

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

APPELLANTS,

VS.

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

RESPONDENTS.

Electronically Filed
May 03 2024 11:51 AM
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 86676
Dist. Ct. Case No. A-18-767242-C
Consolidated with A-16-738444-C

**EDGEWORTH APPELLANTS' SUPPLEMENTAL APPENDIX
IN SUPPORT OF REPLY BRIEF**

**VOLUME X
BATES AA1785-AA1888**

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

CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL	BATES NOS.¹
2017-11-27	Simon/Henriod 11:53 a.m. Email Exchange	X	AA1785
2017-11-28	Simon/Pancoast Email Exchange	X	AA1786
2018-04-03	Excerpts of Hearing Transcript	X	AA1787-90
2018-08-28	Excerpts of Transcript of Evidentiary Hearing – Day 2	X	AA1791-97
2018-08-29	Excerpts of Transcript of Evidentiary Hearing – Day 3	X	AA1798-1809
2018-08-30	Excerpts of Transcript of Evidentiary Hearing – Day 4	X	AA1810-1819
2018-09-18	Excerpts of Transcript of Evidentiary Hearing – Day 5	X	AA1820-27
2023-11-13	Appellant's Response to Simon's Second Mot. for Reconsideration in Case No. A-19-807433 (with Ex. A, B)	X	AA1828-88

¹ Continued Volume and Bates Numbers from the Appellants' Appendix filed concurrently with Opening Brief, which included nine volumes: Vol. I - IX (Bates No. AA0001 – 1784).

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

ALPHABETICAL INDEX

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2023-11-13	Appellant's Response to Simon's Second Mot. for Reconsideration in Case No. A-19-807433 (with Ex. A, B)	X	AA1828-88
2018-04-03	Excerpts of Hearing Transcript	X	AA1787-90
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2018-08-30	Excerpts of Transcript of Evidentiary Hearing – Day 4	X	AA1810-1819
2018-09-18	Excerpts of Transcript of Evidentiary Hearing – Day 5	X	AA1820-27
2017-11-27	Simon/Henriod 11:53 a.m. Email Exchange	X	AA1785
2017-11-28	Simon/Pancoast Email Exchange	X	AA1786

Daniel Simon

From: Henriod, Joel D. <JHenriod@lrrc.com>
Sent: Monday, November 27, 2017 11:53 AM
To: Janet Pancoast
Cc: Daniel Simon; tparker@pnalaw.net; Ashley Ferrel; robinson (robinson@mmrs-law.com); chun@mmrs-law.com; Jessica Rogers; Polsenberg, Daniel F.
Subject: Re: Edgeworth - Expert Depositions

In the context of discussing the settlement agreement, Danny also said that he'd like to move the 12/1 hearing (before Bulla) on various motions—perhaps to 12/20 or 12/22. He thinks those issues wouldn't need to be decided before the evidentiary hearing anyway.

just chatted with him about the settlement agree

Joel Henriod
Lewis Roca Rothgerber Christie
(Office) 702.474.2681
(Mobile) 702.743.0212
jhenriod@lrrc.com

Sent from my iPhone

On Nov 27, 2017, at 11:47 AM, Janet Pancoast <janet.pancoast@zurichna.com> wrote:

Teddy and Danny called me about the expert depositions. As you will recall, there are two set for tomorrow, Crane Pomerantz at 10:00 a.m. and Brian Garelli at 2:00 p.m. Neither of these experts is set to proceed tomorrow. In light of the ongoing discussions with Viking we have an agreement that since these depositions were noticed, that in the event they need to be re-set after the close of discovery, Plaintiffs will not object to setting these depositions later. Danny agreed to get dates for both these experts so they can be rescheduled.

If you have any questions, please advise.

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

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SIMONEH0004559

Daniel Simon

From: Janet Pancoast <janet.pancoast@zurichna.com>
Sent: Tuesday, November 28, 2017 9:18 AM
To: Daniel Simon; Ashley Ferrel
Cc: Jessica Rogers; robinson (robinson@mmrs-law.com); Henriod, Joel D. (JHenriod@lrrc.com)
Subject: Edgeworth - Discovery

In light of the settlement in this matter, Viking is of the impression that it need not respond to the discovery that is due today. If you have any belief to the contrary, please advise.

Thank you,

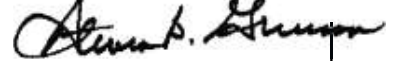
Janet C. Pancoast, Esq.
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SIMONEH0004557

AA1786



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST,)	
)	
Plaintiff,)	CASE NO. A-16-738444-C
)	
vs.)	DEPT. NO. X
)	
LANGE PLUMBING, LLC,)	(CONSOLIDATED WITH:
)	CASE NO. A-18-767242-C)
Defendant.)	
)	
<u>And related matter/cases.</u>		

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, APRIL 3, 2018

**RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS**

APPEARANCES:

FOR THE PLAINTIFF:	ROBERT D. VANNAH, ESQ.
	JOHN B. GREENE, ESQ.
FOR THE DEFENDANT:	JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

2 [Case called at 9:38 A.M.]

3 THE COURT: -- in the consolidated case of Edgeworth
4 Family Trust versus Daniel S. Simon, doing business as Simon
5 Law. Good morning, counsel. If we could have everyone's
6 appearance.

7 MR. VANNAH: Yes. Robert Vannah and John Greene on
8 behalf of the Edgeworth parties.

9 THE COURT: Okay.

10 MR. CHRISTENSEN: Jim Christensen on behalf of the
11 Law Office.

12 THE COURT: Okay. So this is on for several things.
13 And what I did notice, counsel, is Mr. Simon had filed a
14 Motion to Adjudicate the Lien. And I believe when we were
15 here last time, I ordered you guys to a mandatory settlement
16 conference. So, it was my fault that we did not recalendar
17 the motion to adjudicate the lien, so it did not appear on the
18 calendar today.

19 However, I believe that the Motion to Adjudicate the
20 Lien is very, very important in making the decisions on the
21 other motions that are on calendar today. You guys have
22 already argued that motion, so I'm prepared to deal with all
23 of those issues today, if you guys are prepared to go forward
24 on that.

25 MR. VANNAH: We -- we are, Your Honor.

1 thing as giving it to us. You're okay.

2 So there's just -- there's no way to stop the anti-
3 SLAPP motion. They haven't cited any case law; we have. They
4 don't point to any section of the statute; we have. It
5 applies. Their -- their initial Complaint and their Amended
6 Complaint both have to be dismissed, because Mr. Simon was
7 sued because, and solely because he followed the lien statute.

8 THE COURT: Okay.

9 MR. CHRISTENSEN: Thank you, Your Honor.

10 THE COURT: Thank you, counsel.

11 I've read everything, and considering the arguments
12 today, it appears to me on the face of the regular Complaint
13 as well as on the face of the Amended Complaint that they were
14 not suing Mr. Simon for bringing the lien; they were suing him
15 for conversion, breach of contract, and the other causes of
16 action, which includes the last one that was added in the
17 Amended Complaint.

18 So the Special Motion to Dismiss is going to be
19 denied.

20 Moving on to -- there is a Motion to -- sorry, I'm
21 just on the wrong page -- a Motion to Dismiss Plaintiff's
22 Complaint pursuant to NRCP 12(b)(5), as well as the -- I want
23 to do the Motion to Adjudicate the Attorney Lien at the same
24 time. If you guys -- and I know you guys have made a lot of
25 arguments, and I do recall everything that was said the last

1 courtesy copy to chambers just in case there's some --

2 MR. CHRISTENSEN: Oh, May 18th.

3 THE COURT: -- mixup with Odyssey.

4 MR. CHRISTENSEN: Got it. Okay. Very good.

5 THE COURT: Okay? Thank you, counsel.

6 MR. CHRISTENSEN: Thank you, Your Honor.

7 MR. VANNAH: Thank you, Your Honor.

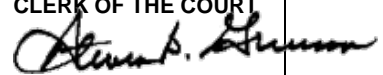
8 [Hearing concluded at 10:11 A.M.]

9 * * * * *

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



JULIE LORD, INDEPENDENT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 TUESDAY, AUGUST 28, 2019

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 2**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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1 A Correct.

2 Q Danny Simon's name is not on that?

3 A I don't believe it is, no.

4 THE COURT: Mr. Christiansen, before you move on to
5 another -- I have a question in regard to that. Mr. Greene, I apologize
6 early if this was a question you were going to ask, and I already asked it.

7 When is the last time you, personally, had contact with Danny
8 Simon?

9 THE WITNESS: Through email, or telephonically?

10 THE COURT: Any contact at all. Any contact at all between
11 you and him, that doesn't involve --

12 THE WITNESS: December --

13 THE COURT: -- Mr. Vannah, Mr. Greene, you and Danny
14 Simon?

15 THE WITNESS: December 5th.

16 THE COURT: December 5th. And what was that contact?

17 THE WITNESS: Danny left a voicemail on my phone saying
18 something about there was some --

19 THE COURT: Okay. Did you call him back?

20 THE WITNESS: No, I did not.

21 THE COURT: So, you've never spoke to him?

22 THE WITNESS: No.

23 THE COURT: When is the last time you and Mr. Simon
24 conversed? Like there's something --

25 THE WITNESS: Or email --

1 THE COURT: -- from you, something from him?
2 THE WITNESS: Not just emails back and forth. Because the
3 5th --
4 THE COURT: I don't care if it's an email. There's
5 communication, if you communicated with him.
6 THE WITNESS: Yeah.
7 THE COURT: Because if he left you a voicemail, and you
8 didn't call him back, you didn't talk to him. So, what is the last time you
9 personally had communication with Mr. Simon?
10 THE WITNESS: I believe that's the December 5th email that
11 Mr. Johansen [sic] --
12 MR. CHRISTIANSEN: Christiansen, it's okay.
13 THE WITNESS: Christiansen, I apologize.
14 MR. CHRISTIANSEN: Peter's fine, it's okay.
15 THE COURT: Okay. So, the email you sent to Danny Simon?
16 THE WITNESS: Correct.
17 THE COURT: And when's the last time you talked to him?
18 THE WITNESS: Spoke to him was probably November 25th
19 when I was packing to go to Asia.
20 THE COURT: And you spoke with him on the phone?
21 THE WITNESS: Correct. He called me from --
22 THE COURT: It's okay, sir, I don't need details. Okay. Thank
23 you. Sorry, Mr. Christiansen.
24 MR. CHRISTIANSEN: You're fine, Your Honor.
25 THE COURT: And, Mr. Greene, like I said I apologize if you

1 Brian?

2 A Yes, I do.

3 Q Describe this email to the Judge. First read it for her, if you
4 would, please, and then describe the circumstances.

5 A I know I have an open invoice that you were going to give me
6 at a mediation a couple weeks ago and then didn't leave with me. Could
7 somebody in your office send Peter [copied here] any invoices that are
8 unpaid, please.

9 Q So, as of November 15th, you acknowledge you owed more
10 fees to Mr. Simon, correct?

11 A Yes, correct.

12 Q Has that always been your position?

13 A Yes.

14 Q What does November 15th coincide with ,Brian?

15 A That night is when the mediator's settlement agreement,
16 Floyd Hale, the mediator, said the whole settlement was -- the mediator's
17 agreement was settled on by both parties. So, it's basically the Viking
18 settlement day.

19 Q Did Mr. Simon ever hit reply and type in a response to you?

20 A No.

21 Q Did Mr. Shin, your accountant, ever receive another invoice?

22 A No.

23 Q Did you ever receive another invoice in November from Mr.
24 Simon?

25 A No.

1 Q December of 2017, either?

2 A No.

3 Q If you would have received one as you had asked, what
4 would you have done?

5 A I would have checked it over. If everything was in order I
6 would have scribbled my signature on it and give it to Peter to pay.

7 Q Which you had done each of the four times previously?

8 A Correct.

9 Q Paid it?

10 A Correct.

11 Q In full?

12 A Correct.

13 Q I'm going to look at Exhibit 9, pages 7 through 12, Your
14 Honor, and Brian.

15 THE COURT: Okay.

16 BY MR. GREENE:

17 Q Brian, this is a side-by-side comparison of new bills, new bill
18 hours, paid bills hours, daily total. Do you recognize this document if I
19 just put it on here?

20 A Yes, I do.

21 Q And how do you recognize this document?

22 A I scanned the bills that were presented in late January of
23 2018 attached to a motion of some sort. I scanned them in and then I
24 summed them and then I sorted them by date.

25 Q Would it be a fair assessment to -- to say that you compared

1 criminal calendar tomorrow morning, so we will start at 10:30.

2 UNIDENTIFIED SPEAKER: Yes, Your Honor.

3 THE COURT: My criminal calendar will be over.


4 UNIDENTIFIED SPEAKER: See you tomorrow morning.

5 Thank you, Judge.

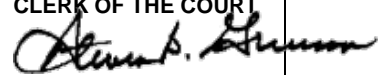
6 THE COURT: Okay. Tomorrow morning at 10:30.

7 [Proceedings concluded at 5:00 p.m.]

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

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23 _____
24 Maukele Transcribers, LLC
25 Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 WEDNESDAY, AUGUST 29, 2018

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

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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1 because she was there and that just completely baffled me. It left me like
2 -- I thought we were talking about the case, first of all, and this thing has
3 just settled two days before. I thought we were going to talk about how
4 to wrap it up, and get rid of this, and get it off my life, and, instead, we're
5 talking about something totally random, and we didn't talk anything
6 about the case.

7 Just before we left, Angela's like, well, what -- what about court
8 today? Are you going to go in -- like until we have a contract with Viking,
9 there's no settlement yet. Until we have a signed contract and the check,
10 we don't trust these people. They've done a lot of things. Make sure
11 you keep working on the case.

12 And that led to -- Angela and I drove back to the office. We started
13 discussing what we thought he meant, and we had no idea. We --
14 Angela and I couldn't even agree on a number that we had heard. That's
15 how unstructured the meeting was.

16 Q Let me ask you some different questions. What was -- what
17 do you remember about Danny's demeanor -- Mr. Simon's demeanor
18 towards you and Angela during the course of that meeting? How did he
19 treat you?

20 A He treated us like we were stupid, first of all. He kept -- he
21 used the phrase, you're using your business mind, you don't understand
22 the law. You know, that's when he had told us we can go ask other
23 lawyers, he's entitled to this, and he can get his contingency because
24 that's all he does is contingency. And you can go ask anyone, you're
25 going to get that -- he's going to get that. I apologize.

1 Q So when Mr. Simon said, I got to consider my options, what
2 impact did that have upon you and Angela?

3 A We were scared, like we were scared the whole settlement
4 might go.

5 Q And so I'm looking back, there's a -- we've showed the Judge
6 evidence, a meeting in San Diego in August 8 to 9'ish, of 2017. We've
7 shown her an email of August 22nd, 2017. Both instances, you're asking
8 for a proposal from Mr. Simon?

9 A Correct.

10 Q Fair summary?

11 A Correct.

12 Q Up until this November 17, 2017 meeting, any proposal from
13 Mr. Simon as to what he suggested the fee be changed to?

14 A No.

15 Q So we had this meeting on November 17, was a written
16 proposal presented to you then?

17 A No, he said we had to come to agreement and sign it in his
18 office. We couldn't have something to leave with.

19 Q So what happened next? It's November 17th, you and
20 Angela have just left.

21 A We drive back to the office, and then Mr. Simon calls me four
22 times over the day, saying have you and Angela talked. Have you
23 discussed this? We need to come to an agreement on this. And I kept
24 saying, I'm like Angela's -- I forget where she was, she was in Summerlin
25 or somewhere. I wasn't going to see her until about 10:00 at night.

1 So, he kept calling and asking if I've done something, really
2 agitated as if there was some hurry to do this, which that's not how I
3 operate. Like I would want to go back and forth and take days. And
4 finally, he called me later at night and said, what have you guys
5 decided? I need to know. And I'm like, I haven't seen my wife yet.

6 Q Stop for a minute. After hours?

7 A Yeah, after hours.

8 Q Didn't you hear Mr. Christiansen condemn you for speaking
9 to Mr. Simon after hours?

10 A I know.

11 Q But Mr. Simon called you after hours, what did he say?

12 A He wanted a decision right then and there, and he didn't
13 believe I hadn't spoken to Angela. He basically was calling me a liar that
14 I hadn't seen Angela, and I'm like what's the big rush, you know, what --
15 what's the rush? We can talk about this later. You know, we'll talk about
16 it over the weekend. He's like I leave tomorrow at -- I forget when, it was
17 like 6 a.m. or 7 a.m. I'm like, wait. Where are you going?

18 This blew me away because I had no idea he was going away,
19 because we had to prepare for the UL deposition, which was very
20 technical and very difficult, and really important to this case. And he
21 said that he was going to Machu Picchu. And I'm like, what.

22 And then I didn't expect to hear from him for a week, but he kept
23 calling me on his trip with the same demands, I want an answer. I need
24 an agreement. I need an agreement. And finally, when I'm packing for
25 China on the 25th, he called demanding an answer. This is after he

1 asked me -- he says, send me, you know, your list of costs that we
2 presented, or whatever the thing that I was shown earlier, which had 3.8
3 million plus, plus, plus, plus on it, you know, like I had left a bunch blank.
4 All my time, my business I lost, everything else. Who knows what the
5 value of that is. I sent that to him on the 21st.

6 On the 25th, he called all agitated, saying, oh, as if this is really
7 your F-ing damages. This -- you didn't F-ing lose this much. And I'm
8 like, what are you talking about. Like the whole -- the whole thing was
9 bazaar, and I'm like what are you talking about. He's like, well, you're
10 never going to pay these F-ing loans back.

11 And I'm like -- that really set me off, because he's basically asking
12 me and Angela to give him some more money and to rip off Colin and
13 Angela's mom for the interest. And right there, it was just like it's over,
14 and then I lost it. And I just said, you either send me something in
15 writing that's structured and cogent, or we don't talk about this again.
16 We don't talk about these fees again. Send it.

17 And then he -- and then I packed. I drove to L.A., I flew to Japan
18 for a day, and then I believe when I landed in China, I got the November
19 27th letter.

20 Q Let's talk about that now, but let's not talk about the letter
21 first, let's go to the retainer agreement.

22 MR. GREENE: Your Honor, that is -- and Pete, that's Exhibit
23 4, Page 8, and it's entitled Retainer Agreement.

24 THE COURT: Okay.

25 MR. CHRISTIANSON: Okay.

1 BY MR. GREENE:

2 Q This is the top part of that. Just kind of a brief thumbnail
3 sketch. What type of documents did you get from Danny and how -- Mr.
4 Simon, and how on this November 27th?

5 A By email, there was, I think -- okay, this was attached. There
6 was a letter explaining his point of view. This was attached, and there
7 was some fee agreement that had the breakdown of funds, whatever you
8 would call that.

9 Q Okay.

10 THE COURT: Was this attached to the November 27th letter?

11 MR. GREENE: Correct, Your Honor.

12 THE COURT: Okay.

13 BY MR. GREENE:

14 Q Looking at this Page 8, this looks familiar to you, Brian?

15 A Yes.

16 Q Now earlier you mentioned to the Judge that if this claim
17 against Lange was so valuable, why didn't Mr. Simon produce some kind
18 of a hybrid or whatever agreement that he thought was fair to cover that
19 claim? Do you remember giving that testimony to the Judge?

20 A Yes.

21 Q Is there anything in your understanding of reading this
22 retainer agreement that pertains to any contingency fee agreement for
23 Lange?

24 A No, he's basically saying any future services performed
25 prosecuting Lange Plumbing will be determined by a separate

1 were on calendar of all our experts. We had basically a ton of stuff going
2 on.

3 And then, as far as the -- we talked about the settlement. We
4 talked about what the motion for good faith determination means, how
5 that affects the settlement. About the Lange claim. And that was
6 another provision where they tried to include the Lange claim as part of
7 the global settlement from Viking, and I excluded that as well. So, I was
8 able to preserve the Lange claim with the Viking settlement.

9 So, at that time, I talked to them also about the Lange claim and
10 the application of that and how we would proceed forward. I told them
11 that I already had discussions with Mr. Parker, that we were going to
12 continue to the case because the posture of the case was now changing.
13 It was now defined in a very narrow scope, which was really just the
14 recovery of the attorney fees provision. And, basically, then I asked -- I
15 told him about now it's time to settle up the fee because now we know
16 the outcome, and so I just wanted to determine what a fair fee would be.

17 And in response to that, Brian said absolutely nothing. Angela --
18 and he was sitting in my -- in front of my desk to the right of me, and
19 Angela was in the left, and she just kind of looked at Brian, looked back
20 and goes, we'll talk about it. And then at that point, I gave them a -- the
21 cost, the outstanding cost, which is about \$72,000, which is the printout
22 of all the costs that he's seen before on many occasions, which we've
23 showed him at mediation, so he always knew what his costs were.

24 I handed him a copy of that and said this is your outstanding costs
25 as of today. And then get back to me on what your thoughts are on the

1 fee.

2 Q Did you --

3 A And I told him -- and I did tell them that my normal fee in this
4 type of case, you know, on a regular fee if it was a contingency would --
5 my normal fee would be at \$2.4 million for this settlement, but you
6 know, you guys talk about it and tell me what you think is fair, and I'll tell
7 you what I think is fair and obviously I'm willing to come off of that and
8 do what's fair, and that's how we left it and they left.

9 Q The breakdown of cost is what your office calls a case
10 expense summary?

11 A Yes.

12 Q Okay. And that was about \$72,000 or so?

13 A Yes.

14 Q Were tensions high during that meeting?

15 A No.

16 Q Did you get the perception that anyone was feeling scared or
17 intimidated?

18 A No, there was nothing to be scared or intimidated about. I
19 wasn't demanding anything from them. I explained everything about the
20 case because the settlement wasn't even necessarily agreed to. Brian
21 still was confused as to how the confidentiality was going to work. And
22 so, that's why I had later discussions with him, even that evening, talking
23 about how the confidentiality would work.

24 Q I mean, the -- so the -- you hadn't struck a deal yet on the \$6
25 million.

1 A It wasn't -- yeah, it wasn't an official deal. The number was
2 okay, but the remaining terms that they were requiring were still not
3 agreed to by the Edgeworths.

4 Q As Judge Earl used to say, the devil is in the details, right?

5 A Yeah.

6 Q Okay.

7 A I mean, there's deal breakers all the time.

8 Q Yeah.

9 A Just when you get a good number, it doesn't mean people
10 are going to go through with it.

11 Q So, at the time that you told them what your normal fee
12 would be in that type of a situation, that was preliminary?

13 A Right.

14 Q Okay.

15 THE COURT: And if -- yeah, we were just going to finish up
16 with the 11/17 meeting --

17 MR. CHRISTENSEN: Okay.

18 THE COURT: -- if you were finished.

19 BY MR. CHRISTENSEN:

20 Q Let's finish with 11/17. Was that the end of the meeting?

21 A That was the end of the meeting, and then I was headed off
22 to court. They left. Then I basically went over to court and took off the
23 motion because we weren't going to proceed at that time. I think we
24 worked on continuing it, kind of keeping it on, in case we needed to
25 come back for it, in case the settlement didn't get ultimately finalized.

1 Q You wanted to keep that, sort of hanging over their head
2 while you worked out the details of this settlement?

3 A Correct.

4 Q Okay. Did you have conversations later that day with Brian
5 on the telephone?

6 A I did. So later that day we talked about, a) the confidentiality,
7 how that would work again. We kind of went over a little bit of the same
8 stuff because they were confused about all of the information that I gave
9 them, and then we started talking about the fee and what a fair fee would
10 be, and he was always just, well, I'm just trying to figure this out. I
11 mean, he was kind of just, you know, very cagy about it all, right.

12 And so, you know, what's there to figure out? What's your
13 questions? Help me explain it to you. You know, what -- I don't
14 understand why he was playing -- he was playing a little dumb at that
15 point, where I just don't get it. I'm just not sure. And I'm like, okay, well,
16 what's there not to get?

17 And that was basically -- we had multiple conversations, I guess at
18 that point, and I said, well, talk to your wife and let me know.

19 Q Okay.

20 A And I was leaving out of town, 6:00 a.m. the next day, so I
21 was hoping to get an answer from them. I don't know what would be
22 too difficult about it. I mean, here we are at the end of the case. I've got
23 an amazing result, and now it's time to figure out a fair fee, so here's my
24 regular rate. Give me something that you think is fair. And that's all I
25 was asking for.

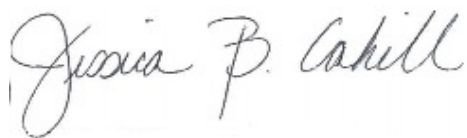
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MR. VANNAH: Thank you, Your Honor.

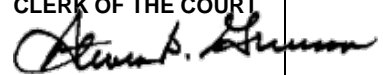
THE COURT: Thank you.

[Proceedings concluded at 4:29 p.m.]

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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC, ET AL.,

Defendants.

CASE#: A-16-738444-C

DEPT. X

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON, ET AL.,

Defendants.

CASE#: A-18-767242-C

DEPT. X

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

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

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

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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

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

5 THE COURT: Right.

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

10 THE COURT: Okay.

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

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

23 THE COURT: Right.

24 MR. VANNAH: He's --

25 THE COURT: He billed 550 an hour.

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

4 THE COURT: Okay.

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

11 THE COURT: Okay.

12 MR. CHRISTENSEN: May I, Your Honor?

13 THE COURT: Yes.

14 MR. CHRISTENSEN: Thank you, Your Honor.

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

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

24 THE COURT: I've read the agreement.

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

1 A Hundreds.

2 Q -- or active?

3 A Hundreds. On the plaintiff side probably 35, 40.

4 Q The rates were all 40 percent?

5 A Some were lower, some were lower. They had, I think there
6 was a firm out of Oklahoma or somewhere that was charging a little bit
7 lower.

8 Q Okay.

9 A And I think those clients got what they paid for.

10 Q How about the Southern Nevada attorneys.

11 A The Southern Nevada attorneys were by and large charging
12 40 percent.

13 Q Okay. Well, Mr. Kemp, are there any other factors which
14 support your opinion?

15 A Well, I went and talked to a mediator, because I just didn't
16 understand how they got \$6 million in a case like this. And so, he's in
17 the same building as I'm in.

18 MR. VANNAH: Wait a minute, excuse me. I have -- I
19 appreciate, I have this report, but it doesn't talk anything about any
20 conversation -- are you talking about Floyd Hale?

21 THE WITNESS: Yeah.

22 MR. VANNAH: Yeah. I don't have any -- okay. I have an
23 objection about that. Nothing's ever been disclosed that he went to talk
24 to Floyd Hale about this case. It's just -- here I am.

25 THE COURT: Okay. So, it's not in his report. Mister --

1 MR. VANNAH: There's nothing in the report about any
2 discussion with Floyd Hale. I just don't feel that would appropriate to
3 bring up that as any part of this; that's wrong. Considering it's never
4 been disclosed to me. If it had been disclosed I'm not going to -- no
5 problem.

6 THE COURT: Yes.

7 MR. VANNAH: But that did not get disclosed to me.

8 THE COURT: Okay. Mr. Christensen, I don't see that in the
9 report that I have, that I've read.

10 BY MR. CHRISTENSEN:

11 Q May I ask a couple of foundational questions?

12 A Yeah.

13 Q Did your conversation with Mr. Hale change or alter your
14 opinion in anyway?

15 A No. The reference to what Mr. Hale said is in Mr. Simon's
16 letter, dated November 27th, where he says that the mediator gave 2.4
17 million for fees. It says that on page 2 of the letter, in the middle. So
18 that's the only point that I was going to make that the mediator
19 confirmed. This in Mr. Simon's letter, it's not --

20 MR. VANNAH: Well, I don't have any problem talking about
21 whatever documents you reviewed, just conversations --

22 THE COURT: Okay.

23 MR. VANNAH: -- that I wasn't privy to that --

24 THE WITNESS: Let's --

25 MR. VANNAH: -- had never been disclosed.

1 THE WITNESS: Let's just put it this way. It was my
2 understanding that the mediation 2.4 million was for fees. Is that --

3 THE COURT: Okay.

4 THE WITNESS: -- fair?

5 MR. VANNAH: No, I don't understand that. I actually don't
6 understand that, what does that mean?

7 THE COURT: Okay. Mr. Kemp, what does that mean?

8 THE WITNESS: That means that the mediator threw in an
9 extra 2.4 for fees out of the 6 million, because he wanted to get
10 Edgeworth 3 million, plus some money for costs, and they knew that Mr.
11 Simon, like most people, typically have around 40 percent, so that's why
12 it's 6 million, not 3.6 million, or something like that.

13 MR. VANNAH: Thank you.

14 THE WITNESS: Yeah.

15 MR. VANNAH: That makes no sense.

16 THE COURT: Okay. Mr. Christensen.

17 BY MR. CHRISTENSEN:

18 Q Mr. Kemp, did we cover your opinions?

19 A Give me one second.

20 Q I think I referenced it, but there were a lot of emails, you
21 know. A lot of communication with the client, so I got to commend Mr.
22 Simon for, you know, responding. You know, sometimes he responds
23 in a minute, it's unbelievable. And I don't want to make it sound like Mr.
24 Edgeworth was being frivolous. I mean, there was a lot of important
25 emails from him. You know, he had a list of questions that I thought

1 were great, for a sprinkler expert or something. So anyway, it was a
2 productive relationship, but there was obviously a lot of work done in the
3 case.

4 Q Okay. One follow-up. Is it hard to find a lawyer here in
5 Southern California -- or Southern Nevada, excuse me, or in the Western
6 United States, generally, for complex product cases?

7 A I would say so, because -- you know, there's more to product
8 cases than people understand, you know. First of all, the average juror
9 doesn't understand what product liability is. You know, you tell them
10 that it, you know, it doesn't matter, there's no negligence, they still think
11 they need some negligence.

12 A lot of the judges haven't really tried product's cases, so they
13 don't need all the defendants always coming in, and they talk about this,
14 that and the other thing, and sometimes the judge goes down that rabbit
15 hole. So, there's really not that many people who do product's cases
16 here. So, I would say, yeah, it is hard.

17 Q Well, any other reasons why a product case is different from
18 say a typical injury case?

19 A Well, I mean, first of all you have to have a defective product,
20 okay. Just because the sprinkler broke and there was a flood, it doesn't
21 mean that the product was defective. But first of all, you have to have a
22 defective product. And I think what really makes the product case
23 different is it's pretty expert heavy. You know, you've got to spend a lot
24 of money on the experts.

25 Q Can --

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MR. VANNAH: Thank you.

THE COURT: No problem.

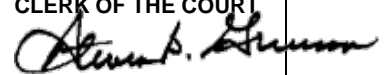
MR. VANNAH: That's been great.

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

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 TUESDAY, SEPTEMBER 18, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 5**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

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1 MR. CHRISTENSEN: No, Judge. They ended my
2 examination of Mr. Edgeworth. I asked a question, and I intended to go
3 into a slew of things he and his wife had talked about. Mr. Vannah
4 asserted the privilege that I couldn't talk to him about it. I sat down. Mr.
5 Vannah has that right. That was the end of it. They're judicially
6 estopped from now unwinding that assertion.

7 THE COURT: Well, I mean, she can testify to something she
8 has independent knowledge of, but she can't testify to something he told
9 her because you guys have invoked that privilege. And this is about the
10 volleyball. Wasn't this about -- I'm sorry; I forgot what the question was
11 you asked. Wasn't this about him doing some volley -- the volleyball
12 place?

13 MR. GREENE: It's about charitable backgrounds, talking
14 about her background at this particular point.

15 THE COURT: Okay.

16 MR. GREENE: So --

17 THE COURT: Okay. Well, can we move on from that, Mr.
18 Greene? Because I'm not really sure how that applies to what's owed to
19 Mr. Simon and the legal work that he did.

20 MR. GREENE: Well, I understand that, Your Honor. But they
21 spent time and volumes and words in their briefs for lack of a better
22 word, sliming the Edgeworths. Calling them dishonest, that they don't
23 pay their bills, that they're -- that they can't be trusted. Most assuredly
24 their charitable background, their giving, their conduct towards others is
25 certainly relevant to help unwind some of that stain that the defense put

1 on.

2 THE COURT: Well, let me -- I understand your desire to do
3 that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging
4 them based on whether or not they gave money to Three Square. I'm
5 here to make a call about the legal work that was done by Mr. Simon and
6 what is owed to him. That is the only thing I am here to pass judgment
7 on.

8 I'm not here to pass judgment on who's passing out canned
9 goods at Three Square. I'm doing it every other week in all reality, but
10 that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of
11 fact. I'm not a jury. I'm not here to discuss things that are outside the
12 legal realm. I'm just here to decide what is going to be done with what's
13 owed to them, what's owed to Mr. Simon, who needs to get paid.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GREENE:

16 Q Angela.

17 A Yes.

18 Q When did you come to know the Simons?

19 A I met Alaina (phonetic) when my daughter was in preschool
20 and we've known them for quite a long time. Alaina helped me a lot
21 when my father passed away. She was a good friend, and I considered
22 her to be one of my closest friends. We took family vacations together
23 and you know, our kids knew each other since preschool.

24 Q Did you ever at that time gain an understanding as to what
25 her husband Danny did for a living?

1 MR. GREENE: On the family, and it's a broad question.

2 THE COURT: It's a broad -- well, she can talk about the
3 financial aspects of that, because as I previously explained, I'm not here
4 to judge anyone. I'm here to get to the bottom of what is owed, what's
5 been paid, what hasn't been paid, and what people are owed. She can
6 talk about the financial effects of how this affected her family.

7 MR. GREENE: Okay.

8 BY MR. GREENE:

9 Q What financial effects did this litigation have on you and your
10 family?

11 A It was very stressful. It was a very stressful time for us.

12 THE COURT: And you said -- I'm sorry, Mr. Greene, I don't
13 mean to cut you off either, but we kind of moved on. And I'm sorry, I
14 never know when you are done with one section.

15 You said you had concerns that the billing was exaggerated.
16 Are these concerns that you have now or are these concerns that you
17 had when you guys received, because I thought Mr. Greene was talking
18 about the four original bills. Did you have concerns when you received
19 those four original bills, or are these concerns you have after the
20 January 2018 bill?

21 THE WITNESS: I had concerns back then, Your Honor.

22 THE COURT: Did you express those to Mr. Simon?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 And I'm sorry, Mr. Greene.

1 A Yes.

2 Q So before you even had your money, you sued Mr. Simon?

3 Yes?

4 A Yes.

5 Q You accused him of converting your money, correct?

6 A Yes.

7 Q Before you even had the money, correct?

8 A Yes.

9 Q Before the money was in a bank account, right?

10 A Yes.

11 Q Okay. And in that lawsuit, you sought to get from him

12 personally and individually, from his and his wife Elaina, your friend, you

13 want punitive damages, right?

14 A Yes. I didn't --

15 Q Just yes.

16 A -- ask to be in this position.

17 Q Just yes.

18 A Yes.

19 MR. GREENE: Your Honor, object. We didn't --

20 MR. CHRISTIANSEN: Sure -- most certainly did.

21 MR. GREENE: Elaina wasn't sued.

22 MR. CHRISTIANSEN: Well, it was his family.

23 MR. GREENE: Well --

24 THE COURT: Well, I mean, if Danny Simon as an individual

25 and the Law Office of Danny Simon, isn't it?

1 MR. GREENE: Yes, but we didn't name his wife --

2 MR. VANNAH: That's not his wife.

3 MR. GREENE: -- as a defendant.

4 THE COURT: Okay.

5 BY MR. CHRISTIANSEN:

6 Q Is Elaina married to Danny?

7 A Yes.

8 Q Okay. So, if you're trying to get punitive damages from a
9 husband individually, you're trying to get their family's money, right?

10 MR. GREENE: Same objection.

11 THE COURT: Mr. Christiansen, the lawsuit is against Danny
12 Simon as an individual and the Law Office of Danny Simon, so that's
13 who they sued.

14 BY MR. CHRISTIANSEN:

15 Q You made an intentional choice to sue him as an individual,
16 as opposed to just his law office. Fair?

17 A Fair.

18 Q That is an effort to get his individual money, correct? His
19 personal money as opposed to like some insurance for his law practice?

20 A Fair.

21 Q And you wanted money to punish him for stealing your
22 money, converting it, correct?

23 A Yes.

24 Q And he hadn't even cashed a check yet, correct?

25 A No.

1 get Judge Herndon mad at me.

2 MR. CHRISTIANSEN: Oh, he'll take it out on me. Don't worry
3 about it.

4 THE COURT: Yeah. My goal is to not get Judge Herndon
5 mad at me. I was very nice to him when I called him.

6 [Proceedings concluded at 4:29 p.m.]

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20 audio-visual recording of the proceeding in the above entitled case to the
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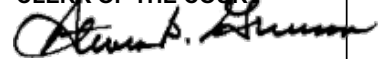
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20 *Brian Edgeworth and Angela Edgeworth*

21 DISTRICT COURT
22 CLARK COUNTY, NEVADA

23 LAW OFFICE OF DANIEL S. SIMON,
24 A PROFESSIONAL CORPORATION;
25 DANIEL S. SIMON,

26 Plaintiffs,

27 vs.

28 EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC; BRIAN
EDGEWORTH AND ANGELA
EDGEWORTH, INDIVIDUALLY, AS
HUSBAND AND WIFE; ROBERT
DARBY VANNAH, ESQ.; JOHN
BUCHANAN GREENE ESQ; AND
ROBERT D. VANNAH, CHTD., d/b/a
VANNAH & VANNAH; and DOES I
through V, and ROE CORPORATIONS
VI through X, inclusive,

Defendants.

) CASE NO.: A-19-807433-C

) DEPT. NO.: VIII

) EDGEWORTH DEFENDANTS'
) RESPONSE TO SIMON'S SECOND
) MOTION FOR (PARTIAL)
) RECONSIDERATION

) HEARING DATE: 11/30/23

) HEARING TIME: 10:00 a.m.

1 The Edgeworth Family Trust; American Grating, LLC; Brian
2 Edgeworth and Angela Edgeworth (collectively referred to here as the
3 Edgeworths) respectfully respond to Simon's second motion for
4 Reconsideration, which challenges the Court's latest order based largely on
5 the same flawed arguments raised in his previous motion for
6 reconsideration. In addition to the errors previously identified in the
7 Edgeworths' prior motion for limited reconsideration, if the Court is inclined
8 to further reconsider the October 17, 2023 order, it should also address the
9 erroneous premise on which Simon's initial motion for reconsideration was
10 granted.

11 INTRODUCTION

12 Simon's second motion for reconsideration seeks to delay
13 appellate review of the errors the Edgeworths and their counsel believe led
14 to the Court's prior orders. He now seeks reconsideration of the Court's
15 October 17, 2023 Order, in part he says, to revive the twice-dismissed
16 conspiracy and abuse of process claims. Ignoring the fact that the Court
17 granted his first motion for reconsideration based on a false premise *created*
18 *by Simon*, he now seeks additional reconsideration of the dismissal of his
19 other tort claims, which the Court concluded failed as a matter of law, on the
20 same grounds he presented in his prior motion.

21 Simon initially obtained favorable reconsideration based on an
22 intentionally incomplete and conflated timeline that focused the Court on
23 when the settlement checks cleared (January 22, 2018) to divert attention
24 from the fact his wrongful conduct began in mid-November, 2017 when he
25 started placing his desire for a higher fee above his client's interests and
26 refused to provide the settlement documents they specifically requested. He
27 does not discuss that he received *two* settlement checks on the Edgeworths'
28 behalf in mid-December 2017. In point of fact, Simon withheld *both* of the

1 Edgeworths' settlement checks from them even though they had promptly
2 paid every invoice he had presented for his services to that point. At the
3 same time he was holding their checks hostage, he refused to provide the
4 Edgeworths with a final invoice for services rendered. He did so to pressure
5 them into accepting a contingent-like fee agreement that he did not have to
6 displace the hourly fee agreement he had "negotiated" with the Edgeworths,
7 on his terms, in 2016. Otherwise, Simon told them, he would keep them tied
8 up for years in court, as he has done.

9 Simon also continues to transmute the out-of-context testimony
10 given by Mrs. Edgeworth on why she believed a request for punitive
11 damages in the Edgeworths' complaint was appropriate (*i.e.* to punish), into
12 a statement that the litigation was initiated to punish Simon for filing his
13 lien, which Angela did not say. *Even Judge Jones rejected Simon's contention*
14 *that the Edgeworths' lawsuit was inappropriately filed to punish him when*
15 *she promptly rejected his anti-SLAPP suit*, which the Nevada Supreme
16 Court *affirmed*. Nevertheless, Simon irresponsibly continues to advocate as
17 if this precedent does not exist.

18 The arguments raised in the Edgeworths' motion for limited
19 reconsideration, which the Court denied, will not be repeated here, although
20 the Edgeworths maintain they remain meritorious and applicable. Simon,
21 however, is not so restrained, as this second motion for reconsideration
22 illustrates: he continues to quarrel with the Court's dismissal of his abuse of
23 process and civil conspiracy claims on the same basis as he challenged their
24 dismissal in his first motion for reconsideration. E.D.C.R. 2.24 does not
25 contemplate serial motions for reconsideration for the same reasons.
26 Litigation would be endless if such repeat motions were indulged. Simon's
27 second motion in part repeats the identical arguments he raised in his prior
28

1 motion, which is without doubt improper. E.D.C.R. 2.24(a) ("No motions
2 once heard and disposed may be renewed in the same cause . . .").

3 This opposition is based on the following Memorandum of
4 Points and Authorities, the record before the Court, and any argument
5 permitted by the Court.

6 MEMORANDUM OF POINTS AND AUTHORITIES

7 I. SIMON HAS KNOWINGLY MISREPRESENTED THE
8 RELEVANT TIMELINE THAT LED TO THE EDGEWORTHS'
9 2018 COMPLAINT AGAINST HIM AND HIS FIRM.

10 Simon's motion contends that reconsideration is necessary
11 because "the Court's findings at paragraph 4, 6, and 8 that explicitly *found*
12 *that there exists genuine issues of material fact as to the Defendants' good*
13 *faith when filing the conversion claims*" conflict with paragraph 9 of the
14 order. This statement ignores the fact that Simon slow-played the Viking
15 settlement. He withheld the Edgeworths' settlement checks he received in
16 mid-December 2017, and he refused to provide them the amount he claimed
17 was due for his services. Moreover, not only does Simon's fail to explain the
18 alleged conflicts within the Court's order, but his argument for
19 reconsideration itself highlights the Court's error when it granted
20 reconsideration based on his skewed and inaccurate description of facts,
21 contrary to controlling Nevada authority on anti-SLAPP analysis.

22 The relevant timeline demonstrates that the Court erred in
23 granting Simon's first motion for reconsideration based on a perceived
24 "misapprehension of a material fact because the Court was basing its' [sic]
25 ruling on the fact that Mr. Simon did not release the undisputed funds
26 promptly to the Edgeworths." 10/17/23 Order at ¶3. Both of the
27 Edgeworths' settlement checks were deposited and a *portion* of the funds –
28 the amount of which Simon would not disclose until after the checks were

deposited – was distributed *after* the complaint was filed. The Court's "misapprehension" incorrectly assumes the settlement checks, which the Edgeworths believed belonged to them, are not property and that Simon could reasonably lay claim to *both* of their checks with impunity.

The Court was mostly correct in its December 15, 2022 order. Setting aside that Simon had been lying to his clients, and assuming for the sake of argument that Simon had a legitimate claim for nearly \$2.4M in fees, he refused to turn over *either of the settlement checks* when he received them, despite the fact one check far exceeded the amount he wrongfully claimed. While the Edgeworths believed Simon wrongfully computed his claimed lien amount by basing it on the new terms he wanted and was pressuring them to accept to supersede the terms of the implied contract under which he had billed for the previous 16 months, his filing of an inflated charging lien was *not* the reason the Edgeworths sued him.¹

A summary of the applicable timeline follows:

DATE	EVENT (AE=Angela Edgeworth; BE=Brian Edgeworth Vannah=used to refer to B. Vannah or J. Greene)	RECORD CITE ²
11/10/17	As of the date of the second mediation on 11/10/17 that ultimately resulted in settlement, the Edgeworths had paid every invoice presented by Simon and asked for all outstanding invoices.	Ex. B, ¶¶13-22; Ex. E, ¶¶7-11

¹ Judge Jones considered and rejected Simon's anti-SLAPP claim that the Edgeworths filed the suit against him for filing a lien, and the Nevada Supreme Court has affirmed that dismissal. Ex. U at 15; Exs. CC, DD; *Edgeworth Family Trust v. Simon*, 136 Nev. 804, 477 P.3d 1129 (2020).

² Except for Exhibits AAA and BBB, all citations in this brief are to exhibits in the Edgeworth Defendants' Special Motion to Dismiss Pursuant to NRS 41.660 - anti-SLAPP, filed on 8/15/22 and their reply in support thereof, filed 9/22/22. Copies of the referenced exhibits are attached hereto for the Court's convenience.

	Judge Jones recognized Simon <i>knew</i> the Edgeworths had taken high-interest loans costing them almost \$1K day to pay him for the litigation (Ex. E, ¶¶7-11).	
11/11/17	Edgeworths accept the mediator's settlement proposal re the Viking claims.	Ex. A, ¶11; Ex. B, ¶24
11/15/17	Viking accepts the mediator's settlement proposal re the Viking claims and the Edgeworths expect a quick resolution based on Viking's eagerness at the mediation, and the matters that were pending.	Ex. A, ¶12; Ex. B, ¶¶26-27
11/15/17	BE emails Simon again asking for outstanding invoices.	Ex. B, ¶25; Ex. E, ¶14; Ex. H
11/16/17	Simon sends text claiming "case is back on" – presumably because of a confidentiality clause the Edgeworths had no problem accepting.	Ex. B, ¶¶28-30, Ex. BB
11/17/17	Simon demands a meeting with BE and is irritated when both BE and AE attend; at the meeting, the Edgeworths believe he is not being truthful when he tells them he hasn't heard anything about settlement and makes what they believe to be threats about imploding the settlement unless they reward him with a \$1M+ share of the settlement. Simon then repeatedly calls BE that day demanding an answer to his demand for a higher fee. (Ex. B, ¶47).	Ex. A, ¶¶13-32; Ex. B, ¶¶31-48
11/18/17	Simon is abroad on a personal trip to Peru from 11/18 through 11/24/17, yet he continues to call demanding an answer to his new and increased fee demand and continues to maintain he has not heard about settlement. He responds to BE's demands for the	Ex. B, ¶¶50-51

	settlement documents by telling him "there was no settlement and no settlement agreement." Ex. B, ¶51.	
11/25/17	Simon and his wife both contact AE to meet with Simon, knowing BE is abroad in China. AE had lost confidence in Simon after his behavior at the 11/17/17 meeting and believed he was interfering with the settlement and did not want to meet with him alone.	Ex. A, ¶33
11/27/27	AE continues to ask about the settlement and Simon falsely maintains he has yet to hear anything about it. Simon emails a demand letter and a retention agreement with his desired terms, which the Edgeworths believed confirmed his threats to implode the settlement they believed he was making at the 11/17/17 meeting. AE believes he is treating them as adversaries and <i>unequivocally demands Simon provide them all communications and drafts about the settlement.</i> Simon ignores her.	Ex. A, ¶¶34-45, 66-67; Ex. B, ¶¶53-71; Ex. C
	<i>Unbeknownst to the Edgeworths, Simon had retained counsel to represent him against the Edgeworths. They discovered this during the lien adjudication proceedings.</i>	Ex. A, ¶67; Ex. B ¶60; Ex. W
11/29/17	AE follows up on her demand for settlement communications, fearful that Simon is <i>interfering</i> with settlement as he threatened. Simon again wants her to come to his office to sign his new fee demand. BE flies back from China and they retain another lawyer to protect their rights and help Simon finish memorializing the settlement.	Ex. A, ¶¶46-49; Ex. B, ¶¶71-74

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	11/30/17 am	Before Simon learned another lawyer was involved, he sends the Edgeworths a draft of the settlement agreement for the <i>first time</i> and again asks to meet with them. The Edgeworths express concern that the draft agreement had a redlined change adding Simon's firm to the settlement checks. Ex. L. The Edgeworths understand that Viking requested the change and they want to expedite completion and minimize the risk of Simon imploding the settlement so they accept it. Vannah notifies Simon of his involvement and tells him that the Edgeworths accept the settlement draft he provided. <i>In 2022 after the Supreme Court ordered Simon to produce the Edgeworths' case file to them, the Edgeworths were able to confirm their belief that Simon had withheld earlier drafts of the settlement agreement and had asked Viking to put his name on the settlement checks.</i>	Ex. A, ¶¶50-51, 53; Ex. B, ¶¶75-76, 78; Ex. L
19 20 21 22 23 24	11/30/17 pm	Ignoring Vannah's unambiguous notification that the Edgeworths accepted the settlement agreement "as is," Simon sends another draft of the settlement agreement that afternoon which contains unilateral changes that he later <i>falsely testifies</i> to the Court were made at the Edgeworths' request. (Ex. I at 216-17).	Ex. A, ¶51; Ex. B, ¶¶76-78; Ex. I at 216-17; Ex. M
25 26 27	12/01/17	The Edgeworths sign the Viking settlement agreement and Vannah returns it to Simon, as Simon demanded in his 11/30/17 email.	Ex. A, ¶51; Ex. B ¶¶78-79; Ex. P at 17.
28	12/01/17	Simon files a lien for \$80,326.86 in costs and unspecified fees; Simon has never	Ex. B, ¶¶80, 90; Ex. E at

	substantiated the basis for the costs claimed, and maintained his refusal to provide a final invoice. His actual costs were later confirmed to be substantially lower.	17:10-12; Exs. X, Y
12/7/17	The Edgeworths' continue to request a final invoice; Simon addressed this request in a letter to Vannah claiming the unbilled fees would exceed \$1.5M (which would be impossible given the number of unbilled days) and claimed he has over \$200,000 in costs, which he has never substantiated.	Ex. A, ¶¶55-56; Ex. B, ¶¶81 Ex. N
12/12/17	The settlement agreement called for Viking to provide certified checks on or before 12/21/17. Viking's counsel emails Simon on this day (the 12th) to advise she overlooked the requirement for certified checks and offers to deliver the company checks early so that they can be deposited and cleared before the 12/21/17 deadline. Simon <i>does not</i> relay this offer to the Edgeworths or their counsel.	Ex. B, ¶83; Ex. M at 2; Ex. O
12/13/17	Vannah asks about status of the settlement checks because the Edgeworths suspect Simon might be withholding them, despite knowing the Edgeworths had high interest loans outstanding that would be repaid with settlement funds. (Their suspicion is based on the urgency to finalize the settlement that Viking expressed at the 11/10/17 mediation). Simon <i>falsely</i> responds on 12/14 or 15 that he has not yet heard anything about the checks. <i>Almost two years later</i> when Viking's counsel provided <i>some</i> of their email re the settlement, the Edgeworths learned of Viking's offer	Ex. B, ¶82; Ex. E, ¶11; Ex. O

	to tender the two settlement checks to Simon on 12/12/17, which again <i>confirmed their belief that Simon had lied to them.</i> Ex. O.	
12/18/17	Simon notifies Vannah that he just received the checks (does not tell him at this point they are not certified) and demands the Edgeworths endorse them so he can deposit them into his account. Simon still refuses to provide a final bill or tell Vannah how much he is owed and tells him <i>he will not disclose the amount he is owed until the checks are endorsed.</i> Vannah points out to Simon that he has no legal basis to hold the checks, but Simon refuses to turn them over. Notably, Viking paid its share of the settlement in two checks, one for \$288,000 and the other for \$5.7M yet Simon <i>refused to turn over even the smaller check,</i> knowing the litigation debt was costing the Edgeworths nearly \$1K/day. Ex. A, ¶62.	Ex. A, ¶62; Ex. B, ¶¶84-85
1/2/18	Simon files an amended lien for nearly \$2.4M in fees, and \$76,535.93 in costs, confirming he was dishonest in claiming \$80K in costs on 12/1/17 and over \$200K in costs on 12/8/17. The claimed fees appear to be based on the revised fee agreement he wanted, not the hourly fee agreement in place.	Ex. A, ¶57; Ex. B, ¶¶89-90; Ex. Y
1/4/18	Because Simon still refuses to turn over the checks or provide an invoice of what he is owed, Vannah files the complaint. Vannah notifies Simon's counsel of the suit and Simon's counsel requests that they hold off serving it as they are diligently preparing the final	Ex. A, ¶¶58-62; Ex. B, ¶92

	bill and will turn it over within that week.	
1/8/18	Edgeworths endorse the checks at the bank office for deposit that day.	Ex. B, ¶93
1/9/18	Vannah serves Simon with the complaint; Simon refuses to provide the invoice he claimed to have been diligently preparing.	See Ex. B, ¶¶92
1/10/18	Even after the checks were deposited on 1/8, Simon still refuses to tell Vannah what portion of the proceeds he would release to the Edgeworths from the checks he had held hostage.	See Ex. B, ¶¶92-93
1/17/18	Nine days after the Edgeworths endorse the checks and Simon deposits them, they are still in the dark as to what monies Simon would release from the settlement funds. Simon responds and <i>for the first time</i> sets out what he unilaterally decided is the amount in dispute so they can compute the amount he would disburse.	Ex. AAA
1/22/18	The Edgeworths receive a check for \$3.9M still without any support for the amounts Simon claims are due to him.	Ex. A, ¶62
1/24/18	Simon files his Motion for Adjudication of the lien, claiming he is owed over \$2M in fees for which he has no agreement, and alternatively claims that he is owed over \$692K+ if the hourly fee agreement in place since the start of the engagement is enforced. He presents his "super bill" for the first time with this filing but refuses to release the amounts in excess of that bill.	Ex. B, ¶¶94-95

1 On January 4, 2018, the Edgeworths filed suit against Simon that
2 included the claim for conversion on the advice of counsel because they
3 believed he was wrongfully holding their property (i.e. the checks offered
4 by Viking on December 12 and admittedly received by Simon on December
5 18, 2017) to pressure them to give in to his demand for a higher fee. Ex. A,
6 ¶¶65; Ex. B, ¶¶98. They were prepared to pay his final invoice, which he did
7 not render. As even Judge Jones recognized, the Edgeworths believed the
8 settlement checks *belonged to them*. Ex. F at 7:6-7. They asked Simon to turn
9 over the settlement checks so they could pay off their litigation debt and cut
10 off liability for the almost \$1K/day interest, which Simon knew was
11 accruing. Ex. E, ¶ 11.

12 At the hearing on September 30, 2022, Simon's counsel
13 repeatedly misstates these facts to the Court. He said: "I point you to Ms.
14 Edgeworth's sworn testimony that she -- at the time she filed the Complaint,
15 knew Mr. Simon *didn't have the checks*." Ex. BBB, 9/30/22 Hrg. Tr. at 45;
16 *see also id.* at 51 ("when they sued Simon -- . . . , he *didn't have the checks*").
17 That's flat wrong. Vannah filed the complaint on January 4, 2018, and Simon
18 *himself* acknowledges that he received the checks on December 18. Plus he
19 lied to the Edgeworths' counsel on December 14 when he responded that he
20 had not heard anything about the checks, even though he was offered the
21 two checks on December 12. Ex. O. The Court itself recognized that Simon
22 received "two checks, one for like 5.8 million, and, then, there was another
23 one for another 200,000." Ex. BBB at 51. Whether or not Simon cashed the
24 checks is irrelevant. The Edgeworths believed Simon had no right to
25 withhold the checks, which they believed to be their sole property that they
26 asked he turn over to them. Even if, for the sake of argument, Simon believed
27 he was justified in holding the larger of the two checks, *he cannot and has*
28

1 *not pointed to any reasonable claim on the \$288K check*, which he also
2 wrongfully withheld.

3 Angela Edgeworth's declaration expressly states that the
4 Edgeworths "sought advice from Vannah about how to get [their] checks."
5 Ex. A, ¶58; *see also* Ex. A, ¶61 ("We sought judicial relief against Simon
6 because we honestly believed that we had been wronged We also
7 believed that the settlement checks belonged to us and that he should have
8 given them to us immediately."); Ex. A, ¶65 ("Based on the advice of Vannah
9 we asserted our right to seek relief in court because we felt Simon's strong-
10 arm tactics were wrong, and that *he had no right to refuse to turn over our*
11 *settlement checks to pressure us* to give him the additional fees he arbitrarily
12 demanded."). The Edgeworths believed the checks provided by Viking in
13 exchange for dismissal of their claims were their personal *property*. Simon's
14 refusal to turn the checks over and his claim for a higher fee, based on an
15 agreement he wanted but the Edgeworths rejected, was consistent with
16 conversion, as it was explained to them. *See Bader v. Cerri*, 96 Nev. 352, 356,
17 609 P.2d 314, 317 (1980), *overruled on an unrelated point by Evans v. Dean*
18 *Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000) ("conversion occurs
19 whenever there is a serious interference to a party's rights in his property.").
20 Simon self-servingly avoids recognizing that the *checks* he refused to turn
21 over to the Edgeworths *are property*. He does so to bolster the appearance
22 that the timeline supports his SLAPP suit, and to foolishly attack the
23 credibility of the Edgeworths good faith belief at the time they turned to the
24 Court to aid them in obtaining their property. Whether the claims selected
25 and asserted by their counsel in Court were ultimately successful does not
26 determine whether the Edgeworths had a good faith belief in accepting their
27 counsel's advice on which legal claims to file to obtain their property, all of
28 it.

1 To the extent that Simon points to the Edgeworths' March 2018
2 amended complaint, filed after he had released \$3.9M of their settlement
3 proceeds was wrongful because *some* of the damage done by his conversion
4 was mitigated, he ignores the fact that under Nevada law, "[t]he return of
5 the property converted *does not nullify the conversion*. Such return does
6 serve to mitigate damages" (emphasis added). *Bader*, 96 Nev. at 356, 609 P.2d
7 at 317. *Bader* also held that a "conversion occurs whenever there is a serious
8 interference to a party's rights in his property."). Here, Simon not only
9 refused to provide a final bill showing what he was owed for services or lien
10 in an amount far in excess of fees that could reasonable be owed under the
11 parties' implied contract, but the Edgeworths believed Simon had been lying
12 to them about the settlement documents, unilaterally changed settlement
13 terms they had approved, and then *refused to turn over* the settlement
14 checks that they believed belonged to them. Even if one accepts (for the sake
15 of argument) he could hold one of the two checks to secure his unreasonably
16 inflated charging lien, he still wrongfully refused to turn over the second
17 check when it was demanded, despite knowing the Edgeworths had high
18 interest accruing on the loans they took to pay his earlier invoices.

19 **II. The Court's Analysis Under the First anti-SLAPP Prong is**
20 **Inconsistent with Nevada Law.**

21 The Court's determination that a "question of fact about whether
22 or not there was an agreement between Simon and Edgeworths' attorney,
23 the Vannah parties, prior to the filing of the January 4, 2018 complaint . . ."
24 precluded her from finding the complaint was filed in good faith is simply
25 contrary to Nevada law and misses the point. 10/17/23 Order at 2, ¶ 4; *id.*
26 at 3, ¶ 6 ("Defendants did not meet their burden under the first prong . . .
27 because there is an issue of fact as to whether the underlying conversion
28 claim against Simon were good faith communications . . ."); *id.* at 3-4, ¶ 8

1 ("there is a genuine issue of material fact as to the good faith and truthfulness
2 of the communication when the conversion complaint was filed . . .").

3 There are two components to the first prong of the anti-SLAPP
4 analysis. *Omerza v. Fore Stars, Ltd.*, 455 P.3d 841 at *2 (Nev. 2020) (Table).
5 The first component is satisfied "by showing that the plaintiff's claims for
6 relief are based on a communication that "falls within one of the court
7 categories enumerated in NRS 41.637." *Id.* Here, there can be no reasonable
8 dispute that filing a judicial complaint falls under NRS 41.637.

9 The second component is met by showing that the protected
10 communication is truthful or made without knowledge of its falsehood."
11 NRS 41.637; *Omerza* 455 P.3d at *2. The standard of proof applicable under
12 the first prong *is preponderance: "it is more likely than not that the*
13 *communications were truthful or made without knowledge of falsity."* *Id.* at
14 6. The Nevada Supreme Court's decisions have distinguished the anti-
15 SLAPP and summary judgment burdens and repeated that at the first-prong
16 of the anti-SLAPP analysis, "[a] defendant's affidavit affirming her
17 statements were true or statements of opinion, in the absence of
18 contradictory evidence in the record, is sufficient to show good faith."
19 *Williams v. Lazer*, 495 P.3d 93, 97 (Nev. 2021); *Omerza*, 455 P.3d at *4 n.5
20 (Nev. 2020) (Table) ("the sworn declaration[] . . . is sufficient to satisfy the
21 good-faith component of the step-one inquiry"); *Taylor v. Colon* , 482 P.3d
22 1212, 1217 (Nev. 2020) (citing *Stark v. Lackey*, 136 Nev. 38, 43, 458 P.3d 342,
23 347 (2020)) ("declaration regarding the defendant's state of mind, is . . .
24 entitled to be believed at this stage . . .").

25 Here, the Court improperly focused on the fact that the
26 complaint asserted a claim for conversion that the district court in 2018
27 determined failed as a matter of law. The Court improperly disregarded the
28 Edgeworths' sworn declarations setting out their belief that they had been

1 wronged and needed judicial help to rectify that wrong. They relied on their
2 counsel to determine the appropriate claims. Despite the fact their counsel
3 also provided a sworn declaration *confirming* that he made the
4 determination as to what claims to assert in the complaint and did so in good
5 faith, the Court disregarded these dispositive declarations. Whether or not
6 the parties *later* agreed to deposit the Edgeworths' checks into a joint account
7 to mitigate the damages from Simon's improper withholding of them is
8 irrelevant to whether or not they had a good faith belief in the facts presented
9 to the court in their pleading. *See Omerza*, 455 P.3d at *4 n.5 ("[t]o the extent
10 that the district court focused on the existence of a genuine issue of material
11 fact in determining that appellants did not meet their step one burden on the
12 good faith component, we conclude that the court erred."). Simon had
13 withheld the Edgeworths' property since mid-December. Whether or not he
14 turned over *some or all* of the funds in mid-January would not cure his
15 conversion. *Bader*, 96 Nev. at 356, 609 P.2d at 317. Equally irrelevant is the
16 fact that the court ultimately determined the claim failed as a matter of law.
17 (If this were the standard, every failed judicial claim would lead to more
18 litigation).

19 The Edgeworths offered unrebutted declarations that they
20 believed the checks belonged to them and that Simon wrongfully withheld
21 them. *See, e.g.*, Ex. A, ¶¶58-62; Ex. B, ¶¶25, 34, 81, 91. *Judge Jones recognized*
22 *that this was their belief*. Ex. F at 7. They at all times acknowledged they
23 owed Simon fees based on their hourly contract and costs incurred since the
24 date of his last invoice but were prevented from paying him because he
25 refused to provide an invoice. *See, e.g.*, Ex. A, ¶¶58-62; Ex. B, ¶¶25,
26 34, 81, 91, Ex. E, ¶14. They have consistently disputed that he had *any* claim
27 on their settlement checks and no right to withhold the checks because they
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1 had promptly paid each invoice he had presented them. *See, e.g.*, Ex. A, ¶¶
2 58, 61, 65.

3 The issue is not whether the conversion claim³ was an
4 appropriate claim to bring or whether it was successful; the issue is whether
5 the Edgeworths *believed* the supporting facts offered to their counsel were
6 truthful or made without knowledge of their falsity. Their counsel's affidavit
7 confirmed they relied on his expertise and believed he was asserting
8 appropriate lawful claims. Simon offered no evidence to rebut their beliefs.
9 Nor could he, as their belief, like opinions, are incapable of being false, as
10 *Abrams v. Sanson* teaches. 136 Nev. 83, 89, 458 P.3d 1062, 1068 (2020); *see*
11 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002)
12 ("there is no such thing as a false idea.")

13 **III. Simon's Attempt to Lean on Judge Crockett's Interlocutory**
14 **Order is Misguided.**

15 Simon's motion claims that paragraph 9, which maintains the
16 dismissal of several of his claims on other grounds, is inconsistent with
17 paragraphs 4, 6 and 8 that state there "exist genuine issues of material fact as
18 to the Defendants' good faith when filing the conversion claim." 10/17/23
19 Order at 2. Simon's current motion does not explain the conflict between
20 these paragraphs; he just argues the dismissal of his abuse of process and
21 conspiracy claims should be revisited for essentially the same reasons he
22 sought reconsideration the first time.⁴

23
24
25 ³ Specific claims asserted by lawyers are only their legal opinion as to
26 the cause of action that facts provided by a client will support. The facts
27 provided by the Edgeworths, as well as facts known to but concealed by
28 Simon, support conversion of their property.

⁴ It is unclear from page 15 of the Motion whether Simon is also
challenging the dismissal of the negligence and negligent supervision
claims. If so, the dismissal remains proper for the reasons previously

1 Simon again contends that Judge Crockett's Order Denying
2 *Vannah's* NRCP 12(b)(5) Motion to Dismiss Simon's Amended Complaint
3 somehow precludes this Court from dismissing any claim asserted under his
4 initial complaint. 10/27/23 Mot. at 3. His contention that "the denial of the
5 NRCP 12(b)(5) was never appealed to the Nevada Supreme Court and the
6 order of remand never discusses any aspect of Judge Crockett's NRCP
7 12(b)(5) order" is a nonstarter. As pointed out in the previous response,
8 denial of a NRCP 12(b)(5) motion is an interlocutory order that is *not*
9 *appealable*. *Trejo v. State*, 504 P.3d 527 (Nev. 2022) (Table) (there is no right
10 of direct appeal of an order denying a motion to dismiss); *see also* NRAP 3A
11 (listing appealable determinations).

12 Simon's contention that the Supreme Court's Mandate does not
13 reference the order denying the NRCP 12(b)(5) motion to dismiss the
14 amended complaint is nonsensical because that dismissal was not the subject
15 of the prior appeal and, for that reason, was unaffected by the Supreme
16 Court's mandate. Thus, Simon's reliance on *Hsu v. County of Clark*, 123 Nev.
17 625, 173 P.3d 724 (2007) to support his argument is neither credible nor
18 correct. *Hsu* correctly stated that "[u]nder the law of the case doctrine,
19 '[w]hen an appellate court states a principle or rule of law necessary to a
20 decision, the principle or rule becomes law of the case and must be followed
21 throughout its subsequent progress, both in the lower court and upon
22 subsequent appeal.'" *Hsu*, 123 Nev. at 629 – 30, 173 P.3d at 728 (emphasis
23 added). But a point not considered by the Supreme Court cannot become
24 "law of the case."

25 As also addressed in response to Simon's prior motion for
26 reconsideration, Judge Crockett's *dismissal order was not even directed to*
27

28 articulated by the Court. Simon does not offer anything to change the
outcome.

1 *the initial complaint*, which is the subject of this Court's 2022 Order. Judge
2 Crockett summarily denied Vannah's 12(b)(5) motion to dismiss the
3 *amended complaint* based on his mistaken analysis under the SLAPP statute
4 and his mistaken refusal to consider privileges in the SLAPP analysis, as case
5 law requires. *Lazer*, 495 P.3d at 98-99 (confirming that under the second
6 prong of the analysis, privileges that would defeat the plaintiff's claims must
7 be considered in evaluating whether he could demonstrate a probability of
8 prevailing on his claims).

9 Even if Judge Crockett's decision pertained to the initial
10 complaint that was the subject of this Court's order, which is not the case,
11 the Court was free to revisit or disregard Judge Crockett's prior order as the
12 Court deemed appropriate. *Masonry & Tile Contractors Ass'n of S. Nevada*
13 *v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997)
14 ("district court may reconsider a previously decided issue if substantially
15 different evidence is subsequently introduced or the decision is clearly
16 erroneous.").

17 **A. The Court Correctly Dismissed Simon's Claim For Abuse**
18 **of Process.**

19 Simon's argument that the Court should not have dismissed his
20 abuse of process claim still does not point to any fact that was
21 misapprehended or provide legal authority contrary to dismissal. Simon
22 does not offer anything beyond the court filings to support this claim,
23 despite the briefing on his prior motion addressing this claim's failure to
24 satisfy the requisite legal elements. He again points only to court filings
25 referring to conversion in the history of the case to support his claim that the
26 two elements of an abuse of process claim were satisfied.

27 But in its December 15, 2022 Order, the Court reiterated the two
28 elements required to establish a claim for abuse of process. 12/15/22 Order

1 at 10 (citing *Kovacs v. Acosta*, 106 Nev. 57, 59, 787 P.2d 368, 369 (1990);
2 *Posadas v. City of Reno*, 109 Nev. 448, 457, 851 P.2d 438, 445 (1993)). The
3 Court then expressly found that "filing a complaint" does not meet the
4 requirement of a "willful act that would not be proper in the regular conduct
5 of the proceeding." *Id.* "Simon has alleged no facts to show Defendants
6 improperly abused the legal process in filing their Complaint *or litigating*
7 *the case*. Accordingly, the claim cannot be maintained." *Id.* at 10-11
8 (emphasis added).

9 Simon's latest motion, at 5 - 8, again lists every legal document
10 filed after the complaint alleging conversion, but that compendium of
11 documents does not salvage his claim for abuse of process. Moreover, the
12 Court has already considered this worn-out argument in adjudicating the
13 initial motions to dismiss and Simon's prior motion for reconsideration.
14 Notwithstanding this history, he still cannot point to any willful act outside
15 the regular course of conduct of a proceeding or an "ulterior purpose" for the
16 proceeding," because no such conduct or purpose exists. *LaMantia v. Redisi*,
17 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). The claim was properly dismissed.
18 Dismissal of an invalid claim is in no way "inconsistent" with any portion of
19 the instant order.

20 ***B. The Court Also Correctly Dismissed Simon's Conspiracy***
21 ***Claim.***

22 In its December 15, 2022 Order, the Court also set out the
23 elements of a civil conspiracy claim, along with its reasons for dismissing it.
24 10/15/22 Order at 15-16. Simon's latest motion for reconsideration does not
25 present any misapprehended facts or law with respect to this claim. He
26 merely argues it was specifically pleaded and sets out the relevant
27 paragraphs of his complaint. *Id.* The Court has already held that "[t]he filing
28 of a Complaint is not an unlawful objective." 12/15/22 Order at 16.

1 Consequently, the Court held that "Simon therefore does not assert an
2 actionable basis for civil conspiracy as a matter of law and dismissal is
3 mandated." *Id.* Nothing presented in Simon's latest motion changes that
4 analysis.

5 IV. CONCLUSION

6
7 The Edgeworths' relationship with Simon, whom they had
8 previously considered a friend and knew well, was irreparably damaged in
9 November 2017, after he broke their trust by trying to coerce them into
10 giving him a windfall, which was not required under the terms of his
11 representation. Because of long-standing relationship, they had a strong
12 suspicion that he was not being truthful to them based on his conduct and
13 the flip to being their adversary they witnessed, especially after his
14 November 27, 2017 demand letter confirmed the threats he made to them
15 during their November 17, 2017 meeting at his office. Once they rejected his
16 demands and brought in other counsel to help finalize the settlement to
17 protect their interests, they believed Simon was following through with his
18 threats to tie them up in court for years and waste the money they refused
19 to gift him. The meager third-party evidence the Edgeworths have been able
20 to cobble together only with the assistance of the Supreme Court's order
21 requiring Simon to turn over their file has confirmed many of their
22 suspicions, as well as Simon's outright misrepresentations to the Courts.

23 Although there is no inconsistency in maintaining the dismissal
24 of claims with fatal defects and not dismissing the defamation and business
25 disparagement claims, the Edgeworths maintain that denying their motion
26 for limited reconsideration was erroneous for the reasons set forth in their
27 prior motion for reconsideration, and in their response to Simon's first
28 motion for reconsideration. In granting Simon's first motion to reconsider,
the Court did not fully consider the facts in the record or accept the

1 Edgeworths' testimony of their beliefs when they sought help from the court
2 in 2018. These are issues that will be considered by the appellate court once
3 the Court enters its final order in this matter.

4 To the extent the Court did not consider Simon keeping the
5 second Viking check for \$288K that could not have been reasonably disputed
6 from the Edgeworths in reaching its prior decision, and/or is finding that
7 "checks" are not property subject to conversion, clarification is appropriate
8 so that these issues can be properly reviewed on appeal.

9 For these reasons, the Edgeworths respectfully ask that Simon's
10 latest motion for reconsideration as to the dismissed tort claims be denied.

11 MORRIS LAW GROUP

12 By: /s/ STEVE MORRIS

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of MORRIS LAW GROUP, and that the following document was electronically filed with the Clerk of the Court and caused a true and accurate copy of **EDGEWORTH DEFENDANTS' RESPONSE TO SIMON'S MOTION FOR PARTIAL RECONSIDERATION** to be served via the Odyssey File and Serve system upon all registered counsel of record:

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DATED this 13th day of November, 2023.

By: /s/ Cathy Simicich
An Employee of Morris Law Group

**INDEX OF EXHIBITS IN SUPPORT OF EDGEWORTHS'
RESPONSE TO SIMON'S MOTION FOR
RECONSIDERATION RE 10/17/23 ORDER**

LETTER	DOCUMENT TITLE
A	Declaration of Angela Edgeworth
B	Declaration of Brian Edgeworth
C	11/27/2017 Simon's Demand Letter And Fee Proposal
E	11/19/2018 Order Adjudicating Simon's Lien
F	11/19/2018 Order on Simon's NRCP 12(b)(5) Motion to Dismiss Edgeworths' Complaint
H	11/15/2017 Email from Brian Edgeworth to Simon Requesting Outstanding Invoices
I	08/29/2018 Excerpts of Transcript of Day 3 of Evidentiary Hearing
L	11/30/2017 8:39 A.M. Email from Simon to Edgeworths with Viking Settlement Agreement
M	11/30/2017 5:31 P.M. Email from Simon to Edgeworths and Counsel with Final Viking Settlement Agreement
N	12/07/2017 Simon's Letter to Vannah with Excessive Fees and Costs Estimate
O	12/12/2017 Email from Pancoast, Viking's Counsel, to Simon Offering Checks for Dismissal
P	08/30/18 Excerpts of Transcript of Day 4 of Evidentiary Hearing
U	Excerpts of 4/3/2018 Hearing on Pending Matters
W	Billing Invoice Confirming Simon Retained Counsel for Fee Dispute with the Edgeworths by 11/27/2017
X	11/30/2017 Simon's Lien
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BB	Simon's November 16, 2017 Text re Viking Settlement
CC	1/9/19 NOE of Order Denying Simon's anti-SLAPP Motion to Dismiss

DD	9/18/19 Amended NOE of Order Denying Simon's anti-SLAPP Motion to Dismiss
AAA	1/17/18 Email fr Greene to J. Christensen asking what amount Simon will disburse.
BBB	Excerpts of Transcript of 9/30/22 Hearing on Special Motions to Dismiss

EXHIBIT A

DECLARATION OF ANGELA EDGEWORTH

DECLARATION OF ANGELA EDGEWORTH

I, ANGELA EDGEWORTH, declare as follows:

1. I am one of the named defendants in the case filed in the Eighth Judicial District Court under Case No. A-19-807433-C.
2. I declare the following is true and correct, to the best of my knowledge and belief, and if called as a witness, I could and would competently testify to the matters stated herein, which are within my personal knowledge. For those facts stated upon information and belief, I believe them to be true.
3. My husband, Brian Edgeworth, and I each own a 50% interest in American Grating LLC (also known as "AMG").
4. My husband and I are also the trustees of the Edgeworth Family Trust.
5. On April 10, 2016, a home Brian and I were building sustained approximately \$500,000 in damage from flooding caused by a defective Viking sprinkler head installed by Lange Plumbing.
6. Initially we hoped we could resolve the issue without judicial action and were disappointed to discover we could not. Neither the plumber who installed the sprinkler, Lange Plumbing, nor the sprinkler manufacturer, Viking, would take responsibility for the damage.
7. My husband and I spoke about the damage with an attorney our insurance company suggested, and we considered retaining other business attorneys we had used before I suggested that we contact Daniel Simon ("Simon") because his wife Eleya Simon and I had known each other more than 10 years and I considered her a close

friend. We figured only a few letters were needed by a lawyer to resolve this issue; we did not anticipate litigation.

8. When the initial demand letters Simon sent did not resolve the dispute, Brian told me Simon suggested we file a lawsuit. In response to my question as to Simon's fees, Brian told me his fee would be and Brian told me \$550 per hour which was Simon's "court-approved" fee. Although I thought his fee was high, I believed our differences with Viking and Lange Plumbing would be quickly resolved. In addition, because Simon was a family friend, I did not push back on his fee.
9. Simon did not reduce the fee arrangement to writing as I expected he would do, as had other lawyers we dealt with had done. However, since I knew he had told Brian his hourly rate was \$550 and "court approved" I did not insist on a written agreement and he billed us on that basis. I saw and approved the invoices he sent and promptly paid each invoice we received.
10. The invoices received and paid from Simon's law firm totaled approximately \$486,453.09, including \$118,846.84 in costs.
11. Brian participated in two mediations to resolve our claims against Viking. At the second mediation, held on November 10, 2017, he told me the mediator suggested making a time-limited Mediator's Proposal to resolve the case, and proposed \$6 million to settle the case. I felt my husband was responsible for us getting this large number because he worked very hard on this case and discovered many more instances of faulty sprinklers on his own, so I was not completely surprised by the outcome. In my opinion, the favorable settlement had more to do with his findings and Viking's exposure than Simon's connections. Brian and I discussed the mediator's

proposal, and on November 11, 2017, he accepted the mediator proposal via email on our behalf.

12. On November 15, 2017, we learned from Simon that Viking also accepted the mediator's settlement proposal. This same day, we reiterated to Simon that we accepted the mediator's proposal. The next day, November 16, 2017, we again notified Simon via text that we accepted the settlement "AS-IS" with no changes on our part. This was the third time we told Simon we agreed to the settlement.
13. The claims against Lange Plumbing remained pending, and on November 17, 2017, my husband called me and asked me to meet him downtown to go to Simon's office because Simon had asked him to come to his office.
14. Brian told me that he was not sure what the meeting was about, but because of the settlement and court proceedings that were pending, he believed the meeting was to discuss the settlement and the Lange claims. I went to the meeting as well, feeling good, and even brought donuts to celebrate.
15. At the meeting, I sensed Simon was perturbed that Brian had asked me to attend and that he had not anticipated my presence at this meeting. As it quickly became evident, the meeting was not called to discuss the settlement or Lange claim. Simon wanted us to agree to pay him compensation in addition to his fee of \$550 per hour. I was shocked and upset because we never agreed to pay him any more than the hourly rate he had been billing us up until the Settlement Agreement. We knew there were outstanding invoices for hourly work that still needed to be paid that Simon had not presented to us. At the meeting, we again asked him to provide the outstanding

- invoices, but I knew those invoices did not amount to anything close to what he seemed to be demanding as additional compensation.
16. Simon started the meeting by telling us what an excellent job he had done and that he usually works on a contingency fee basis.
 17. Simon said it would be "unfair" to him, and he would be cheating himself, if he did not receive more money from this case than the hourly fee we had been paying.
 18. He said he normally would take a 40% contingency fee, which would amount to \$2.4 million, but he was willing to "do us a favor" and let us pay him "only" an additional \$1.2 million.
 19. In my opinion, it sounded to me like the new fee he was demanding was based a contingency fee based on the amount of the settlement and not on hours worked as he had billed us and we had paid for over a year.
 20. I reminded Simon that we were paying him hourly and had paid all of his invoices promptly; he said that did not matter because sometimes he might receive an hourly rate plus a contingency fee, which we had not agreed to. I also felt that we had paid him a lot of money for the work he had completed, given that this case initially involved approximately \$500,000 from water damage and as of that date, we had paid him almost that same amount in fees and costs (\$486,453.09, including \$118,846.84 in costs).
 21. I asked Simon whether he would have refunded all the hourly billing invoices we already paid if we had lost the case. He said, "no, that is not how it works, you don't understand." This was one of several times during the meeting that he told me, in a condescending way, I did "not understand" how he worked.

22. I am aware of how contingency fees work, and that we should not have had to come out of pocket if we had agreed to a contingency fee in the first place. I believed what he was proposing was not fair and, in my opinion, was unethical.
23. He told us we could ask another attorney and that attorney would agree with Simon that the contingency fee-like bonus he was wanted was customary and normal. I did not believe him.
24. Although I did not fully understand the terms that Simon was demanding, other than he wanted more money and wanted us to sign documents accepting the revised fee structure he demanded, I told Simon that Brian and I would have to think about and discuss his new fee demand. I did not intend to sign anything that day, and that appeared to frustrate and irritate Simon.
25. Simon made a point to insist that much remained to be done to finalize the Viking settlement and that he would feel uncomfortable signing the settlement agreement if we did not reach an agreement on his demand that we to pay more money. I believed that his signature on the settlement agreement (which we had not seen) was required. He implied that he could cancel the deal if he wanted to and I believed him. I did not know at the time that he could not.
26. To me, Simon's demeanor and tone at the November 17 meeting made me feel that his statement regarding not being comfortable signing the Viking settlement unless we agreed to give him more money was a veiled threat that he could cancel the settlement agreement unless we acquiesced in his demand for more money. During the meeting, he threatened to tie us up in court for years if we did not agree to his demand (and he has made good on his threat).

27. Simon repeated several times that what he was asking was fair and that we should sign a new fee agreement, so he could finish the settlement. I did not think it was fair at all; I felt like we were being extorted.
28. Brian and I left the meeting upset and nervous that Simon could derail the Viking settlement, as he told us he could.
29. Brian, who attended the mediation, told me that Viking had been very eager for a quick settlement and he expected they would move quickly to memorialize the settlement agreement
30. Brian and I both asked Simon about the status of the settlement agreement several times during the meeting. Simon claimed he did not have it, which concerned us and I did not believe him.
31. At the meeting, we asked Simon for the balance then-outstanding for time and costs, which I expected would be at the same hourly fees as his prior invoices, because I wanted to pay him what he was owed for his work at the hourly rates he agreed to. I wanted to be finished and wrap up the settlement with Viking.
32. Simon would not tell us what we owed for services since his last invoice, and would not invoice us after the meeting. I did not understand how he could unilaterally demand a percentage of the settlement (or some equivalent) when we had an agreement to pay him on an hourly basis. I did not think he was acting ethically.
33. On Saturday, November 25, 2017, Simon and his wife Eleya both contacted me to set up another meeting to discuss the case, while they knew Brian was on his way to China. They wanted me to come to Simon's office on Sunday, by myself, without Brian. This made me suspicious that what he was doing was not normal. I thought he was

trying to manipulate me by involving his wife who was a close friend of mine at the time.

34. On November 27, 2017, at 2:26 p.m., while Brian was on a business trip in China, Simon sent Brian and me an email with three documents: a demand letter and two attached contracts that he wanted us to sign – a Retainer Agreement and a Settlement Breakdown. This email and referenced documents are attached hereto as Exhibit C to this motion.
35. In his demand letter, he said, "Pursuant to your request, please find attached herewith the agreement I would like signed, as well as the proposed settlement breakdown, if a final settlement is reached with the Viking entities." I believed this was not a request; it was a demand that we had to meet to conclude the settlement with Viking that we had agreed to.
36. In bold he writes, "I helped you with your case and went above and beyond for you because I considered you close friends and treated you like family." In my opinion, this was not how one would treat a close friend or family member.
37. He also said, "It is my reputation with the judiciary who know my integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number."
38. He goes on to state, "The attached agreement reflects a greatly reduced sum for the value of my services that I normally charge in every case. I always expected to be compensated for the value of my services and not lose money to help you." He then *falsely* says that we understood he was not working on an hourly basis. He also acknowledges that he "did produce billing statements but these

statements were never to be considered full payments." This was news to me because he had never said working for us and being paid \$550 per hour was less than he was entitled to. He also never told us or in any manner suggested that paying his invoices was optional, as he would later falsely assert. He cashed every single check we sent. He went on to say we owed him an additional \$1,114,000 (\$1,500,000 less invoices paid for \$367,606.25) plus costs of \$80,000 (\$200,000 less payments made of \$118,846.84). In total, he wanted an additional \$1,194,000.00 for the "exceptional results achieved" per his demand letter.

39. He concludes his November 27 demand letter saying, "If you are agreeable to the attached agreement[s], please sign both so I can proceed to attempt to finalize the agreement. If you are not agreeable, *then I cannot continue to lose money to help you.*" In my opinion, this was clearly a threat: "Sign or lose the Viking settlement."
40. Simon's November 27, 2017 demand letter repeated his threats made in person to me at our November 17, 2017 face-to-face meeting in his office.
41. I was concerned that we had yet to receive the settlement agreement, which increased my concern that Simon would delay or derail the finalization of the Viking Settlement until we acceded to his demand for more money.
42. In the November 27, 2017 email exchanges, Simon told me that he had not yet received the settlement agreement, which I later learned was not true. A copy of the email thread between us is attached as Exhibit J to this motion.

43. Specifically, in the November 27 email exchange, I asked Simon to, "In the meantime, please send us the Viking Agreement so we can review it." Simon responded, "I have not received the Viking agreement. When I receive I will forward."
44. I responded with "I do have questions about the process and am quite confused. I had no idea we were on anything but an hourly contract with you until our last meeting."
45. In the email exchange, on which I copied Brian, I also asked that Simon provide us with details regarding what he had been discussing with Viking concerning the settlement, and because of my fears, I asked him to provide us with all documents concerning the settlement negotiations. He ignored me, which greatly upset me.
46. Since Simon did not respond to my November 27, 2017 email requesting copies of all settlement discussions, I sent a follow up email on November 29, 2017. Simon still did not send me the Settlement Agreement. I also mentioned in the email that I had no idea we were going to talk about fees at our November 17th meeting. He responded by saying that I should come into his office to sign documents.
47. Because of my concern with Simon's conduct and threats, I concluded that we needed immediate assistance in navigating this complicated fee situation with Simon or else the Viking Settlement would be lost forever.
48. On November 29, 2017, Brian returned to Las Vegas and we retained Robert Vannah (and John Greene of his office) to work with Simon to finish memorializing the Viking settlement.

49. Brian signed a letter to Simon instructing him to allow Mr. Vannah to participate in all settlement discussions and any judicial proceedings on our behalf. A copy of this letter is attached as Exhibit K to this motion.
50. On the morning of November 30, 2017, we received an email that **for the first time** included a draft settlement agreement memorializing the Viking settlement. This email is attached as Exhibit L to this motion.
51. During the evening of November 30, 2017, Simon, after learning that we had retained Vannah, Simon sent the Vannah attorneys another email with what he said was a "revised" settlement agreement. This email is attached as Exhibit M to this motion. We ultimately signed the Viking settlement agreement on December 1, 2017.
52. I was informed and believe that on November 30, 2017, Vannah also notified Simon to accept Lange Plumbing's offer to settle. We agreed to a consent settlement with Lange on December 7, 2017.
53. The Viking settlement agreement called for the certified settlement checks to be made out jointly to us and to Simon. We questioned this but were informed by Vannah's office that this was normal for this type of settlement. We later learned that it was Simon not Viking that requested that his firm's name be included to the checks on November 30, 2017. I feel we would not be here today if Simon had not done that. This was not a personal injury case and in my opinion, he had no right demand that change. I believe what he did was unethical, and in an effort to keep the money from us, which he has succeeded.

54. Simon later *refused* to give us the settlement checks and demanded that the checks be deposited into his trust account. I told Brian I would not agree to that because I believed whole-heartedly that we would likely spend years waiting for the money. To this date, almost 5 years later, he refuses to release over \$1.5 million in excess of the fees awarded Simon by Judge Tierra Jones in the lien adjudication proceeding. This is conversion in my lay opinion because Simon is exercising control of money that belongs to us and to which he has *no* rightful claim. His additional claim in excess of what Judge Jones has already awarded is admittedly based on his own opinion "In light of the substantial work performed and the exceptional results achieved, the [newly proposed] fee is extremely fair and reasonable," as he says in the conclusion of his November 27, 2017 demand letter.
55. Because we had agreed to settle the Viking/Lange Plumbing claims by November 30, 2017, Vannah also asked Simon to send us a final bill for his fees and costs so we could pay it.
56. Rather than send us a final invoice for services rendered under his agreement for \$550 per hour, which we had requested many times before, Simon filed an attorney lien against us on November 30, 2017, which I did not understand since at that point, we had paid in full all invoices sent to us. There was an outstanding balance only because Simon refused to tell us what we owed him. Simon's November 20 lien did not state the amount of his lien, but included what I believed was an inflated amount of costs. A copy of the lien is attached as Exhibit X to this motion.
57. Simon filed an amended attorney lien on January 2, 2018 for \$1,977,843.80 in fees; an amount that appeared to be based on the

demand Simon sent us on November 27, 2017 that we had rejected. It reduced the claimed costs, which I believed were still overstated because he seemed to just be throwing out numbers without providing detailed invoices. A copy of the amended lien is attached as Exhibit Y to this motion.

58. Believing Simon was making good on these threats to tie up our money we sought advice from Vannah about how to get our checks.
59. We asked Vannah's office how Simon could claim he was owed money based on an agreement we rejected. We fully relied on Mr. Vannah, the senior partner of the firm, to file litigation against Simon
60. As Mr. Vannah has confirmed, he made the decision on the claims to assert on our behalf as well the arguments presented in briefs, in court, and all other judicial proceedings. Brian and I relied on Vannah's judgment in representing us against our former lawyer.
61. We sought judicial relief against Simon because we honestly believed that we had been wronged by Simon efforts to pressure us to accept his demand before he would finalize the Viking settlement. His conduct made me feel afraid, blackmailed, and betrayed. We also believed that the settlement checks belonged to us and that he should have given them to us immediately.
62. Instead, Simon refused to give us either of the two checks issued on December 8: Zurich Check in the amount of \$288,572.00 and Viking Check in the amount of \$5,711,428.00. Simon would not let us deposit the checks. On January 9, we agreed to deposit the checks in a joint account controlled by Vannah and Simon. Simon released \$3,950,561.27 on January 22, almost two months after the checks were issued.

63. My good faith belief that Simon was pursuing his interests instead of ours such that litigation was warranted was based on Simon's aggressive behavior at the November 17, 2017 in-person meeting at his office, the calls, texts, and emails that followed, the content of the November 27, 2017 demand letter, and consultation with counsel.
64. I honestly believed at the time Mr. Vannah filed the complaint on our behalf that Simon was wrongfully exercising dominion and control over our money in an attempt to extort more fees from us. I still believe that.
65. Based on the advice of Vannah we asserted our right to seek relief in court because we felt Simon's strong-arm tactics were wrong, and that he had no right to refuse to turn over our settlement checks to pressure us to give him the additional fees he arbitrarily demanded.
66. During the lien adjudication hearing, Simon testified that he had completely finalized the Viking settlement *before* drafting his November 27, 2017 demand letter to us, which confirmed to me that he had lied when he told me on November 27, 2017 that he had not received any draft settlement agreement.
67. During the lien adjudication hearing, I also learned that he had hired counsel at least by November 27, 2017 to represent him against us. November 27, 2017 was the same day he refused to provide the Viking settlement documents to us, and continued to threaten us that he would stop representing us unless we accepted his demand for more money. To me, this also confirmed my earlier suspicion that he was pursuing his own interests instead of ours, his clients, and was

slowing down settlement to force us to accept the after-the-fact fee agreement he demanded. Simon to this day has refused to turn over our complete client file, which we are entitled to, and that I believe would confirm he was not truthful to us.

68. At all times during the evidentiary hearing before Judge Tierra Jones to adjudicate Simon's lien, I testified truthfully and to the best of my ability and, when asked, I expressed my opinions and my feelings about the manner in which Simon treated us.

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

Signed on this 22 day of July 2022.



ANGELA EDGEWORTH

EXHIBIT B

DECLARATION OF BRIAN EDGEWORTH

DECLARATION OF BRIAN EDGEWORTH

I, BRIAN EDGEWORTH, declare as follows:

1. I am one of the named defendants in a case filed by my former lawyer in the Eighth Judicial District Court under Case No. A-19-807433-C. I declare the following is true and correct, to the best of my knowledge and belief, and if called as a witness, I could and would competently testify to the matters stated herein, which are within my personal knowledge. For those facts stated upon information and belief, I believe them to be true.
2. My wife, Angela Edgeworth, and I each own a 50% percent interest in American Grating LLC (also known as "AMG").
3. My wife and I are also the trustees of the Edgeworth Family Trust.
4. On April 10, 2016, a flood, caused by a defective Viking fire sprinkler installed by Lange Plumbing during the construction of our home, resulted in significant property damage.
5. Prior to speaking with Daniel Simon, Angela and I had spoken with Attorney Craig Marquiz, a construction defect attorney to discuss representation. He quoted me an hourly rate of \$500.
6. My wife was good friends with Simon's wife, and suggested I contact him about representing us in the case.
7. On May 27, 2016, I sent an email to Simon to discuss representing us against the parties responsible for the water damage to our home, including Viking and Lange Plumbing.
8. On May 28, 2016, I met with Simon to discuss retaining him.

9. During that meeting, we discussed retaining Simon to write letters to Lange and Viking regarding compensating us for damages we incurred.
10. On June 2, 2016, Simon sent letters on our behalf to Lange and Viking.
11. On or between June 8, 2016 and June 10, 2016, Simon called to tell me he would likely need to file a lawsuit on our behalf and that he would need to start billing us. During the call, he explained to me that he would represent us at his court-approved hourly rate of \$550. He also said that based on his extensive experience in the courtroom trying cases, he believed he could recover attorney-fees incurred from Lange. No written fee agreement for representation was proposed or signed, and Simon did not say anything about a contingency arrangement.
12. Although Simon had requested a higher rate of pay than Mr. Marquiz and what I found to be the market average, I decided to hire him because our wives were friends and because of the extensive experience he touted. He assured me that his reputation would compel Lange and Viking to resolve the matter quickly. We did not learn until much later in court with Simon that he had no previous experience in construction defect cases. On June 14, 2016, Simon filed a Complaint against Viking and Lange.
13. In December 2016, I received the first invoice for legal services from Simon totaling \$42,564.95 at the previously discussed rate of \$550 per hour. Simon billed his time starting with our first meeting on May 28, 2016.

14. After asking him where I should send the check in payment of his fees, I paid the amount invoiced in full. Simon cashed the check.
15. On May 3, 2017, we received a second invoice from Simon for legal services totaling \$46,620.69 at the same rates (\$550/hr. for his time and \$275/hr. for his associate), of which \$11,365.69 was for costs. Like he did with his own rate, Simon unilaterally selected the billing rate for his associates and we accepted the rate at which he billed us. I also paid that invoice shortly after receiving it.
16. I told Simon that Angela and I had borrowed money from family and a close friend at a high interest rate in order to pay his bills.
17. While returning from a meeting with an expert in San Diego on August 9, 2017, Simon and I briefly discussed changing the terms of his engagement if litigation became protracted. I told Simon I was open to discussing and considering a change if there would be mutual sharing of risk. Simon did not broach the subject again over the following weeks and instead continued to bill under the hourly arrangement.
18. On August 16, 2017, I received another invoice from Simon, on the same terms as prior invoices, totaling \$142,081.20, of which \$110,137.50 was attorney's fees and \$31,943.70 was costs. I again promptly paid the invoice.
19. On August 22, 2019, I sent an email to Simon labeled "Contingency" to remind him of our earlier brief conversation. I told Simon that if we could not reach an agreement to modify the terms of our fee agreement that I would continue to borrow money to pay his hourly fees and the costs. A copy of this email is attached as Exhibit G to this motion. Simon did not respond to the email.

20. On September 25, 2017, I received another invoice on hourly terms from Simon totaling \$255,185.25, of which \$183,630.25 was attorney's fees and \$71,555.00 was for costs. I again promptly paid this invoice.
21. On October 10, 2017, I participated in a mediation with Viking at JAMS Las Vegas conducted by Floyd Hale, which was not successful
22. On November 10, 2017, we participated in a second mediation at JAMS, again with Floyd Hale, and although it was initially unsuccessful, Mediator Hale asked us to express our position on the value of the case, and Simon began by presenting the specific damage to our property and costs we incurred. I interjected and explained the settlement value was based on the exposure that I believed Viking had from evidence I had painstakingly gathered over the prior weeks. Thereafter, Mediator Hale suggested he make a time-limited mediator's proposal to both sides that would quickly resolve the case.
23. The proposal the mediator made to both parties was that Viking agree by November 15, 2017 to pay us \$6,000,000 to resolve all the claims against it.
24. I emailed Simon on November 11 inform him that we accepted the mediator's proposal.
25. On the morning of November 15, 2017, I emailed Simon regarding a fee invoice he had shown me at a mediation but which I could not locate; I asked him to send *any* invoices that remained unpaid. A copy of this email is attached as Exhibit H to this motion. I did not receive a response from Simon or his office.
26. On the evening of November 15, 2017, Simon called to tell us that Viking had agreed to the mediator's proposal and to "confirm" that we still wanted to settle for \$6 million.

27. I immediately confirmed to Simon that we would accept the mediator's proposal to resolve the Viking claims. Because of a quickly approaching critical deposition and court hearings that could be avoided by settlement, I expected Viking would move swiftly to implement the settlement.
28. On November 16, 2017, I received a text message from Simon with a picture of a letter from Viking's counsel to Mediator Hale. Simon's message said "Floyd [expletive removed] us. Case is back on." A copy of this exchange is attached as Exhibit BB to this motion.
29. I reviewed the letter pictured in the photo that contained Viking's request of a confidentiality clause as to only the amount of the settlement, which Simon said was problematic. I replied to Simon by text and again reiterated that I had no problem with the confidentiality clause, and that we wanted to settle and accept the mediator's proposal "as-is."
30. Since this was the third time I had advised Simon we wanted to settle for \$6 million and Viking seemed to want to move quickly with the settlement, I became suspicious of Simon continuing to ask whether we wanted to settle, especially because I did not see a problem with the confidentiality clause proposed by the mediator.
31. The following day, November 17, 2017 (two days after both Viking and we had agreed to settle the case), at approximately 7:20 a.m., I received a text message from Simon asking me to come to his office at once to discuss settlement or sticking with the discovery schedule and the court's calendar.

32. I contacted my wife Angela and we met at Simon's office at approximately 8:30 a.m. on the 17th. During the meeting, Simon appeared to be irritated that Angela had joined us for the meeting.
33. Simon was agitated and opened the meeting by reiterating what a superb job he had done for us. He then spent a significant amount of time reiterating what an excellent job he had done representing us during the course of the case, and how he was able to get us far more money than we deserved, and claimed the large settlement was only due to his reputation and his close relationship with the judiciary. For that reason, he said he needed to settle with us on how much of the settlement proceeds he would receive.
34. I reminded Simon that we had paid him hourly at the rate he set for all work done and that Angela and I had taken all of the risk and had paid for all work and costs invoiced. I also told Simon that he was not entitled to additional compensation other than any outstanding invoices for unbilled time, which I again requested he provide us and fully expected Simon to promptly deliver.
35. Simon became very angry and told me that being paid hourly is not how he works. He said he was entitled to forty (40) percent of the \$6 million settlement, but since he knew we had some costs he was going to "rip himself off" and only take forty (40) percent of the amount in excess of our losses, which he calculated to be no more than \$3,000,000.
36. Because of the taint of the flood on a newly built multi-million dollar home, I informed Simon that our total incurred losses were significantly higher than \$3,000,000. He replied that those were "not real losses."

37. Simon demanded more money and told us that if we were not going to treat him "fairly," he would not continue to lose money and represent us.
38. He also told us that the settlement was not finalized and that he would not be comfortable signing the settlement agreement unless we first agreed to revise his compensation. I understood this as a threat that we could lose the settlement deal if he was no longer a part of it.
39. Simon claimed that he was being "overly fair" with the extra money he demanded and said any judge in town would give him more than he was asking us to pay because he operated exclusively on a contingent fee basis. He insisted we owed him a portion of the settlement.
40. Simon repeatedly reminded us that he was close to all the judges in this district and any of them would give him whatever he asked for if we did not accede to his demand.
41. I believed his intimidating conduct to be a threat that if we did not give him what he asked for, he would use his connections with the courts to get even more money from us, which would cost us dearly because we would incur huge legal fees to fight him.
42. He said he was doing us a "favor" and "ripping himself off" by asking for less than his customary fee. We could not get from him exactly what or how much he was asking for, other than it was more than a million dollars on top of what we had already paid.
43. Simon said if we did not meet his demand and "treat him fairly" we could lose the Viking settlement because he was an essential part of the Viking deal. Further, even if we got the settlement, he said he

could tie up our money for a decade in court where we would spend more fighting him than he was demanding now.

44. When Angela protested that whatever he was demanding was not fair he contemptuously remarked that we "did not understand how legal matters worked," which he repeated several times.
45. Angela and I never agreed to Simon's demand for a new deal for fees because we had already paid Simon almost \$500,000 in fees and costs to represent us based on the invoices presented for work at his hourly rate. Simon did not ever make payment of his invoices optional, as he would later say in court.
46. When Angela and I questioned whether his demand was ethical, he threatened to sue us if we reported him to the State Bar.
47. After the long meeting with Simon on November 17, 2017, Angela and I left and went about our day. Simon called me three times that same day demanding an answer to his demand for more money.
48. I interpreted Simon's demeanor and language at the November 17, 2017 meeting and in the calls that followed the meeting as threats that he would implode or derail the settlement if we did not acquiesce to his demand for more money.
49. In one of his calls, Simon said that he would be leaving for Peru the following morning, Saturday, November 18, 2017 (three days after both Viking and we had agreed to the settlement). He wanted an immediate answer from us to pay him more money.
50. I was shocked that Simon was planning to leave the country with the settlement deal incomplete and some very important upcoming hearings for which it appeared he had not prepared, especially when he claimed he still had not received a written settlement agreement.

We had specifically asked him at the November 17th meeting to proceed with the scheduled matters unless we had a signed settlement agreement in hand.

51. Simon persistently called me while on his trip to Peru to discuss various issues related to the additional money he wanted from the Viking settlement including on November 25 while I was packing for a flight to China. He was aggressive and not altogether coherent. I told him I would not speak to him about his fees unless and until he put in writing what he was asking for. I also demanded Simon send us the Viking settlement agreement. His response was that there was no settlement and no settlement agreement.
52. On November 27, 2017, while I was in China, Simon sent Angela and me an email with an attached demand letter, and two attached contracts that he wanted us to sign, his new Retainer Agreement and a Settlement Breakdown. A copy of this email together with the attachments is attached as Exhibit C to this motion.
53. In my opinion, the tone and contents of Simon's November 27, 2017 demand letter confirmed, and reiterated the threats to scuttle settlement that he made at our November 17, 2017 in-person meeting. The demand suggested he would either jeopardize our settlement with Viking by stopping all work on it and refuse to sign the confidentiality provision demanded by Viking, or sue us regarding his fees. He repeated his claim that he had no doubt a court would award him 40% of the entire Viking settlement (\$2.4 million) plus all costs if we litigated.

54. Simon's demand letter outlined the extensive work Simon claimed remained and suggested that if we did not agree to his demands for more money, the Viking settlement would be in jeopardy.
55. Simon's demand letter suggested for the first time that he had significantly "under-billed" us in his prior invoices. He said in his November 27 demand letter that "If you are going to hold me to an hourly arrangement then I will have to review the entire file for my time spent from the beginning to include all time for me and my staff at my full hourly rates to avoid an unjust outcome."
56. His demand letter says: "If you are not agreeable [to new fee demands] *then I cannot continue to lose money to help you. I will need to consider all options available to me.*" This to me was a clear threat he would derail the Viking settlement and quit or sue us if we did not accept his demands.
57. Simon's demand letter repeated the claim he made at the November 17 meeting that our large settlement was the result of his "reputation with the judiciary who know my integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number."
58. Simon's demand letter expressed his importance to closing the Viking settlement by suggesting he might be *unwilling* to sign the Viking settlement agreement because "The defendant will require I sign the confidentiality provisions which could expose me to future litigation. Depending on the language, I may not be comfortable doing this as I never agreed to sign off on releases."
59. Because of Simon's earlier threats and persistent calls, and the tone and content of his November 27, 2017 demand letter, I became very concerned that Simon was putting his interests ahead of ours,

especially because I did not believe his claim that he had not yet received any drafts of the Viking settlement agreement, and because he refused to give us the outstanding invoices for fees and costs as we had requested.

60. During the lien adjudication hearing that followed before Judge Tierra Jones, my fears seemed to be confirmed when I learned that by November 27, 2017, the same day he **sent his written demand and what we believed were lies about the status of the settlement**, Simon had retained counsel to represent him in a dispute against us, though while reading his demand, we had no idea that Simon saw us as his adversaries.
61. Both Angela and I felt uncomfortable with Simon's statements in the November 27, 2017 demand letter. I particularly had doubts about the veracity of his statements outlining the extensive amount of work that he said remained to finalize the settlement because we had agreed to the essential terms almost two weeks before.
62. Because Simon had become so aggressive, our concern that he might derail the settlement as he had suggested escalated. I believed Simon was untruthful to us about the status of settlement and his "importance" to the consummation of the settlement.
63. On November 27, 2017 at 3:20 p.m., Angela emailed Simon, copying me, and asked that he forward the draft settlement agreement to us. A copy of this email thread is attached as Exhibit J to this motion.
64. Within the hour, Simon responded to Angela and claimed that he did not yet have the agreement but would forward it upon receipt. *See* Ex. J.

65. We believed at that time that Simon had already received the Viking Settlement Agreement despite his statements otherwise, and that he was stalling to pressure us into accepting his proposed new fee terms.
66. Because of our concerns, Angela followed up at 4:14 p.m. to ask Simon why the draft settlement agreement had not yet been received. *See* Ex. J.
67. Simon replied at 4:58 p.m. that "It appears that you have a lot of questions about the process which is one reason I wanted to meet with you. If you would like to come to the office or call me tomorrow I will be happy to explain everything in detail. My Letter also explains the status of the settlement and what needs to be done. Due to the holiday they probably were not able to start on it. I will reach out to lawyers tomorrow and get a status. I am also happy to speak to your attorney as well. Let me know. Thx." *See* Ex. J. I felt Simon's reply to Angela was evasive.
68. At the evidentiary hearing to adjudicate the lien Simon later filed, he confirmed he had the Viking settlement draft and had the confidentiality clause removed and negotiated all terms in the agreement *before* he wrote his November 27, 2017 demand letter and sent us his desired fee agreement. (*See*, Ex. P to this motion at 15 – 17 and at ^{Ex. I} 216:24-218:13). This testimony validated my feelings that the "extensive work" that Simon said remained to finalize the settlement was a pretext to intimidate us to accept his November 27 demands.
69. At the evidentiary hearing, Simon also falsely testified that I was opposed to a confidentiality provision in the Viking settlement when I had in fact told him I preferred a confidentiality provision. *See*, Ex.

P to this motion at 216:7 – 9, and at 216:24 - 217:5). This testimony was also completely contrary to Simon's November 30, 2017 evening email in which he boasted of removing the confidentiality clause from the Viking settlement agreement even though we had instructed Simon that we wanted to sign the agreement "as is" (with the confidentiality clause). *See* Ex. M to this motion. Simon's testimony confirmed my feelings that Simon was not being frank with us and that he had been delaying the settlement to exert pressure on us to accept his terms.

70. Angela and I refused Simon's demands to alter or amend the terms of his engagement because we had already paid all of the invoices he sent us pursuant to our hourly-fee arrangement, and in fact had paid him nearly as much as the damages we initially sought to recover. We also felt that Simon was not being honest with us about the status of the settlement agreement while he was demanding more money from us, which made us feel very uneasy about his intentions.
71. After reviewing Simon's aggressive and demanding language in the November 27 demand letter, Simon's evasive answers to Angela's email the same day, and discussing it with her, I felt the need to consult an attorney to protect our rights, assist with finalizing the settlement, and to ensure we received our settlement funds.
72. On November 29, 2017, I returned to the United States from China and met with Robert D. Vannah, of Vannah & Vannah in his office; John B. Greene was also present for the meeting.
73. We decided to retain Vannah to help us navigate Simon's demands and conclude the Viking settlement.

74. On November 29, 2017, I signed a letter to Simon instructing him to allow Vannah to participate in all settlement discussions and court proceedings with respect to our case. A copy of the letter and the fax transmitting the letter to Simon is attached to this motion as Exhibit N.
75. On the morning of November 30, 2017, before he received the letter of instruction from Vannah, Simon for the first time sent us a draft of the Viking settlement agreement, still suggesting that it needed work, though Simon would later testify that all terms were negotiated *before* his November 27, 2017 demand letter. His email with its enclosure is attached to this motion as Exhibit L.
76. Within hours after receipt of the morning draft Viking settlement agreement from Simon, we asked Vannah to notify Simon that we accepted the Viking agreement he had sent with the confidentiality provision, and accepted Lange Plumbing's offer to settle for a nominal amount. Simon received this instruction, as confirmed in an email he sent us hours later near close of the day. *See* Ex. M.
77. On the afternoon of November 30, 2017, hours *after* Vannah notified Simon we had retained his firm and *after* Vannah's call that we accepted the Viking settlement agreement he sent that morning, Simon sent another version of the settlement agreement, which took out the confidentiality clause that we wanted, and had told him more than once that we accepted. This change was not discussed or authorized by us. *See* Ex. M (attachment).
78. Because we did not want to risk the Viking settlement and wanted to be done with Simon, we ultimately signed the Viking agreement as presented because Simon had insisted that he continue to be the point

of contact with Viking and Lange and we were very concerned about what else Simon was doing without informing us.

79. We signed the Viking settlement agreement on December 1, 2017, and agreed to the Lange consent settlement on December 7, 2017 (1 day and 7 days after Simon was informed we hired Vannah).
80. Simon filed a charging lien on November 30, 2017. It did not specify the fees allegedly outstanding and listed \$80,326.86 for costs, without any detail and for which we had not received an invoice. A copy of the lien is attached as Exhibit X to this motion. To this point, we had promptly paid in full all invoices Simon presented. He had refused my requests, and Vannah's request to tell us what remained outstanding and flatly refused to provide invoices supporting his lien claiming a false amount of pass through costs.
81. Vannah informed us that he was also unsuccessful in getting Simon to tell him what amount of fees and costs that Simon claimed remained outstanding. I was informed that Simon sent a letter to Vannah dated December 7, 2017, which I have since read, where Simon claimed he had "under billed" in the flood litigation by an amount that "may well exceed a total of \$1.5M and the costs currently are approximately \$200,000" (though his initial lien claimed less than half that amount). A copy of Simon's letter is attached as Exhibit N to this motion. This claim by Simon seemed disingenuous to me because he had billed us through September 17, 2017, and there were not enough hours in the day to get to his number between his last bill and December 7, 2017 when agreed to a consent agreement to resolve the Lange claims. This was especially so given that Simon was on an eight-day vacation in Peru during that period. Even if the court

- allowed Simon to bill 24 hours a day, 7 days a week against our case at \$550 per hour, I felt that number was impossible.
82. On or around Wednesday December 13, 2017 we asked Vannah about the whereabouts of Viking's payment to us since the \$6M in certified checks was due the next week according to the terms in the Settlement Agreement. On or about December 14 or 15, 2017, John Greene informed us that Simon's lawyer told them the check had not arrived and would inform us when it was received.
83. I later also learned that Viking's counsel offered Simon the opportunity to pick up the Viking settlement checks on December 12, 2017 in exchange for the stipulated dismissal and Simon did not accept the offer, or tell Vannah (or us) that Viking had offered that option despite knowing Angela and I had outstanding high-interest loans that we had obtained to pay his fees. A copy of the email from Viking's counsel is attached to this motion as Exhibit O.
84. On December 18, 2017, Simon notified Vannah's office that he had received the checks and we asked that Simon allow us to deposit the entirety of the settlement proceeds into our account, planning to pay Simon's final hourly invoice for fees and costs.
85. Simon had told our attorney Greene on December 18, 2017 that he would not disclose the amount he intended to withhold from the \$6 million settlement funds until AFTER Angela and I endorsed the settlement checks and they were deposited into Simon's trust account.
86. I felt these demands by Simon were wrong, and Mr. Greene told us he knew of no legal basis for Simon to make such demands. Mr. Greene said he had expressed this to Simon, to no avail.

87. Because we had lost all confidence in Simon, whom we felt was not being truthful with us and appeared to be treating us as adversaries, Angela and I did not want to entrust our funds to him. He had already threatened that he would tie us up in court for years
88. I felt wronged by Simon's refusal to give us the settlement checks. After all, it was our money. Asserting a right to more fees under a proposed agreement that we had rejected seemed dishonest to me.
89. On January 2, 2018, Simon amended his lien to a net claim \$1,977,843.80 in fees (\$2,345,450 minus the \$367,606.25 in fees we had paid him), which aligned with the threats included in his November 27, 2017 demand that we rejected, rather than the agreed terms that he had billed us on for the previous 18 months.
90. The amended lien claimed \$76,535.93 in costs (less than the amount originally claimed and far less than the \$200,000 he said remained due in his December 7 letter). A copy of the amended lien is attached as Exhibit Y to this motion.
91. Even after filing an Amended Lien, Simon still refused our requests to provide an invoice for what he was owed in fees or the back-up documentation to support his demanded costs.
92. We believed Simon's exercise of dominion and control over our settlement proceeds was unlawful and on January 4, 2018, we accepted Vannah's advice to file suit to enforce our rights to the settlement checks. I was informed and believe that Vannah's office did not immediately serve the complaint on Simon because Simon's lawyer had informed Vannah's office that they would deliver the final invoice within that week.

93. In the meantime, Vannah continued to negotiate with Simon to have some of the settlement proceeds released to us, and on January 8, 2018, he set up a special trust account requiring his signature and Simon's to temporarily hold the portion of the settlement funds that Simon claimed in his lien until the lien was adjudicated, which I mistakenly thought would happen quickly.
94. On January 24, 2018, weeks after being served with our lawsuit, Simon finally produced his "new" invoices totaling \$692,120 for "additional" services billed at the contract rate of \$550/\$275 per hour (his so-called "Super Bill"). He did not send the Super Bill to us. He attached it as an exhibit to his Motion to Adjudicate Lien filed with the court.
95. Despite the fact Simon's Super Bill was much less than the \$1.5 million he had written to Vannah about on December 7, 2017, and the \$1,977,843.80 Simon sought in his January 2, 2018 Amended attorney lien, Simon refused to release the difference between his Super Bill and the amount on deposit.
96. I sincerely believe to this day that Simon's conduct in forcing his demands on us was wrongful and that our suit against him was justified. His conduct made us feel threatened, blackmailed and extorted by someone that we should have been able to trust.
97. I did not understand how this conduct from a lawyer was acceptable, and even read the professional rules of conduct in my effort to understand how this was possible, and believed Simon's tactics violated my lay understanding of the rules in a number of ways.

98. I fully relied on Vannah to make the strategic decisions to file pleadings for us and thereafter, the arguments presented in briefs, in court, and all other judicial proceedings involving Simon and us.
99. I trusted that these decisions were made after a thorough review of the law pertaining to the claims made and in the good faith belief that all of the written and oral communications made to the court are accurate and well founded in law, and not done for any ulterior or improper motive.
100. My testimony during the lien evidentiary hearing was truthful to the best of my knowledge and ability. When asked, I expressed my sincerely held opinions and feelings about the manner in which Simon treated us.
101. I feel my feelings, summarized below, provided me a good faith basis to seek judicial relief against Simon:
 - a. I had spent 7 weeks demanding any unpaid invoices from Simon so that we could pay him. I believed Simon's refusal was unprofessional and unethical, and part of his scheme to lien our settlement monies and pressure us into paying him additional fees to which he was not entitled.
 - b. I believed Simon had been consistently untruthful with us about important matters to support the threats he was making to pressure us to give him more than a million dollars that he had no right to.
 - c. I believed Simon had stalled in sharing the draft Viking settlement document, withheld our settlement checks from us, and lied about when they were available. I believed this also was unprofessional, unethical and unfair to us.
 - d. I believed that Simon acted unethically when he said he would risk our settlement and "stop helping us" if we declined his demand for millions of dollars in unearned fees to scare us into believing that our settlement was at risk.

millions of dollars in unearned fees to scare us into believing that our settlement was at risk.

- e. I believed that Simon changing our settlement agreement was for his own benefit.
- f. I believed Simon had filed liens in false amounts to try to take money from us that Simon had no claim on, including by overstating the pass-through costs.
- g. I believed that Simon's attempt at making false claims and unsupported liens on the costs supported my lay understanding of a conversion claim all on its own. I believed Simon fully knew what he was doing when making the false claim as he signed the first lien and claimed the \$80,326.86 in costs was increasing, a false statement. The final cost invoice presented, which we paid the next day was for \$68,844.93. Once I was provided the backup, I learned that even this invoice was overstated because another client's \$1,700 invoice was included in our bill. See Ex. AA to this motion.
- h. I believed Simon's threats that he would sue us if we complained about him to the Nevada Bar.
- i. I further believed Simon's threat that he could keep the settlement money tied up for years (as he has done) if we did not give in to his demands.

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

Signed on this 22nd day of July, 2022.



BRIAN EDGEWORTH

CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that, a true and correct copy of the foregoing **EDGEWORTH APPELLANTS' SUPPLEMENTAL APPENDIX IN SUPPORT OF REPLY BRIEF (VOLUME X)** was served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System

James R. Christensen
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Las Vegas NV 89101

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

DATED this 3rd day of May, 2024.

By: /s/ CATHY SIMICICH