**IN THE SUPREME COURT OF NEVADA**

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| EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC,<br>Appellants,<br><br>vs.<br><br>DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON,<br>Respondents, | Supreme Court Case No. 86676<br><br>Dist. Ct. Case No. A-18-767242-C<br>Consolidated with A-16-738444-C |

# EDGEWORTH APPELLANTS' REPLY BRIEF

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## RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a) that must be disclosed. These representations are made to enable the Justices of this Court to evaluate possible disqualification or recusal.

The Edgeworth Family Trust is a trust formed under the laws of the State of Nevada. American Grating, LLC, is a Limited Liability Company formed under the laws of the State of the Nevada. American Grating, LLC is wholly owned by Brian Edgeworth and Angela Edgeworth, who are also the Trustees of the Edgeworth Family Trust. These Appellants were represented in the district court by the law firm of Vannah & Vannah, Messner Reeves LLP and Morris Law Group. These Appellants are represented in this appeal by Steve Morris, Rosa Solis-Rainey of Morris Law Group.

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## I. INTRODUCTORY STATEMENT

The Simon Respondents' answering brief avoids, for the third time, the relevant question before the Court: Did the district court again err by ignoring this Court's express mandate in two previous appeals to set out an evidentiary basis under *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969) that would justify a quantum meruit award to Simon of $200,000 for 71.10 hours of post-discharge administrative services?

The answering brief is suffused with Simon's latest exaggerations and ad hominem attacks on the Edgeworths to avoid this issue. Recall that on December 13, 2023, Simon filed a motion to consolidate a then-pending and fully briefed writ petition and **this** appeal, ***acknowledging*** that "requiring additional briefing [in this case] **will only needlessly increase the time and expense . . . for no obvious purpose.**" Case No. 86467, Mot. at 4. Notwithstanding this acknowledgement, Simon's latest answering brief in this case is expansively and rudely different than his answering brief in the preceding writ proceeding, which omitted much of the vitriol he now puts in his answer.[1] *Compare* Simon's 8/14/23 answer in Case No. 86467 *with* his 3/5/24 answer in this appeal. His personal attacks are not only contradicted by the record, but they are irrelevant to the relevant

[1] The issues in the Petition and this Appeal are the same. Appellants believed extraordinary relief by writ was warranted due to the district court twice disregarding the mandate.

question of whether the district court has ***again*** ignored this Court's mandate and considered Simon's pre-discharge work in valuing his post-discharge work.

Simon's misconduct that undermines his entitlement to $200,000 was clearly summarized in the opening brief here and in the preceding writ proceeding because it is relevant when considering the *Brunzell* factors, especially the quality of the advocate. Simon's answer now attempts to avoid his reprehensible misconduct by clothing himself in the garb of a "victim." He, not the Edgeworths, is the actor who misused his superior legal knowledge (unsuccessfully) to bully them, his clients, into acquiescing to his unwarranted monetary demands. He told them in 2017 that unless they accepted his demand to change the basis for his compensation from hourly to contingent he would, as he has done, keep them tied up in court for years.

Because the district court will not and cannot justify its gift of $200,000 to Simon's for 71.10 hours of non-substantive post-discharge work without reference to his *pre*-discharge work (for which he has been fully paid at the rate selected *by Simon* in 2016), the Edgeworths ask the Court to either reverse the subject quantum meruit judgment or direct the district court to enter judgment on his quantum meruit claim for 71.10 hours at the hourly rate ***he chose*** (and the district court accepted) for his *pre*-discharge work, which would come to $33,811.25. The remand the Court twice directed to the district court is unambiguous and does not require Simon's counsel to divine in his answer what Judge Jones might have considered to support her Fifth

Amended Decision and Order (hereafter referred as "Fifth Order") if her order does not set it out.

We do not need more proceedings on this subject or a fourth appeal, as the Edgeworths suggested in their fully briefed writ petition that the Court denied, saying ***this appeal*** would be adequate to provide them with a remedy for the district court's failures to follow the Court's mandate.

## II. SIMON'S MISTATEMENTS OF FACT

As he has in prior briefing, Simon's Answering Brief ("Ans.") continues to misstate record facts to cause the Court's approval of his bullying tactics. A few examples of the misstatements repeated in his answer are presented below to illustrate this point:

| SIMON SAYS | RECORD SAYS |
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| He "worked for his longtime friends as a favor . . . and advanced costs on their behalf." Ans. at 1 | Simon billed the Edgeworths from his very first meeting with them (VII-AA1405), including all costs incurred, which the Edgeworths promptly paid. I-AA0051:21-25. |
| The Edgeworths claim "Simon was due nothing." Ans. at 2. | The district court order confirmed the Edgeworths knew there were ***unbilled*** outstanding |

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| | fees. I-AA0052:25-53:3 ("[Edgeworths sent an email to Simon asking for the open invoice."). Edgeworths repeatedly requested an invoice from Simon to pay him to date. X-AA1796:5-9. Simon ignored their requests. They ***correctly*** claimed that Simon was owed nothing more ***for periods he had billed and they had paid,*** which the district court confirmed when she rejected Simon's "superbill" for periods already invoiced and paid. I-AA0062:19-63:19. |
| Mrs. Edgeworth admitted they filed suit to "punish" him. Ans. at 2. | Mrs. Edgeworth testified that they sought punitive damages to punish his reprehensible behavior. X-AA1825-26 (testimony about reason for seeking punitive damages); X-AA1789:11-14 (denying Simon's anti-SLAPP suit). |

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| The Edgeworths "conceded in their first appeal that the district court did not find them credible." Ans. at 2. | The underlying basis for this specious argument is the Edgeworths claim that in adjudicating their motion to dismiss, the district court ***failed*** toaccept all allegations in the complaint as true and draw all inferences in favor of the non-moving party, as the law required her to do. I-RA175-76 (arguing standard of review misapplied). |
| The "mediator's proposal included $2.4 million earmarked for attorney's fees." Ans. at 15. | Edgeworths addressed this misstatement in their reply in Case No. 83258/83260, at 7, note 6. The misstatement was not admissible. X-AA1817. |
| His small physical stature in comparison to Brian Edgeworth disproves the Edgeworths' express feelings that he was bullying them. Ans. at 15. | Mr. Edgeworth testified that he felt "intimidated," "blackmailed," and "extorted" by his former friend's effort to use his legal expertise to coerce a windfall from them. I-RA86-87. Mr. Edgeworth also testified he was not physically |

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| | scared, and no threat of physical violence was involved. *Id*. (Simon's continued attempts to create contradictions by wrenching testimony out of context seems to have no limits). |
| The Edgeworths "stopped speaking" to him on November 25, 2017, causing him to seek legal counsel on how to handle a non-responsive client. Ans. at 16. | On the same page, ***he confirms*** communication with Mrs. Edgeworth and acknowledges various emails she sent him on Monday, November 27, 2017. Ans. at 16. VIII-AA1613-14. He also testified he spoke with Mr. Edgeworth on Saturday, 11/25/17, ***over*** the Thanksgiving weekend. V-AA0977. Christensen's records reference a billing dispute that Simon to that point had not disclosed to the Edgeworths, ***not*** uncommunicative clients. I-AA0152 (bold title). |
| Simon avoids addressing the Viking settlement drafts he did not | The Edgeworths have at all times acknowledged Simon emailed them |

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| produce by focusing on the two he produced on 11/30/17. He testified ***falsely*** there were no other drafts because he "physically . . . went through it" in person. I-AA0016:18-24. | two drafts of the settlement agreement, both on 11/30. IV-AA0689-98. The issue has been whether Simon produced ***all*** settlement drafts and communications as they demanded in writing on 11/27/17 (IV-AA0673-77) and followed-up on 11/29/17 (III-AA0476:13-16). Portions of the client file Simon produced for the first time in **2022** confirmed that ***at least four drafts*** of the agreement ***were exchanged*** with Viking. VIII-AA1575. Simon received one draft at 4:49 p.m. on 11/27/17 ***before*** he replied to Mrs. Edgeworth that he had not yet heard anything about the Viking settlement.[2] VIII- |

[2] Simon did not just "[write] that the draft agreement might have been delayed by the holiday," as he says in note 2 of his answer (at 17), he said the settlement "was far from done" and might "implode" and speculated it was not yet started due to the holidays. VIII-AA1613. In truth, ***he had*** discussed the settlement with opposing counsel that very morning (X-AA1785) and had received a draft agreement that afternoon. VIII-AA1558. He withheld at

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| | AA1613; Ans. at 16-17; Simon *now* suggests he did not see the 11/27 draft until "his office staff forwarded" it to him the next morning. Not only is this incredulous because his office admittedly received it during business hours (VIII-AA1558) and Simon had been incessantly hounding the Edgeworths, including calls during his vacation X-AA1801-03; V-AA0977), but the record shows he was discussing settlement ***the morning of* 11/27/17**. X-AA1785.<br>Simon did not immediately produce the 11/27 draft or any other details of the settlement until 11/30/17. Simon cannot escape the |

least two drafts from the Edgeworths until 2022, *after* this Court ordered him to turn over his complete file. *See* VIII-1575 (referencing version 4). There is nothing groundless about the reasonable inference drawn from the record facts that Simon was withholding the settlement details to pressure the Edgeworths to share the settlement proceeds.

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| | fact that he ***falsely testified*** about the existence of other drafts (beyond the two he produced on 11/30). |
| He negotiated the confidentiality clause out at Brian Edgeworth's request. Ans. at 18-19. | Simon falsely testified "Brian didn't want confidentiality." VII-AA1505:7-8. He expressly and falsely testified he negotiated the confidentiality clause out at Brian's request (VII-AA1506:4-24) despite *proof* that Mr. Edgeworth had informed Simon he ***did not object*** to confidentiality. VIII-AA001619. |
| He met with Joel Henriod (Viking's lawyer) ***on November 30, 2017*** to make edits to the settlement agreement. Ans. at 19. | Simon testified that settlement negotiations ***were completed before he was discharged on November 29***. AA0718 (settlement terms were "hammered out . . . before he was fired" and before he sent his 11/27 demand letter. I-AA0015:11-15; IV-AA0716-17 (placing the date of the negotiations at November 27, 2017); V-AA0977:8-13. He also testified he |

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| | negotiated the deletion of the confidentiality clause ***before*** he knew about Vannah, confirming his claims about negotiations on 11/30/17 are false. V-AA0978:4-8. |
| The mediator's settlement was not accepted by both parties by 11/15/17. | The briefing and the district court's order are consistent. The Edgeworths accepted the mediator's proposal on 11/10 (VIII-AA1717); Viking accepted it on 11/15/17. I-AA0052:22-23. The district court's order recognizes this together with the fact the agreement was signed on December 1, 2017. IX-AA1721:22-23. In fact, the prior version of the district court order, changed at Simon's behest, ***acknowledged the settlement occurred on November 15, 2017***. I-AA0027:5-6. |
| "[O]n December 26, 2017, the Edgeworths accused Simon of | There is no question that the Edgeworths had lost all faith in Simon and no longer trusted him. |

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| intent to steal the Viking settlement money." Ans. at 21. | They believed he had lied to and improperly pressured them. They expressed this distrust to new their lawyer, Vannah, who inappropriately shared their fears but using ***his*** own words that "***they [the Edgeworths] are fearful*** that he will steal the money." IX-AA1732 |

The "[r]elated matters" in Simon's answering brief (at 7-13) adds additional irrelevant issues to falsely portray him as the victim of his own lack of candor with the Edgeworths. This gibberish has nothing to do with the district court's failure to follow this Court's mandate which was first issued on December 30, 2020 (case 77678). Simon's impudent behavior is also evident from his shameless reference to his outrageous November 27, 2017 demand letter in which he recharacterized the threats he made at the November 17 meeting as a "fee proposal," Ans. at 16, as if threats and misstatements are legitimate components of an engagement letter.

With respect to the fees he claimed he had earned, Simon repeatedly refused to invoice the Edgeworths in November and early December 2017 so they could pay his final invoice.[3] IX-AA1754:25-55:3; X-

[3] Presenting a final invoice which the Edgeworths would have promptly paid (X-AA1796), as they did his prior invoices, would have eliminated Simon's lien.

AA1796. He refused to turn over either of the two settlement checks he was offered on December 12, 2017 (IV-AA0707). He ***lied*** about the status of the checks two or three days later when he responded to the Edgeworths' counsel's inquiry about the status of the checks. He falsely told them he had not yet heard anything about the checks, X-AA1884 ¶82-83, despite knowing the Edgeworths were incurring significant interest liability on loans they obtained to pay Simon's earlier invoices.[4] IX-AA1721:15-18.

Simon also fails to address the fact he ***repeatedly lied*** to another district court about a court order to justify his refusal to release the funds, when ***no such order existed***. IV-AA0823 (falsely representing that Judge Jones ordered that the money should not be distributed pending appeal."); IV-AA0824 (falsely stating that ". . . Judge Jones ordered the funds remain in the account" (emphasis added)); *see also* IV-AA0827 (misrepresenting that "Simon is following the District Court order to keep the disputed funds safe . . ."). Bottom line, even from the time the district court adjudicated his lien for less than 25% of what he claimed, Simon refused to release the remaining $2M until 2023. I-AA0070; IV-AA0781, VIII-AA1714.

Simon does not address or otherwise acknowledge his repeated proven ***lies*** to the district court, this Court, and the Edgeworths claiming

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[4] If the Court is inclined to accept Simon's revisionist arguments enlarging the 2018 record, it should also consider the significant costs he caused the Edgeworths to incur by his refusal to immediately turn over even one of the settlement checks.

he had turned over his client file. Case No. 84159 at Ans. Br. at 10 (telling this Court he had provided the file); *id. at* III-AA0448 (saying "The Edgeworths have the File" to the district court). Even after this Court issued its writ and the district court ordered him to turn over the complete file, he failed to do so. When the Edgeworths' sought to enforce the order, the district court denied the request, improperly shifting to the Edgeworths the burden to show documentary proof of that which they had not received (VIII-AA1646). The Edgeworths at no point wanted Simon jailed, as he hysterically contends. They simply want their complete file because they believe it will expose more of Simon's misconduct in using settlement negotiations to coerce them to acquiesce in his insistence that they share in the settlement ***as if*** he had taken the risk of a contingency case instead of being timely paid on an hourly basis ***as he insisted***. X-AA1806:3-5. The complete client file is also necessary to their defense of the baseless SLAPP suit Simon has filed against them.

Not surprisingly, only ***after*** the district court denied the Edgeworths' motion to enforce the order that this Court's writ instructed it to issue, Simon produced over 280 pages, some of which ***confirmed*** he had lied about the existence of additional settlement communications in 2018.[5] VIII-AA1604-05.

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[5] The Edgeworths still do not believe they have received all email or the full history of the settlement negotiations, as very little about the Lange settlement negotiations has been disclosed.

## III. SIMON IGNORED DEMANDS FOR AN INVOICE AND SETTLEMENT DOCUMENTS.

***For months*** **Simon** ignored the Edgeworths' requests that he provide them his final invoice so they could pay him. IX-AA1754:25-55:3 (confirming requests for invoice in November 2017); VIII-AA1617 (claims he was still compiling invoice in December 2017); III-AA0552 (same). He compiled a "superbill" and presented it in a court filing around January 24, 2018 as support for his argument that he was owed a percentage of the settlement. VIII-AA1699:13-22. Using his superbill, he unsuccessfully tried to persuade the district court that he should be paid for time he omitted during the periods he had already invoiced to the Edgeworths and been paid. I-AA0062:19-63:19. *Simon alone* made the tactical decision on what work to outline in his "superbill." He alone decided not to supplement it at any point in 2018, when the issues were before the district court. The Edgeworths simply ask that Simon be held to payment for administrative post-discharge work **he elected** to present to the district court in his superbill in 2018.[6]

Simon had ample time to prepare the invoice he testified was meticulously prepared for the district court. IV-AA0812. He **withheld** the

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[6] Unbeknownst to the Edgeworths, by November 27, 2017, Simon had retained counsel to represent him in a fee dispute with the Edgeworths while they were his clients! They discovered this the following year after the lien adjudication proceedings. I-AA0152.

invoice he claimed had been in the works for months until the end of January, 2018. VIII-AA1699:12-22. The Court can take judicial notice, of the extensive timeline the Edgeworths presented in their reply in their opposition to Simon's second motion for reconsideration filed on 11/13/23 in Case NO. A-19-807433-C at 5-11 (X-AA1832-38), for a more complete picture of Simon's gamesmanship tactics on this issue.

In the 2023 writ briefing, ***Simon himself*** *listed* the identical 71.10 hours of post-discharge work that he detailed in his superbill, which the Edgeworths asked the district court and this Court to consider in the second appeal in 2021. VII-AA1356-63. Additional work that Simon in 2023 claimed he did between January and March 2017 that ***he chose not to present to the district court in his superbill in 2018 when his lien and quantum meruit were at issue*** was of little to no benefit to the Edgeworths. Moreover, the post-discharge hearings that Simon ***belatedly attempts to add*** to his 2018 superbill were largely to support a good-faith determination of the Lange settlement ***to resolve claims between Lange and Viking***. VII-AA1366. This was not a "complex" matter that Simon had to unravel for the Edgeworths' benefit. IV-AA0753-57. His revisionist billing to modify his superbill more than five years after he created and submitted it to the district court should be rejected by this Court.

## IV. ARGUMENT

Although the district court, at Simon's invitation, paid lip service to this Court's two mandates by adding words saying that her award was based on post-discharge work, the Fifth Order does not "make specific and express findings as to what work Simon completed after he was constructively discharged and limit its quantum meruit fee to those findings." *Edgeworth Family Trust v. Simon (EFT II)*, 516 P.3d 676 at *1 (Nev. 2022). The district court's so-called *Brunzell* analysis remains focused on Simon's ***pre-discharge work***. The district court's *Brunzell* analysis in the 2023 Fifth Order is substantively the same as the district court's analysis in 2018 that this Court rejected. IX-AA1772-77 (2023 analysis); III-AA0602-06 (2018 analysis); *see also* Op. Br. at 17-20.

### A. SIMON'S PERSONAL ATTACKS ON THE EDGEWORTHS ARE AN UNPRINCIPLED EFFORT TO DISTRACT THIS COURT'S ATTENTION FROM THE DISTRICT COURT'S FAILURE TO ADHERE TO THE MANDATE.

Principled appellate advocacy demands facts to support a litigant's contentions on appeal. The facts here show beyond reasonable dispute that the district court has ***never*** made "specific and express findings as to what work Simon completed after he was discharged" in 2017 that would justify $200,000 as "a reasonable quantum meruit fee for [his] post-discharge work." *EFT II,* 516 P.3d at *4. The district court cannot make

specific findings because many of the 71 hours listed by Simon provided zero benefit to the Edgeworths (e.g., VII-AA1403; IV-AA0745) and includes as "billable" time when he was actively lying to his clients.

In the first appeal of this case (Nos. 77678/78176), this Court said

> [W]e agree with the Edgeworths that the district court abused its discretion by awarding $200,000 in quantum meruit ***without making findings regarding the work Simon performed after the constructive discharge***.

*Edgeworth Family Trust v. Simon*, 477 P.3d 1129 at *2 (Nev. 2020) (Table) (emphasis added). After the district court ignored this mandate, it issued essentially the same order which this Court rejected in the second appeal, saying:

> [w]e conclude that the district court's order suffers from the same flaw as its previous order -- the order does not make specific findings that clearly reflect that the quantum meruit award is limited to only services Simon provided post-discharge. Specifically, the district court's quantum meruit award is premised on the work Simon performed relating to the Edgeworths' settlement agreements . . . ***before*** he was discharged. . . . . Further, the district court ***does not make any other findings of fact regarding work Simon completed post-discharge that would otherwise support the quantum meruit fee.***

*(EFT II*, 516 P.3d 676 at *1 (emphasis added).

The Court left no doubt as to what it expected: "We ***further instruct*** the district court to make ***specific and express findings*** as to what work Simon completed ***after*** he was constructively discharged and ***limit*** its quantum meruit fee to those findings." *Id.* at *2 (emphasis added). For Simon to now suggest that even if the district court's Fifth Order does not evidence compliance, this Court should try to find a way to justify it should be construed as a concession that the Fifth Order fails to comply with the Court's prior mandates.

This Court can and should consider ***the record Simon elected to present to the district court in 2018*** and decide whether the minimal ministerial work that remained warrants an inflated award (that comes to over $2,800 per hour). *State Eng'r v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017) (*citing Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 263, 71 P.3d 1258, 1260 (2003) (compliance with a mandate is reviewed de novo)). The Court should also consider the history of Simon's mistreatment of his clients and his condemnable misrepresentations to them

and the courts in his unrelenting quest for more unearned money. This history includes:

- Refusing to allow his clients access to the Viking settlement communications and falsely reporting that he had heard nothing about the settlement documents to frighten them into believing the settlement could fall apart if they did not acquiesce in his demands. IV-AA0673-77; X-AA1785-86; IV-AA0720-25.
- Falsely testifying he negotiated the deletion of a confidentiality clause at the client's behest. VII-AA1505-06.
- Lying to his clients and the courts about the existence of other settlement drafts beyond the two versions he produced on November 30, 2017 because he conducted all negotiations in person. VIII-AA1515:18-24.
- Falsely reporting to his clients that he had not heard anything about the settlement checks, when the checks had been offered to him days before or that he unilaterally waived the settlement agreement's requirement that checks be certified. IV-AA0707.

- Lying to other district courts about the existence of a court order from Judge Jones requiring him to hold all funds until the conclusion of all appeals from her orders. IV-AA0823-27.

Simon's condemnable conduct does not merit the windfall $200,000 in quantum meruit that the district court has not and will not explain. Moreover, it is inconceivable that express findings under *Brunzell* can justify any award to an attorney for time spent lying to his clients or refusing their demands to access settlement communications.

1. *Mere Lip Service in the District Court's Fifth Order is not Compliance with the Mandate.*

Simon pointing out the add-on phrase in the Fifth Order that "the Court is applying the *Brunzell* factors for the period commencing after the constructive discharge," IX-AA1739:27-40:1, ignores the fact that the district court did not, as it was twice expressly directed to do, "make specific and express findings" that would support the court's $200,000 award as "a reasonable quantum meruit fee for Simon's post discharge work." Merely saying it was "applying the *Brunzell* factors" does not add up

to "specific and express findings" the district court was unambiguously directed to make.

The Fifth Order is just a cut-and pasted *Brunzell* analysis from the order the Court found insufficient in the second appeal. Neither the Fifth Order nor its predecessors make "specific and express findings" as to what Simon did post-discharge that would entitle him to $200,000 for the 71.10 hours[7] he and an associate billed for that period. *See Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner*, 138 Nev. Adv. Op. 80, at 7, 521 P.3d 1169, 1174 (2022) ("the district court should show its work and provide 'a concise but clear explanation' of the reasoning behind its award amount." (Citations omitted)).

[7] Simon's own briefing confirms the 71.10 hours he detailed and submitted to the district court in 2018 that should be the basis for the quantum meruit award. VII-AA1356-63. The delays due to the district court's repeated failure to follow this Court's mandate should not enable Simon to now, *nearly five years later*, add to the "superbill" he presented to the district court in 2018.

2. *Simon's Quantum Meruit Compensation Award Should be Limited to the Billing He Created and Submitted to the District Court in 2018.*

Following the second mandate, Simon set out ***the same 71.10 hours of post-discharge*** work listed in his 2018 superbill that the Edgeworths have described in prior briefing. Simon then proceeded to amend his "meticulously prepared" superbill ***more than five years later*** **to include** work he chose to omit in 2018.[8] Remember that Simon's team ***testified*** in 2018 that the superbill was ***meticulously prepared after review of the entire file***, including email. VII-AA1424:3-17. Most of the add-ons he now wants to include were not presented to the district court in 2018 even though they

[8] In the second appeal, Simon argued that although he chose to end his "superbill" on January 8, 2018, the limited work he did in 2018 after that date – while the parties were already in litigation – ***could*** have been considered by the district court in in determining the amount of his award. The Edgeworths urged this Court to ignore that argument, as it was new on appeal and had not been presented to the district court. Case Nos. 83258/83260 Edgeworths' Reply at 7. Simon's effort to capitalize on the second remand to argue to the district court ***for the first time*** that his superbill should be revised – more than five years after he prepared it – should be rejected.

occurred during the same period he included in his superbill. VII-AA1363. Although it would be fundamentally unfair to allow Simon to revise his superbill by the add-ons he withheld or "forgot" in 2018, the added work still would not render the quantum meruit fee reasonable and *Brunzell*-complaint.

3. *The Fifth Order Does Not Comply with the Mandate*.

Although the district court added 41 paragraphs in its Fifth Order, 40 merely list the date and title of filings, including this Court's orders. (IX-AA1724-27 ¶¶ 34–74). The last of these "added" 41 paragraphs (IX-AA1727 ¶ 75) is merely a conclusory statement that "the [district court finds that there was ample foundation for the quantum meruit award of $200,000.00." These ***added paragraphs are not "specific and express findings"*** that comport with *Brunzell*. Moreover, the minimal post-discharge work the district court lists in its Fifth Order merely discusses work that is included in the 71.10 hours of ministerial work that the Edgeworths have urged this Court to consider. IX-AA1743-44. For example,

- Finalizing the Lange settlement, with terms he testified he hammered out pre-discharge (VIII-AA1584), save an additional $53K increase Simon claims to have negotiated on November 30 after the Edgeworths instructed him to accept the offer as it was. IV-AA0718; X-AA1785 (confirming Simon was actively discussing settlement agreement the morning of 11/27/17); *id*. at X-AA1786 (confirming terms were agreed upon by November 28, 2017).
- Finalizing "work" on the Viking settlement, signed on December 1, 2017, two days after he was discharged. IX-AA1743-44; IV-AA0744 (described in superbill). Simon billed for this work yet admitted he destroyed the fully executed copy because it was after his termination. *See* VIII-AA1586 (transmitting settlement agreement executed by Edgeworths to Viking's counsel); IV-AA0744 (billing for receipt of release from Viking); VIII-AA1715 at 6V

(recently admitting he destroyed the fully executed agreements).

- Wrap-up work regarding settlement, including ministerial tasks of depositing checks, working on his own lien, and finalizing Lange settlement. IV-AA0757.

Aside from the minimal reference to specific work, such as "finalizing work" on the Viking settlement and the misstatement that Simon negotiated a $53,000 increase in the Lange settlement, both of which are covered at 36-37 of the opening brief, the district court merely shuffles a few non-substantive words in its so-called *Brunzell* analysis section to largely repeat the same analysis previously rejected by this Court. IX-AA1740-43. For example, in the "Character of the Work" section, the district court omitted details about how the character of the pre-discharge work was complicated. The words the court ended up with **do not** show that the **post**-discharge work was in the least complicated. Ans. at 19. It was routine at most, as a reading of Simon's billing descriptions attests. And the

Edgeworths have provided examples of Simon lying to them during this period.

In the 2021 third iteration of its order, which the Court found insufficient, the district court described the quality of the pre-discharge work for which Simon has been compensated as follows:

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

IV-AA0645.

The new paragraph in the 2023 Fifth Order states:

> The character of the work done in this case is complex. This case was a very complex products liability case, from the beginning. After the constructive discharge of Simon, the complications in the case continued. The continued aggressive representation of Mr. Simon, in prosecuting the case was a

> substantial factor in achieving the exceptional results. Even after the constructive termination, Simon continued to work on the case. At one point, Simon said that he was not going to abandon the case, and he didn't abandon the case. The lack of communication with the Edgeworths made continuation of the case difficult, but Simon continued to work on the case and ended up reaching a resolution beneficial to the Edgeworths.

IX-AA1741. Thus, although the district court said in its Fifth Order that "complications in the case continued," that statement is not supported by "express and specific findings" that would show Simon's post-discharge work caused or contributed to "a resolution beneficial to the Edgeworths. The "resolution beneficial to the Edgeworths" refers to work during the *pre-*discharge period for which Simon has been ***paid in full*** on terms ***he dictated*** to the Edgeworths at the outset of the case in 2016.

In his answering brief in this third appeal, Simon cannot point to anything more in the record that would be pertinent to support the district court's conclusory statement that Simon's "continuing work" post-discharge "ended up reaching a resolution beneficial to the Edgeworths." The resolution the court refers to was reached in November 2017, ***before*** Simon was constructively discharged and for which he has been paid.

Saying that Brian Edgeworth's description of the case as "pretty complicated" when he testified about the rate he paid Vannah, Ans. at 39, is an irrelevant distraction, as the Edgeworths address in their opening brief. Vannah was not retained "to do the same work as Simon" as Simon thoughtlessly suggests. Vannah was retained ***to protect the Edgeworths***' from Simon's threats. I-AA0002:17-19. The fee Vannah was paid to protect the Edgeworths' against Simon's arm-twisting and bullying tactics is not only irrelevant to the question of what a reasonable fee would be for Simon's post-discharge ministerial work, but Simon neglects to mention that Vannah's $925/hour fee included a reasonable cap considering that Vannah would be adverse to a fellow lawyer whom Vannah had considered a friend. X-AA1813:11-17.

Likewise, there is nothing in the Fifth Order to support how the district court thought the complexity of the case continued ***after*** settlement occurred in November, 2017. The district court clearly remained focused on ***pre-discharge*** work that Mr. Edgeworth assisted with that led to the large settlement with Viking, which Simon himself testified was fully "hammered

out . . . ***before*** he was fired." IV-AA0718; *see* IV-AA0716-17 (placing the date of the negotiations at November 27, 2017). That settlement was fully ***negotiated pre-discharge.*** *See* X-AA1785-86.

The district court also cut and pasted the "Work Actually Performed" paragraph but added nothing of substance pertaining to post-termination work. It said:

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

IX-AA1741; *see also* IV-AA0645-46 (for old description).

It is shocking that Simon ***still*** maintains he should be rewarded for negotiating the removal of a confidentiality clause his clients had accepted (VIII-AA1619), which he lied about to the court. VII-AA1505-06. More likely is that ***he wanted it*** removed for self-serving purposes (to

advertise the win). Crediting Simon for these changes also ignores the fact that he ***unilaterally usurped*** the Edgeworths' right to decide settlement matters when he ignored their instruction to accept the confidentiality clause and the Lange settlement as it was. IV-AA0698.

As addressed in the opening brief, he cost the Edgeworths upwards of $41K in additional interest he knew was accruing on the loans they took to pay his prior fees (I-AA0052 at ¶11) by waiving the certified check requirement and refusing to promptly accept and turn over their settlement checks when they were offered by Viking on December 12, 2017. (IV-AA0707); *see also* IV-AA0745 (billing for 12/12/17 exchanges with Viking's counsel re checks about which he later lied to his clients). Notwithstanding numerous requests to release a portion of the funds that were not involved in the lien adjudication, Simon held the proceeds of the checks hostage until he released a portion of the monies on January 22, 2018.

With Simon's urging (VII-AA1367; VII-AA1390:1-7), the district court's *Brunzell* analysis continued the district court's focus on what she deemed to be an extraordinary result in obtaining the $6M Viking

settlement, and accolades from other lawyers regarding Simon's ***pre-discharge*** efforts. *Id.* Any doubt about the district court's reliance on the pre-discharge work in its Fifth Order is eliminated when reviewing the "Result Obtained" section of the Order, which remained ***identical*** to the rejected ***four*** prior orders. IX-AA1741-42; IV-AA0646 (***for identical analysis in the court's*** third order).

The district court also ***failed to consider*** or comment on the ministerial nature of Simon's post-discharge work. *See* VII-AA1399-1403. The nature of that work was described by Simon in his 2018 superbill (VII-AA1405-19), as outlined in both the Edgeworths and Simon's briefing. VII-AA1399-1403; VII-AA1356-63. Furthermore, the district court failed to place the risk of indeterminacy on the lawyer (Simon) who failed to memorialize the terms of his engagement. *See* Rest. (Third) of the Law Governing Lawyers § 39 cmt. b(ii) (2000) ("Where there has been no prior contract as to fee, ***the lawyer*** presumably did not adequately explain the cost of pursuing the claim and is thus ***the proper party to bear the risk of indeterminacy***).

### B. SIMON'S SUGGESTION THAT THIS COURT MUST GIVE DEFERENCE TO FINDINGS THE DISTRICT COURT DID NOT MAKE IS PREPOSTEROUS.

At page 36 of his Answer, Simon appears to suggest that the Court should use an abuse of discretion standard of review instead of *de novo* review. *State Eng'r v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017) (*citing Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 263, 71 P.3d 1258, 1260 (2003) (compliance with a mandate is reviewed ***de novo***)). The issue is whether the district court followed this Court's unambiguous instruction "to make ***specific and express findings*** as to what work Simon completed ***after*** he was constructively discharged and ***limit*** its quantum meruit fee to those findings." *EFT II*, 516 P.3d 676 at *1 (emphasis added). It did not.

### C. SIMON'S UNDISCLOSED CONFLICT IS SUPPORTED BY THE RECORD AND RELEVANT PRINCIPALLY TO THE *BRUNZELL* QUALITY OF THE ADVOCATE PRONG.

Simon's attempt to escape the conflict he failed to disclose to the Edgeworths is not supported by the contemporary record of events. Simon now says he consulted his own attorney on November 27, 2017 "concerning clients who would no longer speak to him." Ans. at 47. His

own briefing confirms that he was in frequent communication with Mrs. Edgeworth on November 27, 2017. Ans. at 15. Simon also testified he spoke with Mr. Edgeworth on Saturday, 11/25/17, as he was returning from Peru (V-AA0977) while Mr. Edgeworth was packing for a trip to Asia (X-AA1974), yet claims to have retained counsel the following Monday because the Edgeworths had allegedly "stop[ped] speaking to him" less than a business day before. Ans. at 16. Simon had also repeatedly spoken to Mr. Edgeworth the prior week, including while Simon was on vacation in Peru and hounding him daily about sharing the settlement funds). X-AA1801-03; V-AA0977:20-23; *see also* III-AA0471:19-72:10 (acknowledging he hired counsel re fee dispute). NRPC 1.6(b)(4) may permit a lawyer to seek advice about a non-communicative client, but the record demonstrates Simon consulted a lawyer ***about a fee dispute with the Edgeworths before they knew he had a dispute with them or that their lawyer (Simon) now considered them his adversaries***. I-AA0152 (Simon attorney's billing

describing the representation as one for "Simon Law Group – Edgeworth Fee Dispute").[9]

Simon's effort to hide behind the professional rules of conduct is also ironic, as well as condemnable, because the district court explicitly prohibited the Edgeworths' counsel from examining him on any professional conduct issues. I-AA0220:1-10. Not surprisingly, the contention that "Simon's consultation with a lawyer and attorney retention [on November 27, 2017] was not disclosed is groundless" is not ***supported by anything in the record or by the Model Rules of Professional Conduct..*** The issue is that by November 27, 2017 when the Edgeworths' desperate demands that Simon provide everything about the settlement (because of his threats to implode it), Simon had consulted a lawyer in a fee dispute with the Edgeworths that they did not yet know about. He did not disclose to them that he was conflicted and considered them adversaries. In point of

[9] And Simon's argument about a "claim that an attorney cannot consult with another attorney without creating a conflict . . . ," Ans at 48, is a fabrication. The Edgeworths have never made such a claim.

fact, they retained Vannah on November 29, 2017 to protect them and "assist [Simon] in the litigation and any settlement." IV-AA0687. Had they been informed of the conflict, they would have removed Simon altogether. They soon learned that Simon was not on their side when he filed a lien against them on November 30, 2017, and shortly thereafter began bad-mouthing them to personal acquaintances. II-AA0234-36.

### D. SIMON'S ANSWER TO THE REQUEST FOR JUDGE REASSIGNMENT MISSES THE POINT.

Simon's answering brief misses the basis for the request for reassignment. The Edgeworths ask that if this Court believes a third remand is appropriate, which the Edgeworths oppose and do not believe would be appropriate, reassignment to another judge would nevertheless be appropriate due to Judge Jones's unwillingness or inability to follow the mandate that has been discussed throughout this and the two prior appeals. *Wickliffe v. Sunrise*, 104 Nev. 777, 783, 766 P.2d 1322, 1327 (1988) (confirming reassignment is proper for failure to follow the mandate). The request was made in the interest of fairness and judicial efficiency, not bias. The Edgeworths and the Court have now spent excessive time and money

considering the same *Brunzell* issues in three appeals. There is no way the Court can make its mandate any clearer for the district court. Reassignment would allow a fresh judge to consider and follow the unambiguous instructions of this Court.

## V. CONCLUSION.

For the reasons set out in the opening brief and this brief, and in the extensive record before the Court on this issue in two previous appeals, as well as in the preceding writ petition denial in which the Court said this third appeal would be the Edgeworth's adequate remedy at law, they respectfully ask the Court to vacate the district court's Fifth Order and (1) either enter an order directing the district court to reduce its quantum meruit award to Simon for not more than $33,811.25 in fees for his and his associate's minimal post-discharge work, or (2) vacate the award altogether for the district court's continuing multiple failures to obey the Court's mandate which was first expressed in its *en banc* Order in *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (2020) (Table).

Alternatively, if the Court remains unwilling to direct entry of judgment but is inclined to vacate the Fifth Amended Decision and Order and remand this case for a third time, it should order that it be assigned to another district court judge for consideration of an appropriate quantum meruit value based on the record Simon submitted in 2018.

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## CERTIFICATE OF COMPLIANCE

1. I certify that I have read the **EDGEWORTH APPELLANTS' REPLY BRIEF**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I also certify that this brief complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5), the type style requirements of Nev. R. App. P. 32(a)(6), and limitations in Nev. R. App. P. 32(a)(7) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Palatino 14 point font. Excluding the parts of the brief exempted by Nev. R. App. P. 32(a)(7)(C), it contains 6,877 words.

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

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## 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 foregoing **EDGEWORTH APPELLANTS' REPLY BRIEF** to be e-served via the Supreme Court's EFlex Electronic Filing System to all counsel of record.

Dated this 3rd day of May, 2024.

By: /s/ CATHY SIMICICH