motion.

As we point out in the motion, Simon's own testimony and the references in his opposition demonstrate that he has withheld portions of the Edgeworth file. The Court's order is not ambiguous. Simon's admission that he **chose** not to print the attachments referenced in the email he himself identified as part of the Edgeworth file, *alone*, warrants contempt.

Due to the late receipt of the opposition (after 2 p.m. before tomorrow's scheduled 9:00 a.m. hearing), not every one of Simon's arguments will or can be addressed. The Edgeworths' reserve the right to respond to the arguments orally or at subsequent proceedings scheduled by the Court.

For the reasons set forth in the motion, below, and in argument permitted by the Court, the Edgeworths respectfully ask that the Court

grant this Motion and set a date by which Simon can demonstrate why he should not be held in contempt.

A. THE VIKING SETTLEMENT DOCUMENTS

Simon's opposition dissembles by mischaracterizing the exchanges with counsel, indulging his feigned inability to understand that "complete file" means the complete file and dismissing counsel's examples of the types of documents missing from the portion of the file he produced (the Edgeworths cannot specifically identify what Simon has not produced). Simon has an obligation to produce his client file in the order in which he keeps it – he can do so the old fashioned way by printing every portion of it and then producing a print (or pdf copy) or with respect to those portions he keeps electronically, such as email, he can produce the .pst files if that is more efficient for him. However, instead of finding solutions to produce the missing portions of the file – even the email attachments **he admits** he intentionally excluded – Simon's arguments focus on *pieces* of the file he did produce and ignores the questions raised about the documents he did not produce or identify. For example, where are the emails or letters by which Simon received the initial draft of the settlement agreements? Where is the fully executed copy of the Viking settlement agreement?

1. *Initial Viking Settlement Drafts*

Simon self-servingly cites to his own testimony in 2018 to suggest documents which the Edgeworths reasonably expected to be in the file are missing, ignoring the fact that his own testimony was contradictory with regards to the timing of settlement negotiations. On August 30, 2017, he testified to the Court that he returned from Peru on November 27, 2017 and received "this release where they omitted the confidentiality clause" Ex L at 15:20-22. He reiterates that he "got mutual releases" for the Edgeworths on November 27. *Id.* at 16:4 – 5. Where are these releases he

1 received that day? He confirms his claim that these negotiations took place
2 on November 27 by stating that he finished hammering out the terms before
3 he was fired, and expressly confirms it was before November 30, 2017. *Id.* at
4 17:6 – 14.

5 Simon later tries to change the timing to say he hammered out
6 the details of the settlement between his November 30 morning email to the
7 Edgeworths transmitting the first draft of the settlement he provided them,
8 and the afternoon email that same day transmitting a "revised" draft. *See* Ex.
9 M, Superbill Excerpt at 75 (3rd entry from bottom). Even if the contradictory
10 testimony is credited, it begs the question of how and when did Simon
11 receive the initial settlement proposal from the Viking side so that it could
12 be fully negotiated by November 27 or 30th?

13 Simon also testified he negotiated the confidentiality clause at
14 Brian's request before November 30, 2017. Ex. R August 29, 2017 Hrg. Tr. at
15 216 – 218. Brian Edgeworth told Simon on November 16 that he was fine
16 with the confidentiality provision. Ex. N, Text between Simon and Brian
17 Edgeworth, which could not be located in Simon's file. The letter shown in
18 the background of the text, which presumably is on Simon's computer
19 screen (Ex. O) could also not be located in the portion of the file Simon
20 provided.

21 Not only did Simon give false testimony claiming he negotiated the
22 removal of the confidentiality clause at the Edgeworths' request, but he
23 raises the question as to why the "draft" of the Viking Agreement Simon sent
24 to the Edgeworths on the morning of November 30, 2017 still had a
25 confidentiality provision if he negotiated it out *before* that date, as he
26 testified to the Court. His candor to his clients and the Court is a relevant
27 factor to the "value" of his post-discharge services.
28

2. *Final Settlement Agreement*

Simon's opposition mocks the Edgeworths for stating that they had not even received the fully-executed Viking settlement agreement from him, claiming it was after he'd been fired. Opp'n at 11-12. *But Simon insisted* that the signed documents from the Edgeworths and Viking be transmitted through him. *See* Ex. P, Simon's 11/30 Afternoon Email. This request was honored as Vannah's office delivered the copy of the Viking agreement executed by the Edgeworths to Simon on December 1. Viking appears to have also returned their executed copy to Simon, as shown by his billing records. Ex. M at 76 (12/1/17 Entry "Receive and review release email *from* Pancoast [Viking's counsel] & discussion with AF"). Even if Simon now takes the position that the document was not included, the "release email from Pancoast" cannot be located in Simon's production.

B. EXPERT EMAIL AND REPORTS

Simon testified in response to the Court's own questions that he retained the experts after August 2017 without discussing their selection and costs with the Edgeworths. Although 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, some of the document numbers point to the portion of the file that Simon says he initially withheld based on the protective order. Why would expert engagement letters be subject to the stipulated protective order? More importantly, where are the portions of the expert files that he did not produce?

Simon retained McDonald Carano to provide expert or consulting work, yet they are not among the experts addressed by Simon. Where is the "evaluation" that Mr. Ogilvie transmitted to Simon and the

1 email transmitting it (unless Simon wants to now claim that too was done in
2 person)? *See* Ex. Q, McDonald Carano Invoice. Simon billed the Edgeworths
3 three hours on November 29, 2017 for reviewing Mr. Ogilvie's email
4 "**report**". *See* Ex. M at 74 and 75.

5 Furthermore, as discussed in the instant motion, the size of the
6 file produced does not match the size of the file Simon testified existed in
7 2018. Simon's response (Opp'n at 25) to the size of the file argument missed
8 the point and now seems to contradict the hearing testimony. Simon's
9 counsel elicited testimony that there was six, seven, or eight boxes of email –
10 that's 30,000 to 40,000 pages (not the 5,426 pages Simon produced); Simon's
11 office testified discovery alone was the 122,458 pages (the 24.5 boxes) but
12 also added that those boxes did not include the remaining portion of the file.
13 So the question is, where is the remaining portion?

14 Furthermore, Simon's opposition also confirms that only *a*
15 ***fraction*** of the file has been produced. *See* page 22 referencing "confidential"
16 Bates documents LODS 1352727 – 746 (over 1.2 million more pages than the
17 139,995 he has produced to the Edgeworths). *See* Ex. I (charting Simon's
18 partial production with the last page showing an ending Bates number
19 LODS139995); *see also* Opp'n at 21 (claiming Koch's retainer agreement is at
20 LODS1348256 – nearly ***one million pages beyond*** the last page Simon
21 produced to the Edgeworths).

22 C. EMAIL ATTACHMENTS

23 Simon's effort to now step back from his counsel's ***admission***
24 that **Simon chose** not to print attachments when gathering the Edgeworth
25 file email, must be rejected. The same is true of his latest contention that not
26 all email is maintained in the file. There is nothing "vague" about the
27 Edgeworths' counsel's declaration that email attachments are missing. Opp'n
28 at 24. Mr. Christensen had no trouble understanding that description when

he was forced to admit they did not print them to include in the file Simon turned over because it would have made the production too voluminous. And he cannot *unilaterally* pronounce that "the Edgeworths already have draft attachments of interest," as he tries to do on page 24 in order escape responsibility for not producing all of the attachments.

D. EXPECTED FILE

The Edgeworths repeatedly and clearly stated to Simon's counsel that they expect to receive the complete file that Simon maintains. Despite Simon's meritless arguments to the contrary, the Edgeworths did not ask Simon or his counsel to produce anything more. The charts that Simon's office produced on October 26, 2022 – two weeks after the deadline for the ordered production – were compiled to bolster their disingenuous arguments, not for the Edgeworths "guidance." In fact, during the October 25, 2022 call, Simon's counsel stated Simon had no obligation to create a chart, although he was at work doing so.

Likewise, the manner of production was up to Simon, so long as the production was complete and documents were in the order maintained in the normal course of business. His counsel admitted that was not the case with respect to email. No amount of "spin" can change the fact Simon has the email together with the corresponding attachments but has refused to produce those documents.

E. CONCLUSION

Regardless of Simon's best efforts to recharacterize and spin the history of this case file, it is clear that he has not honored his obligation to produce the Edgeworths' complete client file as ordered. The Court should grant this motion and provide Simon an opportunity to meet his burden to show cause why he should not be held in contempt.

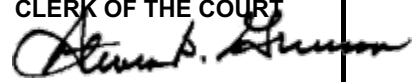
1 The Edgeworths simply want their complete file, the Supreme
2 Court has ruled on that issue, and this Court has so ordered. It is time to
3 make Simon comply.

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
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10 Attorneys for Edgeworth Family Trust
11 and American Grating, LLC
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST,)
)
Plaintiff,)
)
vs.)
)
LANGE PLUMBING, L.L.C.,)
)
Defendant.)
)
AND OTHER PARTIES)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 15, 2022

TRANSCRIPT OF HEARING RE:

**EDGEWORTH'S MOTION FOR ORDER TO SHOW CAUSE WHY DANIEL SIMON AND
THE LAW FIRM OF DANIEL S. SIMON SHOULD NOT BE HELD IN CONTEMPT
AND EX PARTE APPLICATION TO CONSIDER SAME ON OST HEARING
REQUESTED**

APPEARANCES:

FOR EDGEWORTH FAMILY TRUST:

STEVE L. MORRIS, ESQ.
ROSA SOLIS-RAINEY, ESQ.

FOR DANIEL SIMON AND
LAW FIRM OF DANIEL SIMON:

JAMES R. CHRISTENSEN, ESQ.
PETER J. CHRISTIANSEN, ESQ.*
DANIEL S. SIMON, ESQ.

*Via BlueJeans

RECORDED BY: VICTORIA BOYD, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, NOVEMBER 15, 2022, 8:57 A.M.**

2 * * * * *

3 THE COURT: Okay. All right. Let's go on the record
4 in A738444, the Edgeworth Family Trust versus the Law Offices
5 of Daniel Simon.

6 May the record reflect -- let's go ahead and get
7 everybody's appearances. Who is here from the Edgeworth Family
8 Trust?

9 MS. SOLIS-RAINEY: Your Honor, Rosa Solis-Rainey,
10 Morris Law group on behalf of the edge worse.

11 MR. MORRIS: Good morning, Your Honor. Steve Morris
12 for the Edgeworth.

13 THE COURT: Okay. On behalf with Mr. Simon and the
14 Law Office of Daniel Simon.

15 MR. CHRISTENSEN: Jim Christensen, 3861.

16 THE COURT: Okay.

17 MR. CHRISTENSEN: And Mr. Simon is present as well.

18 THE COURT: Okay. And Mr. --

19 MR. CHRISTIANSEN: Good morning, Judge. Pete
20 Christiansen is present as well, 5254.

21 THE COURT: All right.

22 All right. So here is where we are. This is on for
23 the motion for an order to show cause why Daniel Simon and the
24 law office of Daniel Simon should not be held in contempt about
25 return of the files.

1 So here's where we are. Mr. Christensen, I did
2 receive your appendix yesterday. That is 258 pages. I was in
3 a settlement conference all yesterday afternoon. I thought I
4 could get this done last night. And then I did get a lot of it
5 done, but then I got in this morning, and as I was finishing
6 up, at about 8:30 I realized there was a reply filed last night
7 at 7:15 that I have not had an opportunity to read because I
8 was preparing for -- I figured there might be a reply, but I
9 didn't know if you guys were going to be requesting a
10 continuance today to do it or what you were going to do. So I
11 have not read the reply.

12 So the options I will give you guys today is you guys
13 can argue this, and I'm going to issue a written decision, or
14 we can come back after I've had an opportunity to review the
15 reply.

16 Have you reviewed the reply?

17 MR. CHRISTENSEN: I have, Your Honor.

18 THE COURT: Okay. Because I know you guys all showed
19 up in person. So it's totally your call as to what you guys
20 want to do.

21 MS. SOLIS-RAINEY: And, Your Honor, I do have a
22 courtesy copy of the reply, not that you need to look at it
23 right now, but --

24 THE COURT: No, yeah, I can look at it. I'm actually
25 in Odyssey.

1 MS. SOLIS-RAINEY: For your convenience.

2 THE COURT: No, no. I don't need it. I have it
3 electronically.

4 MS. SOLIS-RAINEY: Okay.

5 THE COURT: Yeah, I'm in Odyssey right now. So I
6 don't need that one.

7 MS. SOLIS-RAINEY: Okay.

8 THE COURT: Yeah, but I literally just saw it at
9 8:30 that it was filed last night. So I haven't read it.
10 So what would you guys prefer to do?

11 MR. MORRIS: We can go ahead with the argument.

12 THE COURT: Okay. All right. Since it is your
13 moving papers, Mr. Morris, whenever you are ready.

14 MR. MORRIS: Yes. Thank you, Your Honor. And I'm
15 pleased to report that I can hear you this morning.

16 THE COURT: I know. You know, we just get a little
17 bit of technology, and it feels like we take one step forward
18 and three steps back.

19 MR. MORRIS: Well, just to be sure, I invested in my
20 own technology. I put new batteries in my hearing aids.

21 THE COURT: Okay.

22 MR. MORRIS: So I hope I don't miss anything from you
23 this morning.

24 THE COURT: Okay.

25 MR. MORRIS: And if you have any questions, I hope I

1 hear those clearly and answer them for you.

2 THE COURT: All right. Perfect. And I'm glad to see
3 everybody in person, but I know how convenient it is when we do
4 have BlueJeans for certain things.

5 MR. MORRIS: Yes. Your Honor, I'm not going to tell
6 you anything you don't already know. But this I do want to
7 emphasize. The Supreme Court said that the statute compels you
8 to order Simon to produce his complete client file. That's
9 what the Supreme Court said, and that is in point of fact what
10 7055, the statute, says. That has not been done. Simon has
11 produced bits and pieces of the file, most of which he
12 apparently assembled two years ago but waited until this
13 proceeding started to compel him to produce something. And I'm
14 sorry. Following the Supreme Court's order to produce
15 anything. And still that is incomplete.

16 Your Honor, I want to direct your attention to, if I
17 may, Exhibit C to our motion for an order to show cause. This
18 is what Mr. Christensen said when he, although was late doing
19 so, when he said he was going to produce the documents that we
20 are after, and the Supreme Court said he must produce. He said
21 to Ms. Solis-Rainey in a letter of October the 13th, which is
22 Exhibit C to our motion:

23 The file is quite large. Accordingly, the
24 Simon office will be producing the file in a
25 rolling fashion. Most of what is produced will

1 be duplicative of what has been produced,
2 sometimes multiple times previously. The Simon
3 office started the production of documents
4 withheld for the appeal because that seemed to
5 be a reasonable place to start production.

6 And then he goes on to say, Accordingly, the Simon
7 office is producing the file in a standard fashion.

8 He hasn't done that. What he has done is shift
9 grounds. He now claims or most recently claimed what the
10 Supreme Court ordered him to produce is ambiguous. He doesn't
11 understand what complete file means.

12 You can look at a dictionary if you'd like to find
13 some synonyms for complete. It means total, all, taking into
14 consideration everything that is in the file. It must be
15 produced.

16 Now, he says later, he says, and later in October,
17 after this October 13, 2022, letter, he's been with this case
18 from the beginning. He said, oh, I may have misspoke when I
19 said we would be producing the file in a rolling production.
20 And thereafter he took the liberty of producing the file or
21 bits and pieces of it in the same fashion that he had produced
22 bits and pieces of the file previously. And for us, it is
23 incomprehensible.

24 Now, Mr. Christensen says, well, that's really of no
25 moment because you have everything. And if you get together

1 with me, if you will collaborate with me, I will show you where
2 everything is.

3 Well, the Supreme Court did not order us, and you
4 didn't order him to collaborate with us. You ordered him to
5 produce his entire file. He hasn't done it, and he apparently
6 is not going to do it unless you direct him specifically to do
7 so.

8 Now, we offered during the exchange, and you can see
9 the exchanges of letters between Ms. Solis-Rainey and
10 Mr. Christensen. We offered to -- we didn't request, as he
11 mistakenly -- that's Mr. Christensen mistakenly repeats. We
12 didn't request this file to be produced in its native form. We
13 suggested that it could be for efficiencies -- for efficiency
14 purposes, but he didn't want to do that. He can PDF the whole
15 file, and he hasn't done that. He's produced bits and pieces
16 that he has selected from the file and done in PDF, but we do
17 not have the entire file either in PDF or in native format. We
18 just don't have it.

19 Now, we've been at this, as you know -- you have been
20 too -- for a long time. We would like to bring this to a close
21 with him with respect to this file by Mr. Simon producing, and
22 Mr. Christensen facilitating that, this file in its complete
23 form.

24 Ordinarily, I don't know how Simon keeps his files.
25 I don't think you do either. But ordinarily, most people keep

1 files chronologically. That shouldn't be an insurmountable
2 task for him to produce his files as they were kept and as they
3 were cataloged.

4 But he falls back on, Mr. Christensen does, falls
5 back on the excuse that the files were maintained by different
6 lawyers in Mr. Simon's office. Well, there are only two there:
7 Mr. Simon and Ashley Ferrel. And Simon produced documents in
8 one manner, and she produced documents in another. They still
9 don't line up. We still don't have the complete file.

10 Now, important to this, Your Honor, is
11 Mr. Christensen's acknowledgment or Mr. Simon's acknowledgment
12 through Mr. Christensen the e-mails that we are seeking,
13 particularly with respect to what occurred at or about the time
14 of settlement, those e-mails have attachments to them. That's
15 referred to in the October 13 letter. Mr. Christensen now
16 declines to produce those, those e-mails with the attachments
17 that accompanies them because it would be too voluminous to do
18 so.

19 The Supreme Court didn't say, and the statute doesn't
20 say, you don't have to produce the complete file if parts of it
21 would make the production too voluminous. It says complete
22 file. And if that includes, as Mr. Christensen said on October
23 the 13th in his letter to Ms. Solis-Rainey he's going to be
24 producing everything in a rolling fashion, and that will
25 include duplicates that are in the file, I suppose as parts of

1 e-mail strings, but he hasn't done that. He's shifted grounds
2 now saying, look, we prepared an index. And if you study that
3 index, you can see that we have produced everything you're
4 asking for.

5 Well, we've looked at that index, and there's some
6 things we can't find. The numbers and the index don't line up
7 with the numbers in his opposition.

8 So, for example, we can't by going to the opposition
9 and the index, we can't find, we just cannot find, although he
10 says they're there, we can't find the expert's reports. We
11 can't find them. We don't have them. We've been asking for
12 them for months, if not years, and they just aren't
13 forthcoming.

14 Your Honor, I don't think we need to beat this to
15 death. I think what we need to do is get an order from you
16 directing Mr. Christensen to produce his -- Mr. Simon's
17 complete file even if it is voluminous to do so.

18 And by the way, on the expert's report that I just
19 mentioned, we can find some of the experts -- we can find some
20 portions of the expert's materials, but we can't find them all.
21 I don't think we should have to go through this elaborate index
22 that he prepared, that Mr. Christensen prepared for his own
23 purposes and try to figure out where in that index with respect
24 to the documents he's already produced we can find the things
25 that we're entitled to receive if he produced the complete

1 file.

2 So I think what we've shown here thus far, there's
3 more once we get the production, but I think what we have shown
4 thus far is, among other things, with respect to who is being
5 truthful and candid, we have shown that Mr. Simon was not
6 truthful when he said the Edgeworths did not want the
7 confidentiality clause in the settlement agreement. He knows
8 that that is not true because on November the 16th, 2017, Brian
9 Edgeworth sent him a text in support of our materials saying
10 we're fine with this confidentiality clause. Don't worry about
11 it. Go ahead with this.

12 If you credit Mr. Simon's testimony that he
13 negotiated the confidentiality provision out on 11/27, as he
14 directly testified to you in the lien hearing in response to
15 your questions, why did he present a draft of the settlement to
16 the Edgeworths on the morning of November 30th that had that
17 clause in it if he negotiated it out?

18 And why did he say later in the afternoon, when he
19 knew that the Vannah law firm was involved that the clause was
20 still in it and then later say in an afternoon e-mail that he
21 had negotiated the confidentiality provision out on that same
22 day? You can see this history if you look at Exhibit P to our
23 motion.

24 MS. SOLIS-RAINEY: Reply.

25 MR. MORRIS: I suggest that there is a little bit of

1 a disconnect here because with respect to eliminating this
2 confidentiality agreement, he had to make some entries in his
3 superbill to account for the fact that he spent, he says, three
4 hours with Mr. Henriod earlier to try to -- in an effort to
5 reconcile his story about when the confidentiality agreement
6 was in the agreement or out of the agreement.

7 The point of this is though that there was no quarrel
8 with the fact that there was a confidentiality agreement in the
9 settlement agreement. The Edgeworths, who are the client, and
10 he says are bound by the settlement agreement that said to him
11 they're fine. That's fine, f-i-n-e. He said that. That text
12 is in the materials for you to consider.

13 Another thing that is puzzling that production of the
14 complete file might help us with is the timing -- I mean, is
15 the timing of the initial draft of the settlement agreement,
16 which is something he has avoided answering, even when you ask
17 him about it. You asked when. You asked when he saw the
18 initial draft of the settlement agreement, and he didn't
19 directly answer.

20 Take a look at Exhibit L on page 16 for that
21 exchange. It's excerpts from the transcript. He didn't have a
22 proposed release when he got back into his office from a
23 Thanksgiving holiday on November the 27th, and he said that he
24 went to Henriod's office to hammer it out. This is consistent
25 with what he testified to, but it is inconsistent with his

1 superbill and his November 30 e-mails where he suggests that he
2 did all of that on November the 30th between his 8:39 e-mail
3 and his 5:39 e-mail.

4 Here's the exchange when you ask and he avoided
5 answering the question I've just raised. You said, okay. And
6 this is -- you can see this on Exhibit L.

7 Okay. And I'm sorry, Mr. Christensen. Before you
8 move on, on December 1, when that settlement agreement is
9 signed, the one that's Exhibit 5, how did you -- when was the
10 first time you saw the document, that document?

11 And he says, that was prior to the one that was
12 proposed.

13 And that had the confidentiality in it and all that?

14 Yeah. It had all of that.

15 And you said, okay.

16 And then the conversation goes on. So when I got
17 back, he says, Mr. Simon says, right when I -- so right when I
18 get back, it was probably, you know, proposed release, and so I
19 went over to the office with Mr. Henriod, who was Viking's
20 counsel, and I have a great relationship with him.

21 He's big on relationships. The only relationship
22 that's not great is the one with his former client, the
23 Edgeworths, but he's got great relationships with everybody
24 else, and that hasn't panned out in turning over the documents
25 whereas I think we're trying -- we're trying to determine, and

1 this testimony shows that he has not been helpful, and he
2 didn't answer the question you asked him: How did the
3 settlement agreement get to his office?

4 He says, and nothing was transmitted and because it
5 was all done in a meeting apparently with Mr. Henriod.

6 Well, where's the release then? And why did he tell
7 the Edgeworths later on November the 27th that he had not -- he
8 had not, he had not received anything when he told you in
9 response to a direct question that he had?

10 THE COURT: And, Counsel, I don't mean to cut you
11 off, but I want to stick to the facts here. I mean, I am
12 110 percent of aware of the relationship between Mr. Simon and
13 the Edgeworths. I want to stick to the facts here about what
14 it is that is missing from the file, what hasn't been turned
15 over because I'm just going to direct you so that we can direct
16 where your responses are going.

17 What I -- I mean, I understand that there seems to
18 be -- there can be a discrepancy. Like there might be a
19 discrepancy between Mr. Christensen and Mr. Christiansen as to
20 how they keep their files. All lawyers don't keep their files
21 the same way. So I understand that there may be a discrepancy
22 in how the lawyers are keeping the files.

23 But when you talked about the Mr. Christensen had
24 reached out to you and said, hey, if you confer with me, we can
25 get to the bottom of these things, and you talk about these

1 expert reports, some -- at first you said some of them are
2 there. And then you said some pieces of them are there. Is
3 the expert report something that you believe if there was maybe
4 a conference with Mr. Christensen that could be something that
5 could get resolved? Because maybe is it possible that based on
6 this index, which I've seen the index. I'm still going through
7 the index, but is it possible that based on that index it's
8 something that you're just having trouble locating, or are you
9 confident that it's not there?

10 MR. MORRIS: I can't give you an absolute answer to
11 that. So far we haven't been able to find it. I suppose if
12 we -- and this is buying in to Mr. Christensen's statement that
13 you just repeated in substance, well, why don't you just sit
14 down with me, and we'll go through my index, and I will -- and
15 you tell me what you think is missing, and I'll point you to
16 it. That's what he calls collaboration.

17 I'm telling you that we are not -- not only not
18 required to do that, all of our efforts that we have engaged in
19 to deal with Mr. Christensen in a collaborative manner on any
20 subject have not turned out well. We don't feel -- maybe you
21 do, but I don't. I don't have confidence that we can work with
22 him and be satisfied or satisfy his obligation to produce the
23 complete file.

24 He has not produced the complete file, and he has,
25 and his index doesn't show otherwise. He has not produced the

1 e-mails with the attachments. That's of consequence.

2 THE COURT: Well, I -- I was going to get to that in
3 a second.

4 So then let me ask you this because ultimately what
5 you want me to do is say I order you to turn over the file.
6 Well, I've already done that. So what would you like me to say
7 that is different in basically -- I mean to phrase this
8 differently, like, what does -- compliance with the order that
9 I issue that says you are to transfer the complete file and it
10 needs to be done within 10 days of this order, what does
11 Mr. Simon's compliance with my order look like according to
12 you? Like what does that look like? What -- because it
13 appears that you got this index. You have this stuff, but you
14 still believe that there are things missing. So what would
15 you -- what are you requesting? What would you like to see?
16 Because I'm not -- because you say you want me to order them to
17 turn the file over. Well, I've already done that. So if
18 you're saying that that wasn't complied with, then you're
19 asking me to do something different.

20 MR. MORRIS: You can say -- you can say this and save
21 us all a lot of time and trouble. You could order Mr. Simon to
22 produce his complete file in native format. You could do that,
23 and that would do it.

24 Or, as we suggested to him in an e-mail that is an
25 exhibit to our motion, he could turn that file over, his native

1 file over. He could turn that file over to an outside service,
2 and they could PDF the whole thing and produce it --

3 THE COURT: But is your understanding --

4 MR. MORRIS: -- just as it was kept.

5 THE COURT: -- that we believe that the files may be
6 kept differently compared to the different law offices. So how
7 would you be certain, if I made that order, I'm just talking
8 hypotheticals. If I made that order that Mr. Simon handed you
9 what he said and him and Mr. Christensen and Mr. Christiansen
10 represent is his native file, how would you be certain that
11 that was the native file? Like what are you looking for that
12 is going to tell you that he has fully complied with the
13 Court's order? Because that's where I'm confused as to because
14 I don't know how Mr. Simon keeps his files like you said when
15 you started your argument, and I'm pretty confident you don't
16 either.

17 So what does that look like? Like how would you be
18 able to say, yes, Judge, this order has been complied with?
19 Because if he says this is my native file, and then you
20 disagree, we're going to be right back here doing this exact
21 same song and dance. So I'm trying to eliminate that, but I'm
22 asking you how would you know?

23 MR. MORRIS: If he produces his complete file in
24 native format and authenticates it, says this is, he swears to
25 it, this is all that I have in my file and the form in which it

1 is kept, irrespective of what that form may be, just as it is
2 kept, we would have to be satisfied with that.

3 We are not required, certainly you're not required to
4 go to Mr. Simon's office and rummage through his electronic
5 media to satisfy ourselves that he has produced his complete
6 file.

7 THE COURT: So you want it all printed for you? Or
8 are you -- I mean, because he can put it on a flash drive.

9 MR. MORRIS: He can do this and -- he could do this
10 in one of three ways. He could produce it electronically in
11 native format. He could produce it in print from native
12 format. That's the second. Or third, he can send it out to,
13 if he doesn't want to do it himself, a copying service that
14 specializes in this sort of work can copy those files that he
15 produces in native format to that service in PDF and give them
16 to us either electronically or in print. He can do either one.

17 The point is we are entitled to -- I can't tell you,
18 and Mr. Christensen can't tell you either. He can't tell you
19 that if we sit down with him we're going to be able by
20 listening to him tell us about his index any more than he can
21 tell you that you'll know what he didn't produce by talking
22 with him.

23 What we are entitled to and what we should have, we
24 should have that entire file in native format electronically,
25 fine. In PDF, in electronic form, fine, but we need the

1 complete file. We use those e-mail attachments only as an
2 example because he acknowledges, he acknowledges, and that's
3 something that I know you have thought about, but you should
4 consider. He acknowledges that the file has attachments with
5 e-mail -- with e-mails with attachments that haven't been
6 produced, and that's referred to and confirmed that his October
7 the 13th letter when he says even though it's a lot of
8 documents I'm going to be producing those in a rolling fashion,
9 which he has not done, and the letters, later letters in the
10 October 25 and 27 series of letters, he backs off of rolling
11 production. Remember, I told you he said I misspoke. Well, he
12 may have misspoken, but he has backed off of producing the
13 complete file that the Supreme Court ordered with the feeble
14 excuse that we already have everything, and the Supreme Court's
15 order and yours is ambiguous. There's a question about what
16 complete file means.

17 So the best I can -- you have ordered him to produce
18 his complete file. We have given you examples of
19 incompleteness, documents and files that are incomplete that he
20 hasn't produced, and that's why we're here today. If we get --
21 if we had gotten everything in native format, we wouldn't be
22 here today. We would have all that is available, which is what
23 the Supreme Court ordered him to produce and which is what the
24 statute says he should produce.

25 So, you know, another example, he charges time, and

1 he assessed fees or costs to the Edgeworths for hiring the
2 McDonald Carano firm to produce a report. His time entries
3 showed that he reviewed what they did. Whatever they did is
4 not among the documents that he has produced. If it is, it's
5 buried with some misnomer or misnumbering. We haven't found
6 it, and we shouldn't be required, Your Honor, we shouldn't be
7 required to go through his index and determine whether the
8 index matches up, which it doesn't, with his opposition and the
9 LOD series of numbers that he cites.

10 We don't -- we just don't have, and we've given you
11 examples of what we don't have. We just don't have his
12 complete file.

13 In any event, Ms. Solis-Rainey points out a point
14 that indirectly you pointed out too, what we're asking for and
15 what he says he wants among other things other than to avoid
16 having to produce his complete file, we're asking for an
17 evidentiary hearing for him to show -- that's with this motion
18 is about, to show why he did not present his complete file.
19 He's now acknowledged that he didn't.

20 Well, now he can come as a result of this motion and
21 your order to an evidentiary hearing to show cause why he
22 should not be held in contempt for that.

23 The time for the explanations that he has offered,
24 which we have so far found, and I think you would agree, are
25 insufficient to meet the -- meet the certainty or create

1 certainty about production of the entire file. That's his last
2 opportunity, his last opportunity to show you that he has
3 produced, and for some reason we just can't recognize it, his
4 complete file.

5 We haven't. We haven't received it. You may have
6 ordered him to produce it, but he hasn't done so. He has not
7 done so, and his October 13th letter, which we've talked
8 about several times, Exhibit C to our motion, confirms that
9 fact. It confirms it. Nothing he did after that cures the
10 fact that he said, look, we've got a large amount of material.
11 Some of it is going to be duplicative. Some of it's been
12 produced before, but we're going to produce it again so we meet
13 the Supreme Court's mandate to produce the complete file, and
14 he hasn't done it.

15 So he should, and you should schedule a time for him
16 to come here and to testify. You've heard him testify a lot of
17 times. You get a chance to hear him again to say why it is
18 that he was ordered to produce his complete file, but has not
19 done so.

20 If we're wrong and he comes here and shows and
21 testifies and proves with evidence that everything I have
22 produced is everything I have, then we've got it, but that
23 isn't the case, and it isn't the case by his admission. And we
24 are just missing too many things. I referred earlier to an
25 11/27 release, the one that was received on November 7th '17 --

1 or 27th, 2017, where is it? And how was it transmitted?

2 That's his burden. It's not ours. We don't have to
3 collaborate with him for him to say I don't know because he
4 hasn't produced it.

5 He's got it, or he had it, and he's discarded it, but
6 he is the person that controls his files, the files that are
7 maintained in his office irrespective of the timekeeper in his
8 office who may have touched those files.

9 We're asking you to make sure that he produces
10 everything he has in the client file and that it adds up to
11 everything that he filed at the time he received it. That's
12 why, among other things, we suggest and I suggested to you that
13 a lot of this could be avoided or could have been avoided if he
14 would have just said what he had indicated he was going to do
15 on October the 13th, I'll produce the whole file in native
16 format, and you can then see exactly what I received, when I
17 received it and from whom it was received and what the
18 response, if there was a response, was.

19 That's where we are.

20 THE COURT: Okay. All right. Thank you very much,
21 Mr. Morris.

22 Mr. Christensen.

23 MR. MORRIS: Sorry?

24 THE COURT: Oh, Mr. Christensen.

25 MR. MORRIS: Does he want to talk?

1 THE COURT: It would seem so.

2 MR. CHRISTENSEN: Thank you, Your Honor.

3 I'm going to address this in two different sections.

4 The first is going to respond to your immediate and pertinent
5 questions concerning what you could possibly order in this
6 circumstance, and then I'm going to go on to the argument about
7 why they haven't established anything here.

8 Saying something over and over again does not make it
9 true, but it's also we don't have the burden of proof. The
10 statute places the burden of proof on the movement to show that
11 there was a contempt. And unless they do so in a declaration,
12 there is no basis to order an evidentiary hearing. They just
13 tried to reverse the law.

14 Your Honor interrupted at one point when the
15 testimony before the evidentiary hearing was being rehashed.
16 It's quite obvious that the intent of all of this is to attack
17 what this Court did four years ago and which was upheld on
18 appeal. This is not an attempt to obtain a file.

19 And that's really shown by the discussion of what you
20 can possibly order. In other words, how would you fashion the
21 purge clause? Because if you're going to issue an order about
22 indirect civil contempt, there has to be a purge clause. What
23 can Mr. Simon do to cure or purge the contempt? What could you
24 order?

25 The problem here is two-pronged. First, they have

1 a -- they're confusing complete file with the notion of
2 organization of the file. The second one is that they're
3 confusing e-mail production with production of the case file.
4 Those are two different things.

5 As I pointed out in the brief, and I even cited
6 advisory opinions from Bars, an underlying problem to all of
7 this is that they have not looked at what we have given them.

8 THE COURT: And, Mr. Christensen, let me just ask you
9 a question.

10 MR. CHRISTENSEN: Yeah.

11 THE COURT: The appendix that was provided to the
12 plaintiff.

13 MR. CHRISTENSEN: Yes.

14 THE COURT: Is that the same 248-page appendix that
15 you provided to me?

16 MR. CHRISTENSEN: The two production indexes are the
17 same. That's what they got. That's what we submitted to the
18 Court is Exhibit 1 and 2.

19 THE COURT: Okay.

20 MR. CHRISTENSEN: And the appendix. And I was going
21 to -- yesterday when I was thinking about this I was going to
22 focus on the procedural requirements defining indirect civil
23 contempt because that's laid out by statute and case law and
24 that the provided declaration is insufficient for the Court to
25 even consider the motion, and I'm going to get that today.

1 But then the reply arrived, and I know Your Honor
2 hasn't had a chance to read it. There's just a couple of
3 things I'd like to point out.

4 Counsel, do you need a copy?

5 Your Honor, I have a hard copy if you --

6 THE COURT: I have it right here.

7 MR. CHRISTENSEN: Okay. If you would be so kind to
8 turn to page 6.

9 THE COURT: Okay.

10 MR. CHRISTENSEN: At line 14, it begins, Furthermore,
11 Simon's opposition also confirms that only a fraction, with
12 emphasis, of the file has been produced. See page 22
13 referencing confidential Bates documents LODS 135-2727-746.

14 And then they have a paren: Over 1.2 million more
15 pages than the -- I'll round up, 140,000 he has produced to the
16 Edgeworths. See Exhibit 1.

17 And then see also -- I'm going to skip over that
18 page -- see also opposition in 21 claiming conscious retainer
19 agreement is at 134-8256, nearly 1 million pages beyond the
20 last page Simon produced to the Edgeworths.

21 This is the level of argument that we have. You've
22 had an argument submitted to you to hold Mr. Contempt -- or to
23 hold Mr. Simon in contempt, to have them jailed because my
24 pleading has a typo. If the file was a million pages larger, I
25 would have had 200 more bankers boxes in this courtroom. It's

1 absurd. This is the quality of argument that we face. This is
2 just another example of the lengths to which they have gone to
3 attack a former friend who put millions into their pockets.

4 There's another argument in the reply, and this
5 argument is carried through to the whole thing. So I'm going
6 to address it now. The attachment argument. Drafts of
7 documents, e-mails, things like that are not typically part of
8 an attorney's file. I cited law on that. They've cited
9 nothing.

10 We told them in 2018 exactly how the e-mail was
11 produced, and the e-mail was produced for purposes of the
12 evidentiary hearing, which is all the folks who sent e-mails in
13 the Simon office relevant to this case went to their computers,
14 and they just went through it, and whenever they found an
15 e-mail, they printed it out. They did not print out the
16 attachments. They've known that for years. If that was a
17 concern, they could have brought that to the attention of this
18 Court or the Supreme Court and gotten a ruling on it, but they
19 did not.

20 The issue briefed before the Supreme Court was the
21 items withheld pursuant to the SPO, a stipulated protective
22 order.

23 Also overlooked on this argument is the fact that an
24 attorney does not have to produce a document multiple times.
25 If we are sending documents to someone as an attachment to the

1 e-mail, say a motion for summary judgment but it already exists
2 in the pleading file, why do we have to reproduce it? It's in
3 the file. They have it.

4 A perfect example are the releases they complained
5 about, which they introduce into evidence at the evidentiary
6 hearing as Exhibits 11 and 12. They have the documents that
7 they're complaining about.

8 At page 5 of their reply, at the bottom, they talk
9 about the Ogilvie evaluation. Well, of course, that's George
10 Ogilvie the third, the managing partner of McDonald Carano, and
11 he was consulted by Mr. Simon because when Mr. Teddy Parker
12 came into the case for Lang, he raised an issue concerning
13 proper licensure of the Edgeworth entities that were involved
14 in the building and speculation home, and that was an issue of
15 import to Mr. Edgeworth. He was concerned about it. Mr. Simon
16 was concerned. So they turned to an expert in the field.

17 So here's what the Edgeworths say in their attempt to
18 have Mr. Simon jailed. First, in the paragraph above, they say
19 although the portions of the file he now says contained e-mail
20 and agreements have not been reviewed due to the limited time
21 and the manner in which the Simon file is organized, and then
22 it goes on.

23 So they haven't even looked. They admitted in a
24 reply filed before this Court that they haven't looked at what
25 we've given them. Yet Mr. Morris stood up here and said we

1 haven't given them everything. Well, how in the world can they
2 know if they haven't looked at it? So they go on to say where
3 is the evaluation? Well, they have the evaluation.

4 Your Honor, if I could approach?

5 THE COURT: Yes.

6 MR. CHRISTENSEN: This is one of the e-mails that was
7 produced that we didn't Bate is SIMON 3811. It was re-Bated
8 LODS 16842, and it was contained in the 2020 production. So
9 here it is. This is Mr. Ogilvie's comments on the unlicensed
10 contractor issue raised. You can see from the e-mail that it
11 references a lot of materials being provided to Mr. Ogilvie,
12 that they've reviewed everything, that he and Mr. Simon were
13 going to have a meeting or talk on the phone. If Mr. Simon had
14 any questions about that, they have it. They just need to look
15 at what they have.

16 And more so, in their reply they indicate that they
17 haven't looked at what we gave them recently. They've had this
18 since 2020.

19 In their moving papers, they raised an issue
20 regarding a chart. This is on the research issue where they
21 first claim we didn't have any research. I said you have
22 everything. Did you look under the research tab in the
23 materials that we provided? Did you look in the research
24 folder? They carried that argument through in a motion to this
25 Court when they argued that we don't have everything.

1 They didn't raise that issue before the Supreme
2 Court, but they raised it again after we returned, and I gave
3 them the Bates range, and then they shifted the argument and
4 said, well, when we talked about research, we're actually
5 talking about the work product, the analysis of the discovery
6 of the activations.

7 So there's -- and I provided you with a Bar opinion
8 on that. There is a question concerning whether that type of
9 work product is part of the client file. By no means there's,
10 you know, if you go to a different state you're going to get a
11 different opinion. So there's a question there concerning how
12 Nevada is going to treat that. Nevada hasn't ruled on it. So
13 you can't hold Mr. Simon in contempt.

14 You also can't hold him in contempt -- if I can
15 approach, Your Honor?

16 THE COURT: Yes.

17 MR. CHRISTENSEN: Where's the chart? This was
18 produced. The lead Bate is LODS 135727.

19 Now, as a segue back to their million page file
20 argument, you can see what I did when I typed in the Bate. I
21 stuck an extra 2 in there. My fault. It's a typo. But here's
22 the chart. They've got this too.

23 And that dovetails into two things. One, it's
24 another example of an inaccurate claim that they had made of a
25 missing document. Every time they have given us a specific,

1 every time they've gone from vague to explicit, we've been able
2 to find the document and say here it is. It's only when they
3 keep things on the, well, we don't have it because we don't
4 have it that they have any sort of an argument.

5 So under the statute, the declaration has to stand on
6 its own and has to contain everything that evidences contempt.
7 It's not Mr. Simon's burden to prove compliance. They have the
8 burden to show noncompliance. That's the way the burden of
9 proof works in this instance.

10 So we've got a couple of problems. One, every time
11 they brought up a specific example to try to say we didn't get
12 this or we didn't get that, we have disproved that. We have
13 provided them with Bates ranges. We've provided Your Honor
14 with the documents. Here it is. They have it. It's on the
15 discs. They've admitted they haven't looked through those
16 external drives. They need to do so.

17 And we also have the problem in that not only is the
18 declaration inadequate, but the order as applied to the issues
19 being raised is not adequate.

20 The Supreme Court looked at whether the documents
21 withheld pursuant to the stipulated protective order should be
22 produced. We redacted them at the time of production back in
23 May of 2020. They were put into a -- they were segregated and
24 put into a different section at the time of production, which
25 is what you're supposed to do, which is why the modified date

1 argument again, not a lawyerly argument -- is dated from back
2 in May of 22. Because that's when the separation occurred.
3 The Supreme Court looked at it and said no, produce the SPO
4 documents. We did so within the time that this Court ordered.

5 Regarding the organization of the file, I want to dig
6 into this just a little bit because there's two different
7 things. There's the typical case file, which is going to be
8 your pleadings, your depositions, what have you. The
9 organization that they received is the organization that it's
10 kept on the Simon computer. They just moved the files over.

11 I think what they're getting at is they don't like
12 the way we provided e-mail. I think that's really what they're
13 getting at. The problem, of course, is if you get a native
14 production of e-mail, it's not even as organized as it is now.
15 It's simply going to be floating around on a disc, and you're
16 going to have to do searches for it. It's not going to be in
17 date order. That's not the way those things are provided when
18 it comes in electronically if you're pulling PST files off of
19 some -- off the exchange server and you bring an IT person in,
20 and then they've got to do searches, and it's days and days of
21 work.

22 They have the e-mails, and they have the overwhelming
23 majority of the attachments. If there is something specific,
24 if they say, look, there's an e-mail on October 1st, and it
25 looks like this is based upon something earlier, can you go

1 look for that, we're happy to do so. Either they can't find it
2 or maybe during the production process an e-mail was missed.
3 Entirely possible, but they have to give us specifics.

4 You know, they say we've provided bits and pieces.
5 We provided 140,000 pages of bits and pieces. It's not like
6 we've given them a little hint. They have over 5,000 pages of
7 e-mails. Are they having trouble going through all of those?
8 Sure. There's 5,000 pages of it. I would be surprised if they
9 were able to rip through them. That's going to take some
10 effort on their part.

11 Your Honor, in the opposition, we painstakingly went
12 through the arguments that they raised in their declaration
13 concerning documents that had not been produced, and we
14 provided Bates ranges for each of those documents. We provided
15 the names of the experts, and we pointed them exactly to it.

16 In response to that, in reply, even though it's not
17 sufficient to cure the declaration, the best we got was, well,
18 we got some expert stuff, but not all of it. Well, what didn't
19 you get? What expert report is incomplete? Did you go back
20 and look? And give me the name of the expert so that I can
21 check.

22 I apologize, Your Honor. I swore to myself I was
23 going to keep my cool here, and I, you know, I woke up this
24 morning angry over the typo argument. Why am I here? Because
25 I made a typo. They want to hold Mr. Simon in contempt because

1 of my typo? If they're going to make an argument, they need to
2 make a lawyerly argument. They need to specifically state what
3 the problem is.

4 On the attachments, they have most of them. They
5 just have to go and look. If there's something particular, let
6 us know, and we'll go and do it. They're talking about a
7 native file and imaging of the entire computer. I don't even
8 know what that means, and I don't know how the Court would
9 fashion an effective purge clause. We don't have anything
10 specific there. And until they come to this Court with
11 something specific, there is no basis for this Court to order
12 an evidentiary hearing or any other further response by
13 Mr. Simon.

14 Thank you, Your Honor.

15 THE COURT: Any response so that, Mr. Morris?

16 MR. MORRIS: Just a few points.

17 THE COURT: Go ahead.

18 MR. MORRIS: This is really a -- it's a point of some
19 consequence, but it's minor in terms of the overall.

20 Mr. Christensen said that the PST file keeps e-mail
21 in order. Well, it does. If he -- I mean, he said it does
22 not. PST file does keep e-mail in order. I point out to you,
23 and we've indicated in our papers we have 5,000, 5,000 pages of
24 e-mail with no attachments. And you can see that on Exhibit J
25 to our motion.

1 He claims that e-mails are not a part of the file,
2 but he included incomplete e-mails. We're only asking for
3 everything that is in those e-mails or was with it. And if it
4 had been filed under PST, it would have its attachments with
5 it. It would not have been separated.

6 Now, turning to what I think is the major legal point
7 here, and that is the statute and the Supreme Court's order.
8 Mr. Christensen claims that it's our burden of proof under the
9 statute NRS 7055 to specify the documents that have not been
10 produced in order to conduct this hearing and get to an
11 evidentiary hearing on a show cause. That isn't what the
12 statute says. That isn't what the Supreme Court said.

13 The Supreme Court said in the order that brings us
14 here -- you have it, on page 4, Mr. Christensen, he likes to
15 characterize or mischaracterize that order as really driven
16 only by the fact that the stipulated protective order is what
17 the Court was addressing.

18 But here's what the Court said. The Court said,

19 Addressing the protective argument first,
20 after reviewing the order and based on the
21 totality of the circumstances, we concluded that
22 the order does not prevent Simon from disclosing
23 any portion of the Edgeworths' file, including
24 those confidential portions subject to the
25 order.

1 Your Honor, most of the opposition to our motion in
2 this proceeding right now is largely a repeat of what he has
3 said in the Supreme Court in his opposition to our motion for a
4 writ of mandamus, and that's what the Court rejected.

5 And in rejecting that, the Court said, after it
6 addressed the protective order, and this I think is of
7 consequence, and it answers some of the questions that
8 Mr. Christensen has rhetorically raised: We further conclude
9 that the District Court had a statutory duty to compel Simon to
10 produce to the Edgeworths their complete file, not portions of
11 it that were introduced and produced -- introduced into
12 evidence or produced during the lien hearing, but their
13 complete file after. This is the Supreme Court's word -- after
14 such a demand was made under NRS 7055.

15 We made that demand. They indicated at the outset,
16 even though they were late in doing so, and in responding to
17 your order to produce the complete file, they indicated they
18 were going to do that, which they have not done.

19 And you heard Mr. Christensen say all sorts of
20 excuses which boil down to this. It's what I told you earlier.
21 They have the documents. They just haven't looked at
22 everything. That isn't what the Supreme Court said, and that
23 isn't what the statute requires us to do.

24 Look at this piecemeal production that is all cobbled
25 together to determine what is missing and then ask Mr. Simon --

1 Mr. Christensen about it.

2 The Supreme Court said, compel Simon to produce the
3 Edgeworth -- to the Edgeworths their complete file after such a
4 demand was made under NRS 7055. That demand has been made and
5 it has not been responded to.

6 With respect to the other arguments that have been
7 made, I guess -- not other arguments that have been made, but
8 with respect to the argument that, you know, I don't know what
9 more I can do, that's what Mr. Christensen says. I did
10 everything that I was supposed to do. Why am I here? Why am I
11 here? He's here because, notwithstanding what he says he has
12 done, he did not say what he intended to do when he got the
13 Supreme Court's order and your order compelling him to produce
14 the complete file after, after we had made demand for it.

15 We didn't make demand for it, and we are not
16 concerned with, as you pointed out, really not concerned with
17 the evidentiary hearing in 2018. We're not trying to revisit
18 that and continue this litigation because we're dissatisfied
19 with the outcome of that.

20 What we're dissatisfied with is, and that's why we
21 filed the petition for writ of mandamus, and that's why I think
22 the Supreme Court granted it is that he hasn't done what he is
23 statutorily required to do.

24 Now, he says, well, how could we do that? That's in
25 substance is argument. I've done everything possible. What

1 could we do.

2 Well, I've suggested to you what he could do, but
3 he's not going to do it or says he's not going to do it or
4 doesn't want to do it. He could produce that file in its
5 native format, and if it is produced in its native format in
6 the manner in which it is kept, we would then go through that,
7 as opposed to indexes he created that reference parts of his
8 production, but not others. We could then go through that and
9 satisfy ourselves that he has or he has not produced his
10 complete file.

11 So why don't you -- the decision is yours, and I have
12 nothing more to say.

13 It isn't that Ms. Solis-Rainey's declaration is
14 incompetent or incomplete. She has said and accurately
15 recounted the history of negotiating with Mr. Christensen in an
16 effort to obtain production of what he said on October the 13th
17 he would produce in a rolling fashion, and it hasn't worked
18 out. And that's why we are here.

19 If he wants to testify under oath and point of fact
20 that he has done all these things, and Simon wants to say we
21 have produced our complete file in accordance with the Supreme
22 Court's direction after the demand was made under 7055, he can
23 do that, but he hasn't done it now, and he hasn't done it
24 before now.

25 We don't have, and there's no way for us to guess

1 that we do or we don't have, that he did or he didn't put all
2 of the documents that we are entitled to see as a complete file
3 in his indexes, which I point out, for what its worth, are a
4 little bit confusing because when you try to track these
5 indexes through to the multiple piecemeal productions he's
6 made, they sometimes don't produce what they say -- what he
7 says they produce. And that's why we can't satisfy ourselves
8 that the complete file has been produced.

9 So it's in your hands, Your Honor.

10 THE COURT: All right. Thank you very much, Counsel.

11 I will read the reply, and then I will put out a
12 written decision on all of these pending matters. I hope to
13 have that done by the end of the week, but it will be
14 definitely be done by the beginning of next week. Okay?

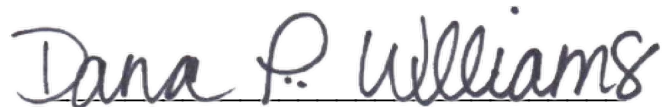
15 ATTORNEYS: Thank you, Your Honor.

16 THE COURT: Thank you, guys. Thank you very much.

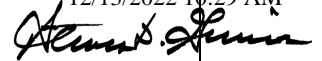
17 (Proceedings concluded at 10:00 a.m.)

18 -oOo-

19 ATTEST: I do hereby certify that I have truly and correctly
20 transcribed the audio/video proceedings in the above-entitled
21 case to the best of my ability.

22 
23

24 Dana L. Williams
25 Transcriber



CLERK OF THE COURT

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

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

**ORDER DENYING EDGEWORTHS'
MOTION FOR ORDER TO SHOW
CAUSE ON OST**

Hearing date: 11.15.22
Hearing time: 9:00 a.m.

1 The Edgeworth's Motion for Order to Show Cause Why Daniel
2 Simon and the Law Firm of Daniel S. Simon Should Not Be Held in
3 Contempt came before the Court on the 15th day of November, 2022.
4
5 James R. Christensen appeared on behalf of Daniel Simon and the Law
6 Firm of Daniel S. Simon ("Simon"). Steve L. Morris and Rosa Solis-Rainey
7 appeared on behalf of the Edgeworth Family Trust and American Grating,
8 LLC ("Edgeworths"). The Court, having heard the arguments of counsel,
9 having reviewed the papers and pleadings on file herein, and being fully
10 apprised in the premises, hereby finds as follows:
11

12
13 The Court FINDS that Simon has provided the Edgeworths with a
14 CD of email, three external drives, multiple copies of documents, videos,
15 cell phone records, tangible evidence, and newly created file indexes.
16
17 While the Edgeworths argue that they are missing documents, there has
18 been no evidence presented to demonstrate the specific documents that
19 are missing from the file productions. As such, the court is unable to
20 determine the extent, if any, of missing documents. Without said specifics,
21 the Court cannot find that Daniel Simon is in contempt of this Court's
22 order. Any specific requests for production of missing items from the file
23 can be made directly to Simon's counsel.
24
25
26
27
28

1 The Motion for Order to Show Cause Why Daniel Simon and the
2 Law Firm of Daniel S. Simon Should Not be Held in Contempt is DENIED.
3 Dated this 13th day of December, 2022

4 DATED this ____ day of December 2022.

5 
6 _____
7 DISTRICT COURT JUDGE

8 Submitted by:

0F9 797 E176 E417
Tierra Jones
District Court Judge

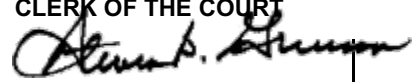
9 /s/ James R. Christensen

10 JAMES CHRISTENSEN, ESQ.
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16 Approved as to form and content:

17 Agreed as to form but no consent given to sign electronically

18 STEVE MORRIS, ESQ.
19 Nevada Bar No. 1543
20 ROSA SOLIS-RAINEY, ESQ.
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25 (702) 474-9400
26 (702) 474-9422
27 Attorney for Plaintiffs
28



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST,)	
et al.,)	CASE NO. A-16-738444-C
Plaintiffs,)	
)	DEPT. X
v.)	
)	<u>CONSOLIDATED WITH:</u>
LANGE PLUMBING, LLC, e al.,)	A-18-767242-C
)	
Defendants.)	
)	
<u>And all related claims/actions.</u>		

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, MARCH 21, 2023

**RECORDER'S TRANSCRIPT OF PROCEEDING:
MOTION FOR ADJUDICATION FOLLOWING REMAND**

APPEARANCES:

FOR THE PLAINTIFFS: STEVE MORRIS, ESQ.
Via Videoconferencing

FOR DEFENDANTS LAW OFFICE OF DANIEL S. SIMON, P.C., AND DANIEL S. SIMON: JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC
(Hearing recorded via Bluejeans Videoconference/Audio)

1 LAS VEGAS, CLARK COUNTY, NEVADA, MARCH 21, 2023

2 (Case called at 9:03 a.m.)

3 THE COURT: -- Trust versus Lange Plumbing, LLC.
4 May the record reflect that Mr. Christensen is here. Well,
5 it's Edgeworth Family Trust that was also consolidated with
6 the Edgeworth Family Trust versus the Law Offices of Daniel
7 Simon. Mr. Christensen is here on behalf of the Law Offices
8 of Daniel Simon, and on behalf of Daniel Simon. Mr. Morris is
9 here on behalf of the Edgeworth Family Trust.

10 All right. This is on for the Motion for
11 Adjudication Following the Remand. I have read the Motion.
12 I've read the Response, as well as I've read the Reply in
13 Support.

14 Mr. Christensen, do you have anything you would like
15 to add to your --

16 MR. CHRISTENSEN: Yes, Your Honor.

17 THE COURT: And just briefly, from a procedural
18 standpoint, there is nothing pending at the Supreme Court that
19 I could see. Is that how you guys understand the posture at
20 this time?

21 MR. CHRISTENSEN: That is correct, Your Honor.

22 THE COURT: Okay.

23 Mr. Morris?

24 MR. MORRIS: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. MORRIS: That's correct.

2 THE COURT: All right.

3 All right. Go ahead, Mr. Christensen.

4 MR. CHRISTENSEN: So we're back before Your Honor
5 because -- I guess I could put it this way, the proceedings
6 before the Supreme Court got a little prolonged. There were
7 Motions for Rehearing filed by both parties, that dragged out
8 the Remittiturs the Remands.

9 But we're finally back down here and we need to
10 create another order on the quantum meruit issue and see where
11 that goes, see if there's another appeal on it.

12 So that's what we're here today.

13 In the Order Vacating Judgment and Remanding, dated
14 September 16, 2022, I think reading between the lines, the
15 Supreme Court wanted some more information in the Order for
16 Adjudication.

17 So what we did was we put together our Motion for
18 Adjudication Following Remand, and essentially, pages 4
19 through 18 address what we believe are some of the -- excuse
20 me -- some of the foundation for the work that Simon did post-
21 discharge, in other words, post November 29.

22 I'd like to apologize. We actually have a typo in
23 our motion at page 4, it says November 19, and that's supposed
24 to be 29.

25 So beginning with the information that was included

1 in the Time Sheets, that's detail, beginning at page 4, that
2 goes through page 6 or 8, I forget. And then following that
3 is additional discussion regarding three e-mails that were not
4 initially captured on the Time Sheets. And then following
5 were work that was done after the Time Sheets ended, is
6 described in detail.

7 And then, of course, there's the Declaration of Mr.
8 Simon referring to the Lange Foundation, for the e-mails that
9 were sent back and forth, and some of the other work that was
10 done.

11 And also, importantly, Your Honor, is some of that
12 work was done before Your Honor. We have two different
13 hearings where people showed up, including Mr. Simon. We have
14 transcripts of those which are available to the Court, which
15 are in the record, and they indicate that the defense
16 attorneys, and in fact Mr. Vannah, the Edgeworth attorney,
17 were turning to Mr. Simon to help effectuate the settlement
18 and to bring it home, both for the Viking Settlement and the
19 Lange Settlement.

20 And that's contained in our moving papers at pages 4
21 through 18. And that, I -- from Mr. Simon's perspective, that
22 provides an awful lot of detail and information that perhaps
23 the Supreme Court is looking for. So that could be just stuck
24 in as a block.

25 There's a couple of items that the Edgeworths argue

1 about. One has to do with --

2 THE COURT: Well, let me just stop you. I have a
3 question, Mr. Christensen.

4 So --

5 MR. CHRISTENSEN: Yes, Your Honor.

6 MR. CHRISTENSEN: -- so basically the Supreme Court
7 told this Court on September 16th of 2022, like basically,
8 Judge Jones, we want -- for the second time, we want further
9 clarification as to how you arrived at this \$200,000 figure
10 for Daniel Simon.

11 And when you just talked about the things that you
12 guys reference on page 4 through 18, which if you look at the
13 beginning of page 4, it starts on November 29th of '17, and
14 this goes all the way through things that were being done, up
15 in 2018, when we were actually arguing things in front of this
16 Court, and things of that nature.

17 So when you said, you can just stick those in, what
18 -- talk to me about the issue that if the Court were to just
19 go and stick those in, the Court would have to be expanding
20 upon the fee of Mr. Simon, because the Court had already
21 determine the \$200,000 fee, without knowing this information.

22 Do you understand what I'm saying?

23 MR. CHRISTENSEN: Oh, I understand that, Your Honor.

24 THE COURT: And so --

25 MR. CHRISTENSEN: Um --

1 THE COURT: -- basically, that -- I know that that's
2 basically what you are requesting in this motion, right?

3 MR. CHRISTENSEN: Well, there is -- the case was
4 sent back down.

5 THE COURT: Right.

6 MR. CHRISTENSEN: And in the order it at least --
7 well, I think it overtly states that, Simon, of course, is
8 requesting more money.

9 THE COURT: Right.

10 MR. CHRISTENSEN: And on the last page of the order,
11 the second to the last paragraph, the Supreme Court's
12 commenting on a couple of the Edgeworth claims, and then it
13 goes on, "Because we will not make factual findings in the
14 first instance, we also decline Simon's invitation to affirm
15 the District Court's Order."

16 And then it goes on.

17 So it -- the Supreme Court did not make a definitive
18 statement that it's \$200,000 or --

19 THE COURT: Right.

20 MR. CHRISTENSEN: -- or nothing, or that it's
21 \$200,000, or the Edgeworth proposal, of 30-some-thousand.

22 THE COURT: Right.

23 MR. CHRISTENSEN: And --

24 THE COURT: And so what you're asking this Court to
25 do --

1 MR. CHRISTENSEN: -- normally --

2 THE COURT: -- expand upon that, based on this
3 additional information --

4 MR. CHRISTENSEN: That's --

5 THE COURT: -- and expand upon the monetary sum.

6 MR. CHRISTENSEN: That is correct.

7 THE COURT: Yes.

8 MR. CHRISTENSEN: However, I have to concede that,
9 that new information. And that's not really new, because it
10 all happened before the Court. But it's -- it's -- would be
11 new to the order.

12 THE COURT: Right.

13 MR. CHRISTENSEN: That information could be used
14 either to support the existing quantum meruit award of
15 \$200,000, or a higher one.

16 THE COURT: But that's --

17 MR. CHRISTENSEN: Or, I suppose, our --

18 THE COURT: -- what I'm asking, how --

19 MR. CHRISTENSEN: -- or --

20 THE COURT: -- how does it support, if it was new,
21 and wasn't presented to this Court during the Evidentiary
22 Hearing that we had, or during anything that was previous to
23 this motion being filed?

24 MR. CHRISTENSEN: Well, it doesn't -- it -- it goes
25 both ways, Judge. It just means that your \$200,000 was --

1 that there's even more support for it.

2 Now, I could argue that if the work that the Court
3 based its Findings upon in the first instance, was sufficient
4 for \$200,000, then in light of this new work, that the number
5 should go higher. And, in fact, that is our argument.

6 THE COURT: Oh, because, (indiscernible) I'm pretty
7 sure what you're arguing in the motion.

8 MR. CHRISTENSEN: But that does not mean that the
9 counter-argument is invalid, because the Court could say,
10 well, even though there is more work, and more labor evidenced
11 in the record now, I still think that \$200,000 would be
12 sufficient to compensate that.

13 But I'm not going to -- I'm not going to say that --
14 that definitively, logically, that there's some sort of a
15 contradiction there, because there isn't. But, of course, we
16 think the number should go up.

17 THE COURT: Correct.

18 MR. CHRISTENSEN: The Edgeworths have a couple of
19 arguments. One there's a -- there's a file issue. They
20 continue to complain about the file.

21 I don't want to fully engage on that, because I
22 think it's a red herring. But I -- I do want to just make a
23 couple of -- of comments.

24 In the Reply, we -- we attached a letter I had sent
25 back and some of the issues. Since then, I've gotten a -- a

1 letter back.

2 One of the issues is, if Your Honor recalls, many,
3 many years ago, at the Evidentiary Hearing, there was
4 discussion of a November meeting at Mr. Simon's office, and
5 Mr. Simon says, I had a printout for the costs, and I gave it
6 to him, and the costs at that time were \$70,000, \$80,000,
7 whatever they were.

8 And the Edgeworth version of that conversation was,
9 that was a Fee Agreement that he wanted us to sign, and he was
10 intimidating us, and he took it away at the end of the
11 meeting. So we've got two different factual narratives.

12 The Edgeworths continued to ask for that piece of
13 paper. And as Your Honor can see, my response was, look, that
14 was a -- the costs are taken off of this program that they
15 have that tracks costs. And you push a button and you get a
16 printout. So you get a -- a picture in time of what the costs
17 are.

18 But the costs move. They go up as additional bills
19 come in, or they go down as payments come in. So it's just a
20 snapshot of a moment of time. He just had it printed out and
21 just gave it to them. And that was the -- that was it.
22 Right? There was no retention of a copy, there was no
23 nothing. There's no obligation to retain a copy.

24 In response to that, this is the Edgeworth Reply is,
25 "Your letter suggests a copy of the requested cost printout

1 that was provided to our clients. Mr. Simon handed it to them
2 to look at, but took it back, which is why we're asking you to
3 identify where it can be found in their file. I do not
4 understand how it would no longer be available since he
5 retained it."

6 Well, that's not what we said. And that's not what
7 Mr. Simon testified to, and that's not what I said in my
8 letter. I said, he handed it to them. That's it. If -- if
9 he didn't retain a copy, then there is no copy.

10 So this is the level that the file discourse is
11 getting down to. We're now fighting over factual narratives
12 and not over content. And so I don't want to go down that
13 rabbit hole too far in this motion, because that's really
14 something for another day.

15 There was an argument made that the Court cannot go
16 beyond the bill. And that's wrong for a number of reasons.
17 First of all, the bill ends on January 8th, for the Time
18 Sheets sent on January 8th, and clearly, there was work done
19 after. There was appearances before Your Honor after that
20 date. So clearly, the Court can take those things into
21 consideration. And an argument that somehow the -- the
22 drawbridge goes up on January 8th doesn't make any sense.

23 There's also an interesting issue in that the -- the
24 Time Sheets, there's a -- there's kind of a strawman thing
25 going on here by the Edgeworths. The Simon position has

1 always been that the Time Sheets were incomplete, that they
2 were simply an indication of the work that they could
3 definitively find within the file, but that it didn't
4 encompass all of the work.

5 So from the Simon position, those Time Sheets are
6 incomplete. And Your Honor received evidence to that effect.
7 So that's another reason why being limited to the Time Sheets
8 is not an appropriate way to go.

9 The -- the third reason is that the Supreme Court
10 commented on that argument, because the Edgeworths made that
11 argument to the Supreme Court: "Insofar as the Edgeworths
12 argued that we should award Simon 34,000 in quantum meruit
13 fees, based on Simon's billing statement, that purportedly
14 shows that he completed 71 hours of post-discharge work, we
15 decline to do so. The District Court found that the billing
16 statement may not accurately reflect Simon's post-discharge
17 work."

18 So they -- they tried that argument before the
19 Supreme Court. It didn't work. And now they're trying it
20 before the District Court, which doesn't seem appropriate,
21 considering the facts, the record, and the Supreme Court's
22 dismissal of that argument.

23 So, in conclusion, we think that the information
24 contained at pages 4 through 18 of the motion would be very
25 helpful to the Court in fashioning a new order.

1 There is an issue whether it needs to be a
2 standalone order or whether simply an additional section could
3 be added on to the existing order. In my mind, an additional
4 section could just be added on.

5 There's an awful lot of information in the preceding
6 order, including an in-depth analysis of the Brunzell factors.
7 That, at a minimum, would need to be carried over, if it's
8 going to be a standalone order, that's really just a -- a
9 crafting decision that's to the Court's discretion.

10 So unless there's a question, I'll turn it over to
11 Mr. Morris.

12 THE COURT: No. You answered my question. Thank
13 you very much.

14 MR. CHRISTENSEN: Thank you, Your Honor.

15 THE COURT: Mr. Morris?

16 MR. MORRIS: Your Honor, thank you.

17 We're back here before you for the third time. The
18 Supreme Court has said with respect to the record that was
19 before you and the Supreme Court, in two -- in one writ and an
20 appeal, that they couldn't -- they couldn't determine from
21 that what you had considered to support your \$200,000 quantum
22 meruit award.

23 But, and I know that you filed your Fourth Amended
24 Decision and Order, and you also filed that before -- when you
25 did not have jurisdiction. If that's your position, then you

1 simply need to affirm that. But if you want to consider some
2 of the things that Mr. Christensen has said and argued, I want
3 to point this out: Simon agrees that the time spent on post-
4 discharge matters, 71.10 hours, and Mr. Christensen just
5 mentioned that, is accurate.

6 And that was the number of hours and the time --
7 that represents the time that the -- was be -- was before you
8 for the Supreme Court when they said you didn't sufficiently
9 identify in that -- in that -- on this record that those
10 hours, what would, consistent with Brunzell, the Court, the
11 \$200,000 quantum meruit award.

12 Now we come back -- and now that we're back before
13 you, Mr. Christensen and Simon want to add on, they want to
14 add on work based on e-mails that were withheld, purposely
15 withheld until you denied several months ago -- a couple of
16 months ago -- our Motion for an Order to Show Cause why Simon
17 should not be sanctioned for failing to produce documents.

18 And now that we have those documents that are
19 produced, he wants you to consider those.

20 He also -- he also has by producing these late e-
21 mails, he's confirmed a couple of things that are of interest
22 -- should be of interest. They are to us. They should be of
23 interest to you.

24 To give Simon credit for what he has produced five
25 years after the fact, would award him for withholding part of

1 the file, which shows, for example, that -- that the
2 Edgeworths did not, as he has represented, they didn't request
3 him to negotiate confidentiality, and that he had -- another
4 thing these e-mails show, look at Exhibit K.

5 They show that he had the Viking settlement drafts,
6 but he said he didn't have them. And that is -- is a
7 consequence of his negotiations with Joel Henriod, and he
8 produced those drafts of the Settlement Agreement after we had
9 the Show Cause Hearing.

10 So he was telling the Edgeworths, at the same time,
11 on November the 27th, but you can see on our Exhibit R, that
12 there was much that remained to be done. And that many terms
13 had to be negotiated when in point of fact, the terms for
14 settlement with Viking had been agreed to prior to that time.

15 Those are just -- those are points I raise to show
16 that I don't believe that Mr. Simon has been forthright
17 throughout these proceedings. You may disagree --

18 THE COURT: And Mr. --

19 MR. MORRIS: -- with me. (Indiscernible) --

20 THE COURT: -- Mr. Morris? Let me --

21 MR. MORRIS: Yes?

22 THE COURT: -- ask you a question.

23 When the Lange -- let's talk about the Lange
24 settlement. So, for instance, they're -- Mr. Simon is saying
25 the original -- originally the Langes were going to provide

1 \$25,000. And it is Mr. Simon's work that got the Langes to
2 agree to \$100,000. So do you disagree that he was continuing
3 to work at that time?

4 MR. MORRIS: I don't disagree that he was -- he --
5 he was in conversations at that time.

6 THE COURT: But --

7 MR. MORRIS: But I don't -- but I don't agree, and I
8 don't think that you should find the fact that in -- point of
9 fact, that additional \$75,000 comes out to be much less,
10 because there's an offset involved here.

11 But in any event, that doesn't -- and that increase
12 was negotiated by November 30th.

13 THE COURT: Right.

14 MR. MORRIS: It wasn't completely documented and the
15 Settlement Agreement signed --

16 THE COURT: Right. But I found that --

17 MR. MORRIS: -- until later.

18 THE COURT: -- constructive discharge occurred on
19 November 27. So if the settlement -- if the number doesn't
20 come into an agreement until November 30th, wouldn't you agree
21 that he's still working, unless there is some evidence that it
22 wasn't Danny Simon who negotiated that new number?

23 MR. MORRIS: I would -- I would agree that on
24 November 30th, that he -- that he said there was work that
25 remains to be done.

1 And then in an e-mail, which you have before you, he
2 said he did a couple of things that same day. But the fact --
3 fact of the matter is, Your Honor, that work did not continue
4 beyond November 30. So I don't -- I -- I don't -- and you've
5 had this before you on previous occasions. But that doesn't
6 -- doesn't indicate that Mr. Simon has been deprived of
7 anything.

8 And point of fact, one of the things that we
9 suggested to you in 2021, when we argued this before you for
10 the first time is, that with respect to the hours that he
11 claims, for which he was not compensated, which show largely
12 -- largely, not exclusively, but largely administrative and
13 nominal tasks, that you could compensate him, on the basis
14 that he had agreed to accept compensation before the -- with
15 the Edgeworths, long before this dispute reached your
16 courtroom.

17 And that would yield, as Mr. Christensen has just
18 pointed out, and as we argue to you, that would yield \$33,811
19 as -- as distinguished, or as opposed to, \$200,000.

20 THE COURT: Well, and Mr. Morris, let me ask you --

21 MR. MORRIS: So --

22 THE COURT: -- this though. I mean --

23 MR. MORRIS: -- the -- the --

24 THE COURT: -- Mr. Simon did make additional court
25 appearances in front of this Court. That is part of the court

1 record. There's transcripts that he was here, and that he was
2 making appearances. And as a lawyer, you guys get paid to
3 come in and make appearances for your client.

4 So are you arguing that that wasn't additional work
5 that he was doing?

6 MR. MORRIS: I was -- that -- I just -- I just told
7 you that's some work that he was doing. That is some work,
8 that it was done and completed by November the 30 -- by
9 November 30th, which is evidenced in the e-mails you have.

10 It didn't continue on into December. It didn't
11 continue on --

12 THE COURT: He made appearances --

13 MR. MORRIS: -- into --

14 THE COURT: -- after November 30th. He made
15 appearances on this case --

16 MR. MORRIS: Correct.

17 THE COURT: -- after November 30th. So he did not
18 conclude his work on November 30th. This Court can take
19 judicial notice of Mr. Simon standing in front of me, and
20 there's transcripts, and there's Minutes that reflect that he
21 was here on this case.

22 MR. MORRIS: I'm not arguing with that.

23 THE COURT: Okay. I'm just making sure.

24 MR. MORRIS: I'm not saying that he did nothing
25 beyond November 30th. I was responding to your question with

1 respect to when the increase in the amount from 25 to 100,000,
2 which was really because of an offset, a net of \$53,000, when
3 -- when that was done.

4 That was not done post November 30th. That was done
5 and over on November 30. And Simon continued to perform some
6 administrative tasks, which are evidenced in the increase that
7 you credited in his Super Bill, and they add up to 71.10
8 hours.

9 That doesn't -- I submit to you, and we've argued
10 before, I -- you may disagree with us. I'm simply trying to
11 present our position consistent with what I understand the
12 record to be and the law to be, that it doesn't support under
13 the Brunzell factors, a quantum meruit award of \$200,000.

14 And I think that's one of the -- one of the things
15 the Supreme Court indicated when it sent this back, for you to
16 say, within that 71.10 hours, what is it that Simon did that's
17 consistent with Brunzell, that would produce a recovery of
18 \$200,000 in quantum meruit.

19 And a good deal -- Your Honor, a good deal of what
20 happened post November 30th was just final -- it was
21 finalizing the Lange settlement, and resolving disputes
22 between the Langes and Viking. Remember, the references to
23 the -- if they -- if they didn't resolve the -- didn't resolve
24 that, there would have to be a good faith settlement hearing.

25 So, I'm -- I'm just -- I -- I'm puzzled why you are

1 so resistant to considering the fair amount of what would be a
2 fair amount of compensation for Simon's post November 30 work
3 at the -- at the rate in which he indicated he would be paid,
4 to -- to the Edgeworths, when he commenced representing them.
5 That's \$550 an hour.

6 THE COURT: Well, first off, Mr. Morris --

7 MR. MORRIS: And that adds up to --

8 THE COURT: -- I never said I didn't --

9 MR. MORRIS: -- including \$550 an hour for his
10 associate, who he billed at 275. But that would include --
11 that would include Ashley Ferrel. So, I --

12 THE COURT: Mr. Morris, I never said I was --

13 MR. MORRIS: -- I don't see why --

14 THE COURT: -- resistant to anything. And --

15 MR. MORRIS: Pardon me?

16 THE COURT: I never said I was resistant to
17 anything. And it's going to be this Court's order that's
18 going to decide what is Mr. Simon's fair compensation.

19 MR. MORRIS: Well, Your Honor, if you -- if you
20 believe this cut and dried, you've already -- you've already
21 filed -- although you didn't have the jurisdiction to make a
22 -- to make a entry of it. You filed your Fourth Amended
23 Decision and Order. If you believe you're correct on that,
24 and you have addressed the Supreme Court's concerns that
25 result in this -- that result in this Third Remand, well, then

1 file it, enter that order, and we'll go on from there.

2 But if you want to consider, which is out of time
3 and is not something the Supreme Court asked for, Mr. -- Mr.
4 Christensen's Motion to Adjudicate Fees Post -- Post November
5 30, why then you -- you should, I think, consider what we've
6 been arguing and what we've presented to you.

7 We've been presenting this to you for some time. He
8 would be entitled to, and it could be supported by reference
9 to Brunzell, \$33,811. And if -- if you agree with that, and
10 enter an order according to that, we're done with this case.
11 We don't have to go to the Supreme Court again, and come back
12 before you again. We're done.

13 And I just think that's -- that's something you --
14 you should consider. But if you don't want to consider it, if
15 you wish to stay with the position you've taken, on the record
16 that you have before you, then simply enter your Fourth
17 Decision and Order.

18 THE COURT: All right. Thank you, Mr. Morris.

19 Did you have anything else you wanted to add?

20 MR. MORRIS: No, I think I've -- I -- I think I've
21 said just -- I -- I just want to reemphasize, irrespective of
22 Mr. Christensen's misdescription of what the Supreme Court was
23 looking for, the Supreme Court was not looking for new
24 information, it was looking for you to say, in your order,
25 what it is that you considered, that Simon did in the 71.10

1 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.

4 The -- the -- what's -- what Mr. Simon and what Mr.
5 Christensen has presented is just simply some add-ons, and
6 some e-mails, and declarations that don't say anything at all
7 about the time that he spent. He just tenders this stuff
8 saying, this -- this would support, confirming your \$200,000
9 award.

10 Well, if that's true, Your Honor, he should have, as
11 I said a moment ago, and I'll conclude with this, he should
12 have produced that five years ago and he didn't.

13 THE COURT: Okay.

14 Mr. Christensen, anything you want to add in
15 response to those arguments?

16 MR. CHRISTENSEN: Yes, Your Honor.

17 I quoted from the Supreme Court's Order, so I'd
18 rather -- I'm mildly annoyed at the statement that I somehow
19 misstated the finding of the Court, since I've quoted it.

20 There's a -- there's a strawman argument going on.
21 Simon agrees that the 71.10 hours is the minimum accurate
22 number of hours that he spent post-discharge through January
23 8. So that's the minimum through January 8, only.

24 Obviously, Simon spent more time on this matter, as
25 the Court observed. He did make appearances after January

1 8th. When the Court confronted the Edgeworths, on that point,
2 the Edgeworths deflected and said, well, of course we're not
3 saying he can't be compensated for that. But then they
4 immediately return to their 71.10 hour argument, which ignores
5 those additional appearances.

6 There was a claim made that Simon purposely withheld
7 certain e-mails. I'm not sure how they get to purposefully.
8 They're implying intent, again, they did so without any
9 factual basis. I would submit that it's fairly clear that
10 they are doing these simply to obtain a result -- the result-
11 oriented arguments.

12 There was some argument and some discussion
13 concerning the increased offer. If the offer was increased,
14 and that result was obtained on November 30th, well, that's
15 post-discharge, and therefore, it counts towards quantum
16 meruit.

17 The Supreme Court -- and I'll -- I'll finish on
18 these two points. First, this Court, the record, and the
19 Supreme Court, note that -- and Mr. Simon's testimony at the
20 Evidentiary Hearing, indicate that work on the Settlement
21 Agreements began before discharge, and continued after
22 discharge, page 3, of the Supreme Court Order, about the
23 middle -- the first paragraph on that page addresses that.
24 And this Court addressed that, too.

25 So for the Edgeworths to take the position that

1 because the work began pre-discharge, that somehow all of the
2 work was completed pre-discharge, is a -- is a fallacious
3 position to take. One doesn't lead to the other, it's the
4 work was done when the work was done.

5 And, for example, on Lange, we know that the work,
6 increase in the offer, removing confidentiality and other
7 items, was done post-discharge.

8 So that can serve as a basis for a quantum meruit
9 award. And this Court is not limited to an hourly, because
10 it's post-discharge. The Edgeworths destroyed the implied-in-
11 fact contract that the Court found, when they discharged them,
12 that means it goes away, Simon gets a reasonable fee, and
13 there's absolutely nothing in the Supreme Court Order, or in
14 the law of the State of Nevada that says that that has to be
15 another way. That's flatly rejected.

16 The last point I want to bring is, again, the
17 Edgeworths propose a -- a dichotomy which is a false
18 dichotomy. They say, well, either you go with our 71.1 hours,
19 or you enter your prior order, and those are the only choices
20 the Court has. And that's simply incorrect. And that's not
21 what the Supreme Court said.

22 The Court was remanded. It's now in the District
23 Court's jurisdiction. And when you issue an order, you can
24 issue an order as you see fit, within your sound discretion.

25 And we submit to you that adding in the additional

1 information contained in our motion at pages 4 through 18,
2 would likely be a good idea that would provide the Supreme
3 Court with plenty of information upon which they could be able
4 to determine what the quantum meruit award was based upon.
5 And from our perspective, we think that that would bring this
6 matter to a close.

7 Thank you, Your Honor.

8 THE COURT: All right. Thank you both very much.

9 I am going to issue a written order regarding this
10 case. That order will be filed and both parties will be
11 served.

12 MR. CHRISTENSEN: Thank you, Your Honor.

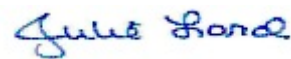
13 THE COURT: All right. Thank you.

14 MR. MORRIS: Thank you.

15 (Proceeding concluded at 9:37 a.m.)

16 * * * * *

ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/visual proceedings in the above-entitled
case.



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