

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARDEE HOMES OF NEVADA,

Appellant,

vs.

JAMES WOLFRAM, AN INDIVIDUAL;
ANGELA L. LIMBOCKER-WILKES, AS
TRUSTEE OF THE WALTER D. WILKES AND
ANGELA L. LIMBOCKER-WILKES LIVING
TRUST, A NEVADA TRUST; AND WALTER
D. WILKES AND ANGELA L. LIMBOCKER-
WILKES LIVING TRUST, A NEVADA TRUST,

Respondents.

Supreme Court No. 72371

District Court Case No. A032338
Electronically Filed
Mar 09 2017 08:24 a.m.

Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See Moran v. Bonneville Square Assocs., 117 Nev. 525, 25 P.3d 898 (2001); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: IV
County: Clark Judge: Kerry Earley
District Court Docket No.: A-10-632338-C

2. **Attorney filing this docketing statement:**

Attorney Rory T. Kay Telephone (702) 873-4100
Firm McDonald Carano LLP
Address 2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

Client(s) Pardee Homes of Nevada ("Pardee")

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

3. **Attorney(s) representing respondent(s):**

Attorney James J. Jimmerson Telephone (702) 388-7171
Firm Jimmerson Law Firm P.C.
Address 415 S. 6th Street, Suite 100
Las Vegas, Nevada 89101

Client(s) James Wolfram, Angela L. Limbocker-Wilkes as trustee of the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust, Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

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

X	Judgment after bench trial	Grant/Denial of NRCP 60(b) relief
	Judgment after jury verdict	Grant/Denial of injunction
	Summary judgment	Grant/Denial of declaratory relief
	Default Judgment	Review of agency determination
	Dismissal	Divorce decree:
	Lack of jurisdiction	Original Modification
	Failure to state a claim	Other disposition (specify) _____
	Failure to prosecute	
	Other	

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

Child custody
Venue
Termination of Parental Rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:
No previous appeals or original proceedings pending before the Court other than this case.

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

Defendant Pardee contracted with non-party Coyote Springs Investment, LLC (“CSI”) to purchase certain real property at the Coyote Springs development project, a master-planned community in Lincoln County and Clark County, Nevada. James Wolfram and Walt Wilkes were real estate brokers who claimed they introduced Pardee’s principals to CSI’s principals. Wolfram and Wilkes executed a Commission Agreement with Pardee, under which Pardee was to pay Wolfram and Wilkes commissions limited to certain payments made by Pardee to CSI, and purchases of certain real property by Pardee from CSI, designated as “Option Property.”

After Pardee paid in full commissions for the payments made to CSI, Wolfram and Wilkes filed this suit alleging that Pardee breached the Commission Agreement by failing to pay them millions of dollars in commissions due and owing for alleged purchases of Option Property, and also by failing to provide them information from which they could verify the truth of Pardee’s representations that it had not purchased any Option Property. Wolfram and Wilkes also asked the district court for an accounting regarding these claimed-to-be-owing commissions. In total, Wolfram and Wilkes alleged three causes of action: (1) breach of contract; (2) contractual breach of the implied duty of good faith and fair dealing; and (3) accounting. Pardee counterclaimed for contractual breach of the implied duty of good faith and fair dealing.

The case proceeded to trial in October and December 2013. On June 27, 2014, the district court entered Findings of Fact and Conclusions of Law (“Findings and Conclusion”). In the Findings and Conclusions, the district court ruled in Pardee’s favor regarding Wolfram and Wilkes’ claim that Pardee breached the Commission Agreement and the implied duty of faith therein by failing to pay them additional commissions. Specifically, the Court expressly found Pardee has not purchased any Option Property from CSI. Accordingly, the district court found that Pardee did not owe Wolfram and Wilkes any additional commissions. The district court also found that Pardee had given Wolfram and Wilkes all information they needed to verify the actual commissions that Pardee had already paid to them.

The court did, however, rule in Wolfram and Wilkes’ favor on the breach of contract, breach of the implied duty of good faith and fair dealing, and accounting claims regarding their argument that Pardee failed to provide them sufficient information from which they could verify they were not entitled to additional commissions for purchases of Option Property. Pardee had informed Wolfram and Wilkes it had made no purchases of Option Property. Wolfram and Wilkes alleged breach for failure to give them information from which they could verify the truth of those representations. For this breach, the district court awarded Wolfram and Wilkes \$6,000 in compensatory damages for time and effort searching for information, and \$135,500.00 in “special damages” for certain of their attorney’s fees and costs incurred in bringing the litigation.

On May 17, 2016, the district court entered a written judgment (the “Judgment”), prepared by Wolfram and Wilkes’ counsel, that expressly incorporated the Findings and Conclusions therein. This Judgment affirmed the award of \$6,000 in compensatory damages and \$135,500 in special damages.

Both parties filed various post-Judgment motions. During proceedings on these post-Judgment motions, the district court denied Pardee’s motion to amend the Judgment regarding the attorney’s fees as special damages, and further awarded Wolfram and Wilkes \$428,462.75 in attorney’s fees, \$56,129.56 in costs, and both pre- and post-Judgment interest on these awards based on the Commission Agreement’s “prevailing party” provision. The district court separately denied Pardee’s request for attorney’s fees and costs on the same basis.

Pardee now appeals the Findings and Conclusions, the underlying Judgment, and the district court's award of Wolfram and Wilkes' attorney's fees and costs, and pre- and post-Judgment interest. Pardee also appeals the district court's denial of Pardee's attorney's fees and costs as the prevailing party for Wolfram and Wilkes' failure to prove entitlement to further commissions.

9. Issues on appeal. State concisely the principal issue(s) in this appeal:

Pardee appeals from the Findings and Conclusions, the underlying Judgment, and the district court's subsequent orders awarding Wolfram and Wilkes their attorney's fees and costs, and pre- and post-judgment interest on the following issues:

- (a) Wolfram and Wilkes were entitled to additional commissions under the Commission Agreement if Pardee purchased Option Property from CSI. Pardee did not purchase any Option Property and told Wolfram and Wilkes that it had not done so. Did the Court err in finding that Pardee breached the Commission Agreement and the implied duty of good faith and fair dealing therein by failing to provide Wolfram and Wilkes with certain information, designated as confidential under the CSI agreement, to verify the truth of Pardee's representations that it did not purchase any Option Property, especially when such could have been verified by public records?
- (b) Attorney's fees as special damages are only to be awarded in limited circumstances, as defined by *Sandy Valley* and its progeny. Did the Court err in awarding Wolfram and Wilkes certain of their attorney's fees as special damages incurred pursuing their causes of action for breach of contract and contractual breach of the implied duty of good faith and fair dealing?
- (c) The parties' Commission Agreement included a "prevailing party" attorney's fee provision. Did the Court err in denying Pardee's attorney's fees and costs under the prevailing party provision in the Commission Agreement when Pardee prevailed upon the predominant issue tried to the district court?; and
- (d) Did the Court err in awarding Wolfram and Wilkes their attorney's fees and costs under the prevailing party provision in the parties' Commission Agreement?

10. Pending proceedings in this court raising the same or similar issues. If you aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: N/A

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

N/A x Yes No

12. **Other issues.** Does this appeal involve any of the following issues? No.

Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first-impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

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

This matter should be assigned to the Court of Appeals. A ruling on the special damages matter requires a straightforward application of the *Sandy Valley* line of cases, and all other issues on appeal are appropriate for decision by the Court of Appeals under NRAP 17.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? 9 days

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

TIMELINESS OF NOTICE OF APPEAL

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

Pardee appeals the following Judgment and post-judgment Orders:¹

- Judgment: May 16, 2016.
- Findings of Fact and Conclusions of Law: June 25, 2014
- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment: January 9, 2017
- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs: January 9, 2017
- Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs: January 9, 2017
- Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016: January 12, 2017

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

¹ The district court has not yet entered a written order on its award of pre- and post-judgment to Plaintiffs. When the district court does so, Pardee will also be appealing that order.

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

- Judgment: May 17, 2016.
- Findings of Fact and Conclusions of Law: June 27, 2014
- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment: January 10, 2017
- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs: January 10, 2017
- Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs: January 10, 2017
- Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016: January 13, 2017

(a) Was service by delivery _____ or by mail/electronic/fax Electronic and Mail

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

- (a) Specify the type of motion, and the date and method of service of the motion, and the date of filing. On June 1, 2016, Pardee filed a Motion to Amend Judgment pursuant to NRCP 52(b) and 59(e).

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

- (b) Date of entry of written order resolving tolling motion January 9, 2017.
(c) Date written notice of entry of order resolving tolling motion was served January 10, 2017.
Was service by: Delivery _____ or Mail Electronic Service

19. Date notice of appeal was filed February 8, 2017.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: No related appeal at this time.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other: NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

(a)

NRAP 3A(b)(1) X NRS 38.205 _____ (specify subsection) _____
NRAP 3A(b)(2) _____ NRS 233B.150 _____ (specify subsection) _____
NRAP 3A(b)(3) _____ NRS 703.376 _____
Other (specify) _____

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

NRAP 3A(b)(1) provides that an appeal may be taken from “a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” The Judgment and post-judgment Orders identified above in questions 16 and 17 are the final judgment and post-judgment orders in this action.

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

(a) Parties:

Plaintiffs: James Wolfram and Walt Wilkes. After Mr. Wilkes died during the litigation, the Court entered an order substituting Angela Limbocker-Wilkes as Trustee of the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust in his place as a named Plaintiff.

Defendant: Pardee Homes of Nevada.

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

All parties in the district court are parties to this appeal.

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

Plaintiffs alleged causes of action for breach of contract, contractual breach of the implied duty of good faith and fair dealing, and for an accounting. Pardee filed a counterclaim for contractual breach of the implied duty of good faith and fair dealing.

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

Yes X No

The Judgment and post-judgment Orders referenced in questions 16 and 17 resolved all claims and the rights and liabilities of all parties.

25. If you answered “No” to question 23, complete the following: N/A

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes No

- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes _____ No _____

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

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

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 42(a) dismissals formally resolving each claim, counterclaims, cross-claims, and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

At the end of this Docketing Statement, Pardee has provided an index and a file-stamped copy of each document listed above.

VERIFICATION

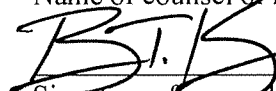
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Pardee Homes of Nevada
Name of appellant

March 8, 2017
Date

Clark County, Nevada
State and county where signed

Rory T. Kay, Esq.
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on March 8, 2017, I served a copy of this completed docketing statement upon all counsel of record:

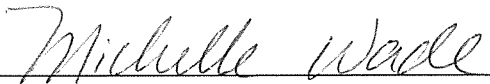
By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address:

James J. Jimmerson, Esq.
The Jimmerson Hansen Law Firm, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada, 89101

Attorneys for Plaintiffs/Respondents

Settlement Conference Judge:
James A. Kohl, Esq.
Howard & Howard
Wells Fargo Tower
Suite 1000
3800 Howard Hughes Parkway
Las Vegas, NV 89169


An employee of McDonald Carano LLP

Index of Filings

- Exhibit A: Plaintiffs' Second Amended Complaint
- Exhibit B: Pardee's Answer to Second Amended Complaint and Counterclaim
- Exhibit C: Judgment, and Notice of Entry of Judgment
- Exhibit D: Findings of Fact and Conclusions of Law, and Notice of Entry of Same
- Exhibit E: Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment, and Notice of Entry of Same
- Exhibit F: Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs, and Notice of Entry of Same
- Exhibit G: Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs, and Notice of Entry of Same
- Exhibit H: Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs, and Notice of Entry of Same
- Exhibit I: Pardee's Motion to Amend Judgment

EXHIBIT A


CLERK OF THE COURT

SAC
JIMMERSON HANSEN, P.C.
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
jjj@jimmersonhansen.com
JAMES M. JIMMERSON, ESQ.
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415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
(702) 388-7171
Attorney for Plaintiffs
James Wolfram and Walt Wilkes

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,)	
WALT WILKES,)	
)	
Plaintiffs,)	CASE NO.:A-10-632338-C
vs.)	DEPT NO.: IV
)	
PARDEE HOMES OF NEVADA,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT

Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their undersigned counsel, James J. Jimmerson, Esq. of the law firm of Jimmerson Hansen P.C., for their Complaint states as follows:

GENERAL ALLEGATIONS

1. At all times relevant hereto, Plaintiffs James Wolfram and Walt Wilkes are individuals who have resided in Clark County, Nevada.

2. That Plaintiff Wolfram has been assigned all of Award Realty's rights, title and interest in that certain Commission Letter dated September 1, 2004, and he is the real party in interest in this case.

1 3. That Plaintiff Wilkes has been assigned all General Realty's rights, title and
2 interest in that certain Commission Letter dated September 1, 2004, and he is the real
3 party in interest in this case.

4 4. At all times relevant hereto, Defendant Pardee Homes of Nevada ("Pardee")
5 was a corporation registered in the state of Nevada.

6 5. Plaintiffs' predecessors in interest, Award Realty and General Realty, and
7 Plaintiffs and Defendant have a financial relationship. Plaintiffs were real estate brokers,
8 dealing in real estate owned by Coyote Springs Investment LLC and being purchased by
9 Defendant. The relationship between Coyote Springs Investment LLC and Defendant was
10 governed by a certain Option Agreement for the Purchase of Real Property and Joint
11 Escrow Instructions, dated in May of 2004 ("Option Agreement") and later amended and
12 restated on March 28, 2005. Plaintiffs and Defendant entered into an agreement entitled
13 "Commission Letter" dated September 1, 2004, which related to the Option Agreement and
14 governed the payment of commissions from Defendant to Plaintiffs for real estate sold
15 under the Option Agreement. For easy reference, Award Realty and General Realty and
16 Plaintiffs, are concurrently referred to as "Plaintiffs" herein.

17 6. Pursuant to the Commission Letter, Plaintiffs were to be paid a commission
18 for all real property sold under the Option Agreement.

19 7. Pursuant to the Commission Letter, Plaintiffs were to be fully informed of all
20 sales and purchases of real property governed by the Option Agreement. Specifically, the
21 Commission Letter stated:

22 Pardee shall provide each of you a copy of each written option
23 exercise notice given pursuant to paragraph 2 of the Option
24 Agreement, together with the information as to the number of
25 acres involved and the scheduled closing date. In addition,
26 Pardee shall keep each of you reasonably informed as to all
27 matters relating to the amount and due dates of your
28 commission payments.

8. On or about April 23, 2009, Plaintiffs sent a letter to Defendant requesting
documents, which detail the purchases and sales of certain real property for which

1 Plaintiffs believe are part of the property outlined in the Option Agreement and, therefore,
2 property for which they are entitled to receive a commission. A parcel map was also
3 requested to identify which properties had been sold.

4 9. Defendant replied to Plaintiffs' April 23, 2009, letter with a letter dated July
5 10, 2009. The July 10 letter failed to provide the documents requested by the Plaintiffs.

6 10. Plaintiffs once again requested the documents from the Defendant in a letter
7 dated August 26, 2009. In that letter, Plaintiffs alleged that failure to deliver the requested
8 documents constituted a material breach of the Commission Letter.

9 11. Defendant, after conversations with Plaintiffs, sent a two-page letter dated
10 November 24, 2009, with four attachments: 2 maps, a spreadsheet, and a map legend.
11 The letter attempted to explain the recent purchases or "takedowns" of real property by
12 Pardee.

13 12. Plaintiffs relied upon Defendant's representations made in the November 24,
14 2009 letter as being truthful and accurate.

15 13. Upon further inquiry, however, Plaintiffs have discovered that the
16 representations made by the Defendant in the November 24, 2009, letter were inaccurate
17 or untruthful. In response to their concerns, Plaintiffs sent another letter dated May 17,
18 2010 to Defendants, asking for additional information and further documentation of all
19 properties purchased by Defendant and sold by Coyote Springs Investment LLC. In that
20 letter, Plaintiffs alleged that the representations made in the November 24, 2009, letter
21 were believed to be inaccurate or untruthful after the Plaintiffs investigated the property
22 transactions and records in the Clark County Recorder's Office and Clark County
23 Assessor's Office. Plaintiffs further asked Defendant why it had instructed Francis Butler of
24 Chicago Title not to release closing escrow documents regarding purchase of properties
25 from Coyote Springs.

26 14. Defendant responded to the May 17, 2010, letter with a letter dated June 14,
27 2010. In that letter, Defendant denied breaching the covenants contained in the
28 Commission Letter, but did not reply or address any particular concern, including, but not

1 limited to: the discrepancy between the representations made by Defendant in the
2 November 24, 2009, letter and information and records found in the Clark County
3 Recorder's Office and the Clark County Assessor's Office, the request as to why closing
4 escrow documents were being withheld, and the request for all relevant closing escrow
5 documents.

6 15. To date there has been no further documentation produced by Defendant for
7 the Plaintiffs regarding their concerns about the sales and purchases of real property by
8 Defendant from Coyote Springs Investment, LLC.

9 **FIRST CLAIM FOR RELIEF**

10 **(Accounting)**

11 16. Plaintiffs incorporate each of the allegations contained within paragraphs 1
12 through 15 above.

13 17. Plaintiffs have requested documents promised to them by Defendant in the
14 Commission Letter and have not received them. Specifically, the have requested: the
15 name of the seller, the buyer, the parcel numbers, the amount of acres sold, the purchase
16 price, the commission payments schedule and amount, Title company contact information,
17 and Escrow number(s), copy of close of escrow documents, and comprehensive maps
18 specifically depicting this property sold and would, with parcel number specifically
19 identified.

20 18. Plaintiffs are entitled to an accounting and copies of the documents and
21 maps for all transfers of real property governed by the Option Agreement.

22 19. As a direct, natural and proximate result of Defendant's failure to account to
23 Plaintiffs, Plaintiffs have been forced to retain an attorney to prosecute this action.
24 Plaintiffs have therefore been damaged in the amount of the fees and costs expended to
25 retain the services on their attorney and are entitled to an award of reasonable attorney's
26 fees as special damages.

27 20. As a direct, natural and proximate result of Defendant's failure to account to
28 Plaintiffs, Plaintiffs have been forced to spend a significant amount of time and effort

1 attempting to get the information owed to them from alternative sources. Plaintiffs have
2 therefore been damaged in the amount of their fair hourly rate in attempting to acquire the
3 information and documents owed to them.

4 21. As a result of this action, Plaintiffs have been forced to bring this matter
5 before the Court. Plaintiff has been damaged in a sum in excess of \$10,000.00.

6 **SECOND CLAIM FOR RELIEF**

7 **(Breach of Contract)**

8 22. Plaintiffs incorporate each of the allegations contained within paragraphs 1
9 through 20 above as though said paragraphs are fully stated herein.

10 23. Plaintiffs have requested documents promised to them by the Defendant in
11 the Commission Letter and have not received them.

12 24. Defendant has a duty to honor its contractual obligations. Defendant has
13 failed and refused to perform its obligations pursuant to the terms and conditions of the
14 Commission Letter.

15 25. As a direct, natural and proximate result of Defendant's breach of contract,
16 Plaintiffs have been forced to retain an attorney to prosecute this action to acquire the
17 documents owed to Plaintiffs. Plaintiffs have therefore been damaged in the amount of the
18 fees and costs expended to retain the services on their attorney and are entitled to an
19 award of reasonable attorney's fees as special damages.

20 26. As a direct, natural and proximate result of Defendant's breach of contract,
21 Plaintiffs have been forced to spend a significant amount of time and effort attempting to
22 get the information owed to them from alternative sources. Plaintiffs have therefore been
23 damaged in the amount of their fair hourly rate in attempting to acquire the information and
24 documents owed to them.

25 27. As a result of Defendant's breach of contract, Plaintiffs have suffered
26 damages in the amount according to proof, in excess of Ten Thousand Dollars (\$10,000).

27 **THIRD CLAIM FOR RELIEF**

28 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

1 28. Plaintiffs reallege and incorporate herein each and every allegation
2 contained in paragraphs 1 through 25, inclusive, herein above.

3 29. Defendant Pardee owed, and continues to owe, Plaintiffs a duty of good faith
4 and fair dealing to do everything under the Commission Letter that Defendant is required to
5 do to further the purposes of the Commission Letter and to honor the terms and conditions
6 thereof to the best of its ability.

7 30. In doing the acts alleged herein, Defendant Pardee failed to act in good faith
8 and to the best of its ability, and also failed to deal fairly with Plaintiffs, thereby breaching
9 its duties to so conduct itself and injuring Plaintiffs' rights to conduct its business and its
10 ability to receive the benefits of the Commission Letter.

11 31. As a direct, natural and proximate result of Defendant's breach of the implied
12 covenant of good faith and fair dealing, Plaintiffs have been forced to retain an attorney to
13 prosecute this action to acquire the documents owed to Plaintiffs. Plaintiffs have therefore
14 been damaged in the amount of the fees and costs expended to retain the services on their
15 attorney and are entitled to an award of reasonable attorney's fees as special damages.

16 32. As a direct, natural and proximate result of Defendant's breach of the implied
17 covenant of good faith and fair dealing, Plaintiffs have been forced to spend a significant
18 amount of time and effort attempting to get the information owed to them from alternative
19 sources. Plaintiffs have therefore been damaged in the amount of their fair hourly rate in
20 attempting to acquire the information and documents owed to them.

21 33. As a direct and proximate result of Defendant's breach of the covenant of
22 good faith and fair dealing, Plaintiffs have been damaged in a sum in excess of
23 \$10,000.00.

24 ///

25 ///

26 ///

27

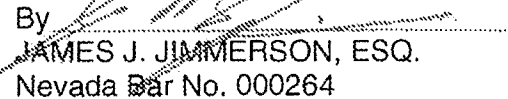
28

WHEREFORE, Plaintiffs pray as follows:

1. For the documents promised to them including, but not limited to, an accurate parcel map with Assessor's Parcel numbers, and an accounting of all transfers or title or sales.
2. For general damages in a sum in excess of \$10,000.00.
3. For special damages in a sum in excess of \$10,000.00
3. For cost of suit.
4. For reasonable attorney's fees.
5. For such further relief as the Court deems proper.

DATED this 6th day of June, 2013.

JIMMERSON HANSEN, P.C.

By 
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
jjj@jimmersonhansen.com
JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
jmj@jimmersonhansen.com
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
(702) 388-7171
Attorney for Plaintiffs
JAMES WOLFRAM and WALT WILKES

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of SECOND AMENDED COMPLAINT was made on the 6th day of June, 2013, as indicated below:

☒ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

☐ By electronic service through the E-filing system

☐ By facsimile, pursuant to EDCR 7.26

☐ By receipt of copy as indicated below

PAT LUNDVALL, ESQ.,
AARON D. SHIPLEY, ESQ.
McDONALD CARANO WILSON, LLP
2300 W. Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant
Pardee Homes of Nevada


An Employee of JIMMERSON HANSEN, P.C.

EXHIBIT B


CLERK OF THE COURT

1 **ANAC**
2 PAT LUNDVALL
3 Nevada Bar No. 3761
4 AARON D. SHIPLEY
5 Nevada Bar No. 8258
6 McDONALD CARANO WILSON LLP
7 2300 West Sahara Avenue, Suite 1000
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11 lundvall@mcdonaldcarano.com
12 ashipley@mcdonaldcarano.com
13 *Attorneys for Defendant*
14 *Pardee Homes of Nevada*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 JAMES WOLFRAM,
12 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTERCLAIM**

16
17 Defendant PARDEE HOMES OF NEVADA ("Defendant"), for their Answer to
18 JAMES WOLFRAM AND WALT WILKES' ("Plaintiffs") Second Amended Complaint
19 responds as follows:

GENERAL ALLEGATIONS

20
21 1. Answering paragraph 1, Defendant lacks sufficient knowledge or
22 information to form a belief as to the truth or falsity of the allegations set forth therein
23 and, on that basis, denies each and every allegation set forth in said paragraph.

24 2. Answering paragraph 2, Defendant lacks sufficient knowledge or
25 information to form a belief as to the truth or falsity of the allegations set forth therein,
26 but acknowledges the Court's order and, on that basis, denies each and every
27 allegation set forth in said paragraph.

28 3. Answering paragraph 3, Defendant lacks sufficient knowledge or

1 information to form a belief as to the truth or falsity of the allegations set forth therein,
2 but acknowledges the Court's order, and, on that basis, denies each and every
3 allegation set forth in said paragraph.

4 4. Defendant admits the allegations contained in paragraph 4.

5 5. Answering paragraph 5, Defendant admits certain aspects of the
6 relationship between Coyote Springs Investment LLC and Defendant were governed by
7 an Option Agreement for the Purchase of Real Property and Joint Escrow Instructions
8 ("Option Agreement") dated May of 2004, along with the subsequent amendments
9 thereto. Further, Defendant admits that its letter to Award Realty and General Realty
10 dated September 1, 2004 ("Commission Letter"), which Plaintiffs acknowledged and
11 executed, memorializes an agreement between the parties. Defendant submits that the
12 terms of the Option Agreement and its amendments and the Commission Letter speak
13 for themselves. Defendant denies each and every allegation set forth in this paragraph
14 that is inconsistent with the terms of either the Option Agreement and its amendments
15 or the Commission Letter, and the remaining allegations contained in paragraph 5.

16 6. Answering paragraph 6, the language of the document speaks for itself.
17 Defendant denies all allegations inconsistent with the terms of the document.

18 7. Answering paragraph 7, the language of the document speaks for itself.
19 Defendant denies all allegations inconsistent with the terms of the document.

20 8. Answering paragraph 8, the language of the document speaks for itself.
21 Defendant denies all allegations inconsistent with the terms of the document.

22 9. Answering paragraph 9, the language of the document speaks for itself.
23 Defendant denies all allegations inconsistent with the terms of the document.

24 10. Answering paragraph 10, the language of the document speaks for itself.
25 Defendant denies all allegations inconsistent with the terms of the document.

26 11. Answering paragraph 11, the language of the document speaks for itself.
27 Defendant denies all allegations inconsistent with the terms of the document.

12. Answering paragraph 12, Defendant denies the allegations set forth therein.

13. Answering paragraph 13, the language of the document speaks for itself. Defendant denies all allegations inconsistent with the terms of the document and all other allegations.

14. Answering paragraph 14, the language of the document speaks for itself. Defendant denies all allegations inconsistent with the terms of the document.

15. Answering paragraph 15, Defendant denies the allegations.

FIRST CLAIM FOR RELIEF

(Accounting)

16. Defendant hereby repeats and incorporates its responses to the foregoing paragraphs as if fully set forth herein.

17. Defendant denies the allegations contained in paragraph 17.

18. Defendant denies the allegations contained in paragraph 18.

19. Defendant denies the allegations contained in paragraph 19.

20. Defendant denies the allegations contained in paragraph 20.

21. Defendant denies the allegations contained in paragraph 21.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

22. Defendant hereby repeats and incorporates its responses to the foregoing paragraphs as if fully set forth herein.

23. Defendant denies the allegations contained in paragraph 23.

24. Defendant denies the allegations contained in paragraph 24.

25. Defendant denies the allegations contained in paragraph 25.

26. Defendant denies the allegations contained in paragraph 26.

27. Defendant denies the allegations contained in paragraph 27.

THIRD CLAIM FOR RELIEF

(Breach of Good Faith and Fair Dealing)

28. Defendant hereby repeats and incorporates its responses to the foregoing paragraphs as if fully set forth herein.

29. The allegations contained in paragraph 29 of the Complaint state a legal conclusion to which no response is required.

30. Defendant denies the allegations contained in paragraph 30.

31. Defendant denies the allegations contained in paragraph 31.

32. Defendant denies the allegations contained in paragraph 32.

33. Defendant denies the allegations contained in paragraph 33.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Second Amended Complaint fails to state a claim against Defendant upon which relief can be granted.

Second Affirmative Defense

Any damage suffered by Plaintiffs was the result of the acts or omissions of the Plaintiffs, or other third-parties over which Defendant had no control, and is not the result of acts or omissions of Defendant.

Third Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, under the doctrines of waiver, laches and/or estoppel.

Fourth Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, under the parol evidence rule and/or the statute of frauds.

Fifth Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, by reason of Plaintiffs' unclean hands and inequitable conduct.

Sixth Affirmative Defense

Plaintiffs failed to and should have taken action to minimize or eliminate any loss, injury, or damage, and therefore Plaintiffs are precluded from recovering damage, or Plaintiffs' damage should be reduced, by operation of the doctrines of avoidable consequences or mitigation of damages.

Seventh Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, because Plaintiffs' alleged damages are speculative and uncertain.

Eighth Affirmative Defense

The Second Amended Complaint may be barred by other affirmative defenses enumerated in NCRP 8(c). Defendant therefore reserves its right to amend this list of Affirmative Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

WHEREFORE, Defendant hereby requests that judgment be entered in its favor and against Plaintiffs as follows:

1. Dismissing the Second Amended Complaint and all claims set forth therein, and ordering that Plaintiffs take nothing thereby;
2. For an award of reasonable attorneys' fees and costs of suit incurred in the defense of this action; and
3. For such other and further relief as this Court may deem just and equitable under the circumstances.

COUNTERCLAIM

Pardee Homes of Nevada, for its Counterclaim against Counter-Defendants James Wolfram and Walt Wilkes complains and alleges as follows:

1. Pardee Homes of Nevada ("Pardee") is now and was at all times relevant hereto a Nevada corporation and is authorized to do business in the State of Nevada.

1 2. James Wolfram and Walt Wilkes have asserted claims against Pardee.

2 3. Plaintiffs were aware of a real estate development project know as
3 Coyote Springs in Counties of Clark and Lincoln, Nevada (the "Coyote Springs
4 Project") and had become acquainted with Harvey Whittemore, the principal member
5 of Coyote Springs Investment LLC ("CSI"), the developer of the Project.

6 4. Plaintiffs had also become acquainted with Jon Lash, Vice President
7 and COO of Pardee.

8 5. Plaintiffs asked if Mr. Lash would be interested in meeting with Mr.
9 Whittemore if they could facilitate such a meeting. Mr. Lash agreed.

10 6. A meeting was then scheduled and held at Pardee's Las Vegas office.
11 Present at this initial meeting were Plaintiffs, Mr. Whittemore, Mr. Lash, and Klif
12 Andrews, another executive of Pardee. Pardee learned that CSI intended to contact
13 Pardee before Plaintiffs suggested doing so.

14 7. Mr. Whittemore expressed his desire to sell certain portions of real
15 estate concerning the Coyote Springs project. Pardee made it clear that they only
16 wanted to purchase the single-family detached production residential lots on the
17 project

18 8. The initial meeting led to several months of negotiations between
19 Pardee and CSI. Plaintiffs were not involved in any of those negotiations.

20 9. After much negotiation, Pardee and CSI entered into a written
21 agreement entitled Option Agreement for the Purchase of Real Property and Joint
22 Escrow Instructions ("Option Agreement"), which set forth, in relevant part, the terms
23 of the deal whereby Pardee would purchase certain portions of real estate – the
24 single family detached production residential lots --from CSI in a series of
25 "takedowns" over an established period of time. The Option Agreement was later
26 amended.

27 10. Pardee and Plaintiffs (through their predecessors in interest, Award
28

1 Realty Group ("Award") and General Realty Group, Inc. ("General")) also negotiated
2 and entered into a Commission Agreement dated September 1, 2004, which the
3 Plaintiffs countersigned ("Commission Agreement" or "Commission Letter"). Pardee
4 relied upon Plaintiffs living up to their obligations under the Commission Agreement.
5 The Commission Agreement governs the payment of commissions from Pardee to
6 Plaintiffs related to Pardee's purchase of the single family detached production
7 residential lots from CSI for purposes of the project. Plaintiffs accuse Pardee of
8 breaching the Commission Agreement. Pardee denies that accusation.

9 11. Pardee paid Plaintiffs commissions on the \$84,000,000 Purchase
10 Property Price and kept Plaintiffs informed of all commissions paid.

11 12. Over the course of the multiple takedowns, Plaintiffs were paid a total of
12 \$2,632,000 in commissions pursuant to the terms of the Commission Agreement.

13 13. No commission was payable under clause (iii) of the Commission
14 Agreement unless the property purchased fell within the applicable definition of
15 "Option Property."

16 14. Pardee has never exercised any options to purchase any Option
17 Property from CSI.

18 15. The Commission Agreement states, in part:

19 Pardee shall provide to each of you a copy of each written option exercise
20 notice given pursuant to paragraph 2 of the Option Agreement, together
21 with information as to the number of acres involved and the scheduled
22 closing date. In addition, Pardee shall keep each of you reasonably
23 informed as to all matters relating to the amount and due dates of your
24 commission payments.

25 16. Pardee has not given any option exercise notice pursuant to paragraph
26 2 of the Option Agreement.

27 17. Plaintiffs received all of their commission payments through escrow from
28 either Stewart Title or Chicago Title. With these commission payments Plaintiffs also
received closing statements from the title companies keeping Plaintiffs informed of the
amounts and due dates of their commission payments.

1 18. Pardee fulfilled all of its obligations under the Commission Agreement.

2 19. Despite Pardee fulfilling all of its obligations under the Commission
3 Agreement, Plaintiffs harassed Pardee for further information and documents to
4 which they are not entitled, and are subject to confidentiality obligations.

5 **FIRST CAUSE OF ACTION**

6 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

7 20. Pardee repeats, realleges and incorporates by reference paragraphs 1
8 through 21 of the Counterclaim as though fully set forth herein.

9 21. Plaintiffs owed, and continue to owe, Pardee a duty of good faith and fair
10 dealing to further the purposes of the Commission Agreement and to honor the terms
11 and conditions thereof to the best of their ability.

12 22. Plaintiffs failed to act in good faith and to the best of its ability, and also
13 failed to deal fairly with Pardee, thereby breaching their duties to so conduct
14 themselves and injuring Pardee's rights to conduct its business.

15 23. As a direct, natural and proximate result of Plaintiffs' breach of the implied
16 covenant of good faith and fair dealing, Pardee has been forced to retain an attorney to
17 prosecute this counterclaim against Plaintiffs. Pardee has therefore been damaged in
18 the amount of fees and costs expended to retain the services on their attorney and are
19 entitled to an award of reasonable attorney's fees as damages. Pardee has objected to
20 Plaintiffs' claim for special attorneys' fees as an element of their alleged damages in
21 this case, separate from the attorney fee provision found within the Commission
22 Agreement. Pardee continues with that objection.. However, Pardee asserts this claim
23 only if the Court deems such a claim permissible in this case under Nevada law.

24 24. As a direct, natural and proximate result of Plaintiffs' breach of the implied
25 covenant of good faith and fair dealing, Pardee has been forced to spend a significant
26 amount of time and effort responding to Plaintiffs' improper attempts to gather
27 information and documents to which Plaintiffs are not entitled. Pardee has therefore
28

1 been damaged in the amount of their fair hourly rate in attempting to provide the
2 information and documents wrongfully requests by Plaintiffs. Pardee has objected to
3 Plaintiffs' claim for compensation for their time and effort as an element of their alleged
4 damages in this case. Pardee continues with that objection. Therefore, Pardee asserts
5 this claim only if the Court deems such a claim permissible in this case under Nevada
6 law.

7 **WHEREFORE**, Counter-claimant Pardee Homes of Nevada, prays for judgment
8 against the Counter-Defendants James Wolfram and Walt Wilkes, jointly and severally,
9 as follows:

- 10 1. For general damages in a sum in excess of \$10,000.00;
- 11 2. For special damages in a sum in excess of \$10,000.00;
- 12 3. For attorneys' fees, costs of suit, and all other expenses reasonably
13 incurred; and
- 14 4. For such other and further relief as the Court may deem just and proper.

15
16
17 DATED this 3rd day of July, 2013.
18
19
20

21 McDONALD CARANO WILSON LLP

22
23 /s/Pat Lundvall
PAT LUNDVALL (#3761)
AARON D. SHIPLEY (#8258)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant and Counter-Claimant
Pardee Homes of Nevada
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of July, 2013, I mailed a copy of the foregoing **ANSWER TO SECOND AMENDED COMPLAINT AND COUNTERCLAIM** to the following:

James J. Jimmerson
James M. Jimmerson
Jimmerson Hansen, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

/s/SallyWexler
An Employee of McDonald Carano Wilson LLP

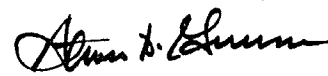
EXHIBIT C

THE JIMMERSON LAW FIRM
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

NOEJ

JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 264
MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 012963
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
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jjj@jimersonlawfirm.com
mcf@jimersonlawfirm.com
Attorneys for Plaintiffs

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CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JAMES WOLFRAM and ANGELA L.
LIMBOCKER-WILKES as trustee of the
WALTER D. WILKES AND ANGELA L.
LIMBOCKER-WILKES LIVING TRUST,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO. A-10-632338-C
DEPT. NO. IV

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that a Judgment was entered in the above-captioned matter
on May 16, 2016. A true and correct file-stamped copy of said Judgment is attached hereto.

DATED this 17th day of May, 2016.

THE JIMMERSON LAW FIRM, P.C.

 #7699
JAMES J. JIMMERSON, ESQ.

Nevada Bar No.: 000264
MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 012963
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

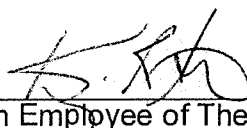
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE JIMMERSON LAW FIRM, P.C., and that on this 17th day of May, 2016, I caused a document entitled Notice of Entry of Judgment to be served as follows:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;
- ☒ by hand-delivery with signed Receipt of Copy.

To the parties listed below at the address, email address, and/or facsimile number indicated below:

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant


An Employee of The Jimmerson Law Firm, P.C.

1 ORDR
2
3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 JAMES WOLFRAM AND WALTER D. WILKES
7 and ANGELA L. LIMBOCKER-WILKES
8 LIVING TRUST, ANGELA L. LIMBOCKER-
9 WILKES, TRUSTEE,

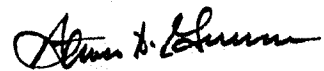
10 Plaintiffs,

11 vs.

12 PARDEE HOMES OF NEVADA,

13 Defendant.

CASE NO.: A-10-632338-C
DEPT. NO.: IV Electronically Filed
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CLERK OF THE COURT

14 JUDGMENT

15 On October 23, 2013, the above-referenced matter came on for bench trial before the
16 Honorable Judge Kerry Earley. The Court, having reviewed the record, testimony of witnesses, the
17 documentary evidence, stipulations of counsel, the papers submitted by the respective parties, and
18 considered the arguments of counsel at trial in this matter, entered Findings of Fact and Conclusions
19 of Law on June 25, 2014.

20
21 In the Findings of Fact and Conclusions of Law, the Court ordered the parties to provide
22 supplemental briefing within 60 days detailing what information Defendant Pardee homes of Nevada
23 ("Pardee") and its successors and/or assigns should provide Plaintiffs James Wolfram and Walt
24 Wilkes ("Plaintiffs") and their successors and/or assigns consistent with the Court's decision on the
25 accounting cause of action.

26
27 After reviewing the parties' supplemental briefing, the Court then entered an order on May
28 13, 2015 reflecting its decision on the supplemental briefing (the "Accounting Order"). Having

1 considered the entire record presented at trial, including testimony of witnesses, the documentary
2 evidence, stipulations of counsel, the papers submitted by the respective parties, and the arguments
3 of counsel at trial in this matter, and in accordance with the findings of fact and conclusions of law
4 incorporated by reference in the May 13, 2015 Order and June 25, 2014 Order, this Court enters
5 judgment as follows:

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS
7 ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for breach of
8 contract and breach of the implied covenant of good faith and fair dealing. Plaintiffs are entitled to
9 damages from Pardee in an amount totaling \$141,500.00, of which \$6000.00 are consequential
10 damages from Pardee's breach of the Commission Agreement and the remaining \$135,500.00 are
11 special damages in the form of attorney's fees and costs.
12

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS
14 ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' cause of action for accounting.
15 Pardee shall provide Plaintiffs with future accountings related to the Commission Agreement
16 consistent with the Accounting Order entered by the Court on May 13, 2015.
17

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS
19 ENTERED in favor of Plaintiffs and against Pardee on Pardee's cause of action for the breach of
20 implied covenant of good faith and fair dealing.
21

22 The Court reserves jurisdiction over this Judgment regarding the issues of attorney's fees,
23 costs, and legal interest, therefore, this Judgment may be amended upon entry of any further awards
24 of interest, costs, and/or attorney's fees.

25 DATED: May 11, 2016.

26
27
28 
KERRY L. EARLEY, DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, I electronically served, sent by facsimile, emailed, or placed a copy of this order in the attorney's folder on the first floor of the Regional Justice Center as follows:

James J. Jimmerson, Esq. - The Jimmerson Law Firm
Michael C. Flaxman, Esq. - The Jimmerson Law Firm
Pat Lundvall, Esq. - McDonald Carano Wilson
Rory T. Kay, Esq. - McDonald Carano Wilson



Kelly Tibbs
Judicial Executive Assistant

EXHIBIT D

NEOJ

JAMES J. JIMMERSON, ESQ.

Nevada State Bar No.: 00264

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LYNN M. HANSEN, ESQ.

Nevada State Bar No.: 00244

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415 South 6th Street, Suite 100

Las Vegas, Nevada 89101

Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM and
WALT WILKES,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO.: A-10-632338-C
DEPT. NO.: IV

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law and Order was entered in the above-captioned matter on June 25, 2014. A true and correct file -stamped copy of said Order is attached hereto.

Dated this 27 day of June, 2014.

JIMMERSON HANSEN, P.C.

JAMES J. JIMMERSON, ESQ.

Nevada State Bar No.: 00264#

LYNN M. HANSEN, ESQ.

Nevada State Bar No.: 00244

415 South 6th Street, Suite 100

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** was made on the 27 day of June, 2014, as indicated below:

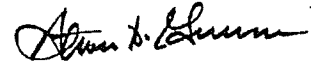
X By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

By facsimile, pursuant to EDCR 7.26 (as amended)

X By receipt of copy as indicated below

Pat Lundvall, Esq.
Aaron D. Shipley, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, NV 89102
Attorneys for Defendant


An employee of JIMMERSON HANSEN, P.C.


CLERK OF THE COURT

1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 JAMES WOLFRAM and
5 WALT WILKES,

6 Plaintiffs,

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

Trial Date: October 23, 2013

10 AND RELATED CLAIMS

11 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

12 On October 23, 2013, this matter came on for bench trial before the Honorable Kerry L.
13 Earley. The Court, having reviewed the record, the testimony of witnesses, the documentary
14 evidence, stipulations of counsel, the papers submitted by the respective parties, and considered the
15 arguments of counsel at trial in this matter, with good cause appearing therefor, the Court now enters
16 the following Findings of Fact and Conclusions of Law. Plaintiffs James Wolfram ("Wolfram") and
17 Walt Wilkes ("Wilkes") (collectively "Plaintiffs") filed this action against defendant Pardee Homes
18 of Nevada ("Pardee") alleging claims for breach of contract, breach of the covenant of good faith
19 and fair dealing, and accounting related to a Commission Agreement entered into on September 1,
20 2004, between Plaintiffs and Pardee (See Second Amended Complaint). As a conditional
21 counterclaim, Pardee alleges against Plaintiffs breach of the covenant of good faith and fair dealing
22 arising from the Commission Agreement.

23 **I. FINDINGS OF FACT**

24 **A. THE PARTIES**

25 1. Plaintiffs James Wolfram and Walt Wilkes have been licensed real estate
26
27
28

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

1 brokers working in Southern Nevada and the surrounding area for over 35 years.

2 2. Plaintiff Wolfram previously worked for Award Realty Group. Plaintiff
3 Wilkes previously worked for General Realty Group. In a previous order, the Court ruled that
4 Wolfram and Wilkes were assigned all claims from Award Realty Group and General Realty Group,
5 and, therefore, had standing to assert the claims at issue.

6 3. Defendant Pardee Homes of Nevada ("Pardee") is a Nevada corporation
7 operating as a residential homebuilder constructing homes and other structures in Southern Nevada
8 and elsewhere.

9 4. In the 1990's, Harvey Whittemore, through his then-owned company, Coyote
10 Springs Investment LLC ("CSI") began developing a project to be known as ("Coyote Springs").
11 The project included over 43,000 acres of unimproved real property located north of Las Vegas in
12 the Counties of Clark and Lincoln.

13 5. In 2002, Plaintiffs had begun tracking the status and progress of Coyote
14 Springs located in the Counties of Clark and Lincoln, Nevada.

15 6. By 2002, Plaintiffs had become acquainted with Jon Lash, who was then
16 responsible for land acquisition for Pardee's parent company, Pardee Homes. Plaintiffs had
17 previously worked with Mr. Lash in the pursuit of different real estate transactions, but none were
18 ever consummated prior to the Coyote Springs transaction.

19 7. After learning that Mr. Whittemore had obtained water rights for Coyote
20 Springs, Plaintiffs contacted Mr. Lash and asked if he would be interested in meeting with Mr.
21 Whittemore of CSI, for the purposes of entering into an agreement for the purchase of real property
22 in Coyote Springs. When Mr. Lash agreed, Plaintiffs contacted Mr. Whittemore advising they had a
23 client interested in Coyote Springs and wanted to schedule a meeting.

24 8. Mr. Lash agreed to allow Plaintiffs to represent Pardee as a potential
25 purchaser, and a meeting was scheduled to take place at Pardee's office in Las Vegas. Present at the
26 meeting were Plaintiffs, Mr. Whittemore from CSI, and Mr. Lash and Mr. Klif Andrews from
27 Pardee. While this meeting was introductory in nature, it ultimately resulted in plans to structure a
28

1 deal between Pardee and CSI to develop Coyote Springs after approximately 200 meetings between
2 Pardee and CSI. During the extensive negotiating process, Mr. Whittemore, on behalf of CSI,
3 expressed CSI's decision to only sell certain portions of real estate at Coyote Springs. Pardee made
4 it clear that it only wanted to purchase the land designated as single-family detached production
5 residential ("Production Residential Property") at Coyote Springs. At that time it was understood by
6 Pardee and CSI, that CSI was to maintain ownership and control of all other land at Coyote Springs
7 including land designated as commercial land, multi-family land, the custom lots, the golf courses,
8 the industrial lands, as well as all other development deals at Coyote Springs.

9 9. Plaintiffs only participated in the initial meeting, as Pardee and CSI informed
10 Plaintiffs their participation was not required for any of the negotiations by Pardee to purchase
11 Production Residential Property. As such, Plaintiffs were the procuring cause of Pardee's right to
12 buy Production Residential Property in Coyote Springs from CSI.

13 **B. OPTION AGREEMENT BETWEEN CSI and PARDEE AND COMMISSION**
14 **AGREEMENT**
15

16 10. In or about May 2004, Pardee and CSI entered into a written agreement
17 entitled Option Agreement for the Purchase of Real Property and Joint Escrow Instructions ("Option
18 Agreement"), which set forth the terms of the deal, among many others, concerning Pardee's
19 acquisition of the Production Residential Property from CSI at Coyote Springs.

20 11. Prior to the Commission Agreement at issue in this case being agreed upon
21 between Pardee and Plaintiffs, the Option Agreement was amended twice. First, on July 28, 2004,
22 Pardee and CSI executed the Amendment to Option Agreement for the Purchase of Real Property
23 and Joint Escrow Instructions. Subsequently, on August 31, 2004, Pardee and CSI executed the
24 Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow
25 Instructions. (The Option Agreement, along with the subsequent amendments, will be collectively
26 referred to as the "Option Agreement"). Plaintiffs acknowledged receiving the Option Agreement
27 and the two amendments.
28

1 12. At the time of Pardee's and CSI's original negotiations, the land was the
2 rawest of all in terms of land development. No zoning, parceling, mapping, entitlements, permitting,
3 etc., had been accomplished. All of that work had yet to be done. At that time multiple issues were
4 outstanding that would impact the boundaries of any land to be acquired by Pardee from CSI for
5 Production Residential Property. Those issues included, among others, the BLM reconfiguration,
6 Moapa Dace and other wildlife protections, moving a utility corridor from Coyote Springs to federal
7 lands, and the design by Jack Nicklaus of the golf courses. At multiple places in the Option
8 Agreement it was acknowledged by CSI and Pardee that boundaries of various lands would change.

9 13. At the same time Pardee was negotiating with CSI, Pardee was also
10 negotiating with Plaintiffs concerning their finders' fee/commissions. Pardee and Plaintiffs
11 extensively negotiated the Commission Agreement dated September 1, 2004. Plaintiffs were
12 represented by James J. Jimmerson, Esq. throughout those negotiations. Plaintiffs offered edits, and
13 input was accepted into the Commission Agreement under negotiation, with certain of their input
14 accepted by Pardee. The Plaintiffs' and Pardee's obligations to each other were agreed to be set
15 forth within the four corners of the Commission Agreement. Plaintiffs and Pardee acknowledge that
16 the Commission Agreement was an arms-length transaction.

17 14. The Commission Agreement between Plaintiffs and Pardee provided that, in
18 exchange for the procuring services rendered by Plaintiffs, Pardee agreed to (1) pay to Plaintiffs
19 certain commissions for land purchased from CSI, and (2) send Plaintiffs information concerning the
20 real estate purchases made under the Option Agreement and the corresponding commission
21 payments.

22 15. Since Mr. Wolfram and Mr. Wilkes had already performed services for
23 Pardee, the Commission Agreement placed no affirmative obligation on them.

24 16. The Commission Agreement, dated September 1, 2004, was executed by
25 Pardee on September 2, 2004, by Mr. Wolfram on September 6, 2006, and Mr. Wilkes on September
26 4, 2004.

1 17. The Commission Agreement provides for the payment of "broker
2 commission[s]" to Plaintiffs in the event that Pardee approved the transaction during the
3 Contingency Period, equal to the following amounts:

4 (i) Pardee shall pay four percent (4%) of the Purchase Property Price
5 payments made by Pardee pursuant to Paragraph 1 of the Option
6 Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);

7 (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the
8 remaining Purchase Property Price payments made by Pardee pursuant
9 to paragraph 1 of the Option Agreement in the aggregate amount of
Sixteen Million Dollars (\$16,000,000); and

10 (iii) Then, with respect to any portion of the Option Property
11 purchased by Pardee pursuant to paragraph 2 of the Option
12 Agreement, Pardee shall pay one and one-half percent (1-1/2%) of the
amount derived by multiplying the number of acres purchased by
Pardee by Forty Thousand Dollars (\$40,000).

13 18. The Commission Agreement states that all of the capitalized terms used in the
14 Commission Agreement shall have the exact meanings set forth in the Option Agreement. Copies of
15 the Option Agreement, the amendments including changes to the Purchase Property Price, and the
16 subsequent Amended and Restated Option Agreement were given to Plaintiffs by Stewart Title
17 Company, the escrow company chosen by Pardee and CSI to handle all of its land transactions.
18 Plaintiffs also acknowledge receiving these documents. However, Amendments 1 through 8 to the
19 Amended and Restated Option Agreement between CSI and Pardee were not provided to Plaintiffs
20 until after this litigation was commenced by Plaintiffs.

21 19. The term "Purchase Property Price" was defined in Amendment No. 2 to the
22 Option Agreement as Eighty-Four Million Dollars (\$84,000,000), which was payable in installments
23 over a period of time. The due dates for commissions' payable under paragraphs i and ii were
24 described in the Commission Agreement as follows:

25 Pardee shall make the first commission payment to you upon the Initial
26 Purchase Closing (which is scheduled to occur thirty (30) days following the
27 Settlement Date) with respect to the aggregate Deposits made prior to that
28 time. Pardee shall make each additional commission payment pursuant to

1 clauses (i) and (ii) above concurrently with the applicable Purchase Property
2 Price payment to Coyote.

3 20. By virtue of Amendment No. 2 increasing the Purchase Property Price from
4 \$66 million to \$84 million, Plaintiffs became entitled to commissions on the increased Purchased
5 Property Price, which they subsequently received.

6 21. Commission payments required under paragraphs i and ii were not dependent
7 upon acreage or location of the lands being acquired, or upon the closing of any land transaction. In
8 sum, when Pardee paid CSI a portion of the Purchase Property Price, under the agreed schedule,
9 then Plaintiffs were also paid their commission. Pardee and CSI anticipated that the Purchase
10 Property would be, and was, cooperatively mapped and entitled before the specific location of any
11 lands designated for single family detached production residential would be transferred by CSI to
12 Pardee.

13 22. The due date for any commissions payable under paragraph iii was described
14 in the Commission Agreement as follows: "Thereafter, Pardee shall make such commission
15 payment pursuant to clause (iii) above concurrently with the close of escrow on Pardee's purchase of
16 the applicable portion of the Option Property; provided, however, that in the event the required
17 Parcel Map creating the applicable Option Parcel has not been recorded as of the scheduled Option
18 Closing, as described in paragraph 9(c) of the Option Agreement, the commission shall be paid into
19 escrow concurrently with Pardee's deposit of the Option Property Price into escrow and the
20 commission shall be paid directly from the proceeds of said Escrow."

21 23. The general term "Option Property" is defined in the Option Agreement as
22 follows: "the remaining portion of the Entire Site which is or becomes designated for single-family
23 detached production residential use, as described below . . . in a number of separate phases (referred
24 to herein collectively as the "Option Parcels" and individually as an "Option Parcel"), upon the
25 terms and conditions hereinafter set forth." The general definition of "Option Property" was never
26 changed by CSI and Pardee in any documents amending either the initial Option Agreement or the
27 subsequent Amended and Restated Option Agreement. The definitions of other capitalized terms
28 found within the Commission Agreement were never changed by CSI and Pardee.

1 24. The Commission Agreement requires Pardee to provide Plaintiffs with
2 notifications and information concerning future transactions between Pardee and CSI under the
3 Option Agreement. Specifically, the Commission Agreement states:

4 Pardee shall provide to each of you a copy of each written option
5 exercise notice given pursuant to paragraph 2 of the Option
6 Agreement, together with information as to the number of acres
7 involved and the scheduled closing date. In addition, Pardee shall
8 keep each of you reasonably informed as to all matters relating to the
9 amount and due dates of your commission payments. (Emphasis
10 Added)

11 25. After executing the Commission Agreement, Plaintiffs never entered into
12 another agreement with Pardee concerning the development of Coyote Springs.

13 26. Pardee's purchase of the "Purchase Property Price" property and any Option
14 Property designated in the future as single family detached production residential lands was a
15 separate and distinct transaction from any other purchases by Pardee from CSI for unrelated property
16 at Coyote Springs.

17 27. The relationship between Pardee and Plaintiffs was such that Plaintiffs
18 reasonably imparted special confidence in Pardee to faithfully inform them of the developments at
19 Coyote Springs which would impact their future commission payments. Pardee and CSI agreed to
20 designate documents relevant to the development of Coyote Springs as confidential. Among said
21 documents were documents relating to the designation of the type of property Pardee was purchasing
22 from CSI during the development of Coyote Springs that were part of a distinct and separate
23 agreement between Pardee and CSI.

24 28. The designation of the type of property Pardee was purchasing from CSI
25 during the development of Coyote Springs was material to Plaintiffs to verify if the commissions
26 they had received were accurate and, if not, what amount they were entitled as further commissions
27 pursuant to the Commission Agreement.

28 29. Pardee should have known that the Plaintiffs needed to have access to
information specifying the designation as to the type of property being purchased by Pardee from
CSI during the development of Coyote Springs to verify the accuracy of their commissions.

1 30. Although certain documents were public record regarding the development of
2 Coyote Springs, the documents referencing internally set land designations for certain land in
3 Coyote Springs were not available to Plaintiffs.

4 **C. PARDEE'S PERFORMANCE UNDER THE COMMISSION AGREEMENT**
5

6 31. Pardee did purchase "Purchase Property Price" property from CSI for
7 \$84,000,000.00. Plaintiffs have been paid in full their commissions on the \$84,000,000.00 Purchase
8 Property Price.

9
10 32. Plaintiffs were informed of the amount and due dates of each commission
11 payment for the Purchase Property Price: first through Stewart Title Company, and then Chicago
12 Title Company, pursuant to the Commission Agreement.

13 33. Under the express terms of the Commission Agreement, pursuant to
14 paragraphs i and ii, these commissions were based solely on the Purchase Property Price for the
15 land, not the number of acres acquired or the location of those acres. Under the Purchase Property
16 formula, they were entitled to a percentage of the Purchase Property Price. There was no benefit or
17 additional commission for additional acreage being purchased if there is no corresponding increase
18 in price.

19 34. Plaintiffs were paid a total of \$2,632,000.00 in commissions pursuant to
20 paragraphs i and ii of the Commission Agreement.

21 35. Pardee did not pay more than 84,000,000.00 as the Purchase Property Price to
22 CSI under the Option Agreement, the Amended and Restated Option Agreement, or any
23 amendments thereto. CSI has never received more than \$84,000,000.00 as payment under the
24 Option Agreement, the Amended and Restated Option Agreement, or any amendments thereto.

25 36. No commission to Plaintiffs is payable under clause (iii) of the Commission
26 Agreement unless the property purchased fell within the definition of Option Property purchased
27 pursuant to paragraph 2 of the Option Agreement.
28

1 Pardee as of the present time has not exercised any options to purchase single
2 family production residential property pursuant to paragraph 2 of the Option Agreement. Therefore,
3 Pardee as of the present time does not owe any commission to Plaintiffs under paragraph iii of the
4 Commission Agreement.

5 37. The other provision of the Commission Agreement alleged by Plaintiffs to
6 have been breached states as follows:

7 Pardee shall provide to each of you a copy of each written option
8 exercise notice given pursuant to paragraph 2 of the Option
9 Agreement, together with information as to the number of acres
10 involved and the scheduled closing date. In addition, Pardee shall
keep each of you reasonably informed as to all matters relating to the
amount and due dates of your commission payments.

11 38. Pardee did provide information relating to the amount and due dates on
12 Plaintiffs' commission payments under paragraphs i and ii. Specifically, Plaintiffs were paid their
13 first commission at the Initial Purchase Closing and then each commission thereafter concurrently
14 with each Purchase Property Price payment made by Pardee to CSI pursuant to Amendment No. 2 to
15 the Option Agreement as was required by the Commission Agreement. Each commission payment
16 was made pursuant to an Order to Pay Commission to Broker prepared by Stewart Title (later
17 Chicago Title) which contained information including the date, escrow number, name of title
18 company, percentage of commission to be paid, to whom and the split between Plaintiffs. Each
19 Order to Pay Commission to Broker was signed by Pardee and sent to either Plaintiffs brokerage
20 firms or Plaintiffs directly. Each commission check received by Plaintiffs contained the amount,
21 escrow number, payee and payer, along with a memo explaining how the amount was determined.
22 When Plaintiffs were overpaid commissions, a letter was sent by Pardee explaining the overpayment
23 and how the amount and due dates to compensate for the overpayment would be handled. An
24 Amended Order to Pay Commission to Broker reflecting these changes was sent to and signed by
25 each Plaintiff. A letter was sent by Pardee to Plaintiffs informing them when Pardee made its last
26 payment of the Purchase Property Price to CSI.

27 39. However, from the documents in Plaintiffs' possession provided by Pardee,
28

1 Plaintiffs were unable to verify the accuracy of any commission payments that may have been due
2 and owing pursuant to paragraph iii of the Commission Agreement. The documents in Plaintiffs'
3 possession included the Option Agreement and Amendments No. 1 and No. 2 to the Option
4 Agreement, the Amended and Restated Option Agreement, various Orders to Pay Commissions, and
5 their commission payments. Amendments Nos. 1 through 8 to the Amended Restated Option
6 Agreement were not provided to Plaintiffs until after commencement of this litigation.

7 40. When Plaintiffs began requesting information regarding Pardee's land
8 acquisitions from CSI, the only information provided by Pardee was the location of the Purchase
9 Property purchased for the Purchase Property Price from CSI. All information provided was limited
10 to the single family production property acquisitions. Pardee informed the Plaintiffs that it had
11 purchased from CSI additional property at the Coyote Springs development, but took the position
12 that any documentation regarding the designations of the use of the additionally purchased property
13 was confidential and would not be provided to Plaintiffs. Interestingly, Pardee had already provided
14 to Plaintiffs the initial Option Agreement, Amendments No. 1 and 2 and the Amended Restated
15 Option Agreement, which were also confidential documents between Pardee and CSI.

16 41. Although Pardee co-developed with CSI a separate land transaction
17 agreement for the acquisition of lands designated for other uses than single family detached
18 production residential lots, Pardee had a separate duty to Plaintiffs pursuant to the Commission
19 Agreement to provide information so Plaintiffs could verify the accuracy of their commission
20 payments.

21 42. Without access to the information regarding the type of land designation that
22 was purchased by Pardee as part of the separate land transaction with CSI, Plaintiffs were not
23 reasonably informed as to all matters relating to the amount of their commission payments as they
24 could not verify the accuracy of their commission payments.

25 43. Although the complete documentation when provided in this litigation
26 verified that Plaintiffs were not due any further commissions at this time for the additional purchases
27 of land by Pardee, Pardee still had a duty to provide sufficient information regarding the designation
28

1 of the type of land that had been purchased to Plaintiffs. Plaintiff Wolfram attempted through public
2 records to ascertain information regarding the additional lands, but he was unable to verify the
3 required information of the land use designations.

4 44. Plaintiffs have also contended that they are entitled to a commission if Pardee
5 re-designates any of its land purchased from CSI to single family production residential property.
6 Plaintiffs are not entitled to commissions on any re-designation of lands by Pardee pursuant to the
7 Commission Agreement.

8
9 **II. CONCLUSIONS OF LAW**

10 **A. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF CONTRACT**

11
12 1. To sustain a claim for breach of contract, Plaintiffs must establish (1) the
13 existence of a valid contract between Plaintiffs and Defendant; (2) a breach by Defendant, and (3)
14 damages as a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 405 (1865); *Calloway v. City of*
15 *Reno*, 116 Nev. 250, 256, 993 P.3d 1259, 1263 (2000) (*overruled on other grounds by Olson v.*
16 *Richard*, 120 Nev. 240, 241–44, 89 P.3d 31, 31–33 (2004)).

17 2. Contract interpretation strives to discern and give effect to the parties'
18 intended meaning...before an interpreting court can conclusively declare a contract ambiguous or
19 unambiguous, it must consult the context in which the parties exchanged promises. *Galardi v.*
20 *Naples Polaris*, 129 Nev. Adv. Op. 33, 301 P.3d 364, 367 (2013).

21 3. Contractual provisions should be harmonized whenever possible, and
22 construed to reach a reasonable solution. *Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112
23 Nev. 1255, 1260, 925 P.2d 505, 509 (1996).

24 4. The Commission Letter Agreement constitutes a valid and enforceable
25 contract between Plaintiffs and Defendant.

1 5. Pardee agreed to pay commissions and provide information to keep Plaintiffs
2 reasonably informed as to all matters relating to the amount and due date of their commissions
3 pursuant to the express terms of the Commission Agreement.

4 6. The language of the Commission Agreement required the payment of
5 commissions under paragraphs i and ii according to percentages of the Purchase Property Price.
6 Undisputedly, those commissions were paid.

7 7. The Commission Agreement also required Pardee to pay commissions on the
8 purchase of Option Property if Pardee exercised its option to purchase Option Property pursuant to
9 paragraph 2 of the Option Agreement.

10 8. Pardee has never exercised any such option.

11 9. Pardee paid Plaintiffs in full and timely commissions on the \$84,000,000.00
12 Purchase Property Price.

13 10. The Purchase Property Price was \$84,000,000.00.

14 11. CSI has not received more than \$84,000,000.00 for the single family detached
15 production residential land acquisition by Pardee from CSI at the Coyote Springs project.

16 12. From the very beginning, CSI and Pardee acknowledged that the specific
17 boundaries of the Purchase Property and Option Property may change, for a variety of reasons.
18 There are many references to the changing boundaries of property at Coyote Springs in Pardee's and
19 CSI's Option Agreement. There are many factors that necessitated those changes, including the
20 BLM configuration, moving the utility corridor, mapping, the subdivision process, the entitlement
21 and permitting processes, the Moapa Dace issue and other wildlife issues, and the design by Jack
22 Nicklaus of the golf courses. There were a number of factors that were out of CSI's and Pardee's
23 control that were expected to change and did change the boundaries and configuration of the
24 Purchase Property. As a result of those boundaries changing, so too did the potential boundaries for
25 Option Property change.

26 13. The Plaintiffs' commissions pursuant to paragraphs i and ii were solely based
27 on the Purchase Property Price, not the acreage acquired by Pardee or its location or its closing.
28

1 Therefore, the change in boundaries had absolutely no impact on the amount or due date of
2 Plaintiffs' commissions.

3 14. Plaintiffs were also entitled to be paid commissions if Pardee exercised
4 option(s) to purchase Option Property pursuant to paragraph 2 of the Option Agreement. To exercise
5 such an option is a multi-step process involving a myriad of written documents. If such an option
6 had been exercised by Pardee those documents would be found in the public record. Since Pardee as
7 of the present time has not exercised any options pursuant to paragraph 2 of the Option Agreement,
8 no commissions are due at the present time to Plaintiffs.

9 15. In addition, the Commission Agreement required Pardee to keep Plaintiffs
10 reasonably informed as to all matters relating to the amount and due dates of Plaintiffs' commission
11 payments.

12 16. Plaintiffs did not receive amendments 1 through 8 to the Amended and
13 Restated Option Agreement. Although those amendments did not change Plaintiffs' commissions
14 due under the Commission Agreement, the information contained in the amendments contained the
15 designation information about the separate land transactions involving multi-family, custom lots,
16 and commercial. This information was needed by Plaintiffs as it was necessary to determine the
17 impact, if any on their commission payments. However, Pardee could have provided the requisite
18 information in various forms other than the amendments. Pardee failed to provide information in any
19 form required by Plaintiffs to determine the accuracy of their commission payments.

20 17. Pardee did not keep Plaintiffs reasonably informed as to all matters relating to
21 the amount of their commission payments that would be due and owing pursuant to the Commission
22 Agreement. Therefore, Pardee breached the Commission Agreement.

23 18. Plaintiffs satisfied any and all of their obligations under the Commission
24 Agreement.

25 19. In order to award consequential damages, the damages claimed for the breach
26 of contract must be foreseeable. See Barnes v. W.U. Tel. Co., 27 Nev. 438, 76 P. 931 (1904). Under
27 the watershed case, Hadley v. Baxendale, 156 Eng. Rep. 145, 151 (1854), foreseeability requires
28

1 that: (1) damages for loss must “fairly and reasonably be considered [as] arising naturally . . . from
2 such breach of contract itself,” and (2) the loss must be “such as may reasonably be supposed to
3 have been in the contemplation of both parties, at the time they made the contract as the probable
4 result of the breach of it.” See Clark County School District v. Rolling Plains Const., Inc., 117 Nev.
5 101, 106, 16 P.3d 1079, 1082 (2001) (disapproved of on other grounds, 117 Nev. 948). Stated
6 another way, the damages claimed for the breach of contract must be foreseeable. Id.

7 20. Plaintiffs suffered foreseeable damages due to Defendant’s breach of not
8 keeping Plaintiffs reasonably informed as to all matters relating to the amount due and owing on the
9 Commission Agreement in the form of their time and efforts attempting to obtain the information
10 owed to them pursuant to the Commission Agreement. The testimony by Plaintiff Wolfram was that
11 he expended 80 hours of time to obtain said information by going through public records and
12 contacting different sources. Using a rate of \$75.00 per hour for Mr. Wolfram’s time as a real estate
13 agent, the damages total \$6,000.00.

14 21. Plaintiffs also suffered damages in the form of the attorney’s fees and costs
15 incurred as they were necessary and reasonably foreseeable to obtain the requisite information
16 regarding the land designations of land acquired by Pardee from CSI in the Coyote Development
17 pursuant to the separate transaction between Pardee and CSI. Plaintiffs specifically requested
18 numerous times from Pardee information to determine the land designations of these additional
19 purchases, but to no avail. In fact, Mr. Lash on behalf of Pardee instructed a third party that said
20 information should not be provided. CSI was not able to provide the requisite information due to the
21 confidentiality agreement with Pardee. Plaintiffs had no alternative but to file suit, use the litigation
22 process to obtain the requisite information, and request an equitable remedy from this Court to
23 obtain said information in the future. The above-referenced facts allow this Court to award
24 reasonable attorney’s fees and costs as special damages. See Liu v. Christopher Homes, LLC, 103,
25 Nev. Adv. Op. 17, 321 P.3d, 875 (2014); Sandy Valley Assoc v. Sky Ranch Owners Assoc., 117 Nev.
26 948, 35 P.3d 964 (2001).

27 Mr. Jimmerson testified regarding the attorney’s fees and costs to pursue the
28

1 Plaintiffs' claim for acquiring the information from Pardee related to the Plaintiffs' commission
2 amounts based on billings contained in exhibits 31A. The damages for reasonable attorneys' fees
3 and costs are \$135,500.00.

4 **B. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF THE COVENANT OF**
5 **GOOD FAITH AND FAIR DEALING**
6

7 1. To sustain a claim for breach of the implied covenant of good faith and fair
8 dealing sounding in contract, Plaintiffs must establish: (1) Plaintiffs and Defendant were parties to
9 the contract; (2) the Defendant owed a duty of good faith to Plaintiffs; (3) the Defendant breached
10 that duty by performing in a manner that was unfaithful to the purpose of the contract; and (4)
11 Plaintiff's justified expectations were thus denied. See Perry v. Jordan, 111 Nev. 943, 947, 900
12 P.2d 335, 338 (1995);

13 2. An implied covenant of good faith and fair dealing is recognized in every
14 contract under Nevada law. Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 114
15 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). Under the implied covenant, each party must act in a
16 manner that is faithful to the purpose of the contract and the justified expectations of the other party.
17 Morris v. Bank of America Nevada, 110 Nev. 1274, 1278 n. 2, 886 P.2d 454, 457 (1994). The
18 implied covenant of good faith and fair dealing forbids arbitrary, unfair acts by one party that
19 disadvantages the other. Frantz v. Johnson, 116 Nev. 455, 465 n. 4., 999 P.2d 351, 358 (2000).

20 3. Plaintiffs, pursuant to the Commission Agreement, were entitled to
21 commissions for Purchase Price Property and Option Property. Plaintiffs had justifiable expectations
22 that Pardee would keep Plaintiffs reasonably informed as to all matters related to the amount and due
23 dates of their commission payments.

24 4. Plaintiffs needed sufficient information regarding purchases of land by Pardee
25 from CSI at Coyote Springs to enable Plaintiffs to verify the accuracy of commission payments. The
26 designation of the land purchased by Pardee from CSI was the basis for Plaintiffs' entitlement to
27 commissions pursuant to Option Property under iii of the Commission Agreement.
28

1 5. Pardee was not faithful to the purpose of the Commission Agreement by
2 failing to provide information regarding other land designations purchased by Pardee at Coyote
3 Springs so Plaintiffs could verify the accuracy of their commission payments. Without this
4 information, Pardee failed to keep Plaintiffs reasonably informed as to all matters relating to their
5 Commission Agreement.

6 6. Pardee did not act in good faith when it breached its contractual duty to keep
7 Plaintiffs reasonably informed as to all matters relating to the amount and due dates of their
8 commission payments. Plaintiffs did not breach any obligation they had to Pardee under the
9 Commission Agreement by requesting information regarding other land acquisitions by Pardee from
10 CSI at Coyote Springs. Plaintiffs acted in good faith at all times toward Pardee and did not deny
11 Pardee its justified expectations under the Commission Agreement.

12 7. Pardee suffered no recoverable damages from Plaintiffs' inquiries.

13 **C. PLAINTIFFS' CLAIM FOR AN ACCOUNTING**

14
15 1. An accounting is an independent cause of action that is distinct from the
16 equitable remedy of accounting. *See e.g. Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705 (1910);
17 *Young v. Johnny Ribiero Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Oracle USA, Inc. v. Rimini*
18 *Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933 (D. Nev. Aug. 13, 2010); *Teselle v.*
19 *McLoughlin*, 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009); *Mobius Connections*
20 *Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-RJJ, 2012 WL 194434 (D. Nev. Jan. 23,
21 2012).

22 2. To prevail on a claim for accounting, a Plaintiff must establish the existence
23 of a special relationship whereby a duty to account may arise. *See Teselle v. McLoughlin*, 173 Cal.
24 App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009). The right to an accounting can arise from
25 Defendant's possession of money or property which, because of the Defendant's relationship with
26 the Plaintiff, the Defendant is obliged to surrender. *Id.*

27 3. This Court has previously held that for Plaintiffs to prevail on an independent
28

1 cause of action for an accounting, Plaintiffs must establish the existence of a special relationship of
2 trust whereby a duty to account may arise. *See Teselle v. McLoughlin*, 173 Cal. App. 4th 156 (2009);
3 *see also*, Order Denying Pardee's Motion for Partial Summary Judgment.

4 4. Courts have found the existence of a special relationship of trust when, in a
5 contractual relationship, payment is collected by one party and the other party is paid by the
6 collecting party. *Wolf v. Superior Court*, 130 Cal. Rptr. 2d 860 (Cal. Ct. App. 2003); *Mobius*
7 *Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-RJJ, 2012 WL 194434 (D.
8 Nev. Jan. 23, 2012).

9 5. In contractual relationships requiring payment by one party to another of
10 profits received, the right to an accounting can be derived from the implied covenant of good faith
11 and fair dealing inherent in every contract, because without an accounting there may be no way by
12 which such a party entitled to a share in profits could determine whether there were any profits.
13 *Mobius Connections Group v. Techskills, LLC, Id.*

14 6. The Court finds there is a special relationship of trust between Plaintiffs and
15 Pardee that entitles Plaintiffs to an accounting for the information concerning the development of
16 Coyote Springs in the future as it pertains to Plaintiffs' commissions on option property. There is no
17 way for Plaintiffs or their heirs to determine whether a commission payment is due in the future
18 without an accounting of the type of land of any future purchases by Pardee from CSI at Coyote
19 Springs. Access to said information is required to ensure the accuracy of commission payments that
20 may be due and owing in the future.

21 DECISION

22
23 Now, therefore, in consideration of the Findings of Fact and Conclusions of Law by this
24 Court, IT IS HEREBY ORDERED as follows:


25 1. The Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for
26 breach of contract, breach of the covenant of good faith and fair dealing, and its failure to account to
27 Plaintiffs regarding the information concerning the development of Coyote Springs because it
28

1 pertained to Plaintiffs' present and potential future commissions. Damages are to be awarded to
2 Plaintiffs from Defendant in an amount totaling \$141,500.00

3 2. The Court finds that Plaintiffs are not liable to Defendant for breach of the implied
4 covenant of good faith and fair dealing. As such, no damages will be awarded to Defendant.

5 3. The Court orders both parties to provide to the Court within 60 days after entry of this
6 order supplemental briefs detailing what information should be provided - and under what
7 circumstances - by Pardee to Plaintiffs consistent with this decision. The Court will schedule after
8 receiving the supplemental briefs further proceedings to determine what information should be
9 provided by Pardee to Plaintiffs, and their heirs when applicable, as an accounting.

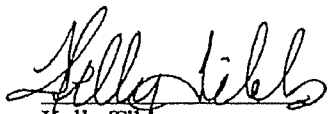
10
11 DATED this 25 day of June, 2014.

12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on June 25, 2014, I mailed, electronically served, or placed a copy of
18 this order in the attorney's folder on the first floor of the Regional Justice Center as follows:

19 James M. Jimmerson, Esq. - Jimmerson Hansen
20 Pat Lundvall - McDonald Carano Wilson

21
22 
23 Kelly Tibbs
24 Judicial Executive Assistant

ROC

JAMES J. JIMMERSON, ESQ.

Nevada Bar No.: 00264

LYNN M. HANSEN, ESQ.

Nevada Bar No.: 00244

JIMMERSON HANSEN, P.C.

415 South 6th Street, Suite 100

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Tel No.: (702) 388-7171;

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jjj@jimmersonhansen.com

lmh@jimmersonhansen.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and
WALT WILKES,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO.: A-10-632338-C
DEPT. NO.: IV

RECEIPT OF COPY

RECEIPT OF COPY of NOTICE OF ENTRY OF FACT, CONCLUSIONS OF LAW
AND ORDER is hereby acknowledged this 27th day of June, 2014, at 4:58 a.m./p.m.
by the undersigned:

AARON D SHIPLEY

Pat Lundvall, Esq.

Aaron D. Shipley, Esq.

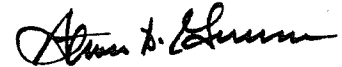
MCDONALD CARANO WILSON, LLP

2300 W. Sahara Ave., Suite 1000

Las Vegas, NV 89102

Attorneys for Defendant

EXHIBIT E



CLERK OF THE COURT

1 NEOJ

2 THE JIMMERSON LAW FIRM, P.C.

3 JAMES J. JIMMERSON, ESQ.

4 Nevada Bar No. 000264

5 MICHAEL C. FLAXMAN, ESQ.

6 Nevada Bar No. 0012963

7 415 South Sixth Street, Suite 100

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9 Telephone: (702) 388-7171

10 Facsimile: (702) 380-6406

11 jjj@jimersonlawfirm.com

12 mcf@jimersonlawfirm.com

13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and WALTER D. WILKES

12 and ANGELA L. LIMBOCKER-WILKES

13 LIVING TRUST, ANGELA L.

14 LIMBOCKER-WILKES, TRUSTEE,

15 Plaintiffs,

16 v.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

Courtroom No. 16B

NOTICE OF ENTRY OF ORDER
AND JUDGMENT FROM AUGUST
15, 2016 HEARINGS REGARDING
DEFENDANT'S MOTION TO
AMEND JUDGMENT

20
21 PLEASE TAKE NOTICE that an ORDER AND JUDGMENT FROM AUGUST 15,
22 2016 HEARINGS REGARDING DEFENDANT'S MOTION TO AMEND JUDGMENT was
23 entered in the above-captioned matter on January 9, 2017. A true and correct file -stamped

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26 ///

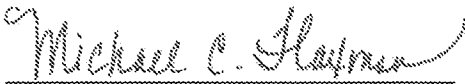
27 ///

28

1 copy of said Order is attached hereto as Exhibit "1".

2 Dated this 10th day of January, 2017.

3
4 THE JIMMERSON LAW FIRM, P.C.

5 

6 JAMES J. JIMMERSON, ESQ.

7 Nevada State Bar No.: 00264

8 MICHAEL C. FLAXMAN, ESQ.

9 Nevada State Bar No.: 12963

10 415 South 6th Street, Suite 100

11 Las Vegas, Nevada 89101

12 Attorneys for Plaintiffs
13
14
15
16
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18
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28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE JIMMERSON LAW FIRM, P.C.
that on the 10th day of January, 2017, service of the above and foregoing NOTICE
OF ENTRY OF ORDER AND JUDGMENT FROM AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S MOTION TO AMEND JUDGMENT was made as
indicated below:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
Administrative Order 14-2 captioned "In the Administrative Matter of
Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;
☐ by placing same to be deposited for mailing in the United States Mail, in a
sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;
☐ by electronic mail;
☐ by hand-delivery with signed Receipt of Copy

To the attorney(s) listed below at the address, email address, and/or facsimile number
indicated below:

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant

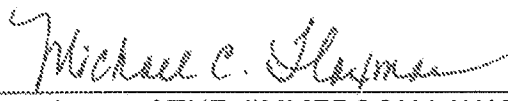
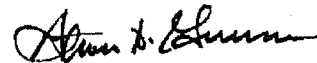

An employee of THE JIMMERSON LAW FIRM, P.C.

Exhibit "1"

1 **ORDR**

2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No. 000264
4 MICHAEL C. FLAXMAN, ESQ.
5 Nevada Bar No. 0012963
6 THE JIMMERSON LAW FIRM, P.C.
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8 Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6406
jjj@jimmersonlawfirm.com
mcf@jimmersonlawfirm.com
Attorneys for Plaintiffs

Electronically Filed
01/09/2017 10:22:17 AM



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and WALTER D. WILKES
12 and ANGELA L. LIMBOCKER-WILKES
13 LIVING TRUST, ANGELA L.
14 LIMBOCKER-WILKES, TRUSTEE,

Plaintiffs,

15 v.

16 PARDEE HOMES OF NEVADA,
17
18
19 Defendant.

CASE NO.: A-10-632338
DEPT. NO.: IV

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S
MOTION TO AMEND JUDGMENT**

20
21 This matter coming on for a hearing on the 15th day of August, 2016, upon
22 Defendant, PARDEE HOMES OF NEVADA's (hereinafter "Pardee"), Motion to Amend
23 Judgment and James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE
24 JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs, JAMES WOLFRAM and
25 ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA
26 L. LIMBOCKER-WILKES LIVING TRUST and Plaintiff, James Wolfram, being present,
27 and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on behalf of Defendant and no
28

1 corporate representative being present, and the Court having reviewed the papers and
2 pleadings on file herein, and heard the arguments of counsel, and for good cause
3 appearing:

4 THE COURT HEREBY NOTES that it ~~was aware~~ ^{considered} of the decision in *Liu v.*
5 *Christopher Homes, LLC*, 130 Nev. Adv. Op. 17, 321 P.3d 875 (2014) at the time it
6 entered its Findings of Fact and Conclusions of Law, filed on June 25, 2014, and in fact,
7 expressly cited to the decision at page 14, lines 23 to 25 of the Court's Findings of Fact,
8 Conclusions of Law and Order filed on June 25, 2014.

10 THE COURT HEREBY FINDS that the decision in *Liu* did not limit, but rather
11 broadened, the circumstances under which the Court could award Plaintiffs attorney's
12 fees as special damages.

14 THE COURT FURTHER FINDS that after the Court's review of *Liu*, *Sandy Valley*
15 *Assoc. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 35 P.2d 964 (2001), and
16 *Horgan v. Felton*, 123 Nev. Adv. Op. 53 (2007), and that after review of the relevant
17 facts and controlling legal authority, there is no legal or factual basis pursuant to NRCP
18 52(b) and NRCP 59(e) to grant Defendant's Motion to Amend Judgment.

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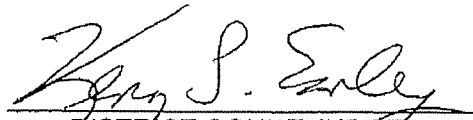
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1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion
2 to Amend Judgment is denied.

3 DATED this 5 day of January, ²⁰¹⁷~~2016~~
4

5 
6 DISTRICT COURT JUDGE
7

8
9 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

10 Dated this ___ day December, 2016.

Dated this ___ day December, 2016.

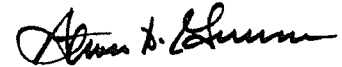
11 THE JIMMERSON LAW FIRM,
12 P.C.

McDONALD CARANO WILSON, LLP

13
14
15 JAMES J. JIMMERSON, ESQ.
16 Nevada State Bar No. 000264
17 MICHAEL C. FLAXMAN, ESQ.
18 Nevada Bar No. 012963
19 415 South Sixth St., Ste. 100
Las Vegas, NV 89101
Attorneys for Plaintiffs

PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant

EXHIBIT F



CLERK OF THE COURT

1 NEOJ

2 THE JIMMERSON LAW FIRM, P.C.

3 JAMES J. JIMMERSON, ESQ.

4 Nevada Bar No. 000264

5 MICHAEL C. FLAXMAN, ESQ.

6 Nevada Bar No. 0012963

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9 Telephone: (702) 388-7171

10 Facsimile: (702) 380-6406

11 jjj@jimmersonlawfirm.com

12 mcf@jimmersonlawfirm.com

13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and WALTER D. WILKES

12 and ANGELA L. LIMBOCKER-WILKES

13 LIVING TRUST, ANGELA L.

14 LIMBOCKER-WILKES, TRUSTEE,

15 Plaintiffs,

16 v.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

Courtroom No. 16B

**NOTICE OF ENTRY OF ORDER
AND JUDGMENT FROM AUGUST
15, 2016 HEARINGS REGARDING
DEFENDANT'S MOTION FOR
ATTORNEY'S FEES**

20 PLEASE TAKE NOTICE that an ORDER AND JUDGMENT FROM AUGUST 15,
21 2016 HEARINGS REGARDING DEFENDANT'S MOTION FOR ATTORNEY'S FEES was
22 entered in the above-captioned matter on January 9, 2017. A true and correct file -stamped

23 ///

24 ///

25 ///

26 ///

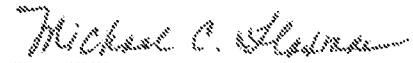
27 ///

28 ///

1 copy of said Order is attached hereto as Exhibit "1".

2 Dated this 10th day of January, 2017.

3
4 THE JIMMERSON LAW FIRM, P.C.

5 

6 JAMES J. JIMMERSON, ESQ.

7 Nevada State Bar No.: 00264

8 MICHAEL C. FLAXMAN, ESQ.

9 Nevada State Bar No.: 12963

10 415 South 6th Street, Suite 100

11 Las Vegas, Nevada 89101

12 Attorneys for Plaintiffs
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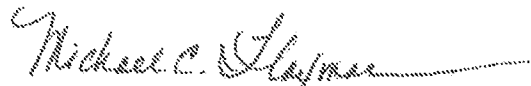
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE JIMMERSON LAW FIRM, P.C.
that on the 10th day of January, 2017, service of the above and foregoing **NOTICE
OF ENTRY OF ORDER AND JUDGMENT FROM AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S MOTION FOR ATTORNEY'S FEES** was made as
indicated below:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
Administrative Order 14-2 captioned "In the Administrative Matter of
Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;
☐ by placing same to be deposited for mailing in the United States Mail, in a
sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;
☐ by electronic mail;
☐ by hand-delivery with signed Receipt of Copy

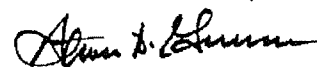
To the attorney(s) listed below at the address, email address, and/or facsimile number
indicated below:

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant



An employee of THE JIMMERSON LAW FIRM, P.C.

Exhibit "1"



CLERK OF THE COURT

1 **ORDR**

2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No. 000264
4 MICHAEL C. FLAXMAN, ESQ.
5 Nevada Bar No. 0012963
6 THE JIMMERSON LAW FIRM, P.C.
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9 Telephone: (702) 388-7171
10 Facsimile: (702) 380-6406
11 jjj@jimmersonlawfirm.com
12 mcf@jimmersonlawfirm.com
13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and WALTER D. WILKES
12 and ANGELA L. LIMBOCKER-WILKES
13 LIVING TRUST, ANGELA L.
14 LIMBOCKER-WILKES, TRUSTEE,

15 Plaintiffs,

16 v.

17 PARDEE HOMES OF NEVADA,

18 Defendant.
19

CASE NO.: A-10-632338
DEPT. NO.: IV

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

20
21 This matter coming on for a hearing on the 15th day of August, 2016, upon
22 Defendant, PARDEE HOMES OF NEVADA's (hereinafter "Pardee"), Motion for
23 Attorney's Fees and Costs, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of
24 THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs, JAMES
25 WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D.
26 WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST and Plaintiff James
27 Wolfram being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on
28

1 behalf of Defendant and no corporate representative being present, and the Court having
2 reviewed the papers and pleadings on file herein, and heard the arguments of counsel,
3 and for good cause appearing:

4 THE COURT HEREBY FINDS that after a thorough review of the relevant case
5 law and facts of the case, the most substantial issues in Plaintiffs' case, from pre-litigation
6 through Trial, this case was fundamentally filed and maintained in order to obtain
7 information Defendant, Pardee Homes of Nevada. Defendant was required to provide
8 the information, and to provide to the Plaintiffs an accounting so they could determine
9 the location and extent of the development and contracts, and whether they were due
10 any additional commissions and to ensure proper monitoring of any possible future
11 commissions Plaintiffs may be entitled to, as this was a contract that will hold up for fort-
12 six (46) years going forward. KLE
13


14 THE COURT FURTHER FINDS that this information was the only reason
15 Plaintiffs initiated the instant litigation. KLE That Plaintiffs, despite their efforts, had no other
16 way, prior to litigation, to obtain the information they were entitled to in order to learn of
17 the needed information and to determine whether they were due any past or future
18 commissions.
19

20 THE COURT FURTHER FINDS that Plaintiffs were the prevailing party and were
21 successful on the most substantial issues in the matter, obtaining information and an
22 accounting, and that Plaintiffs were the prevailing party on each of their three (3) claims
23 for relief, and Defendant, near the close of trial, withdrew its one (1) claim for relief as
24 confirmed within the Court's Findings of Fact, Conclusion of Law and Decision filed June
25 25, 2014, and within its Judgment filed May 16, 2016. Defendant's Motion for Attorney's
26 Fees and Costs has no legal or factual basis under the terms of the Commission
27
28

1 Agreement as filed under the Court's first Judgment, dated May 16, 2016. As such,
2 Defendant was not the prevailing party in the instant matter; and good cause appearing,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's
4 Motion for Attorney's Fees and Costs is denied.

5 DATED this 5 day of January, ²⁰¹⁷~~2016~~.
6

7
8 
9 DISTRICT COURT JUDGE

10
11 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

12 Dated this ___ day December, 2016.

Dated this ___ day December, 2016.

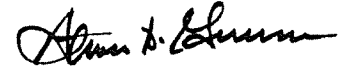
13
14 THE JIMMERSON LAW FIRM,
15 P.C.

McDONALD CARANO WILSON, LLP

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17
18 JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
19 MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 012963
20 415 South Sixth St., Ste. 100
Las Vegas, NV 89101
21 Attorneys for Plaintiffs

PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant

EXHIBIT G



CLERK OF THE COURT

1 NEOJ

2 THE JIMMERSON LAW FIRM, P.C.

3 JAMES J. JIMMERSON, ESQ.

4 Nevada Bar No. 000264

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11 jjj@jimmersonlawfirm.com

12 mcf@jimmersonlawfirm.com

13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and WALTER D. WILKES

12 and ANGELA L. LIMBOCKER-WILKES

13 LIVING TRUST, ANGELA L.

14 LIMBOCKER-WILKES, TRUSTEE,

15 Plaintiffs,

16 v.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

Courtroom No. 16B

**NOTICE OF ENTRY OF ORDER
AND JUDGMENT FROM AUGUST
15, 2016 HEARINGS REGARDING
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS**

20
21 PLEASE TAKE NOTICE that an ORDER AND JUDGMENT FROM AUGUST 15,
22 2016 HEARINGS REGARDING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND
23 COSTS was entered in the above-captioned matter on January 9, 2017. A true and correct
24 file -stamped

25 ///

26 ///

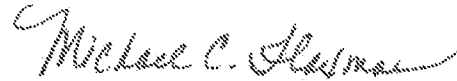
27 ///

28

1 copy of said Order is attached hereto as Exhibit "1".

2 Dated this 10th day of January, 2017.

3
4 THE JIMMERSON LAW FIRM, P.C.

5 

6 JAMES J. JIMMERSON, ESQ.
7 Nevada State Bar No.: 00264
8 MICHAEL C. FLAXMAN, ESQ.
9 Nevada State Bar No.: 12963
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11 Las Vegas, Nevada 89101
12 Attorneys for Plaintiffs
13
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28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE JIMMERSON LAW FIRM, P.C.
that on the 10th day of January, 2017, service of the above and foregoing **NOTICE**
OF ENTRY OF ORDER AND JUDGMENT FROM AUGUST 15, 2016 HEARINGS
REGARDING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS was
made as indicated below:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
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Attorneys for Defendant

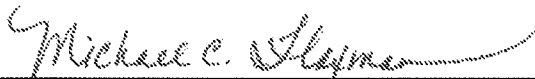
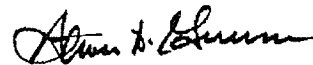

An employee of THE JIMMERSON LAW FIRM, P.C.

Exhibit "1"



CLERK OF THE COURT

1 **ORDR**

2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No. 000264
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11 jjj@jimmersonlawfirm.com
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13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and WALTER D. WILKES
12 and ANGELA L. LIMBOCKER-WILKES
13 LIVING TRUST, ANGELA L.
14 LIMBOCKER-WILKES, TRUSTEE,

15 Plaintiffs,

16 v.

17 PARDEE HOMES OF NEVADA,

18 Defendant.
19
20

CASE NO.: A-10-632338
DEPT. NO.: IV

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

21 This matter coming on for a hearing on the 15th day of August, 2016, upon
22 Plaintiffs', JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the
23 WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST, Motion
24 for Attorney's Fees and Costs, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq.
25 of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs and Plaintiff
26 James Wolfram being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing
27 on behalf of Defendant and no corporate representative being present, and the Court
28

1 having reviewed the papers and pleadings on file herein, and heard the arguments of
2 counsel, and for good cause appearing:

3 THE COURT HEREBY NOTES that it has analyzed the proposed attorney's fees
4 presented by Plaintiffs pursuant to the controlling case of *Brunzell v. Golden Gate Nat'l*
5 *Bank*, 85 Nev. 345, 455 P.2d 31 (1969) and NRPC 1.5, conducted an extensive review
6 of all documentation supporting Plaintiffs' requested attorney's fees and also,
7 Defendant's Opposition thereto;
8

9 THE COURT HEREBY FINDS that Plaintiffs' Offer of Judgment, remitted to
10 Defendant on or about April 29, 2013, contained a conditional provision and as such,
11 does not provide Plaintiffs with a basis to recover attorney's fees.

12 THE COURT FURTHER FINDS that Plaintiffs are the prevailing party in the
13 instant litigation pursuant to the Court's Findings of Fact and Conclusions of Law, filed
14 June 25, 2014, the Findings of Fact and Conclusions of Law and Supplemental Briefing
15 Regarding Future Accounting, filed May 13, 2015 and the final Judgment entered on
16 May 16, 2016.
17

18 THE COURT FURTHER FINDS that, the Commission Agreement, executed by
19 the parties on or about September 1, 2004, specifically provides that, in the event either
20 party brings an action to enforce its right under that agreement, the prevailing party shall
21 be awarded reasonable attorney's fees and costs.
22

23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion
24 for Attorney's Fees and Costs is granted. Based upon the pleadings before the Court,
25 and upon the Affidavit of James J. Jimmerson, Esq. and the evidentiary documentation
26 provided by both parties before the Court, Plaintiffs' request for \$428,462.75 is
27 reasonable, necessarily incurred, and is separate from, and in addition to, Plaintiff's
28

1 attorney's fees damages in the amount of \$135,500.00 as part of the \$141,500.00 in
2 damages awarded in favor of Plaintiffs and against Defendant within its final Judgment,
3 filed May 16, 2016. As such, Plaintiffs shall take Judgment in favor of Plaintiffs and
4 against Defendant, Pardee Homes of Nevada in the sum of \$428,462.75, plus legal
5 interest until paid in full, collectible by any and all lawful means.

6
7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to
8 the commencement date for prejudgment interest, the parties shall brief the issue for
9 the Court. Plaintiffs' brief shall be filed on or before September 12, 2016, with
10 Defendant's Opposition to be filed on or before October 17, 2016. Plaintiffs' Reply brief
11 shall be filed on or before October 31, 2016. The Court shall conduct a hearing on the
12 issue of prejudgment interest on December 12, 2016 at 3:00 a.m., in chambers.
13

14 DATED this 6 day of January, 2016. 2017

15
16 
DISTRICT COURT JUDGE

17 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

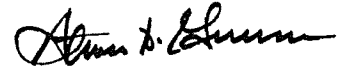
18 Dated this ___ day December, 2016. Dated this ___ day December, 2016.

19
20 THE JIMMERSON LAW FIRM, McDONALD CARANO WILSON, LLP
21 P.C.

22
23
24 JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
25 MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 012963
26 415 South Sixth St., Ste. 100
Las Vegas, NV 89101
27 Attorneys for Plaintiffs

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PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant

EXHIBIT H



CLERK OF THE COURT

1 **NEOJ**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
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8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

DISTRICT COURT
CLARK COUNTY, NEVADA

13 JAMES WOLFRAM,
14 WALT WILKES

15 Plaintiffs,

16 vs.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**NOTICE OF ENTRY OF
ORDER**

19 PLEASE TAKE NOTICE that an **ORDER ON DEFENDANT'S MOTION TO**
20 **RETAX PLAINTIFFS' MEMORANDUM OF COSTS FILED MAY 23, 2016** was
21 entered in the above-referenced case on the 12th day of January, 2017, a copy of
22 which is attached hereto.

23 DATED this 12th day of January, 2017.

24 McDONALD CARANO WILSON LLP

25 /s/ Rory T. Kay
26 PAT LUNDVALL (#3761)
27 RORY T. KAY (#12416)
28 2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 12th day of January, 2017, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

James J. Jimmerson, Esq.
Lynn Hansen, Esq.
James M. Jimmerson, Esq.
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

/s/ Michelle Wade
An Employee of McDonald Carano Wilson LLP

377343v2


CLERK OF THE COURT

1 **ORDR**
2 PAT LUNDVALL (NSBN 3761)
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11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

DISTRICT COURT
CLARK COUNTY, NEVADA

10 JAMES WOLFRAM,
11 ANGELA L. LIMBOCKER-WILKES as
12 trustee of the WALTER D. WILKES AND
13 ANGELA L. LIMBOCKER-WILKES LIVING
14 TRUST,

Plaintiffs,

vs.

15 PARDEE HOMES OF NEVADA,
16
17 Defendant.

18 AND RELATED CLAIMS

CASE NO.: A-10-632338-C
DEPT NO.: IV

ORDER ON DEFENDANT'S MOTION
TO RETAX PLAINTIFFS'
MEMORANDUM OF COSTS FILED
MAY 23, 2016

19
20 On August 15, 2016, the Court heard Defendant PARDEE HOMES OF
21 NEVADA's (hereinafter "Pardee") Motion to Retax Plaintiffs' Memorandum of Costs
22 (the "Motion"). James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE
23 JIMMERSON LAW FIRM, P.C. appeared for Plaintiffs, JAMES WOLFRAM and
24 ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND
25 ANGELA L. LIMBOCKER-WILKES LIVING TRUST. Plaintiff James Wolfram also
26 attended. Pat Lundvall and Rory T. Kay appeared for Pardee.

27 The Court, having reviewed the papers and pleadings on file herein, and heard
28 the arguments of counsel, and for good cause appearing, rules as follows:

1 THE COURT FINDS that, pursuant to NRS 18.020, NRS 18.110 and the
2 Judgment entered on May 16, 2016, Plaintiffs are entitled to certain of their costs.

3 THE COURT FURTHER FINDS that, pursuant to NRS 18.005, Plaintiffs cannot
4 recover the costs detailed in Plaintiffs' Memorandum of Costs, filed May 23, 2016, for
5 John Muije, Esq.'s professional services and expert fees in the cumulative amount of
6 \$13,265.71.

7 THE COURT FURTHER FINDS that, pursuant to NRS 18.005, Plaintiffs can
8 recover all other costs in Plaintiffs' Memorandum of Costs, filed May 23, 2016. Under
9 the standard in *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15 (2015), the
10 Court finds that these remaining costs were reasonable, necessary and actually
11 incurred. Exhibit 4 of Plaintiffs' Opposition to Pardee's Motion to Retax Plaintiffs'
12 Memorandum of Costs provides the level of detail required by *Cadle Co.*

13 Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
14 Pardee's Motion is granted in part and denied in part.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs cannot
16 recover the specific costs associated with John Muije, Esq.'s expert services, totaling
17 \$13,264.55, which equals a \$12,651.81 professional legal services fee and a \$613.22
18 expert witness fee.

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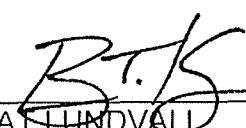
1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court
2 awards Plaintiffs all remaining costs enumerated in its Memorandum of Costs, filed May
3 23, 2016, in the amount of \$56,129.56.

4 DATED this 6 day of January, ²⁰¹⁷~~2016~~.

5
6
7 
8 DISTRICT COURT JUDGE

9 Respectfully submitted by:
10 Dated this 15th day December, 2016.

11 McDONALD CARANO WILSON, LLP

12
13 
14 PAT LUNDVALL
15 Nevada State Bar No. 3761
16 RORY T. KAY
17 Nevada State Bar No. 12416
18 2300 West Sahara Ave., Ste. 1200
19 Las Vegas, Nevada 89102

20 *Attorneys for Defendant*

21
22
23
24 375309

EXHIBIT I


CLERK OF THE COURT

MAMJ
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Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

AND RELATED CLAIMS

CASE NO.: A-10-632338-C
DEPT NO.: IV

**PARDEE HOMES OF NEVADA'S
MOTION TO AMEND JUDGMENT**

Date:
Time:

Pursuant to NRCP 52(b) and 59(e), defendant Pardee Homes of Nevada ("Pardee") moves the Court to amend its findings and judgment in this case. NRCP 52(b) and 59(e) permit a party to move the trial court to amend its factual findings, make additional findings, or amend the final judgment to correct legal or factual errors. Amendment is required here for two reasons.

First, the Nevada Supreme Court has held, and recently clarified its prior pronouncements, that attorney's fees are available as special damages only in three very specific circumstances. None of those specific circumstances apply to this breach of contract case. Consequently Pardee respectfully requests that the Court amend its

1 findings and judgment to eliminate Plaintiffs Walt Wilkes and James Wolfram's
2 (collectively "Plaintiffs") award of special damages for certain of their attorney's fees.

3 Second, in striking the first judgment entered June 3, 2015 and instead entering
4 a second judgment on May 11, 2016, the Court has omitted language reflecting
5 Plaintiffs' failure to recover any additional claimed commissions from Pardee, which
6 was the case's most substantial issue. Specifically, Plaintiffs claimed that Pardee
7 purchased "Option Property" during the project and thus owed them additional
8 commissions pursuant to the Commission Agreement in this case. This theory
9 constituted over 90% of the trial in this case, as Plaintiffs continually questioned
10 witnesses about this Option Property and Pardee's purchases during the development.
11 The Court entirely rejected this theory, finding that Pardee did not owe Plaintiffs any
12 additional commissions related to any breach of the Commission Agreement.
13 Language noting Pardee's successful defense on this issue should be expressly
14 included in the judgment entered on May 11, 2016 because without it, the judgment
15 does not conform to the Court's previous rulings in this case nor does it accurately
16 reflect the litigation's outcome.

17 This Motion is based on NRCP 52 and 59, the pleadings and papers on file, the
18 attached Memorandum of Points and Authorities, and any oral argument the Court may
19 entertain at the hearing of this Motion.

20 DATED this 1st day of June, 2016.

22 McDONALD CARANO WILSON LLP

23 /s/ Rory Kay

24 PAT LUNDVALL (NBSN #3761)
25 RORY T. KAY (NSB #12416)
26 2300 West Sahara Avenue, Suite 1200
27 Las Vegas, Nevada 89102

28 *Attorneys for Pardee Homes of Nevada*

1 NOTICE OF MOTION

2 TO: All Parties and Their Counsel of Record:

3 PLEASE TAKE NOTICE that the undersigned will bring the foregoing **PARDEE**
4 **HOMES OF NEVADA'S MOTION TO AMEND JUDGMENT** for hearing before the
5 above-entitled Court on the 06 day of JULY, 2016 at the hour of 9:00A in
6 Department IV of the above-entitled Court, or as soon thereafter as counsel can be
7 heard.

8 MCDONALD CARANO WILSON LLP

9
10 /s/ Rory Kay

PAT LUNDVALL (NSBN 3761)

RORY KAY (NSBN 12416)

2300 West Sahara Avenue, Suite 1000

Las Vegas, Nevada 89102

Attorneys for Pardee Homes of Nevada

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MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS.

A. Plaintiffs and Pardee Become Involved in the Coyote Springs Project.

This dispute arose from Pardee's and Plaintiffs' involvement in the Coyote Springs Project (the "Project"), a 43,000 acre development in Lincoln and Clark Counties. See Findings of Fact and Conclusions of Law at 2:9-12, on file with the Court. As licensed real estate brokers, Plaintiffs began tracking the Project in 2002, and shortly thereafter, they contacted Jon Lash, Pardee's executive responsible for land acquisition, to see if he was interested in purchasing land and/or developing homes on the Project. See *id.* at 1:27-2:18. Lash agreed to allow Plaintiffs to represent Pardee as a potential purchaser, and the Plaintiffs arranged an introductory meeting between Pardee and Harvey Whittemore to discuss Pardee's interest in the Project.¹ See *id.* at ¶ 8.

After the initial meeting, Pardee and CSI informed Plaintiffs that their services were no longer needed because Pardee and CSI could negotiate the land sales between themselves. See *id.* at 2:24-3:8. Accordingly, Plaintiff and Pardee began negotiating the Plaintiffs' broker commissions related to the Project and Plaintiffs' introduction of Whittemore and Lash. See *id.* at 4:9-16.

B. Plaintiffs and Pardee Execute the Commission Agreement.

The end result of those negotiations was a Commission Agreement, which Pardee and James Wolfram executed on September 2, 2004 and Walt Wilkes executed on September 6, 2004. See *id.* at ¶ 16. The Commission Agreement sets forth the parties' rights concerning Pardee's land purchases on the Project. See generally Commission Agreement Dated September 1, 2004, attached as Exhibit A.

¹ Whittemore was the founder and owner of Coyote Springs Investment, LLC ("CSI"), the entity that owned the Project's land at the time of this introductory meeting.

1 The Commission Agreement expressly addressed attorney's fees should the
2 parties resort to litigation to enforce their rights under the contract:

3 **In the event either party brings an action to enforce its rights under**
4 **this Agreement, the prevailing party shall be awarded reasonable**
5 **attorneys' fees and costs.**

6 *Id.* at p .2 (emphasis added).

7 The Commission Agreement included a merger clause, noting that "all oral
8 statements, representations, and negotiations" were merged into the Commission
9 Agreement, and also a provision prohibiting modification unless in writing signed by all
10 parties. *Id.*

11 C. Pardee Purchases Certain Lands and Pays the Plaintiffs' Commissions
12 Pursuant to the Commission Agreement, but the Plaintiffs Demand More.

13 Soon after the parties executed the Commission Agreement, Pardee purchased
14 relevant land from CSI that was covered by the Commission Agreement. See Findings
15 of Fact and Conclusion of Law at 8:6-9. Pursuant to the Commission Agreement,
16 Pardee paid the Plaintiffs \$2,632,000.00 in commissions based upon the purchases.
17 See *id.* at 8:19-20. These were the only commissions due under the Commission
18 Agreement, and Pardee has made no other purchases from CSI that would require
19 them to pay Plaintiffs any commissions under the Commission Agreement. See *id.* at
20 8:21-9:10 and 10:25-11:3.

21 Nevertheless, Plaintiffs insisted that they were due additional commissions from
22 Pardee and filed the current case on December 29, 2010. See Complaint, on file with
23 the Court. The Plaintiffs claimed that Pardee owed them over \$1.9 million in damages,
24 including \$1.8 million in purportedly lost commissions, \$146,000 in attorney's fees, and
25 \$6,400 in time and effort expended related to the accounting cause of action. See
26 Plaintiffs' Thirteenth Supplement to NRCP 16.1 Disclosure of Witnesses and
27 Documents at 10:17-11:9, attached as Exhibit B.² Plaintiffs argued that Pardee

28 ² Notably, Plaintiffs served this supplemental disclosure on the last day of trial.

1 “reclassif[ied] the land” originally labeled Option Property and that doing so “robbed
2 Plaintiffs of their opportunity to be paid these commissions” pursuant to the
3 Commission Agreement. *Id.* at 11:2-4.

4 D. During Trial, Plaintiffs Spend the Majority of Their Time Pursuing This
5 Theory of Additional Commissions Due and Owing.

6 At trial, Plaintiffs spent numerous hours questioning witnesses about Plaintiffs’
7 commissions under the Commission Agreement and Pardee’s purported reclassification
8 of land on the project. For example, Plaintiffs’ counsel immediately began questioning
9 Plaintiff James Wolfram about how he earned commissions and how Pardee was to
10 pay him those commissions based on its purchased Option Property. See October 23,
11 2013 Transcript (“10/23 Trans.”) at 75:9-76:20 and 88:16-24, attached as Exhibit C.
12 Wolfram testified that it was not “fair” that Pardee and Coyote Springs Investment, LLC
13 (“CSI”) reclassified certain land on the project, which purportedly influenced and
14 reduced Plaintiffs’ commissions. See *id.* at 95:3-17. During this questioning, Plaintiffs’
15 counsel offered parcel maps as demonstrative exhibits to allegedly show how Pardee
16 and CSI reclassified land on the project, and Wolfram stated that Plaintiffs were “most
17 certainly” entitled to additional commissions because of this reclassification. See *id.* at
18 125:11-151:17; see also October 24, 2013 Transcript (“10/24 Trans.”) at 249:25-250:1,
19 attached as Exhibit D.

20 Plaintiff Walt Wilkes also testified that Plaintiffs “were entitled to other, more
21 commissions” and that their “understanding [was] we were going to get the whole
22 commission” had Pardee and CSI not purportedly reclassified land. October 30, 2013
23 Transcript (“10/30 Trans.”) at 98:19-20 and 100:3-4, attached as Exhibit E. Wilkes
24 stated that Pardee “tried to take the extra money from [Plaintiffs]” and that Pardee and
25 CSI went “outside of [the boundaries]” in reclassifying certain land. *Id.* at 102:16-18
26 and 136:1-8.

27 Plaintiffs also heavily questioned CSI’s founder and former principal, Harvey
28 Whittemore, about the purported reclassification of Option Property on the project.

1 Whittemore testified that he believed the case was about “past due brokerage
2 commissions” because it was the “impression that [he] took from [his] deposition” due to
3 Plaintiffs’ counsel’s questioning. Exh. D, 10/24 Trans. at 10:12-15. During that same
4 day at trial, Plaintiffs’ counsel spent almost the entire day asking numerous questions
5 about reclassification of land on the project and the contractual definition of Option
6 Property. See generally *id.* at 35:14-216:13. Whittemore testified that Pardee and CSI
7 had not conspired to deny Plaintiffs any commissions by reclassifying certain land on
8 the project, but rather that the parties needed “the greatest degree of flexibility to allow
9 the parties to ultimately get the best plan” for the entire project. *Id.* at 83:21-84:4.

10 Plaintiffs’ counsel’s opening and closing arguments similarly focused on
11 Plaintiffs’ claims to additional commissions on the project. Counsel opened by stating
12 that the case largely “hinge[d]” on whether Pardee’s purchases were considered
13 Purchase Property or Option Property, and that the evidence would “show that
14 [Pardee’s] commission payments were inaccurate, [and] were not properly calculated.”
15 Exh. C., 10/23 Trans. at 14:8-15:1 and 20:3-4. Counsel’s closing argument again
16 focused on this purported reclassification, as he claimed that “it is . . . a breach of
17 contract to think that [Pardee] can adversely affect [Plaintiffs’] rights to a commission by
18 making a later deal between the parties that would change defined terms and
19 entitlement to money.” December 13, 2013 Transcript (“12/13 Trans.”) at 153:1-8,
20 attached as Exhibit F. Counsel claimed that he was suggesting to the Court “the legal
21 principle that . . . [Pardee] cannot adversely affect the rights of [Plaintiffs] to a
22 commission.” *Id.* at 153:17-154:10.

23 At all stages of trial, Plaintiffs focused almost exclusively on their purported
24 entitlement to additional commissions from Pardee.

25 E. After Trial, the Court Awards Plaintiffs Certain of Their Attorney’s Fees as
26 Special Damages But Rejects Their Claim to Lost Commissions.

27 After a multiple-week bench trial, the Court entirely rejected Plaintiffs’ claim to
28 additional commissions but did find that Plaintiffs were entitled to an accounting and

1 also certain of their attorney's fees as special damages. *See generally* Findings of Fact
2 and Conclusions of Law, on file with the Court. Although the Court explained that
3 "Pardee as of the present time does not owe any commission to Plaintiffs . . .," it
4 awarded Plaintiffs their "reasonable attorney's fees and costs as special damages" for
5 Pardee's breach of the Commission Agreement *Id.* at 9:2-4 and 14:23-25; *see also*
6 Judgment Entered June 3, 2015 (the "Original Judgment") at 2:24-3:2, on file with the
7 Court.

8 In the Original Judgment, which the Court entered on June 3, 2015, the Court
9 expressly noted that Pardee had not "breached the Commission Agreement in such a
10 way as to deny Plaintiffs any future commissions, and Pardee has paid all commissions
11 due and owing under the Commission Agreement." Original Judgment at 2:20-23.
12 Thus, the Court entered judgment "against Plaintiffs and for Pardee as to Plaintiffs'
13 claim for \$1,800,000 in damages related to lost future commissions under the
14 Commission Agreement." *Id.* at 2:19-20.

15 After Plaintiffs moved the Court to set aside the Original Judgment, the Court
16 struck that judgment and instead entered another judgment on May 16, 2016. *See*
17 Judgment Entered May 16, 2016 (the "Second Judgment"), on file with the Court.
18 Although the Second Judgment incorporates the Court's previous finding that Plaintiffs
19 were not entitled to additional commissions, the Second Judgment does not expressly
20 include any language reflecting Pardee's successful defense of this issue. Instead, the
21 Second Judgment only explains that Plaintiffs succeeded on their causes of action for
22 breach of contract and breach of the implied covenant of good faith and fair dealing. *Id.*
23 at 2:6-13. The Second Judgment awards Plaintiffs \$6,000 in consequential damages
24 from this breach and also awards Plaintiffs \$135,500 in special damages for "attorney's
25 fees and costs" associated with the same. *Id.* at 2:11-13.

26 ///

27 ///

28 ///

1 II. ARGUMENT.

2 A. Legal Standard.

3 NRCP 52(b) permits the trial court to “amend its findings or make additional
4 findings and [] amend the judgment accordingly.” NRCP 59(e) allows the trial court to
5 “alter or amend the judgment.” Normally, parties seek relief under Rules 52 or 59 “after
6 a bench trial or where summary judgment has been granted.” *Gutierrez v. Ashcroft*,
7 289 F. Supp. 2d 555, 561 (D.N.J. 2003). These alterations and amendments are most
8 often appropriate to correct manifest legal or factual errors, present newly discovered
9 evidence, prevent manifest injustice or to notify the court of an intervening change in
10 controlling law. See *Stevo Design, Inc. v. SBR Marketing, Ltd.*, 919 F. Supp. 2d 1112,
11 1117 (D. Nev. Jan. 25, 2013); see also *Allstate Insurance Co. v. Herron*, 634 F.3d
12 1101, 1111 (9th Cir. 2011).

13 B. The Court Erred in Awarding Plaintiffs’ Attorney’s Fees as Special
14 Damages, And There Have Been Changes To Controlling Law.

15 Generally, a litigant may not recover attorney’s fees “absent authority under a
16 statute, rule or contract.” *Liu v. Christopher Homes, LLC*, 130 Nev. Adv. Op. 17, 321
17 P.3d 875, 878 (Mar. 27, 2014). A narrow exception to this general rule exists that
18 permits a court to award attorney’s fees “as special damages in limited circumstances.”
19 *Id.* The Nevada Supreme Court has identified only three limited circumstances that
20 permit a trial court to award attorney’s fees as special damages:

- 21 (1) When a plaintiff becomes involved in a third-party legal dispute because of
22 the defendant’s breach of contract or separate tortious conduct;
- 23 (2) When a plaintiff incurs fees in recovering real or personal property that the
24 defendant acquired through wrongful conduct; or
- 25 (3) When a plaintiff seeks declaratory or injunctive relief necessitated by the
26 opposing party’s bad faith conduct.

27 See *Sandy Valley Assoc. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 957-58,
28 35 P.2d 964, 970 (2001); see also *Liu*, 130 Nev. Adv. Op. 17, 321 P.3d at 880.

1 In a breach of contract case that does not involve a third-party legal dispute, the
2 plaintiff is not entitled to attorney's fees as special damages because "parties always
3 know that lawsuits are possible when disputes arise" and so "the mere fact that a party
4 was forced to file or defend a lawsuit is insufficient to support an award of attorney fees
5 as damages." See *Sandy Valley Assoc.*, 117 Nev. at 957, 35 P.2d at 969-70.
6 Moreover, allowing attorney's fees as special damages in a routine breach of contract
7 case would contravene the Nevada Supreme Court's statement that "attorney fees are
8 rarely awarded as damages." See *id.* If courts awarded attorney fees as special
9 damages in routine breach of contract cases, the "narrow exception" will swallow the
10 general rule that attorney's fees are only recoverable under statute, rule or contract.

11 Additionally, the Nevada Supreme Court's approach reflects the common
12 damages theory from other jurisdictions, in which attorney's fees established by
13 contractual language are not considered special damages. "Special damages are
14 those which are unusual given the type of claim, and thus might surprise the opponent
15 if not specifically pleaded." *Fleet Bus. Cred. V. Krapohl Ford Lincoln Mercury Co.*, 735
16 N.W.2d 644, 648 (Mich. App. Ct. 2007); see also *McNaughton v. Charleston Charter*
17 *School for Math and Science, Inc.*, 768 S.E.2d 389, 396 (S.C. Jan. 28, 2015) ("Where a
18 plaintiff seeks special damages in addition to general damages, he must plead and
19 prove the special damages to avoid surprise.") Thus, "attorney fees, when specified by
20 the contract language, are not special damages." *Fleet Bus. Cred.*, 735 N.W.2d at 649.
21 This is true because there is no element of surprise when the contract itself calls for
22 attorney's fees in the event of a breach.

- 23 1. Plaintiffs have not proven that any of *Sandy Valley's* or *Liu's*
24 exceptions apply.

25 In this matter, it was legally erroneous for the Court to award Plaintiffs' certain
26 attorney's fees as special damages, and the judgment should be amended to eliminate
27 the award of attorney's fees. This is a standard breach of contract case where Plaintiffs
28 alleged that Pardee breached the Commission Agreement by failing to pay them

1 commissions owed and keep them reasonably informed of Pardee's purchases on the
2 Project. See Findings of Fact and Conclusions of Law at 11:10-15:3. Plaintiffs did not
3 identify any of the three limited circumstances noted in *Sandy Valley* and *Liu* that would
4 permit them to recover attorney's fees as special damages. See generally Plaintiffs'
5 Second Amended Complaint, on file with the Court. This is not an action for recovery of
6 real or personal property. The Plaintiffs have not alleged that they are involved in a
7 third-party dispute because of Pardee's purported breach of the Commission
8 Agreement. Nor did the Plaintiffs seek declaratory or injunctive relief because of any
9 bad faith conduct; instead, Plaintiffs only alleged breach of contract, breach of the
10 implied duty of good faith and fair dealing, and an equitable cause of action for
11 accounting.

12 Understandably, the Court did not have the benefit of the *Liu v. Christopher*
13 *Homes, LLC* case when it initially ruled upon the Plaintiffs' request for certain attorney's
14 fees as special damages.³ A copy of that decision is attached as Exhibit G. *Liu* is the
15 Nevada Supreme Court's most recent statement on attorney's fees as special
16 damages, and the opinion noted that there was "confusion over *Sandy Valley's* and
17 *Horgan's* effect on the law regarding the recovery of attorney fees as special damages."
18 130 Nev. Adv. Op. 17, 321 P.3d at 877. In removing that confusion, the *Liu* court noted
19 that "a party to a contract may recover, **as special damages**, the attorney fees that
20 arise from another party's breach of the contract" only when the breach "causes the
21 former party to incur attorney fees in a legal dispute brought by a third party." *Id.* at 880
22 (emphasis added). Thus, the Nevada Supreme Court did not hold that attorney's fees
23

24 ³ As the Court may recall, Pardee filed a motion to exclude the Plaintiffs' claim for
25 certain attorneys' fees as special damages on March 1, 2013. See Defendant's Motion
26 in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages,
attached as Exhibit H. The Court heard that motion on April 16, 2013.

27 However, the Nevada Supreme Court did not decide *Liu* until almost a year later,
28 on March 27, 2014. Thus, the Court could not benefit from *Liu's* protracted discussion
of the three narrow circumstances permitting an award of attorney's fees as special
damages.

1 as special damages were available in routine breach of contract cases. Instead, they
2 are only available when the breach places the non-breaching party in a legal dispute
3 brought by a third party. No such third-party action is present in this matter. Thus *Liu*
4 clarifies that Plaintiffs cannot recover certain of their attorney's fees as special
5 damages.

6 Accordingly, without any of *Sandy Valley's* special circumstances and given the
7 additional clarification that *Liu* provided and which the Court was not able to rely upon
8 for its initial ruling, Plaintiffs are not entitled to their attorney's fees as special damages
9 under Nevada's narrow exception to the general rule that attorney's fees arise from
10 contract, statute or rule. And because the Court awarded Plaintiffs their attorney's fees
11 as special damages because of Pardee's alleged breach, the judgment must be
12 amended to comply with *Sandy Valley* and *Liu* by eliminating the award of Plaintiffs'
13 attorney's fees as special damages.

- 14 2. Because the parties' addressed attorney's fees in the Commission
15 Agreement, they are not unusual and therefore cannot be special
16 damages.

17 Moreover, the Plaintiffs' attorney's fees cannot be special damages because
18 they were specifically addressed in the Commission Agreement's plain language. See
19 Commission Agreement, Exhibit A, at p. 2. Thus, the attorney's fees were not "unusual
20 given the [breach of contract] claim" asserted by Plaintiffs. See *Fleet Bus. Cred.*, 735
21 N.W.2d at 648. As the Nevada Supreme Court clarified in *Sandy Valley*, "parties
22 always know that lawsuits are possible when disputes arise" and so damages are not
23 "special" unless they provide some element of surprise requiring specific pleading. See
24 *Sandy Valley Assoc.*, 117 Nev. at 957, 35 P.2d at 969-70. Because the Commission
25 Agreement specifically included the attorney's fees provision, there was no need for
26 Plaintiffs to specifically plead them to avoid surprising Pardee and thus the fees cannot
27 be special damages.

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1 C. The Court Erred in Deleting Language in the Second Judgment Indicating
2 Pardee's Successful Defense of Plaintiffs' Claims to Additional
3 Commissions.

4 As discussed above, Plaintiffs' claims to additional commissions because
5 Pardee purportedly reclassified Option Property on the project was the case's most
6 substantial issue. Plaintiffs devoted over 90% of the trial to this issue, continually
7 questioning witnesses about Plaintiffs' commissions pursuant to the Commission
8 Agreement and Pardee's purported reclassification of land. See Part I(D), *supra*.
9 Harvey Whittemore, a third party to the litigation, testified at trial that he believed the
10 case was about Plaintiffs' commissions because Plaintiffs' counsel repeatedly asked
11 him at his deposition about reclassification of the land and the definition of Option
12 Property and Purchase Property. *Id.* The issue was the central part of Plaintiffs'
13 counsel's opening and closing statements, as counsel repeatedly told the Court that the
14 case was about Pardee's unfair act of denying Plaintiffs' commissions and that the
15 evidence would conclusively establish that Plaintiffs were owed additional commissions
16 from Pardee. *Id.* After trial, however, the Court entirely rejected Plaintiffs' flawed and
17 predominant theory that they were entitled to additional commissions. *Id.*

18 Accordingly, the Second Judgment must accurately reflect the Court's finding on
19 this matter, as Nevada has long recognized that a judgment must conform to the
20 evidence actually offered at trial. See, e.g., *Finnegan v. Ulmer*, 31 Nev. 523, 104 P. 17,
21 18 (1909) (noting a party may move the trial court to revise the judgment when the
22 evidence does not sufficiently justify the verdict or other decision); see also *Bream v.*
23 *Nevada Motor Co.*, 51 Nev. 100, 269 P. 606, 607 (1928) (explaining that evidence must
24 support the judgment); *Cardan Overseas, Ltd. v. Harris*, 92 Nev. 62, 64-65, 544 P.2d
25 1202, 1204 (1976) (modifying a judgment "to conform to the evidence which is
26 nonconflicting"). Absent language showing that Pardee prevailed on the issue of
27 additional commissions, the Second Judgment does not conform with the evidence
28 offered at trial and the Court's post-trial conclusion that Pardee did not owe Plaintiffs'
any additional commissions. Consequently, the Court should amend the Second

Judgment by re-inserting the language from the Original Judgment, in which it expressly stated that Pardee had not breached the Commission Agreement in such a way as to deny Plaintiffs any future commissions, and that Pardee has paid all commissions due and owing under the Commission Agreement.

III. CONCLUSION.

NRCP 52 and 59 provide the Court with the ability to amend its factual findings, conclusions of law, and judgment when legal errors have occurred. In this matter, the Court erroneously awarded Plaintiffs their attorney's fees as special damages despite this being a routine breach of contract case that is not within one of *Sandy Valley's* or *Liu's* three limited exceptions for awarding fees as special damages. The Court also incorrectly deleted language from the Original Judgment explaining that Pardee successfully defended against Plaintiffs' claims to additional commissions, which was the case's most substantial issue. Therefore Pardee respectfully requests that the Court amend its judgment to eliminate the award of Plaintiffs' attorney's fees as special damages. Pardee also asks that the Court re-insert language clarifying that Pardee prevailed on Plaintiffs' claims to additional commissions.

DATED this 1st day of June, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 1st day of June, 2016, I served a true and correct copy of the foregoing **PARDEE HOMES OF NEVADA'S MOTION TO AMEND JUDGMENT** via e-service through Wiznet as utilized in the 8th Judicial District on the following:

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