

1 THE COURT: Thank you.

2 MR. JIMMERSON: Judge, I just have --

3 MS. LUNDVALL: And, Your Honor, I would submit  
4 that, in fact, this is our motion for summary judgment  
5 and that we are the moving party and, therefore, that  
6 our presentation then would be the last point.

7 MR. JIMMERSON: Our response is we can't allow  
8 a misstatement or misrepresentation to go unchallenged.

9 The very next question asked of Mr. Lash is  
10 this -- I'm sorry -- Mr. Whittemore of CSI: So anything  
11 outside of the Purchase Property which you designated  
12 for single family detached production residential was  
13 Option Property; is that correct?

14 Answer: Pursuant to the terms of the  
15 agreement, I believe that's accurate. End of quote.

16 THE COURT: This is why you get all the  
17 evidence. Do you know how hard it is when you just get  
18 excerpts? But -- okay.

19 MR. JIMMERSON: That's the very next question  
20 and answer not read to you by opposing counsel.

21 MS. LUNDVALL: And the point being is this,  
22 that he, as the master developer, designates. Where is  
23 the designation by CSI that there is Option Property  
24 which is single family development? Where is the parcel  
25 map? Where is the tentative map? It doesn't exist.

1           MR. JIMMERSON: The answer is the fifth, sixth,  
2 and seventh amendments. You have Exhibit 19, the  
3 seventh amendment, which at pages 1150 through 1155 that  
4 I showed you has exactly these words "Residential  
5 Parcels 1, 2, 3, 4 and 5."

6           And what's conceded by this response is that  
7 that purchase was outside of the boundaries of Purchase  
8 Property.

9           THE COURT: I honestly understand your  
10 position, and I understand your position.

11           MR. JIMMERSON: What I think is important for  
12 the Court to understand is they do not argue, they do  
13 not refute, they do not compete that the properties that  
14 were actually purchased were outside of the boundaries  
15 of the Purchase Property as defined in the August 2004  
16 agreement. They concede that.

17           THE COURT: Do you agree with that?

18           MS. LUNDVALL: Your Honor, I do not agree with  
19 that. Because the Purchase Property Price -- it's  
20 irrelevant --

21           THE COURT: Not relevant to --

22           MR. JIMMERSON: I'm saying the Purchase  
23 Property --

24           MS. LUNDVALL: Hold on. Please don't talk over  
25 the top of me. I would ask for that courtesy.

1           MR. JIMMERSON: Yes, ma'am. You certainly have  
2 it.

3           MS. LUNDVALL: The point I'm trying to make is  
4 this: If the property boundaries were important for  
5 determining the amount of the commissions, they could  
6 have been included in the Commission Agreement, but they  
7 were not. Nowhere in the commission agreement is there  
8 any reference to --

9           THE COURT: So you are saying look at the four  
10 corners of the agreement and -- I understand. But you  
11 still can look outside to define what the terminology  
12 meant.

13          MS. LUNDVALL: Absolutely.

14          THE COURT: And I think that's where we're  
15 going. Correct, Counsel?

16          MR. JIMMERSON: Yes, Your Honor.

17          MS. LUNDVALL: And the parties told you where  
18 to go to define these terms.

19          THE COURT: Right.

20          MS. LUNDVALL: The only place you go --

21          THE COURT: Is paragraph 1 and 2.

22          MS. LUNDVALL: No. The only place you go for  
23 these definitions is the Option Agreement.

24          THE COURT: That's referred there.

25          MS. LUNDVALL: That's correct.

1           THE COURT: And you have specifically  
2 paragraph 1 and 2.

3           MS. LUNDVALL: So as far as in response then to  
4 Mr. Jimmerson, it would be this: In essence, what he's  
5 basically saying? What's the harm of going to trial?  
6 What's the harm of doing all these different things?  
7 Why would we care?

8           What we care about is the expense that's  
9 associated with that, especially when the Court has all  
10 of the evidence before it for which it can interpret  
11 then the Commission Agreement. And Mr. Wolfram and  
12 Mr. Wilkes should care about that too for this fact:  
13 There is an attorney fee provision within the parties'  
14 agreements.

15          THE COURT: I'm aware. Either side who  
16 prevails has attorneys' fees issues.

17          MS. LUNDVALL: That's correct. And that's the  
18 one thing, though, that is somewhat typical, though.  
19 When you are a defendant and you bring a motion for  
20 summary judgment, what the plaintiff wants to do is to  
21 kind of muddle the facts and muddy the water to make  
22 sure that there's somehow a suggestion that, Well, we  
23 need a trial to focus this.

24          And that's why in our reply what I've tried to  
25 underscore to the Court is that this evidence is before



1 you, and we ask the Court to grant our motion for  
2 summary judgment. Thank you, Your Honor.

3 THE COURT: Thank you, Counsel.

4 MR. JIMMERSON: I had one question, not a  
5 response here. Does the Court -- will the Court, on its  
6 own, under Rule 15(b), allow us to amend for the special  
7 damages?

8 THE COURT: Yes.

9 MS. LUNDVALL: From our perspective, we are  
10 entitled to a motion as far as on that.

11 THE COURT: Right. You can if you want. Let's  
12 do this: I know it's freely given. At this point I'm  
13 not determining this issue just on the damage. So  
14 whether it's amended now or not is not going to make a  
15 difference to the Court's ruling. So we can address  
16 that issue if and when it becomes necessary.

17 MR. JIMMERSON: That's the question. Will you  
18 accept our oral motion today or do I need to file a  
19 motion?

20 THE COURT: My understanding, from counsel for  
21 Pardee, you would like a chance to respond and that is  
22 part -- correct?

23 MS. LUNDVALL: That's correct.

24 THE COURT: I have a lot on my plate today.

25 MR. JIMMERSON: Yes, ma'am. Thank you.

1           THE COURT: I think it should be addressed that  
2 way.

3           I'm going to do it this way: I'm going to go  
4 ahead and grant the motion for summary judgment by the  
5 plaintiffs just on the assignment they are the real  
6 party in interest.

7           MR. JIMMERSON: Yes, Your Honor.

8           THE COURT: I thought I was ready to rule. Let  
9 me go back -- which I guess is the point of oral  
10 argument. Are you still suggesting -- do I need to look  
11 then at plaintiffs that you think you have a motion for  
12 summary judgment on liability or is that -- I didn't  
13 think so.

14          MR. JIMMERSON: We've not filed anything. What  
15 I'm saying to the Court is this --

16          THE COURT: I wanted to make sure I didn't miss  
17 something.

18          MR. JIMMERSON: No. You didn't miss anything.

19          When you look at Exhibit 8, Bates number 1563  
20 that we showed you, you have the definition of Purchase  
21 Property. This is recorded with the county. It says  
22 Coyote Springs. Exhibit 8, it says map of Purchase  
23 Property.

24          What I'm saying to you is, between both  
25 counsel, speaking freely, speaking honestly and candidly

1 to the Court, there's no question of what was purchased  
2 in the fifth, sixth, seventh amendments is outside this  
3 thatched document. That's the basis for the liability,  
4 because clearly they have purchased Option Property for  
5 which we're entitled to the damages. Now, the amount of  
6 damage, I can't tell you, which is why I asked you for  
7 a --

8 THE COURT: But her --

9 MR. JIMMERSON: But there's nothing pending  
10 presently.

11 THE COURT: I just wanted to make sure because  
12 I read through it and I thought, Did I miss something?  
13 Okay.

14 So I'm going to grant, just as far as the  
15 summary judgment on that they are the real party in  
16 interest.

17 Let me think about it a little. I am going to  
18 then -- I'm just going to put it on my chambers  
19 calendar. What I've been doing, I keep my chambers  
20 calendar free, so when I get the transcript, I match it  
21 up. And so I'll put it on my next chambers calendar.

22 THE CLERK: That would be the 13th.

23 THE COURT: What I honestly do, on cases like  
24 this, I then get the transcript and, you know, go  
25 through it and to decide and to make sure I'm thorough.

1           MR. JIMMERSON: So that both opposing counsel  
2 and I understand what this means, do we expect to hear  
3 from you after the 13th of March? We don't come  
4 anywhere. We just expect to hear from you?

5           THE COURT: I will give you a minute order. If  
6 I deny it, then the minute order is easy and that you  
7 just give me. If I grant it, then the minute order  
8 would be obviously for counsel for Pardee to give  
9 findings of fact, conclusions of law. I started doing  
10 those and I realized I don't have time to do that.

11           But I don't let it -- I don't take things under  
12 advisement and let them sit in limbo. So this how I've  
13 worked out, because I'm fresh on this. It's just  
14 nice -- and it's a major motion, Counsel, you and I both  
15 know. You've spent a lot of time and I take both  
16 positions very serious. I have spent a lot of time.

17           I do like, on these motions, I get a transcript  
18 and then I can confirm so I'm as comfortable as I can be  
19 to make the right decision for the parties, and that's  
20 how I do it. And then you will hear from me by  
21 Wednesday, if not by Wednesday, the 13th. So I don't  
22 hold things in limbo. That's how I've been doing it,  
23 and I do it now while I'm still up on it.

24           I'm not comfortable quite yet to rule from the  
25 bench. I thought I would be, but arguments -- as you

1 can see, when I ask questions, there are questions I had  
2 before I even came here. Now I might have a few more  
3 questions that I didn't think about, which is -- I thank  
4 counsel, both of you. That really helps me. I now see  
5 the purpose of oral argument.

6 Counsel, you've lived with this. For me, even  
7 spending many, many -- a lot of hours, a couple days on  
8 it, this helps me. So that's what I'm going to do, so  
9 you are clear where I'm going with this.

10 MS. LUNDVALL: Thank you, Your Honor.

11 MR. JIMMERSON: Thank you.

12 MS. LUNDVALL: I guess the other thing on the  
13 Court's agenda for today is I'm wondering whether or not  
14 this is an issue that can be worked out among counsel.  
15 We are genuinely interested as far as in trying to  
16 conserve as many resources as possible. If we get an  
17 order then from the Court, you know, in the frame that  
18 we're talking about, it's conceivable that we may have  
19 to meet other due dates given the current trial  
20 schedule.

21 THE COURT: In all honesty, I already have --  
22 from my last trial calendar two weeks ago, I had to give  
23 some dates in April. And what's been happening to me is  
24 they are giving me med mal cases that are -- for my five  
25 weeks. So it would be difficult to say you are going to

1 have that trial date.

2 MS. HANSEN: We have a preferential trial  
3 setting already ordered when we were moved to the 15th  
4 of April. By the 15th of April, we are still on a  
5 stack. We haven't got it. But there's an order earlier  
6 in this case granting a preferential trial setting.

7 THE COURT: From somebody else in  
8 Department IV?

9 MS. HANSEN: Yes. Based on the age and the  
10 health of our clients.

11 MR. JIMMERSON: Mr. Wilkes, in particular, is  
12 in very bad shape.

13 MS. LUNDVALL: What you end up with is you've  
14 got competing orders from this standpoint. You've  
15 got --

16 THE COURT: Competing orders on?

17 MS. LUNDVALL: On the preferential trial issue  
18 versus also as far as if the Court had granted us the  
19 opportunity to make sure that our oral argument was in  
20 sufficient time so that we didn't have to start trial  
21 preparation then prior to the Court's determination on a  
22 motion for summary judgment.

23 So what I'm going to suggest is maybe opposing  
24 counsel and I might be able to work out our due dates so  
25 that they can fall after the Court's determination on

1 the motion for summary judgment so that we don't have  
2 everything so compacted, and he and I don't have to  
3 spend unnecessary time and effort then preparing for  
4 trial that may not be required.

5 MR. JIMMERSON: I'm happy to work on any dates.  
6 All I'm saying to the Court is that we really want to go  
7 to trial on the 15th of April. We have older gentlemen  
8 in frail health.

9 THE COURT: Let me ask my JEA. It's a bench  
10 trial; right?

11 MS. LUNDVALL: Bench trial, Your Honor.

12 (Pause in proceedings.)

13 THE COURT: How long do you feel -- if we have  
14 the 15th, 16th and 17th -- I don't know. Can you  
15 estimate for me?

16 MR. JIMMERSON: We just need a day for our  
17 case.

18 MS. LUNDVALL: I don't believe it's the 15th.  
19 I believe we were set for the 16th of April. And  
20 there's no conceivable way we can do it in two days.

21 THE CLERK: We have it scheduled for the 15th.

22 MR. JIMMERSON: We thought it was the 15th.

23 THE CLERK: The 15th is when our trial stack  
24 starts. So that's where you are at right now.

25 MR. JIMMERSON: 15th, 16th and 17th.

1 THE CLERK: We don't have it set that way right  
2 now. When you come to calendar call --

3 THE COURT: I haven't even looked at those  
4 calendar calls. I go by five-year rule and --

5 THE CLERK: We do have the two bench trials the  
6 week prior.

7 THE COURT: Do you have other flexibility in  
8 April if I can't do the 15th?

9 MR. JIMMERSON: Yes.

10 THE COURT: Do you think three days?

11 MS. LUNDVALL: No. Your Honor, my suggestion  
12 would be if, in fact --

13 THE COURT: I want to get you a firm date so I  
14 don't have issues. And that's what you are looking for.

15 I'm gone the last week of April. I have  
16 judicial college I have to go to by order of the Supreme  
17 Court, and this is the last time I can go before  
18 October. So I am back the week of April 22nd through  
19 the 26th or the week of May 13th through the 17th --  
20 May 12th through the 17th, I would be back.

21 MS. HANSEN: Is that a date available, Judge?

22 THE COURT: Yes. If you will pick a date, then  
23 when I do my calendar call, since you are telling me you  
24 have preferential, then I'll just tell them -- before my  
25 calendar call, they are assigning me each month a med



1 mal.

2 MS. HANSEN: We're equivalent to med mal with  
3 preferential.

4 THE COURT: I don't want to have to redo this.

5 MR. JIMMERSON: May 13th through 17th is fine,  
6 Judge. I'm moving two trials, but it's important  
7 because I don't want anybody to die on the plaintiffs'  
8 side.

9 MS. LUNDVALL: I think that's an outrageous  
10 statement.

11 THE COURT: Counsel, are you available the 13th  
12 through the 17th?

13 MS. LUNDVALL: Yes, I am Your Honor.

14 THE COURT: Then why don't we just do that.  
15 And then when I do my calendar call, I'll give you  
16 dates, and then I'll say -- it's like what I do on my  
17 med mal. I didn't know you had priority. I'm taking a  
18 stack at a time. Tell me the dates you want then.

19 MR. JIMMERSON: If Ms. Lundvall is fine,  
20 May 13th, 14th, 15th, 16th 17th.

21 THE COURT: And if it's shorter --

22 MS. LUNDVALL: If we don't have to have it,  
23 then that's okay too.

24 THE COURT: So here's what we'll do on the  
25 17th. It's bench trial. Let's do that. Let's start at

1 10:00 o'clock on May 13th, because the 14th I have  
2 motions, and we'll start at 10:00 o'clock on May 13th  
3 and then we'll -- the 14th and the 16th I have 8:30, but  
4 we can probably start at 10:00. And the other times, if  
5 you have testimony, we can start at 8:30. I'm flexible  
6 when you can get witnesses here. I'll work with you.

7 MR. J.M. JIMMERSON: 10:00 a.m. for the 13th?

8 THE COURT: May 13th, 10:00 a.m.

9 MR. JIMMERSON: And the other days --

10 THE COURT: 14th and 16th are my motion  
11 practice. I do motions every Tuesday and Thursday at  
12 8:30, so I would not be able to start until 10:00. But  
13 if we come and it turns out I get everything off my  
14 calendar -- like today I did a special session. So you  
15 were gracious so I could spend the time.

16 MR. JIMMERSON: You were the one who was  
17 gracious. Thank you.

18 THE COURT: You're welcome.

19 So I'm flexible with you. But if we do that,  
20 we'll get you done. And I'll be flexible. And if you  
21 have to wait because I have a little longer calendar,  
22 you won't get upset with me either. We'll just work it  
23 that way, if that would be okay.

24 MS. LUNDVALL: Thank you, Your Honor.

25 MR. J.M. JIMMERSON: And we'll submit an order

1 on the partial motion for summary judgment.

2 MR. JIMMERSON: We'll submit it to opposing  
3 counsel first.

4 THE COURT: Did you know there was a motion to  
5 continue trial on?

6 MR. JIMMERSON: That's what we're doing right  
7 now.

8 THE COURT: All right. We're going to grant  
9 that and set the trial for May 13th at 10:00 o'clock.

10 -oOo-

11 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF  
12 PROCEEDINGS.

13 *Jennifer D. Church*

14 \_\_\_\_\_  
15 JENNIFER D. CHURCH, CCR. No. 568, RPR

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Jennifer D. Church, CCR No. 568  
District Court, Dept. IV

  
CLERK OF THE COURT

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10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 JAMES WOLFRAM and	)	
13 WALT WILKES,	)	CASE NO.: A-10-632338-C
14	)	DEPT. NO.: IV
15 Plaintiffs,	)	
16	)	
17 vs.	)	
18	)	
19 PARDEE HOMES OF NEVADA,	)	
20	)	
21 Defendant.	)	

18 **ORDER GRANTING PLAINTIFFS' COUNTERMOTION**  
19 **FOR PARTIAL SUMMARY JUDGMENT**

20 This matter coming on for a hearing on the 5<sup>th</sup> day of March, 2013, on the issue of  
21 Defendant's Motion for Summary Judgment and Plaintiffs' Countermotion for Partial  
22 Summary Judgment, James J. Jimmerson, Esq., Lynn M. Hansen, Esq., and James M.  
23 Jimmerson, Esq. appearing on behalf of Plaintiffs, and Plaintiff Jim Wolfram being present,  
24 and Pat Lundvall, Esq. and Aaron Shipley, Esq. appearing on behalf of Defendant Pardee  
25 Homes of Nevada, and the Court having reviewed the papers and pleadings on file,  
26 Plaintiffs' Countermotion for Partial Summary Judgment, Defendant's Opposition thereto,  
27 and Plaintiffs' Reply in Further Support of Their Countermotion for Partial Summary  
28

1 Judgment, and the Court having heard the arguments of counsel, and admitted evidence  
2 and for good cause appearing,

3 THE COURT FINDS that the September 1, 2004 Commission Letter Agreement  
4 was signed and executed by Jon Lash on behalf of Pardee Homes of Nevada, Plaintiff Jim  
5 Wolfram on Behalf of Award Realty Group, and Plaintiff Walt Wilkes on behalf of General  
6 Realty Group, Inc.

7 THE COURT FURTHER FINDS that after the aforementioned execution, Award  
8 Realty Group assigned to Jim Wolfram all rights, title and interest it had in the September  
9 1, 2004 Commission Letter Agreement.

10 THE COURT FURTHER FINDS that after the aforementioned execution, General  
11 Realty Group, Inc. assigned to Walt Wilkes all rights, title and interest it had in the  
12 September 1, 2004 Commission Letter Agreement.

13 THE COURT FURTHER FINDS that other than Defendant Pardee Homes of  
14 Nevada, Plaintiff Jim Wolfram, and Plaintiff Walt Wilkes, no other individuals or corporate  
15 entities have any rights, title or interest in the September 1, 2004 Commission Letter  
16 Agreement.

17 THE COURT FURTHER FINDS that Plaintiffs Jim Wolfram and Walt Wilkes are the  
18 real parties in interest in the above-captioned action, capable of enforcing their rights under  
19 the September 1, 2004 Commission Letter Agreement.

20 ///

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JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that  
2 Plaintiffs' Countermotion for Partial Summary Judgment is GRANTED.

3 Dated 14 this day of March, 2013.

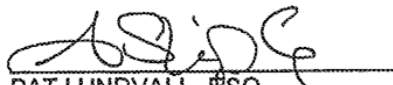
4  
5   
6 DISTRICT COURT JUDGE

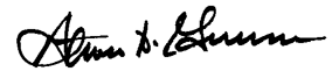
7 JIMMERSON HANSEN, P.C.

8  
9   
10 JAMES J. JIMMERSON, ESQ.  
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18 Attorneys for Plaintiffs  
19 James Wolfram and  
20 Walt Wilkes

21 Reviewed as to form and content:

22 McDONALD CARANO WILSON, LLP

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CLERK OF THE COURT

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9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

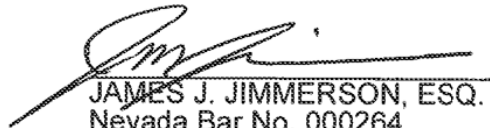
11 JAMES WOLFRAM AND WALT WIKES ) CASE NO.: A-10-632338-C  
12 ) DEPT NO.: IV  
13 Plaintiffs,  
14 vs.  
15 PARDEE HOMES OF NEVADA,  
16 Defendant.

17 NOTICE OF ENTRY OF ORDER

18 PLEASE TAKE NOTICE that an Order Granting Plaintiff's Countermotion for Partial  
19 Summary Judgment was entered in the above-entitled matter on the 14<sup>th</sup> day of March, 2013,  
20 a file-stamped copy of which is attached hereto

21 Dated this 15<sup>th</sup> day of March, 2013.

22 JIMMERSON HANSEN, P.C.

23  
24   
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CERTIFICATE OF SERVICE

I here by certify that service of a true correct copy of NOTICE OF ENTRY OF ORDER was made on the 15 day of March 15, 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 (as amended)

☐ By receipt of copy as indicated below

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An Employee of JIMMERSON HANSEN, P.C.



  
CLERK OF THE COURT

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10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 JAMES WOLFRAM and	)	
13 WALT WILKES,	)	CASE NO.: A-10-632338-C
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14 Plaintiffs,	)	
	)	
15 vs.	)	
	)	
16 PARDEE HOMES OF NEVADA,	)	
	)	
17 Defendant.	)	

18 **ORDER GRANTING PLAINTIFFS' COUNTERMOTION**  
19 **FOR PARTIAL SUMMARY JUDGMENT**

20 This matter coming on for a hearing on the 5<sup>th</sup> day of March, 2013, on the issue of  
21 Defendant's Motion for Summary Judgment and Plaintiffs' Countermotion for Partial  
22 Summary Judgment, James J. Jimmerson, Esq., Lynn M. Hansen, Esq., and James M.  
23 Jimmerson, Esq. appearing on behalf of Plaintiffs, and Plaintiff Jim Wolfram being present,  
24 and Pat Lundvall, Esq. and Aaron Shipley, Esq. appearing on behalf of Defendant Pardee  
25 Homes of Nevada, and the Court having reviewed the papers and pleadings on file,  
26 Plaintiffs' Countermotion for Partial Summary Judgment, Defendant's Opposition thereto,  
27 and Plaintiffs' Reply in Further Support of Their Countermotion for Partial Summary  
28

1 Judgment, and the Court having heard the arguments of counsel, and admitted evidence  
2 and for good cause appearing,

3 THE COURT FINDS that the September 1, 2004 Commission Letter Agreement  
4 was signed and executed by Jon Lash on behalf of Pardee Homes of Nevada, Plaintiff Jim  
5 Wolfram on Behalf of Award Realty Group, and Plaintiff Walt Wilkes on behalf of General  
6 Realty Group, Inc.

7 THE COURT FURTHER FINDS that after the aforementioned execution, Award  
8 Realty Group assigned to Jim Wolfram all rights, title and interest it had in the September  
9 1, 2004 Commission Letter Agreement.

10 THE COURT FURTHER FINDS that after the aforementioned execution, General  
11 Realty Group, Inc. assigned to Walt Wilkes all rights, title and interest it had in the  
12 September 1, 2004 Commission Letter Agreement.

13 THE COURT FURTHER FINDS that other than Defendant Pardee Homes of  
14 Nevada, Plaintiff Jim Wolfram, and Plaintiff Walt Wilkes, no other individuals or corporate  
15 entities have any rights, title or interest in the September 1, 2004 Commission Letter  
16 Agreement.

17 THE COURT FURTHER FINDS that Plaintiffs Jim Wolfram and Walt Wilkes are the  
18 real parties in interest in the above-captioned action, capable of enforcing their rights under  
19 the September 1, 2004 Commission Letter Agreement.

20 ///

21 ///

22 ///

23

24

25

26

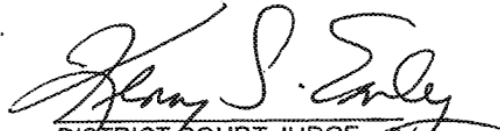
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28


JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that  
2 Plaintiffs' Countermotion for Partial Summary Judgment is GRANTED.

3 Dated 14 this day of March, 2013.

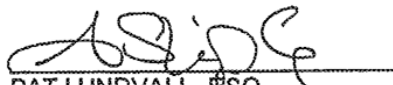
4  
5   
6 DISTRICT COURT JUDGE

7 JIMMERSON HANSEN, P.C.

8  
9   
10 JAMES J. JIMMERSON, ESQ.  
11 Nevada Bar No.: 00264  
12 LYNN M. HANSEN, ESQ.  
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19 James Wolfram and  
20 Walt Wilkes

21 Reviewed as to form and content:

22 McDONALD CARANO WILSON, LLP

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Las Vegas, Nevada 89102  
Attorneys for Defendant  
Pardee Homes of Nevada

1 MR. JIMMERSON: Post reconfiguration.

2 THE COURT: That matches up?

3 MR. JIMMERSON: This is this. This is Option  
4 Property.

5 THE COURT: This is just much bigger.

6 MR. JIMMERSON: This is bigger.

7 THE COURT: This is much more magnified.

8 MR. JIMMERSON: At pages 74, 75 and 76 of  
9 Mr. Lash's depo, he confirms this is an accurate  
10 representation of the earlier Exhibit 16A through 16D.

11 So what happens in the nine amendments post  
12 Commission Agreement are these, purchases of different  
13 properties, including purchases of Option Property in  
14 the red and in the green.

15 Now, in the agreements, never shown to us or  
16 disclosed to us, no notices required by the Commission  
17 Agreement or the like, they never disclose that they've  
18 redefined the term "Purchase Agreement" to be this. In  
19 other words, it's -- and I think Ms. Lundvall  
20 represented to you 1,950 acres and it started 1,500  
21 acres.

22 THE COURT: She gave me numbers.

23 MR. JIMMERSON: The 1,900 acres were to be  
24 here. They went in and purchased Option Property to the  
25 east, this being the same 1,900 acres.

1           So one of the remedies we want at the end of  
2 this case, and it will probably be after a second  
3 evidentiary hearing after they have complied with your  
4 order regarding accounting, is that this property be  
5 deemed Option Property since they've now chosen to  
6 redefine Purchase Property to be here.

7           In other words, they've exhausted the 1,900  
8 acres. We got the \$2.5 million commission for that.  
9 But they didn't stay within the boundaries of the  
10 Purchase Property. So that the economy changes, okay,  
11 ten years changes, where is Pardee likely to buy and  
12 build single family homes in the future? Right there.

13           THE COURT: Sure, because it's contiguous.

14           MR. JIMMERSON: But because of what they've  
15 done, this should be deemed Option Property at the end  
16 of the day, because otherwise --

17           THE COURT: They are calling it purchase.

18           MR. JIMMERSON: -- they've expanded Purchase  
19 Property larger.

20           So one of the breaches that occurred that  
21 they've occasioned is they breached the contract by  
22 expanding or changing the definition of Purchase  
23 Property.

24           THE COURT: Because there's no question then we  
25 have a question of fact on how they are defining what

1 was Purchase Property and what you are defining as  
2 Purchase Property. That alone is a genuine issue of  
3 material fact based on how you look at the Commission  
4 Agreement that's paid out. That's what you are saying,  
5 Mr. Jimmerson; correct?

6 MR. JIMMERSON: Yes, ma'am.

7 Let me now show you Exhibit 19 of our  
8 opposition, which begins at Bates stamp number 1344.  
9 This particular one is the -- it's called Amendment  
10 No. 7 to the Amended and Restated Option Agreement.  
11 This is one of the later takedowns of property.

12 You will see that this Exhibit 21 is produced  
13 by Pardee and it has a legend. You'll see that this is  
14 residential property, and you see the red is red and the  
15 green is green.

16 THE COURT: Where is green? There's no green.

17 MR. JIMMERSON: This is all green down here, is  
18 the green.

19 THE COURT: Okay.

20 MR. JIMMERSON: It does look blue, but I call  
21 it green, or blue.

22 THE COURT: If you call it green, that's fine.

23 MR. JIMMERSON: So the last purchases that  
24 you'll see then are into the Option Property, both red  
25 and green. Exhibit 19 is the Amendment No. 7, which is

1 the takedown of green or blue property. And when you  
2 look at the Bates stamp numbers which show the takedown,  
3 it tells you what the purpose is for the property that  
4 they are buying, residential, parks.

5 THE COURT: So it has to be single family.

6 MR. JIMMERSON: Exactly, for us to be entitled  
7 to a commission.

8 THE COURT: Correct. So you can match that up.

9 MR. JIMMERSON: And they are very specific at  
10 Bates stamp number --

11 THE COURT: 155.

12 MR. JIMMERSON: To show --

13 THE COURT: 1155.

14 MR. JIMMERSON: 1155, to show residential and  
15 other uses. So we clearly see that commissions are  
16 generated, are triggered to be owed and paid to our  
17 clients by virtue of this takedown because it's for  
18 single family residential property, and it so states in  
19 the exhibits here to the property.

20 THE COURT: When it says Residential 1, as  
21 opposed to multifamily, that's the single family;  
22 correct?

23 MR. JIMMERSON: Correct.

24 THE COURT: It doesn't say single family, but I  
25 get it. All right.

1           MR. JIMMERSON: So what we know, and only --  
2 not from Pardee. They precluded -- they refused to  
3 produce any of these amendments. After we took  
4 Whittemore's deposition and got all the amendments, then  
5 he confirmed, Mr. Whittemore in his deposition, that  
6 these properties changed -- that this was Purchase  
7 Property redefined by the amendments and there clearly  
8 was residential single family detached units here that  
9 were being purchased by Pardee. And Pardee's own map,  
10 which is attached to the fourth letter, I think  
11 Exhibit 23 or 24 references that. So that's what  
12 occurred.

13           So when you look at the four letters -- here's  
14 another distinction that's important for you to know.  
15 You asked this question of opposing counsel. Well, you  
16 are saying no Option Property was taken. And so when  
17 you look at the letters, the first two letters say, in  
18 the second letter -- the first letter says this, We've  
19 overpaid you by \$50,000, we're now reducing the amount  
20 of money we're paying you to catch up. And that's why  
21 at the end of 2007, we're paid all we're entitled to,  
22 there's no overpayment.

23           THE COURT: Okay.

24           MR. JIMMERSON: But there is an issue for which  
25 an accounting is due from this defendant on what is the



1 proper commissions. We do not concede, as opposing  
2 counsel said -- she's mistaken. We do not concede that  
3 we have been paid all we've been entitled to be paid.

4 They have not produced an accounting, which is  
5 requested under our third claim for relief, as to the  
6 calculation of the commissions. They have claimed we  
7 have paid you four percent of the first 50 million and  
8 one and a half percent of the last 34 million.

9 THE COURT: She actually did it for me.

10 MR. JIMMERSON: But they don't claim, We paid  
11 you what you are entitled to if we characterize it as  
12 Option Property.

13 THE COURT: Right. They are disagreeing that  
14 it's characterized as option. That's why they don't  
15 think there's an accounting because that's --

16 MR. JIMMERSON: Right.

17 THE COURT: That's the whole issue.

18 MR. JIMMERSON: But if you make a finding,  
19 either now or at the conclusion of the case, or if we  
20 file a motion for partial summary adjudication under  
21 Rule 56(d), that Option Property was taken down, then  
22 the defendant bears the burden of proof, because the  
23 accounting changes the burden of proof to the defendant,  
24 that they have to demonstrate that they've paid what is  
25 presently owed to us based upon Option Property

1 calculation, one and a half percent.

2 THE COURT: If and only if -- if there's a  
3 determination of what is or what is not option. I get  
4 it.

5 MR. JIMMERSON: Here's an underlined point and  
6 why the accounting claim, in our view, will win and then  
7 result in a subsequent evidentiary hearing. They can't  
8 tell you how many acres they've purchased, and they  
9 can't tell you how many acres of Option Property they've  
10 purchased. They've produced no information about that.

11 So when it comes to calculating number of  
12 acres, which is unknown, times \$40,000, we don't have a  
13 number.

14 THE COURT: That's a problem.

15 MR. JIMMERSON: That's why we requested the  
16 accounting, exactly.

17 Now, what happens then is --

18 THE COURT: See, that's where the number of  
19 acres comes in.

20 MR. JIMMERSON: Exactly right.

21 So Mr. Whittemore says it changed. We changed  
22 the boundaries of the Purchase Property by going into  
23 the eastern portion, but the two amendments and the  
24 Commission Agreement didn't allow that. So they  
25 breached the agreement by circumventing our Commission

1 Agreement and changing the definition of Purchase  
2 Agreement. And there's no language in Exhibit 5, the  
3 original agreement, that allows that to happen.

4           So again, I want to go back to the point, when  
5 you asked opposing counsel the question, Is the Purchase  
6 Property boundaries subject to change, the answer is no.  
7 She said the answer was yes. The answer is clearly no.  
8 And there's no language to suggest that Purchase  
9 Property boundaries were ever changed. They only  
10 changed because the two parties agreed to them to change  
11 without including us, and by the way, eight times,  
12 Judge, between September of 2004 and 2009.

13           THE COURT: And the issue is they make a  
14 distinction in the September 1, 2004 agreement on how to  
15 pay the two.

16           MR. JIMMERSON: Exactly.

17           THE COURT: If there was no distinction here --  
18 okay.

19           MR. JIMMERSON: There's the four letters that  
20 you have before you, which are Exhibits 23, 24, 27 and  
21 28. They go like this. The first letter says: We've  
22 overpaid you by \$50,000. We're going to take it upon  
23 ourselves to reduce your commission to catch up. No  
24 problem. No disclosure what they bought, they just say  
25 they are going to catch up.

1           The second letter says, We've not exercised any  
2 Option Property. Because my clients are looking at  
3 whatever closings they can find. They are not provided  
4 any maps, there's no reasonably informed information by  
5 Pardee at all, but they are gathering, from looking at  
6 the recorder's office, that there are other purchases  
7 venturing into -- other purchases occurring. So I'm  
8 simply asking, What is it that's going on?

9           And the response is, by the second letter,  
10 which is 2008, says, There's been no option purchase --  
11 no Option Property purchased. True statement. That's a  
12 true statement as of that moment in time.

13           Unbeknownst to us, because we never got the  
14 amendments, in August of 2008, five months later, they  
15 started purchasing Option Property. And so when you --

16           THE COURT: That's what you say the evidence is  
17 going to show?

18           MR. JIMMERSON: Well, that's what the  
19 amendments show, Judge. Exhibits 17, 18, 19 to our  
20 opposition. They are the fifth, sixth and seventh  
21 amendments to the Option Agreement.

22           If you read the third letter and the fourth  
23 letter, they don't say, despite our pointed requests,  
24 they do not respond by saying no Option Property has  
25 been purchased. They stay away from it, because they

1 know that Option Property was purchased by August of  
2 2008, later in 2008 and 2009.

3 So by then they know that they've purchased  
4 Option Property, and they, between themselves, excluding  
5 our client, have redefined that as Purchase Property.  
6 So they just redefine Purchase Property between  
7 themselves, circumventing or riding around the  
8 commission obligation to our client.

9 THE COURT: So they redefined what you feel was  
10 purchase -- I mean, Option Property. They redefined it  
11 and called it Purchase Property, and then you apply the  
12 commission letter to, whichever way it goes.

13 MR. JIMMERSON: Exactly. And so this property  
14 then, Exhibit 21, the map which is attached, the first  
15 map attached to the fourth letter, shows it went into  
16 Option Property as originally defined and told to our  
17 clients on September 1, 2004, all this area here.

18 Now, under the agreement, for it to be Purchase  
19 Property, at least as of September 1, they would have  
20 purchased north. They didn't. They went east and  
21 bought this property here, which is subject to Option  
22 Property.

23 So if we talk in terms of a conservative  
24 approach, you are so true to give my clients, our  
25 clients credit for their credibility and for their

1 truthfulness. Look at the Complaint. It is one of the  
2 most conservative, appropriate, I think, proper.

3 We don't say that they've stolen from us, that  
4 they've embezzled. We say, in claim number one, they  
5 breached the agreement because they didn't do the two  
6 things. They didn't give notice as formally required.  
7 When you take down Option Property, you are required to  
8 do, as opposing counsel concedes, memorandum, notice,  
9 option deed. None of that is done.

10 By the way, they record a deed. They record a  
11 deed, but they call it Purchase Property. They record a  
12 deed that's in the Option Property, but they call it --

13 THE COURT: So the gist of all this is we have  
14 a big discrepancy on what each side is calling option  
15 and purchase.

16 MR. JIMMERSON: The opening sentence of my  
17 son's brief was -- Mr. Wolfram -- well, it depends on  
18 what you call Option Property.

19 THE COURT: I actually underlined that.

20 MR. JIMMERSON: Now you understand that's the  
21 gravamen of this dispute.

22 THE COURT: No one's going to disagree if it  
23 was defined as Option Property. Pardee understands what  
24 the process is. We went through that. It's just they  
25 say there wasn't.

1           MR. JIMMERSON: So they breached the agreement  
2 by, one, failing to give the notice and, two, failing to  
3 keep reasonably informed on all matters. And all  
4 matters, Judge, means all. "All" means "all." They  
5 breached that provision of the Commission Agreement.

6           THE COURT: So the gist of -- we need to make a  
7 determination is what exactly was Option Property, what  
8 was Purchase Property, and then apply the commission  
9 letter to it, and then we'll have a resolution.

10          MR. JIMMERSON: The accounting claim is also  
11 important.

12          THE COURT: I understand.

13          MR. JIMMERSON: But here's how it plays out:  
14 You'll have a trial on April 16th -- April 15th, and  
15 whatever days it takes to complete the trial. If you  
16 see it the plaintiffs' way, you will then order them to  
17 account.

18          We will then have a second trial, call it  
19 August of 2013, in which they will come back, having  
20 been ordered to account, where they bear the burden of  
21 proof to demonstrate what's been purchased, how many  
22 acres, information not yet provided by the defendants.  
23 Despite being requested, they don't answer the  
24 questions.

25          THE COURT: So envision the first trial is you

1 need a determination on what exactly is Option Property  
2 and what is Purchase Property. Once we do that --

3 MR. JIMMERSON: If you see the plaintiffs  
4 establishing liability, then they have to account.

5 THE COURT: I understand.

6 MR. JIMMERSON: That's how we envision it.

7 THE COURT: If, for some reason, we agree with  
8 that, then they've accounted for everything. Because if  
9 it is defined as Purchase Property, there is no dispute  
10 that they've paid what's owed if it was Purchase  
11 Property.

12 MR. JIMMERSON: Right.

13 Now, the other part of this thing is this:  
14 Because it is, as I call it, a generational case and you  
15 have the concession about the right to the real parties  
16 in interest, what you have is a situation that we are  
17 going to ask the Court to note or by court order -- and  
18 I'll say constructive trust -- but to order that in the  
19 event property north of the red and blue is developed in  
20 the next whatever remains now, 30 years, that the court  
21 treat it as Option Property because they have, on their  
22 own, exhausted the definition of Purchase Property, the  
23 1,900 acres or so, and paid \$84 million. So the next  
24 dollars must be Option Property by definition.

25 THE COURT: I think they've actually agreed to



1 that, at least that if they did any more property, it's  
2 going to be Option Property, and they understand what  
3 the agreement is. Correct?

4 MR. JIMMERSON: Exactly.

5 THE COURT: You just want to know -- make sure  
6 they do their agreement if it does happen.

7 MR. JIMMERSON: Where is the amended and  
8 restated agreement? Judge, will you look at Exhibit 12,  
9 please?

10 THE COURT: Got it.

11 MR. JIMMERSON: I want to point out that  
12 somewhere along the line between March of 2005 and the  
13 commencement of this litigation we obtained a copy of  
14 Exhibit 12. It is the seven amendments to Exhibit 12.  
15 We didn't get it until CSI produced it.

16 Here's what happened: Between September 1,  
17 2004 and March of 2005, those two parties, Pardee and  
18 CSI, amended their agreement in the form of Exhibit 12.  
19 And, of course, they did it without our knowledge or  
20 consent. We were not party to it. And they concede we  
21 were not involved in it.

22 I did want to note that we may ourselves file a  
23 Rule 56(d) motion for partial summary adjudication on  
24 the issue of liability because at page --

25 THE COURT: In this case?

1 MR. JIMMERSON: Yes.

2 THE COURT: I read it more as doing the  
3 assignment.

4 MR. JIMMERSON: The reason we would is because  
5 at pages 74 to 77, page 75 specifically, of the  
6 deposition of Jon Lash, we specifically ask him: And do  
7 you remember ever talking to them -- referring to the  
8 plaintiffs -- about any of the property, residential  
9 property takedowns that we've discussed today?

10 The answer: I didn't see a reason to.

11 Okay. So the answer to my question is no?

12 Answer: No.

13 So if you find, as we believe you will, because  
14 Mr. Lash has provided us the map and confirmed the  
15 correction of the overlay, that Option Property was  
16 purchased during the course of the 2005 to 2009 time  
17 period and, therefore, there was a breach of the  
18 contract of notice and the like, that you will find that  
19 there's a liability established, which is a couple  
20 things.

21 First of all, liability is established. So now  
22 the issue is only damages on the Counts I, II, and III,  
23 and as to the third count, that they have the burden of  
24 proof to, during a subsequent hearing, show us an  
25 accounting of what was purchased and how much and the

1 like, not only to determine present damages as well as  
2 future commissions and the order in which they were  
3 taken.

4 Now, Exhibit 12, this is the first of the  
5 agreements after the Commission Agreement, March of  
6 2005, about seven months later. What's significant  
7 about this document is they changed the definition of  
8 Option Property.

9 MR. J.M. JIMMERSON: Purchase Property.

10 THE COURT: Purchase Property.

11 MR. JIMMERSON: Sorry. Changed -- no, no.  
12 They changed the definition of Purchase Property. And  
13 what they did -- and I'll show you the exhibit. It's  
14 the C-2 exhibit. They then made all Option Property  
15 placed in Lincoln County.

16 So when you go back to your 65 to 66 and 67,  
17 all of this property that you saw was cross hatched here  
18 no longer exists, and they call this now Purchase  
19 Property. And only north of Lincoln County do they have  
20 any Option Property at all.

21 THE COURT: So there's several components to  
22 this of renaming or redefining, in your position, of  
23 what is Purchase and Option Property?

24 MR. JIMMERSON: Correct. Showing you the maps  
25 attached to Exhibit C-2 and to Exhibit 12, Bates stamp

1 number 000055 shows you now that that which is Option  
2 Property is now only north of Lincoln County. There's  
3 no hatch below Lincoln County and Clark County anymore  
4 by virtue of this amendment.

5           So they've done two things. First of all,  
6 they've taken away our ability to one and half percent  
7 times the number of acres times \$40,000 in Clark County.  
8 But secondly, they've delayed, potentially forever, the  
9 development of Option Property that is miles away in  
10 Lincoln County versus trying to complete the rest of the  
11 development in Clark County.

12           THE COURT: So they changed -- you are going to  
13 say the evidence is going to show they've changed what  
14 you say is Option Property, they've changed it up to  
15 Lincoln County and it's not contiguous and --

16           MR. JIMMERSON: Exactly.

17           THE COURT: -- it has a significant impact on  
18 then collecting the commission in the future because  
19 they are going to do contiguous.

20           MR. JIMMERSON: Exactly. The build-out is  
21 going to be contiguous, of course.

22           THE COURT: If there is any or when there is  
23 one. Who knows? Okay.

24           MR. JIMMERSON: I just wanted to note on the  
25 element of damages, there are multiple damages that flow

1 from this. First, there is, after the defendant will be  
2 ordered to complete accounting, there will be a  
3 computation of whether there's any monies due and owing  
4 from the existing takedown of the approximate 2,000  
5 acres.

6 THE COURT: Sure. If you redefine what is  
7 Option Property, then it will be recalculated pursuant  
8 to the agreement.

9 MR. JIMMERSON: Secondly, when you look at the  
10 Complaint, we have specifically pled a request for  
11 attorneys' fees, both as special damages and as  
12 attorneys' fees. Now, when you read the literal words  
13 of the Complaints, opposing counsel tries to be a  
14 stickler on this -- you'll see the first claim for  
15 relief asks for attorneys' fees.

16 THE COURT: The second claim asks for  
17 attorneys' fees.

18 MR. JIMMERSON: But the second claim is very  
19 specific to ask for attorneys' fees as special damages.  
20 The first does not, but the second does and the third  
21 does. And the third does because it incorporates the  
22 second. Okay.

23 So throughout the discovery, you will see all  
24 of our bills through October were all tendered to the  
25 defendant as exhibits. So they are clearly on notice

1 that separate and apart from prevailing party provisions  
2 that are in the Commission Agreement --

3 THE COURT: You are claiming special damages.

4 MR. JIMMERSON: Right. And we will, of course,  
5 supplement our bills as we get near trial, but that was  
6 the cutoff for discovery and when the motion was  
7 currently filed by them, I think in the October,  
8 November time period.

9 Secondly, let me just say this: They are on  
10 notice. I could through a motion 15(a) seek to amend  
11 the Complaint to add the specific word, the word  
12 "special." That's the only criticism.

13 Or third, under 15(b), according to proof, you  
14 have the right on your own.

15 THE COURT: Yes. You can amend. I understand  
16 that.

17 MR. JIMMERSON: So respectfully, I appreciate  
18 when you are in the defendants' position and they've  
19 done this, you do what you can to try to mitigate your  
20 client's culpability. But in the end, we're entitled to  
21 attorneys' fees in two ways, special damages as well as  
22 attorneys' fees for prevailing party.

23 THE COURT: If you prevail.

24 MR. JIMMERSON: Opposing counsel is not going  
25 to say this because she wants to be credible. When I

1 write a letter and I charge my client \$550 for a couple  
2 of hours of work, okay, that's a damage. When I request  
3 information and don't get it back, that's a damage.  
4 When I send out a request for production of documents,  
5 please show me the amendments and they don't provide  
6 them and I have to get them from a third party -- and  
7 that's the gravamen of the case because that shows the  
8 liability. That shows the breach of the contract. It  
9 shows the breach of the accounting requirements and the  
10 need for accounting. So those are the damages.

11 Future commissions are certainly an element.  
12 And so what we envision here, and one of the things that  
13 makes this case difficult to resolve, I'll tell you from  
14 a practical perspective, is we're going to need an order  
15 from the Court that obligates Pardee in the future to  
16 give specific notice as you would order going forward.

17 When Jim is dead and Walt Wilkes is dead and  
18 his wife has passed away, his children need to have some  
19 knowledge that there's some affirmative receipt of a  
20 letter that says, Oh, by the way, the economy has  
21 improved, we're taking down Option Property directly to  
22 the north in Clark County, and here's your notice and  
23 here's your commission check or the like. We're going  
24 to need that protection.

25 THE COURT: You are feeling that because they

1 didn't do it?

2 MR. JIMMERSON: Exactly.

3 THE COURT: But I think their position is they  
4 didn't do it because they believe they did not take down  
5 Option Property. So once we resolve -- however that  
6 resolves -- what actually is Option Property, I don't  
7 feel they are in bad faith in that they didn't follow  
8 the process. They just didn't define it, as her whole  
9 presentation has been, Pardee, as Option Property.

10 Counsel for Pardee, we went through the  
11 process, she was very plain at least three times that  
12 they agree they know the process. It's just they didn't  
13 feel what they exercised -- they didn't feel they  
14 exercised Option Property. So that's really the issue  
15 I'm more interest in. And through all the evidence --

16 MR. JIMMERSON: You'll have to measure the good  
17 faith or bad faith or breach of contract --

18 THE COURT: I agree.

19 MR. JIMMERSON: -- and the credibility of the  
20 witnesses. But they absolutely knew they were merging  
21 into Option Property because if they didn't, there would  
22 be no need to redefine Purchase Property in the seven  
23 amendments that followed. That's the indication that  
24 they knew.

25 THE COURT: I understand the logic of that.



1           MR. JIMMERSON: They made the amendments  
2 because they couldn't stay with the original definitions  
3 of what Purchase Property was, which was --

4           THE COURT: Have you gotten testimony from  
5 somebody at Pardee and gone through all these?

6           MR. JIMMERSON: Yes.

7           THE COURT: I only have snippets of  
8 depositions, as you know, for summary judgment.

9           MR. JIMMERSON: We have Mr. Lash, who is a key  
10 factor, and we've identified other witnesses who may or  
11 may not testify.

12          THE COURT: As I read some of it, I'd get into  
13 it and then it would go to 20 more pages. So it's very  
14 difficult when you are doing summary judgment reading  
15 excerpts. I understand that's why we have trials.  
16 Okay.

17          MR. JIMMERSON: And one other area of damage --  
18 it's a contested issue, I understand. That's why I say  
19 if we did file a partial summary judgment, it would be  
20 on liability -- is the issue of time and effort. The  
21 Gray decision of the California Supreme Court makes it  
22 clear you are entitled to reasonable efforts.

23          Opposing counsel in the case said she doesn't  
24 think that's true, but she didn't cite any case law to  
25 say that's not true. So it's another element of

1 damages, not to be decided today. I'm just saying --

2 THE COURT: I understand it's an issue.

3 MR. JIMMERSON: -- our damages are foreseeable  
4 and they proximately flow from the breach of contract of  
5 the defendants. And the breach of contract is the terms  
6 of the failure to keep reasonably informed, failure to  
7 provide notices, which they concede was due owing if you  
8 find it to be Option Property.

9 And the practical point was had they been --  
10 they never wrote back and said, Here's what we've taken  
11 down. We took golf course property down. You are not  
12 entitled to commission.

13 THE COURT: That's not an issue. I was afraid  
14 that was an issue.

15 MR. JIMMERSON: They never made that  
16 disclosure. I made requests for all information. Over  
17 the phone Mr. Lash tells me he's going to provide it.  
18 They never provide it. Four times you see it.

19 And then after the second amendment, when they  
20 have purchased Option Property in August of 2008, then  
21 they stay away from, in the last two letters, any  
22 suggestion that they hadn't purchased Option Property.  
23 It's noticeably absent, whereas, as you've seen it, as  
24 of March of 2008, they were true, they hadn't taken  
25 Option Property as of that moment. But as you see from

1 the amendments to the restated agreement, there clearly  
2 was.

3 So respectfully, for purposes of today, we  
4 believe we've established that there's genuine issues of  
5 material fact. We've demonstrated causation for damages  
6 and damages.

7 But I think that you won't find any evidence to  
8 the contrary that Option Property was, in fact, taken to  
9 the east of the Purchase Property through the fifth,  
10 sixth, and seventh amendments to the restated agreement,  
11 all of which were never shared with us until this  
12 litigation. And on that basis, through motion or at  
13 time of trial, you will find liability in favor of the  
14 plaintiff. Thank you, Judge.

15 MS. LUNDVALL: If I may, Your Honor?

16 THE COURT: Sure.

17 MS. LUNDVALL: I'm going to work a little bit  
18 on the fly. I would like for you to leave that up  
19 there, please. Thank you.

20 I'm going to see if I can't work a little bit  
21 here on the fly, Your Honor. Almost all of these points  
22 are set forth within our reply, but once again this  
23 theory that the plaintiffs have advanced is different  
24 than what they set forth in their opposition. What you  
25 heard from Mr. Jimmerson today is different than what

1 they set forth in their opposition. But I think that I  
2 can deal with this. And what I'm going to do is see if  
3 I can't --

4 THE COURT: It's a lot more information, I  
5 understand.

6 MS. LUNDVALL: There we go.

7 Number one, the entire premise of the  
8 plaintiffs' presentation is that Pardee agreed to  
9 purchase Purchase Property from CSI and all other  
10 property was Option Property. That's what Mr. Jimmerson  
11 started his presentation with. That's what I objected  
12 to. And, in fact, in our reply we set this out, because  
13 they had that same false premise within their  
14 opposition. And that false premise, we demonstrated  
15 through the sworn testimony of Mr. Whittemore, is not  
16 correct.

17 In other words, they want to take the position  
18 of this, that Pardee agreed to purchase a portion of the  
19 corner and then everything else --

20 THE COURT: Which exhibit do you have? I  
21 apologize, but I would really like to follow you.

22 MR. JIMMERSON: To help you, those are the  
23 exhibits to Exhibit 8, the second amendment of August  
24 2004.

25 THE COURT: I have Plaintiffs' Exhibit 8. So

1 give me the bottom numbers, 15 --

2 MS. LUNDVALL: If you look at -- if you go to  
3 Exhibit 8, Amendment No. 2 to the Option Agreement.

4 THE COURT: I have that. It's the Option  
5 Agreement, 31st day of August, 2004.

6 MS. LUNDVALL: Correct. There's a number of  
7 hand-drawn maps. All right.

8 THE COURT: That's these that I have in front  
9 of me?

10 MS. LUNDVALL: That's correct.

11 THE COURT: Okay. I'm on the right page.

12 MS. LUNDVALL: Now, I want you to think about  
13 this: These are hand-drawn maps. When was the last  
14 time you got a deed with a hand-drawn map or that there  
15 was some type of a hand-drawn map in as far as the Clark  
16 County recorder's office where real property  
17 transactions are taken care of? They don't happen.

18 THE COURT: Hence, you don't like the overlay  
19 part because if it's hand-drawn -- what do we say in  
20 depositions? This isn't specific; right?

21 MS. LUNDVALL: Right.

22 THE COURT: Okay. I understand what you are  
23 saying.

24 MS. LUNDVALL: But the point being is this,  
25 that they've taken the position --

1 MR. JIMMERSON: Excuse me, I'm sorry.

2 MS. LUNDVALL: -- that the Purchase Property --

3 MR. JIMMERSON: Can I be heard briefly? The  
4 overlay is a --

5 THE COURT: The overlay isn't.

6 MR. JIMMERSON: The overlay is a transparency  
7 of the Clark County deed, the deed in Clark County.

8 THE COURT: Okay. Go ahead.

9 MR. JIMMERSON: The transparency, no hand-drawn  
10 there.

11 MS. LUNDVALL: So the point I'm trying to make  
12 is this: They take the position that there was Purchase  
13 Property that was going to be purchased by Pardee for  
14 the Purchase Property Price and then everything else was  
15 Option Property. That's what Mr. Jimmerson told you.  
16 That's the same thing that they told you in their  
17 opposition and it's the same thing that they asked  
18 Mr. Whittemore in his deposition.

19 And we brought to you then Mr. Whittemore's  
20 deposition testimony, as well as the agreement between  
21 the parties. Mr. Whittemore's deposition testimony is  
22 quite clear. Therefore, when you say the Option  
23 Property includes everything else, it doesn't. That's  
24 his testimony.

25 The Option Property only included the pieces

1 that I designated as the developer in conjunction with  
2 the negotiations as single family production homes.

3 Now, why is that important? Because the  
4 definition of what Option Property was was set forth in  
5 the Option Agreement. It wasn't drawn by map. It  
6 wasn't set by metes and bound. It wasn't set forth in a  
7 specific deed. It was defined. And that definition is  
8 what controls the parties' agreement.

9 Mr. Jimmerson negotiated this Commission  
10 Agreement. He was the one that negotiated it on behalf  
11 of Mr. Wilkes and Mr. Wolfram. Option Property was  
12 right here as a specific definition contained within the  
13 parties' agreement. And it is not a map. It is not a  
14 piece of parcel on a map. It is what's defined in the  
15 parties' agreement.

16 THE COURT: It says pursuant to paragraph 2 of  
17 the Option Agreement.

18 MS. LUNDVALL: Exactly. And in paragraph 2  
19 there's a specific definition and also in the recitals  
20 there's a specific definition.

21 So when you take away that false presumption  
22 that they have, the entirety of their argument falls  
23 away. And let me tell you why. Because what they do  
24 then is that they take an overlay and they say then and  
25 they compare, I think it's 21 against 26.

1           And they say, Okay, under these boundaries is  
2 what was the Purchase Property that was originally  
3 contemplated, and because there's some green out here  
4 that was actually purchased by Pardee, then that  
5 demonstrates it was Option Property. But it's a false  
6 presumption given what their false demonstration is of  
7 what is Option Property.

8           The second piece then that you take a look at,  
9 what they don't point to you is all of this white that,  
10 in fact, Pardee did not purchase, did not actually  
11 purchase.

12           THE COURT: Okay. What is that? Option  
13 Property?

14           MS. LUNDVALL: Well, what this is it's all  
15 still land that is owned by CSI. And, therefore, if  
16 CSI, in the future, as the master developer says, We are  
17 going to designate this as single family, Pardee, you  
18 now have the option to buy that, you can buy that.

19           Now, where do we get back to this? You get  
20 back to the issues straight from the Option Agreement.  
21 The boundaries meant nothing. The boundaries of the  
22 properties meant nothing because the parties  
23 anticipated, as they went through the tentative map  
24 process, the entitlement process that was required both  
25 through Clark County as well as through Lincoln County,



1 is that the mapping process for what was specifically to  
2 be deeded to Pardee from CSI, that was going to change.  
3 And in addition, because of the BLM reconfiguration  
4 process, they knew that the boundaries were going to  
5 change.

6 THE COURT: So you can't rely on the  
7 boundaries?

8 MS. LUNDVALL: That's correct. So their entire  
9 premise of their case is trying to suggest that there is  
10 colored areas outside of those boundaries. But what  
11 they ignore, though, is that there's white areas within  
12 the boundaries. And, therefore, you have to say, Well,  
13 why is that?

14 THE COURT: It doesn't make sense.

15 MS. LUNDVALL: It doesn't make sense. But  
16 their theory of the argument it doesn't make sense is  
17 they are ignoring the fact that all of the issues  
18 dealing with boundaries was all expected to change by  
19 the parties across time. And in this respect,  
20 Mr. Jimmerson did an excellent job when he negotiated  
21 this agreement.

22 THE COURT: Because he went for purchase price.

23 MS. LUNDVALL: He went for the big banana.  
24 Okay. That big banana was the Purchase Property Price.  
25 That was the \$84 million. Regardless if there was one

1 acre, there was two acres, there was five acres,  
2 whatever, he went for the big banana and that Purchase  
3 Property Price is what their commissions were based  
4 upon.

5           So to the extent, Your Honor, that they try to  
6 advance the argument that in some fashion or another  
7 that there's been some change, there has been no change  
8 in the definitions. We demonstrated that in our reply.  
9 The definitions are uniform from original Option  
10 Agreement to Amendment 1 to Amendment 2 to the restated  
11 Option Agreement. And then to the actually eight  
12 amendments then thereafter. Those definitions did not  
13 change.

14           THE COURT: You say definitions control and  
15 their position is the boundaries control?

16           MS. LUNDVALL: That's correct. But they cannot  
17 point to you anything within the Commission Agreement  
18 that says boundaries control. What Mr. Jimmerson very  
19 wisely negotiated was that it was the definitions that  
20 controlled.

21           THE COURT: What they are saying is the  
22 definitions, but the boundaries determine what is option  
23 and what is purchase. So that's what --

24           MS. LUNDVALL: But that's not what the Option  
25 Agreement or any of the amendments -- and if you take a

1 look at as far as which is our Exhibit G, which is the  
2 full Commission Agreement, I think it's the very first  
3 paragraph, if I'm not mistaken, it makes reference to  
4 that the definitions were going to be the same as the  
5 Option Agreement. That's where they are all  
6 capitalized. For instance --

7 THE COURT: Hence, the reference to the  
8 capitalization. I get it.

9 MS. LUNDVALL: That's why these are all  
10 capitalized. Those definitions are all set forth within  
11 the original Option Agreement. So that is point number  
12 one, Your Honor, that we wanted to make.

13 The second point then was I wanted to  
14 demonstrate on this overlay why this is all a red  
15 herring. This is a red herring because of the  
16 definitions that were included within the parties'  
17 Commission Agreement. So to that extent, Your Honor,  
18 that there's no mixing of somehow differences in the  
19 formulas.

20 The other thing, though, too is, if I could  
21 offer this to the Court, there's a suggestion that  
22 somehow that we need an evidentiary hearing to make a  
23 determination as to -- let me back up one second.

24 Take their argument at face value. Their  
25 argument is that there's land outside of this line of

1 demarcation. All right.

2 THE COURT: That was purchased by Pardee.

3 MS. LUNDVALL: And they say if, in fact, that  
4 is defined as Option Property and Pardee purchased as  
5 far as this color portion, then, in fact, that we should  
6 be entitled to a commission on this under a different  
7 formula. Well, wait a minute. They know how much land  
8 that is. That's all a matter of public record. There  
9 is a deed that defines that. And you can calculate what  
10 that acreage is. You don't need an evidentiary hearing  
11 by which to do that.

12 THE COURT: That's something you certainly  
13 should present.

14 MS. LUNDVALL: Well, the point being is they've  
15 had that opportunity to do that if they genuinely  
16 believed that. But this has been a bit of an evolving  
17 theory with them. We take a deposition, we get one  
18 theory. We move for a summary judgment, we get another  
19 theory. Now we've got another theory at argument.

20 But the point being is that no matter what  
21 theory you work under, if they genuinely believe that  
22 somehow this is property for which they are entitled  
23 commission on, they could have calculated that. That's  
24 an easy thing to do. It's a matter of determining what  
25 the acreage is of that land, going then back to the

1 agreement --

2 THE COURT: Just apply the formula.

3 MS. LUNDVALL: -- and apply for formula.

4 That's simple math.

5 THE COURT: We'll see if we get there.

6 MS. LUNDVALL: That, I agree.

7 But the only way you get there, though,  
8 Your Honor, is to ignore all of the process and the  
9 procedure that was set forth in the agreement, the  
10 Option Agreement between Pardee and CSI for the purchase  
11 of Option Property pursuant to paragraph 2. They want  
12 you to ignore the language of the agreement that  
13 Mr. Jimmerson negotiated. And you can't.

14 Option Property pursuant to paragraph 2,  
15 paragraph 2 says, If, in fact, CSI designates additional  
16 land for single family development, and if --

17 THE COURT: Hence, the word "additional"?

18 MS. LUNDVALL: That's right.

19 And if Pardee sends a written notice of its  
20 exercise and if there's an Option Property deed, that  
21 Option Property deed would be as a result of written  
22 escrow instructions. All of those transactions would  
23 have been in writing, and it all was required under the  
24 process under paragraph 2 of the Option Agreement and  
25 they don't have any of that. And that's why the

1 contention and the argument that they've tried to  
2 advance is a fallacy.

3           The last thing that, Your Honor, I would like  
4 to go back to, and that is this: The entire argument  
5 that they are basing this on is once again going back to  
6 the issue of acreage. Mr. Wolfram and Mr. Wilkes both  
7 acknowledge that these Purchase Property Prices were not  
8 based upon acreage. They were based upon the  
9 capitalized terms Purchase Property Price.

10           THE COURT: I understand they weren't paid per  
11 acreage, but they were paid -- the issue is what is  
12 Purchase Property, and that may be an acreage issue, and  
13 what is Option Property, and that may be an acreage  
14 issue.

15           MS. LUNDVALL: All right. But then we go back  
16 to this: Purchase Property Price is not based upon what  
17 Purchase Property is.

18           THE COURT: Definition of Purchase Property.

19           MS. LUNDVALL: That's correct, it's not. In  
20 the parties' agreement Purchase Property Price, that  
21 entire term, has a very specific definition. And it has  
22 nothing to do with where the Purchase Property is, where  
23 it's located, how it's configured, what its metes and  
24 bounds are.

25           THE COURT: Hence, paragraph 1.

1 MS. LUNDVALL: Hence, paragraph 1. The  
2 entirety of this has a very specific definition in the  
3 Option Agreement. Paragraph 1 of the Option Agreement,  
4 by the time you take Amendment 1 and 2, says it's  
5 \$84 million, and that's what it is. And that's what  
6 Pardee has paid to CSI. That's what CSI acknowledges  
7 that it received. That's what all of the escrow  
8 documents show. That's what was paid. And it makes no  
9 difference what Pardee got back in exchange for that,  
10 because their commission, very wisely, like I said, was  
11 based upon that Purchase Property Price.

12 THE COURT: But their concern is the third  
13 part.

14 MS. LUNDVALL: That's correct.

15 THE COURT: Their concern is has there been any  
16 Option Property? Not -- I don't think we have a  
17 disagreement on the first two. It's if they are owed  
18 anything under the (iii) section. That's the --

19 MS. LUNDVALL: So then you have to go to the  
20 definition of what Option Property was.

21 THE COURT: And you want me to look at  
22 paragraph 2. And I want you to look at paragraph 2 and  
23 the procedure then by which Pardee was to purchase.

24 THE COURT: But what if Pardee didn't follow  
25 their procedures? What if Pardee decided, Okay, we're

1 supposed to do that under paragraph 2, but for some  
2 reason, we decided to do a swap so we could redefine, I  
3 mean --

4 MS. LUNDVALL: Well, from this perspective --

5 THE COURT: That would be unfair to them, would  
6 you agree, if they didn't decide to do the process they  
7 should have?

8 MS. LUNDVALL: This would be the point, though,  
9 is was there more money paid by Pardee other than the  
10 \$84 million for single family land? No. They admit  
11 that. I guess that's where I get --

12 THE COURT: There's still future things, too,  
13 they're concerned about, future Option Property that has  
14 issues of fact that we need to be concerned about.

15 MS. LUNDVALL: Absolutely, Your Honor. So from  
16 that perspective, that's why I think that that is an  
17 important distinction in the argument that they are  
18 trying to advance.

19 Mr. Jimmerson also said that he thinks that  
20 there's some type of a need for some type of a special  
21 notice.

22 THE COURT: You know, honestly, Counsel, I'm  
23 not going to get there yet. I'm trying to get the facts  
24 to see if I can properly -- I appreciate where he's  
25 coming in and I agree with you. I need a lot more



1 evidence.

2           This sounds horrible, because I've read all  
3 this, but there's a lot to this, as a matter of fact.  
4 And so I appreciate your comments, and I agree that is  
5 certainly an open issue that needs to be thoroughly  
6 addressed before I go anywhere like that.

7           MS. LUNDVALL: Your Honor, from my perspective,  
8 this is what I try to anticipate as well, is that you  
9 have a motion for summary judgment before you, and you  
10 have these documents in front of you. So the question  
11 becomes what are you going to see different at the time  
12 of trial?

13           Number one, the parties have admitted that the  
14 agreements are clear and unambiguous. So they can't  
15 testify, they can't offer any parol evidence that  
16 somehow contradicts these agreements. The plain meaning  
17 is supposed to be brought to them. And the plain  
18 meaning is supposed to be determined by the four corners  
19 of the document. That's point number one.

20           Point number two is you have the evidence  
21 before you as to what Pardee's purchases have been and  
22 the stipulated amount of what they paid for the Purchase  
23 Property Price. There's no other evidence that can be  
24 introduced at a time of trial that is different than  
25 what you have before you.

1           The parties also brought to you the Option  
2 Agreement and each of and every one of its amendments.  
3 Those Option Agreements are important simply for this  
4 fact: It has defined terms in here. And those defined  
5 terms then are found within the parties' agreements.

6           So, therefore, what I try to do is to go back  
7 and I'm trying to sort this out and direct the Court  
8 where within the evidence you are going to find. And  
9 then when I sit back and say, okay, from an anticipation  
10 perspective, what are you going to hear different or in  
11 addition to what is already before you?

12           Mr. Whittemore has already testified on behalf  
13 of CSI that there has been no designation of Option  
14 Property by him as the master developer on behalf of  
15 CSI. And, therefore, there's been no written exercise  
16 notice. They acknowledge that. There's been no special  
17 escrow instructions that have been drawn. There's been  
18 no schedule that has been used to determine what the  
19 purchase price of this Option Property is. There's been  
20 no Option Property deed. Therefore, that should be the  
21 end of this discussion as to (iii).

22           The plaintiffs admit --

23           THE COURT: So based strictly on the excerpt  
24 you gave me from Mr. Whittemore, that's it?

25           MS. LUNDVALL: Absolutely. From the standpoint

1 of it clarifies then two points about Mr. Whittemore's  
2 testimony. We brought and we set forth in our reply  
3 brief, Your Honor, his exact testimony. Number one,  
4 they've never purchased any Option Property.

5 And he also clarified, when Mr. Jimmerson was  
6 asking him questions, Well, in other words, Option  
7 Property includes everything else other than Purchase  
8 Property? And he says, No, no, no. That's not right.  
9 And we brought you his testimony on that particular  
10 point.

11 So to the extent, Your Honor, then, the point I  
12 guess that I'm trying to make is this: There is nothing  
13 separate and distinct that you are going to hear at a  
14 trial that is not before you at this point. And given  
15 that then and given the parties' acknowledgment that the  
16 Commission Agreement is clear and unambiguous, there is  
17 nothing then by which to be resolved at the time of  
18 trial.

19 THE COURT: So you are telling me you think  
20 they can bring no evidence whatsoever or have not a  
21 reasonable argument on what Option Property is and how  
22 it was reconfigured and everything under those  
23 amendments?

24 MS. LUNDVALL: Because, number one, when they  
25 talk about the reconfiguration issues, those

1 reconfiguration issues were entirely anticipated.

2 THE COURT: I understand.

3 MS. LUNDVALL: Those were entirely anticipated.

4 THE COURT: That it would change.

5 MS. LUNDVALL: That it would change. Moreover,  
6 Purchase Property Price, that definition didn't change.  
7 That \$84 million is still there.

8 THE COURT: I understand that.

9 MS. LUNDVALL: Option Property definition, we  
10 pointed out that definition didn't change.

11 And the purchased by pursuant to paragraph 2,  
12 that's the key point. It's not simply what is Option  
13 Property? It's Option Property purchased by Pardee  
14 pursuant to paragraph 2. Did that happen. Paragraph 2  
15 and the escrow instructions and the attachments to the  
16 Option Agreement said that this would be an Option  
17 Property deed, and there is no Option Property deed.

18 And so that's why we believe that the relevant  
19 facts then are undisputed, and those relevant facts then  
20 indicate that Pardee has lived up to its obligation. It  
21 paid \$1.25 million to two individuals for doing an  
22 introduction. And it has acknowledged that if, in fact,  
23 there are any purchases in the future, that it will  
24 notify the plaintiffs pursuant to that first paragraph  
25 then of the Commission Agreement, if that happens.

1 their --

2 THE COURT: I got that.

3 MS. LUNDVALL: So when you look at their  
4 opposition then, you read their brief and you just read  
5 the brief naked, they say we have exercised Option  
6 Property and they cite to some evidence. When you go to  
7 that evidence, it doesn't support what the assertions  
8 are within the brief.

9 A party cannot create an issue of fact. It is  
10 the Court's job then to take a look at the evidence. So  
11 what I'm going to do is I'm going to walk through the  
12 evidence.

13 We offered the testimony of Jon Lash on behalf  
14 of Pardee. His testimony was clear and unequivocal that  
15 Pardee had not exercised any Option Property.

16 We offered the Court then the testimony then of  
17 Harvey Whittemore. And when you actually look at his  
18 testimony, his testimony is that Pardee had not  
19 exercised any Option Property.

20 The third thing that we offered to the Court  
21 then is this process by which the Option Property would  
22 have to be exercised. We pointed out how the Option  
23 Agreement set forth a procedure, and this procedure --  
24 let me back up one step, if I could, please.

25 THE COURT: Absolutely.

1 MS. LUNDVALL: In 2004, Pardee and CSI then  
2 negotiated for this Option Agreement. They had two  
3 amendments then to that before the Commission Agreement.

4 THE COURT: We went through those. You said  
5 one made it go up to 84 million.

6 MS. LUNDVALL: That's correct.

7 Now, if you take a look at that Option  
8 Agreement, there is a whole boatload of due diligence  
9 provisions that were afforded to the parties in there.  
10 The time frames then, once those time frames were,  
11 certain of the due diligence passed.

12 So then March of 2005, the parties then  
13 negotiated and entered into what they called the amended  
14 and Restated Option Agreement. And so that was in March  
15 of 2005. While there is a suggestion within the  
16 opposition the plaintiffs weren't aware of that, their  
17 Complaint and their Amended Complaint relies upon the  
18 Amended and Restated Option Agreement. So that is a  
19 judicial fact then. They are not permitted to deviate  
20 from that.

21 THE COURT: How did the Amended and Restated  
22 Option Agreement affect their claims of being paid under  
23 their Commission Agreement?

24 MS. LUNDVALL: It didn't.

25 THE COURT: That's what I was trying to figure

1 out. I read through it. It's your position there was  
2 nothing in the March 2005 Amended and Restated Option  
3 Agreement that in any way affected their agreement in  
4 the September 1, 2004 Commission Agreement?

5 MS. LUNDVALL: That's correct. The Purchase  
6 Property Price was \$84 million in the Amended and  
7 Restated Option Agreement. That Purchase Property Price  
8 was there.

9 The Option Property has the same definition,  
10 the exact same definition in the original agreement that  
11 was in 2004 and the amended and restated agreement that  
12 was in 2004 -- that was in March of 2005.

13 THE COURT: Between the 2004 and 2005, it had  
14 nothing to do with stating what is Option Property. It  
15 had nothing to do with what was Purchase Property.

16 MS. LUNDVALL: The definitions of Option  
17 Property remained the same. It still was the single  
18 family detached residential production lots that was  
19 going to be designated by CSI.

20 THE COURT: My understanding was plaintiffs are  
21 saying they didn't think it was limited to the single  
22 family detached lots.

23 MS. LUNDVALL: The definition is very clear.  
24 That, to me, is where the plain language and the plain  
25 meaning of these agreements come into play.

1           THE COURT: You are saying in the, we'll call  
2 it the Option Agreement, it defined what Option Property  
3 is, that it was limited to single family detached  
4 property. Can you give me the section?

5           MS. LUNDVALL: It was single family detached  
6 production residential lots designated by CSI. I can  
7 give you that exact reference because we went through  
8 this in great detail and it was in our reply brief.

9           THE COURT: That's where I picked it up.

10          MS. LUNDVALL: On page 11 of our brief, we  
11 discussed this issue at length, and it carries over then  
12 to page 12. The definition of Option Property in the  
13 Option Agreement is found at subsection B(ii), and that  
14 definition is, Buyer's option to purchase the remaining  
15 portion of the entire site which is or becomes  
16 designated for single family production residential use.

17          THE COURT: So what we started in the first  
18 place, whatever they have designated, you said at the  
19 time Pardee bought it all that had been designated by  
20 CSI. So what we're really looking at, if in the future  
21 CSI designates what's left out there as -- I don't want  
22 to say it wrong -- but single family detached  
23 production, whatever the exact buzz words are, that  
24 covered. This option would cover that?

25          MS. LUNDVALL: That's correct, Your Honor.



1           THE COURT: So your position then is let's say  
2 Pardee decides to buy some custom home lots on the golf  
3 course, that would not be covered?

4           MS. LUNDVALL: That's correct. Or the  
5 multifamily or the commercial lots. Or when  
6 Mr. Whittemore got in trouble and he sold the golf  
7 course, okay, those types of issues.

8           THE COURT: Strictly limited to the single  
9 family detached production homes.

10          MS. LUNDVALL: And that definition of what  
11 Option Property was was identical in the original Option  
12 Agreement in 2004 and it is identical then --

13          THE COURT: -- in the amended one in March of  
14 2005. I thought that was true when I read it, and I  
15 wanted to make sure you clarified. Okay.

16          MS. LUNDVALL: And any other definitions then,  
17 Your Honor, in any of the other amendments, there was no  
18 reference.

19          THE COURT: Was there ever any reference other  
20 than -- any change at all in the definition of "Option  
21 Property"? They refer to five or six amendments. I  
22 don't know.

23          MS. LUNDVALL: There was actually eight  
24 amendments.

25          THE COURT: I knew there was a lot. And it's

1 your position that none of those eight amendments had  
2 anything to do with the definition of Option Property or  
3 would in any way relate to their Commission Agreement of  
4 September 1, 2004. Correct?

5 MS. LUNDVALL: That's correct. And if the  
6 Court would like me to walk through what the purpose of  
7 all of those amendments are, I can.

8 THE COURT: No. Only if the plaintiffs say one  
9 is, then I would like, because I did try to read them  
10 all. But that's your position so I understand it?

11 MS. LUNDVALL: That's correct.

12 Also when you go through in the March agreement  
13 as to the escrow instructions and the process then by  
14 which, under paragraph 9, as to how Pardee would  
15 exercise the option, all of that then was the same as  
16 well.

17 THE COURT: So the whole process for the Option  
18 Property stayed the same?

19 MS. LUNDVALL: Stayed the same.

20 THE COURT: And the definition. So the  
21 definition of what was covered by Option Property and  
22 the process by which it would be purchased all stayed  
23 the same from the original agreement that was referred  
24 to in the September 1, 2004 commission letter, which is  
25 the contract that this case is based on.

1 MS. LUNDVALL: That's correct, Your Honor.

2 I went through that whole process, and where I  
3 think that the parties stray, and that is this, is I  
4 think what you are going to hear from the plaintiffs is  
5 that they are going to take out some maps and they are  
6 going to do some overlays.

7 And they are going to suggest then because the  
8 maps and the boundaries of the various properties  
9 changed across time, they are going to suggest that  
10 somehow that that implies that Pardee purchased Option  
11 Property, even though there's no designation, even  
12 though there's no exercise, even though that there's no  
13 escrow instructions for Option Property, even though  
14 there's no recordation of an Option Property deed, none  
15 of that that was set forth in the parties' agreement has  
16 occurred, and they have no documentation concerning  
17 that, and both Mr. Lash as well as Mr. Whittemore, on  
18 behalf of Pardee and CSI, said that that doesn't happen.

19 What they want to try to suggest is somehow the  
20 boundaries don't line up.

21 THE COURT: So if the boundaries don't line up,  
22 what are they saying? That more property was purchased  
23 or additional property was purchased under the option  
24 that you did not let them receive their commission or am  
25 I --

1 MS. LUNDVALL: To be honest with you, I don't  
2 know. Because from this standpoint, they identify that  
3 the boundaries change. And the boundaries across time  
4 did change.

5 THE COURT: Boundaries of the complete property  
6 or boundaries of the single family detached?

7 MS. LUNDVALL: Both. And let me tell you why.  
8 It's what both Pardee and CSI refer to as the donut  
9 hole.

10 THE COURT: The donut hole?

11 MS. LUNDVALL: The donut hole.

12 THE COURT: I thought that was Medicare.

13 MS. LUNDVALL: Who knows how old we're going to  
14 be before -- anyway.

15 But when Mr. Whittemore first got involved as  
16 far as with CSI and acquired this land, if you imagine a  
17 big circle, but in the middle of it, there was all this  
18 BLM land. So what he bought was a donut.

19 THE COURT: Around the BLM hole?

20 MS. LUNDVALL: Around the BLM hole. And what  
21 he was trying to do was to be able to move that hole to  
22 the sides.

23 THE COURT: So he would have contiguous  
24 property?

25 MS. LUNDVALL: So that he would have contiguous

1 property without a hole in it.

2 And at that point in time, the parties also  
3 acknowledged that the defined borders then for purposes  
4 of any of the tentative maps or the parcel maps had not  
5 been defined.

6 THE COURT: Go back again.

7 MS. LUNDVALL: At the very original Option  
8 Agreement, they specifically identified the fact that  
9 the boundaries may change.

10 If you take a look at the Option Agreement,  
11 which was Exhibit 5 to the plaintiffs' opposition, it  
12 was actually our Exhibit D, we've highlighted then, I  
13 brought forth for the Court's attention some of the  
14 information about this donut hole, about how the seller  
15 is negotiating with BLM, et cetera.

16 And it says, Notwithstanding the foregoing, the  
17 parties acknowledge that the BLM reconfiguration will be  
18 accomplished in stages. And it was accomplished in  
19 stages.

20 THE COURT: So getting rid of this donut hole  
21 was accomplished in certain stages?

22 MS. LUNDVALL: That's correct.

23 THE COURT: Did he acquire the BLM land or did  
24 he trade out?

25 MS. LUNDVALL: Traded out.

1           THE COURT: Okay. So he traded out part of his  
2 property that he already owned and gave that to BLM.  
3 Okay.

4           MS. LUNDVALL: That's correct.

5           And it also goes on to say then that, The  
6 location and the legal description of the entire site  
7 shall be modified from time to time as necessary to  
8 conform to the then existing circumstances.

9           And so that's part of the reason why that in  
10 the commission that the parties didn't -- they weren't  
11 being paid on acreage. It was being paid on --

12          THE COURT: Well, they chose the word "price"?

13          MS. LUNDVALL: That's correct.

14          Also, there's another portion of the Option  
15 Agreement that goes on to say this. It makes reference  
16 that if the BLM reconfiguration does not occur or the  
17 real property shown on C-2 is not completed or is  
18 completed, the actual boundaries of the Option Property  
19 are subject to change depending upon the status of the  
20 BLM reconfiguration, the processing of the seller  
21 entitlement -- what are those? Those are the requests  
22 then that when you go to, whether it be the Lincoln  
23 County Commission or the Clark County Commission then to  
24 process those seller entitlements for the entire site as  
25 described in paragraph 10B -- and market conditions.

1           So the parties knew that these boundaries may  
2       change and that was understood and that was expected.

3           THE COURT: That was an excerpt from the Option  
4       Agreement?

5           MS. LUNDVALL: That was an excerpt from the  
6       Option Agreement.

7           And going back then to the point that I'm  
8       trying to make, that is this, it's the Purchase Property  
9       Price then. It didn't make any difference what the  
10      acreage was or where the acreage was at. It was the  
11      price that was being paid then.

12          THE COURT: That dictated the commission?

13          MS. LUNDVALL: That's correct, Your Honor.

14          We've gone through the issue then about how  
15      there was a suggestion that Pardee had somehow changed  
16      the definition of Option Property from the Option  
17      Agreement to the amended. We've already gone through  
18      that.

19          THE COURT: You said there's nothing to show  
20      that.

21          MS. LUNDVALL: So I'm not going to recap on  
22      that.

23          We've talked about what Pardee's duties were  
24      from the notice provision --

25          THE COURT: Right, that whole process we've

1 gone through.

2 MS. LUNDVALL: -- to inform.

3 In our motion then and in our reply, we laid  
4 out how each one of the claims are dependent upon a  
5 demonstration of breach of contract. And so, therefore,  
6 without a breach of contract, how each one of the claims  
7 then, whether it be for breach of contract, accounting,  
8 or breach of the covenant of good faith and fair dealing  
9 would fail.

10 The last thing that we laid out in our motion  
11 for summary judgment then was how the plaintiffs could  
12 not demonstrate damages. We have case law from our  
13 Nevada Supreme Court that says in addition to  
14 demonstrating a breach, that there's certain essential  
15 elements for every claim, but damages are one of those  
16 essential elements. And so, therefore, without any form  
17 of damages, then they cannot prove up a breach contract.

18 THE COURT: But let's say hypothetical, let's  
19 say -- and part of their claim for relief is attorneys'  
20 fees and costs.

21 MS. LUNDVALL: If they prevail, if they  
22 demonstrate breach of contract.

23 THE COURT: Correct. So let's say  
24 hypothetically they felt like they and it was determined  
25 they were not reasonably informed by Pardee to



1 everything that was going on so they actually had enough  
2 information to know they had gotten all the commissions.  
3 Okay. Let's say there's just a breach -- we'll say  
4 hypothetically. I'm not -- in the notice provision,  
5 there would be damages. Part of the damage is they had  
6 to bring this lawsuit.

7 Because they did show several times that  
8 they -- Mr. Jimmerson tried to get information. I saw  
9 the letters from Pardee. Would you not agree then that  
10 that would be damages?

11 MS. LUNDVALL: No, from this standpoint. And  
12 let me see if I can explain that.

13 THE COURT: Why do you think that's not  
14 damages?

15 MS. LUNDVALL: Because if there is a breach of  
16 the notice provision, that would be correct.

17 THE COURT: Okay.

18 MS. LUNDVALL: But without a breach --

19 THE COURT: I agree. Without a breach, there  
20 is no damages.

21 MS. LUNDVALL: The other thing --

22 THE COURT: I understand. There has to be the  
23 contract, there has to be a breach, and then damages  
24 flow. I understand that.

25 MS. LUNDVALL: And the one thing, too, that I

1 would offer to the Court and that would be this: If you  
2 take a look at Mr. Jimmerson's letters, notably those  
3 letters are not appended, they are not a part of their  
4 exhibits. All right. But we were responding to  
5 Mr. Jimmerson's letters.

6 Mr. Jimmerson wanted to know everything, all  
7 the transactions between CSI and Pardee. He did not  
8 limit himself to the provisions of the Commission  
9 Agreement.

10 THE COURT: Which is the single family --

11 MS. LUNDVALL: That's correct.

12 THE COURT: Let me ask this then: Did CSI and  
13 Pardee have an agreement and did they sell property that  
14 was not limited to the single family?

15 MS. LUNDVALL: Yes, Your Honor. As an example,  
16 Pardee -- CSI, I don't want to say got in trouble, but  
17 CSI ran out of money. They wanted Pardee to buy the  
18 golf course that had been developed. We did.

19 THE COURT: What time frame for --  
20 time-frame-wise, when is it that CSI/Pardee left the  
21 original idea that what we're going to do is just do  
22 single family detached and got interested in some other  
23 parts of it? What time frame was that?

24 MS. LUNDVALL: What you end up with is late  
25 2006, 2007, and the front portion then of 2008.

1           THE COURT: So the time frame is, that original  
2 meeting, did you say early 2002? I thought I wrote  
3 down --

4           MS. LUNDVALL: Late 2002 is when the parties  
5 anticipate. It was sometime in late 2002, it's  
6 undisputed, that that's when it was suggested that  
7 Mr. Wilkes and Mr. Wolfram introduced then CSI and  
8 Pardee.

9           THE COURT: So that first meeting, what was the  
10 date of that, the first one that got it going with  
11 Mr. Wolfram, Mr. Wilkes, Mr. Lash, and Harvey Whittemore  
12 was there?

13          MS. LUNDVALL: Late 2002.

14          THE COURT: I'm trying to get the -- okay.  
15 Late 2002.

16          Because I did get a feeling from looking at  
17 this that they are going to say that they didn't feel it  
18 was limited. Okay.

19          So then CSI and Pardee have -- there has been  
20 an exchange of money for other properties at CSI other  
21 than single family?

22          MS. LUNDVALL: Yes, Your Honor.

23          THE COURT: I wondered about that. Okay.

24          MS. LUNDVALL: There was also an issue dealing  
25 with commercial lots, commercial property.

1 THE COURT: That was 2006 and 2007.

2 MS. LUNDVALL: That one was in 2007, and I  
3 believe the front end of 2008, if my recollection serves  
4 me. All of this was basically kind of --

5 THE COURT: I see what happened. They got them  
6 together, and their understanding is, Hey, when you get  
7 them together, everything that they do should be  
8 covered.

9 You are saying, Hey, the way this letter was  
10 done, the letter is limited -- the Commission Agreement  
11 of September 1, 2004 explicitly, on its face, limits to  
12 the definitions of Purchase Property and it refers in  
13 the Option Agreement that --

14 MS. LUNDVALL: That's correct.

15 THE COURT: Okay. That makes a little more  
16 sense. Okay.

17 MS. LUNDVALL: And if you take a look at,  
18 whether it be the original Option Agreement or the  
19 Amended Option Agreement --

20 THE COURT: They give the same definitions.

21 MS. LUNDVALL: -- any of the amendments to  
22 those documents all deal with the single family  
23 residential production lots and what the parties'  
24 agreements were concerning that. That's what the  
25 amendments all deal with.

1           There were separate transactions that the Court  
2 hasn't even been offered. The plaintiffs no longer  
3 suggest that. Well, Mr. Jimmerson's original letters,  
4 before the case ever began said, Give me everything.  
5 That case, though, once it was filed, acknowledged then  
6 it was limited to this.

7           THE COURT: I understand. That's why you said  
8 it's undisputed. They are saying, Hey, we realize this  
9 contract issue is based on the September 1, 2004.

10          MS. LUNDVALL: That's correct, Your Honor.

11          So from our perspective then, what we're trying  
12 to do then is to keep it within the confines, quite  
13 obviously, of what they now admit is the limits then of  
14 what their contractual arrangement was with Pardee.

15          So our basic position is this, that they  
16 acknowledge that they are only entitled now to future  
17 commissions. In their opposition they acknowledge --

18          THE COURT: Future commissions for single  
19 family detached?

20          MS. LUNDVALL: That's correct.

21          So when I sit back and I think about that, all  
22 right, if they acknowledge that they are only entitled  
23 to future commissions, those future commissions then  
24 deal with the Option Property, and that acknowledgment  
25 also acknowledges that Pardee has yet to take down any

1 Option Property and, therefore, those future commissions  
2 haven't come into fruition yet.

3 THE COURT: And they may not or they may?

4 MS. LUNDVALL: That's correct.

5 THE COURT: But you agree that if they do  
6 exercise, Pardee does, they would be doing it owing to  
7 Mr. Wolfram and Mr. Wilkes?

8 MS. LUNDVALL: That would be correct as to  
9 the --

10 THE COURT: That's not in dispute with Pardee.  
11 Pardee agrees to that?

12 MS. LUNDVALL: That's correct.

13 As to the second point, Your Honor, that is  
14 this, they claim that they should be entitled then to  
15 their personal efforts in trying to investigate this  
16 case. We brought to the Court's attention the case law  
17 that says that that is not a contract damage and they  
18 are not entitled to recovery of that.

19 THE COURT: I understand what you are saying.

20 MS. LUNDVALL: Mr. Wolfram says, I had to spend  
21 some time digging around as far as in public records, I  
22 had to look as far as in Clark County and Lincoln  
23 County, and my time has value and, therefore, I think I  
24 should be entitled to recovery of the value of my time.

25 Number one, that's outside the contract and,

1 therefore, is he's not entitled to recovery. And, boy,  
2 every single client I ever had would love to be  
3 compensated for their time involved in litigation, but  
4 it's just simply not a recoverable item.

5 The third thing then, as to the attorneys' fees  
6 component, is that the only way that damages, attorneys'  
7 fees are special damages, separate and apart from a cost  
8 of litigation under Sandy Valley, is if, number one,  
9 they are specifically pled and specifically proven.  
10 They have not specifically pled attorneys' fees as  
11 special damages.

12 Now, if, in fact --

13 THE COURT: I looked at the Complaint. After  
14 each cause of action, they also say they are entitled to  
15 attorneys' fees and costs. You are making a distinction  
16 that's not special damages pled?

17 MS. LUNDVALL: That's correct. Because Sandy  
18 Valley tells you you have to do more. Sandy Valley says  
19 you have to do more.

20 THE COURT: You have to plead more?

21 MS. LUNDVALL: You have to plead more and you  
22 have to plead them as special damages as part of the  
23 portion of the relief.

24 Like in this particular case, there's an  
25 attorney fee provision. Sandy Valley has two lines of

1 opportunity for recovery on attorneys' fees. They are  
2 either a special damage that requires special pleading,  
3 special proof, special discovery.

4 THE COURT: Which would put like, required in  
5 the contract, you can get attorney fees?

6 MS. LUNDVALL: No. I don't mean to interrupt,  
7 but Sandy Valley makes clear that if there's a statute,  
8 a rule, or a contract provision.

9 THE COURT: That's what I was saying, that  
10 provides for it, like what we just heard on the default  
11 judge. The reason they get attorneys' fees is because  
12 part of the lease was they could get attorneys' fees.  
13 That's what you are saying?

14 MS. LUNDVALL: Absolutely.

15 THE COURT: That's what I meant by --

16 MS. LUNDVALL: That's what I mean. But that is  
17 done through post motion practice then. In other words,  
18 there would be an opportunity for either side to come to  
19 the Court and to say that they --

20 THE COURT: They want attorneys' fees.

21 MS. LUNDVALL: That's correct.

22 THE COURT: Was that not in the Option  
23 Agreement?

24 MS. LUNDVALL: The Commission Agreement that's  
25 at issue has a provision dealing with attorneys' fees.



1           THE COURT: Okay. And that doesn't apply then  
2 in this case?

3           MS. LUNDVALL: Not unless, in fact, that they  
4 are the prevailing party.

5           THE COURT: I understand that. But what you  
6 are saying, they can be the prevailing party and get  
7 attorneys' fees. That's not part of their damages of  
8 their cause of action?

9           MS. LUNDVALL: That's correct, Your Honor.

10          THE COURT: That's the distinction. Okay.

11          MS. LUNDVALL: And with the acknowledgment by  
12 the plaintiffs in their opposition then that it's only  
13 future commissions then that is at issue --

14          THE COURT: Let me ask this -- and I grappled  
15 with this. Let's say hypothetically that there was a  
16 breach in Pardee shall keep each of you reasonably  
17 informed as to all matters relating the amount due dates  
18 of your commission payments. Let's say that that was a  
19 breach. What would be their damages for that then?

20          MS. LUNDVALL: Well --

21          THE COURT: I mean, you are saying they could  
22 breach the contract, that section, and there's no  
23 damages.

24          MS. LUNDVALL: Well, what I'm saying is that --

25          THE COURT: No damages would flow from that.

1 MS. LUNDVALL: If, in fact, Pardee had taken  
2 the position, Hey, guys, we don't owe you anything  
3 more --

4 THE COURT: But when you use the word  
5 "reasonably informed," that always -- it's usually a  
6 question fact that has to be found by the trier of fact,  
7 whether it's bench. And the trier of fact, whether it's  
8 the judge or the jury, could say, Pardee, I don't think,  
9 based on six letters or whatever, that that did not keep  
10 Mr. Wolfram and Mr. Wilkes reasonably informed. What  
11 damages are you saying would flow from that? Nothing?

12 MS. LUNDVALL: Well, what I'm saying is this,  
13 Your Honor, if, in fact, Pardee did not pay these  
14 gentlemen through escrow, because all of their payments  
15 were through escrow --

16 THE COURT: I understand that. What you are  
17 saying is -- I don't mean to cut you off. But what you  
18 are saying is you don't think there's a factual basis  
19 that the trier of fact could find that they weren't kept  
20 reasonably informed, I understand.

21 But let's say hypothetically -- I mean, you  
22 never know. The trier of fact could say -- that's what  
23 I'm just trying to figure out legal-wise. Say you  
24 didn't -- hypothetically, okay, that Pardee did breach,  
25 that they did not keep Mr. Wolfram and Mr. Wilkes

1 reasonably informed regarding payment of the  
2 commissions. You are saying Pardee could breach that,  
3 but you cannot find a scenario that there would be any  
4 damages from that?

5 MS. LUNDVALL: No. What I'm saying as far as  
6 under that type of a scenario, I suppose it's  
7 conceivable that if there's was a party's expectation  
8 that they had to go out and try to seek information,  
9 that there could be a value then placed upon that.

10 THE COURT: That goes back to what they are  
11 alleging, that, I had to go look for information or -- I  
12 was trying to find -- and you can understand, these are  
13 big numbers. Everybody -- you know, I look in the  
14 perspective they had a very limited role in this. I  
15 understand that. And it certainly made sense that after  
16 that first meeting, Pardee has a group of attorneys,  
17 that obviously CSI would have a group of attorneys, that  
18 it would be beyond the expertise of Mr. Wilkes and  
19 Mr. Wolfram.

20 And, in fact, I think one of them testified  
21 Mr. Lash said, I don't need you to be involved,  
22 really -- which makes sense. They don't have the  
23 expertise to give anything -- to add anything to coming  
24 to a resolution on whether Pardee would buy or do  
25 options. I understand all that.

1           But also you look in terms, their limited role  
2 also gave them limited understanding as to what occurred  
3 in all these meetings. And, I mean, I read through the  
4 Option Agreement. You probably have. It's very  
5 difficult, as you can imagine. I'm just looking at in  
6 that term.

7           So all right. That does help me, though.

8           MS. LUNDVALL: From this perspective, as far as  
9 far as -- you know, let's make the assumption that  
10 Mr. Wolfram and Mr. Wilkes had never seen a contract  
11 before and that they were very limited as far as to what  
12 their understanding was. And let's say that they were  
13 uncertain --

14          THE COURT: Let's say they needed information  
15 so they weren't uncertain.

16          MS. LUNDVALL: And that they sent a letter to  
17 Pardee and they say, Jeez, have you guys taken down any  
18 Option Property? And Pardee says, No, we haven't.  
19 Okay, because that's what Pardee did. But what  
20 Mr. Wilkes and Mr. Wolfram say is, We don't trust them.

21          THE COURT: I was going to use that expression.  
22 So basically Pardee is saying, "Trust me."

23          MS. LUNDVALL: And the point being is this:  
24 It's once again back to how do you prove a negative?

25          So they go and they seek counsel. Counsel is

1 going to be able to explain to them what the provisions  
2 are within the Commission Agreement. And counsel should  
3 be able to say, All right, Purchase Property Price, did  
4 you guys get your commissions on the \$84 million? The  
5 answer to that, as they told us, Yeah, we did.

6 And they then get as far as looking at this  
7 Option Property, and if counsel's got to go then to the  
8 Option Agreement and the amended Option Agreement that  
9 their Complaint says that they had, what are they going  
10 to find? They are going to say, Okay, there has to be a  
11 designation.

12 All right, CSI, you got any tentative maps  
13 whereby you've designated some additional single family  
14 homes?

15 Number two, they are going to see a written  
16 notice. Is there a written exercise notice out there?  
17 No. Is there an Option Property deed? There's no  
18 Option Property deed. Where would that be found?  
19 That's a matter of -- would be a matter of public  
20 record. And if none of that exists there, then that's a  
21 pretty good indication that maybe Pardee was to be  
22 trusted.

23 THE COURT: That there wasn't any.

24 MS. LUNDVALL: So that's the point. It's the  
25 classic: How do you prove a negative?

1           THE COURT: Or how much do you need to give to  
2 be reasonably informed?

3           MS. LUNDVALL: So from that perspective, it's  
4 back to when Pardee sits back and says, you know, We've  
5 told you, I know you don't trust me, but then there's  
6 the option to look at all of these documents that would  
7 have existed. Because they are all land transactions,  
8 statute of frauds would require them all to be in  
9 writing. And then for the world to be able to take  
10 notice of them, what do you do? You've got to take a  
11 look then at what has been recorded with the recorder's  
12 office.

13          THE COURT: Then tell me also, because -- what  
14 is this 120,000 difference or something? I looked  
15 through everything. I was trying to find out. They  
16 actually got that; correct? They got an addition -- at  
17 least my understanding, they testified they did. Where  
18 did that come from or what was that related to, if,  
19 following your, Here's the commission letter, here's --  
20 what was that for?

21          MS. LUNDVALL: This is why we haven't taken  
22 advantage of that -- notwithstanding the fact of what  
23 their testimony was, that's what they testified to in  
24 deposition -- when you go back through then the escrow  
25 records --

1 THE COURT: Did it add up to that?

2 MS. LUNDVALL: No. It adds up to the 2.5 that  
3 they were entitled to under paragraph (i) and  
4 paragraph (ii).

5 THE COURT: So --

6 MR. JIMMERSON: There's no overpayment, Judge.

7 THE COURT: Because there was testimony to  
8 that. Okay. So that does help me.

9 MR. JIMMERSON: I'll speak to that.

10 THE COURT: Okay. So that fits very nice with  
11 your --

12 MS. LUNDVALL: So we weren't -- even though as  
13 far as that they were in error, we weren't going to be  
14 trying to take advantage of the error they made in  
15 testifying.

16 THE COURT: So there is no overpayment. That  
17 issue, I don't have to worry about that.

18 MS. LUNDVALL: Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 Mr. Jimmerson?

21 MR. JIMMERSON: Thank you, Your Honor.

22 Respectfully, we submit to the Court that based  
23 upon the information you'll hear, both in terms of the  
24 opening statement by opposing counsel as well as my  
25 response and any reply, that you deny the motion for

1 summary judgment.

2 Opposing counsel is in an unenviable position  
3 because she's attempting to divert the Court's attention  
4 away from the facts and evidence as we develop it. It  
5 could only have been learned by virtue of our taking the  
6 Complaint and filing the Complaint and going forward.  
7 And the breach is a failure to keep our clients  
8 reasonably informed as well as providing notices.

9 And you are right -- first of all, thank you  
10 for being so hot or being so attentive to this and  
11 having read this.

12 The issue is whether or not --

13 THE COURT: I tried very hard because it  
14 doesn't do you any good -- and I appreciate you letting  
15 me continue it to this special setting so I actually  
16 could have the time to read everything. I do appreciate  
17 both of your patience because I know you had an earlier  
18 date, or two earlier dates, and both counsel were very  
19 gracious to me. So I appreciate that too. I want you  
20 to know that.

21 MR. JIMMERSON: So what we know is that in late  
22 2002, our clients become the procuring cause for Pardee  
23 to make this Option Agreement in 2004 and to go forward.  
24 By virtue of that, Pardee recognizes that they have a  
25 contractual obligation which they memorialized in



1 writing in the form of the September 1 Commission  
2 Agreement, September 1, 2004.

3 THE COURT: That's not disputed.

4 MR. JIMMERSON: Let's talk in terms of what's  
5 in place at that moment in time.

6 THE COURT: Okay.

7 MR. JIMMERSON: The original Option Agreement  
8 that was spoken to by opposing counsel was in place as  
9 of August or July of 2004.

10 THE COURT: So then when this letter was done  
11 September 1, 2004 --

12 MR. JIMMERSON: We have an Option Agreement --

13 THE COURT: She said there were two options  
14 before that, two changes, but that didn't affect it.  
15 Correct?

16 MR. JIMMERSON: No. It does affect it and  
17 that's what I'm going to speak to.

18 So there are three documents in place by the  
19 date of September 1, the Commission Agreement. Number  
20 one was the Option Agreement itself. It's Exhibit 5 to  
21 our opposition.

22 And, Ms. Lundvall, if you could tell me your  
23 exhibit number for the Option Agreement so we have a  
24 matching number.

25 THE COURT: Is it D?

1 MS. LUNDVALL: Exhibit D.

2 MR. JIMMERSON: Thank you. So Plaintiffs'  
3 Exhibit 5 is Exhibit D. They have Exhibit 5.

4 There are two amendments to the Option  
5 Agreement.

6 THE COURT: Prior --

7 MR. JIMMERSON: Prior to September 1. So you  
8 have three deals, three agreements, an Option Agreement  
9 and two amendments that are in place as of September 1.

10 THE COURT: That were all incorporated in the  
11 September 1, 2004 contract. Okay.

12 MR. JIMMERSON: Correct.

13 Now, what's important for the Court to know is  
14 that the Option Agreement, Exhibit 5, did not attach  
15 maps. But you see the agreement, the first page says  
16 that there's two types of property. There's Purchase  
17 Property and there's everything else which is called  
18 Option Property.

19 MS. LUNDVALL: I'm going to object to that.

20 THE COURT: You are saying to me that if I look  
21 at the agreement, it defines Purchase Property and --  
22 how did you say that?

23 MR. JIMMERSON: And Option Agreement, on the  
24 first page.

25 MR. J.M. JIMMERSON: Subject to single family

1 homes.

2 MR. JIMMERSON: And the Option Property we're  
3 talking in terms of --

4 THE COURT: Single family.

5 MR. JIMMERSON: Right.

6 THE COURT: I want to make sure because that  
7 had me -- so we're all on board on it's single family  
8 production, whatever you want to use. I'll just use  
9 single family, because it's easier, but we all know what  
10 we're talking about. Perfect.

11 MR. JIMMERSON: One of the major points that I  
12 wish to register a vigorous objection to opposing  
13 counsel's remarks is when she answered -- you asked this  
14 question, Judge, did the terms of the purchase -- did  
15 the boundaries of the Purchase Property change?  
16 Opposing counsel said yes. That's not true. It never  
17 changed. The boundaries of the Purchase Property never  
18 changed.

19 It was only the boundaries of the Option  
20 Property that were subject to change due to BLM  
21 reconfiguration.

22 THE COURT: Let me make sure I understand. The  
23 boundaries of Purchase Property, which is what they paid  
24 the 84 million for --

25 MR. JIMMERSON: Correct, never changed, as

1 defined in the Option Agreement and the two amendments  
2 that predate September 1 Commission Agreement.

3 THE COURT: The boundaries of the Option  
4 Property changed.

5 MR. JIMMERSON: Right.

6 THE COURT: So are you saying that since the  
7 boundaries of the Option Property changed, they paid for  
8 additional other than the 84 million?

9 MR. JIMMERSON: No. They paid \$84 million, but  
10 they bought Option Property as well as Purchase  
11 Property, and I'll walk you through this.

12 THE COURT: But if they did this -- help me,  
13 because I want to make sure I follow -- so what does it  
14 matter? They paid the commission pursuant to the  
15 agreement.

16 MR. JIMMERSON: Because --

17 THE COURT: (iii), right?

18 MR. JIMMERSON: No. Because the formula is  
19 different and the method of payment is different. The  
20 formula for calculating the commissions are different  
21 from Purchase Property to Option Property.

22 THE COURT: Hold on. So the formula under  
23 (iii) is different?

24 MR. JIMMERSON: Correct. One is four percent  
25 for the first 50 million, one and a half percent for the

1 following 34 million. And the Option Property is one  
2 and a half percent of the number of acres times 40,000  
3 an acre. It's a different formula.

4 And that's why we have the accounting claim,  
5 which was never recognized, not one word was breathed  
6 upon this by opposing counsel in her opening remarks.

7 THE COURT: So what you are saying is the  
8 Purchase Property changed and so --

9 MR. JIMMERSON: That's right, by amendments.  
10 So let me just continue.

11 THE COURT: Okay.

12 MS. LUNDVALL: You were read this language. I  
13 know you didn't understand the significance. There's no  
14 reference here to reconfiguration of Purchase Property.  
15 The only language here is the Option Property. The only  
16 boundaries that are going to change are Option Property.

17 THE COURT: Gotcha.

18 MR. JIMMERSON: Now let me show you Exhibit 8,  
19 our Exhibit 8, which is the second of the two amendments  
20 to Exhibit 5, and that was in place at the time of the  
21 Commission Agreement.

22 And, Counsel, I'm showing Exhibit 8, Bates  
23 stamp numbers 1565, 1566 and 1567.

24 This exhibit we call C-1. Now, Exhibit 5 is  
25 the main agreement, but doesn't have any maps, but it

1 contemplates maps.

2 THE COURT: It has a reference to them.

3 MR. JIMMERSON: Right. But there's no maps as  
4 attached. The maps come in the first two amendments,  
5 Your Honor. So this is Exhibit 8 and this is the second  
6 of the amendments.

7 THE COURT: And that's where you get the map.

8 MR. JIMMERSON: August of 2004, just before the  
9 September 1 Commission Agreement. And this is the donut  
10 hole that opposing counsel --

11 THE COURT: This is the donut hole?

12 MS. LUNDVALL: Right. The Purchase Property is  
13 this parcel here. It's this property here. This is the  
14 Purchase Property, the boundaries of which never changed  
15 and was not subject to change. This is defined as the  
16 Purchase Property. This is the donut hole, C-1.

17 So what happens. With the reconfiguration,  
18 they see what they were contemplating. Now the Option  
19 Property is the hatched portions here. Okay? So here's  
20 the Purchase Property. And now, having the  
21 reconfiguration that they contemplated in 2004 August,  
22 they've now effectuated this is what it's going to look  
23 like.

24 By the way, this line is Lincoln County --

25 THE COURT: Lincoln County/Clark County, okay.

1           MR. JIMMERSON: So you can see by the agreement  
2 that was in place at the time of the commission, there  
3 was Option Property in Clark County and Option Property  
4 in Lincoln County. And this is the Purchase Property.  
5 So --

6           MR. J.M. JIMMERSON: Flip to the next page.  
7 You'll see the map of the Purchase Property.

8           MR. JIMMERSON: There's the Purchase Property.

9           THE COURT: You know what, I think pulled  
10 these. Do you mind if I mark mine?

11           MR. JIMMERSON: It's in the exhibit to our  
12 opposition.

13           Needless to say, if you do see it the  
14 plaintiffs' way, this will be educational for the time  
15 of trial as well. You'll have a good beginning.

16           THE COURT: Exhibit 8, I have here  
17 Plaintiffs' 8 is the amendment to the option and this  
18 has the maps.

19           MR. JIMMERSON: Right. And if you read the  
20 amendments, you'll see that they specifically are  
21 referencing the Option Agreement of a month earlier, and  
22 here are the maps now that we have.

23           THE COURT: Okay. Let me pull them out because  
24 they are here. You have them as exhibits. The first  
25 one you are calling CSI Wolfram 1577, the first one.

1 MR. JIMMERSON: 1565.

2 THE COURT: And this is the purchase.

3 MR. J.M. JIMMERSON: You may be a little ahead.  
4 It's Exhibit C within the maps.

5 THE COURT: You are right.

6 MR. JIMMERSON: 1565.

7 THE COURT: This is the Purchase Property?

8 MR. JIMMERSON: Yes, ma'am. This is the donut  
9 hole and BLM.

10 THE COURT: This whole thing is the donut hole.  
11 That's the boundary.

12 MR. JIMMERSON: And this is the balance of the  
13 option.

14 THE COURT: All of the diagonal is all Option  
15 Property.

16 MR. JIMMERSON: Correct.

17 So the first thing you know is that the parties  
18 understood and, of course, our clients understood was  
19 that Option Property was in Clark County as well as in  
20 Lincoln County.

21 THE COURT: Okay. And did they understand the  
22 Purchase Property was all -- it looks like it's all in  
23 Clark County.

24 MR. JIMMERSON: It's all in Clark County. It  
25 never changed.



1           So then they also configure what the map would  
2 look like if they were able to make a swap with BLM,  
3 which is the next page.

4           THE COURT: If the BLM had done it.

5           MR. JIMMERSON: Right, which they did. So  
6 Purchase Property there, Option Property, Option  
7 Property. All right.

8           THE COURT: This is option, okay.

9           MR. JIMMERSON: So that is -- and then the next  
10 page --

11          THE COURT: So then what you are saying is  
12 because --

13          MR. JIMMERSON: They purchased the Option  
14 Property down there, called it Purchase Property.

15          THE COURT: This portion down here that was  
16 part of the donut hole, you are saying is Option --  
17 became Option Property.

18          MR. JIMMERSON: It did, by their own  
19 contemplation.

20          THE COURT: And they are calling it Purchase  
21 Property. And it's a matter of which formula that you  
22 use. Okay. Thank you. That's your contention.

23          MR. JIMMERSON: Yes. And there's also another  
24 significant point, and that is that where are you going  
25 to build next? To the north or to the south? I need to

1 show you. But the point is where you are likely to  
2 build, okay, will create the opportunity for our clients  
3 to receive commissions sooner than if you are building  
4 in Lincoln County.

5 So the very next page then also shows you what  
6 the Purchase Property was.

7 MR. J.M. JIMMERSON: It's Exhibit B.

8 THE COURT: What is this?

9 MR. JIMMERSON: That's the Purchase Property.  
10 If you just match it up to the next page, you'll see it.

11 So I need to correct opposing counsel, who was  
12 probably inadvertent in her representation. The  
13 Purchase Property boundaries never were subject to  
14 change or contemplated subject to change.

15 THE COURT: If I put this on top of this, it  
16 should match?

17 MR. JIMMERSON: That's right.

18 THE COURT: So what you are saying is this is  
19 part of the 84 million that should have been paid as  
20 part of the --

21 MR. JIMMERSON: No. The 84 million is the  
22 Purchase Property only.

23 THE COURT: Okay. Tell me, when did they  
24 purchase this part?

25 MR. JIMMERSON: That's part of the BLM

1 reconfiguration. They just swapped land. And they did  
2 it in the 2004 and 2005 time period.

3 THE COURT: So what you are saying, swapping  
4 land was a purchase of the option and they -- right?

5 MR. JIMMERSON: No.

6 THE COURT: I want to make sure. How are  
7 you --

8 MR. JIMMERSON: If you read the agreement, for  
9 purposes of the agreement, the Option Property shall be  
10 the real property shown in C-1, okay, if the BLM  
11 reconfiguration does not occur.

12 THE COURT: But it did occur.

13 MR. JIMMERSON: Exactly. So C-1 is if it  
14 didn't occur. So you know the defined boundaries of the  
15 Purchase Property, and here is the configuration of  
16 Option Property if the reconfiguration does not occur.

17 THE COURT: If they don't get rid of the donut  
18 hole.

19 MR. JIMMERSON: But it does reconfigure. And  
20 they say but if the swap does occur, then this will be  
21 the Option Property.

22 THE COURT: Yeah.

23 MR. JIMMERSON: So here's the point: When they  
24 start to perform the build out, they build out the  
25 Purchase Property. Okay. Under the formula of four

1 percent of the first 50 million --

2 THE COURT: Okay.

3 MR. JIMMERSON: And then if they were to  
4 exercise Option Property, there's a couple --

5 THE COURT: It's the new formula.

6 MR. JIMMERSON: And you also know there's the  
7 notice requirements that we went through.

8 THE COURT: And they didn't do that.

9 MR. JIMMERSON: They didn't do that. They  
10 concede they didn't do that, and their basis for saying  
11 that they didn't do that is because, Well, we never  
12 exercised Option Property; therefore, you weren't  
13 entitled to notice.

14 But it does reconfigure, so now this is the  
15 option Property.

16 THE COURT: So this is what you are saying:  
17 This section under C-2, let's just say the Clark County  
18 that's diagonal --

19 MR. JIMMERSON: We are going to provide to you  
20 the evidence to show you that they went ahead and bought  
21 Option Property, but changed the name to Purchase  
22 Property in the nine amendments we were never made  
23 notice of or made party of. So let's start with that  
24 basis. Okay?

25 THE COURT: So honestly, it's a matter of how

1 you pay it? How much money you get? Whether you title  
2 it Purchase Property, you get less, or Option Property?  
3 That's the basis of the --

4 MR. JIMMERSON: That's part of it. And then  
5 also the sequence of building. Are you more likely to  
6 build after Purchase Property here to the east or to the  
7 north. More likely to the east because it's closest.

8 THE COURT: Sure, because it's contiguous.

9 MR. JIMMERSON: Right. So, therefore, our  
10 entitlement to commission will come in the 20th year,  
11 not the 40th year. This is a 40-year contract. It's  
12 generational.

13 THE COURT: It's 2045. I understand that.

14 MR. JIMMERSON: Let me show you two more  
15 exhibits. This is Exhibit 26.

16 MR. J.M. JIMMERSON: 21 is the map.

17 MR. JIMMERSON: I'm going to give an overview  
18 and then I want to come back. So our clients know what  
19 they are entitled to as of September 1, 2004. Nine  
20 amendments to this Option Agreement occur after  
21 September 1 of 2004, none of which are we notified  
22 about, given any input, and learned only through  
23 discovery of CSI.

24 This is so bad. This is not opposing counsel's  
25 heartache. Her heartache is representing a client who's

1 so arrogant that when we requested the documents, we  
2 never got provided from Pardee any of the nine  
3 amendments during the course of this litigation. We  
4 only got them by getting Harvey Whittemore's personal  
5 deposition, and then we saw for the first time what had  
6 happened.

7 In those nine amendments, Judge, particularly  
8 the fifth, sixth and seventh amendments -- and I'll show  
9 you one as an example -- they change the definition of  
10 Purchase Property to include Option Property. What  
11 you'll see is that these very exhibits --

12 THE COURT: Purchase Property to make it Option  
13 Property.

14 MR. JIMMERSON: Right.

15 THE COURT: Why would they do that?

16 MR. JIMMERSON: Two reasons. Because they felt  
17 it was the sequence in which to build. In other words,  
18 it was --

19 THE COURT: So that was to their advantage.

20 MR. JIMMERSON: And secondly, they don't pay a  
21 commission on it if they consider it Purchase Property  
22 because they are exposed to 2.5 million dollars.

23 THE COURT: They have to pay on Option Property  
24 under the commission letter?

25 MR. JIMMERSON: Correct, right.

1 THE COURT: But --

2 MR. JIMMERSON: But it's a different formula, a  
3 different basis.

4 THE COURT: I understand it's a different  
5 basis, but they still would have to pay.

6 MR. JIMMERSON: No question. But they didn't  
7 pay and that's one of the reasons for the accounting we  
8 requested.

9 Let me show you Exhibit 26. Exhibit 26 is an  
10 overlay of the Purchase Property. It's just a  
11 transparency of the Purchase Property.

12 In the fourth of the four letters that were  
13 exchanged between myself, on the one hand, and Pardee,  
14 on the other, they attach Exhibit 21, which is the  
15 purchases. When you overlay 21 to 26, okay, this  
16 property here is the Purchase Property as defined, this  
17 whole thing.

18 THE COURT: I see.

19 MR. JIMMERSON: She's seen this because we  
20 showed all this to Mr. Lash.

21 THE COURT: The Purchase Property is --

22 MR. JIMMERSON: -- is the parallelogram. And  
23 the Option Property is everything to the east, just like  
24 you see it there.

25 THE COURT: Post reconfiguration?

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No.: 72371**

Electronically Filed  
~~Feb 28 2018~~ 11:29 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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Appeal Regarding Judgment and Post-Judgment Orders  
Eighth Judicial District Court  
District Court Case No.: A-10-632338-C

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**JOINT APPENDIX – VOLUME 14 OF 88**

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10/24/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment	1	JA000083- JA000206
10/25/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment – <b>filed under seal</b>	2	JA000212- JA000321
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume I]	87	JA013669- JA013914
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07/15/2015	Appendix of Exhibits to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	63	JA009772- JA009918
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11/09/2012	Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment – <b>sections filed under seal</b>	3-6	JA000352- JA001332
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07/22/2013	Defendant's Motion for Partial Summary Judgment	17	JA002772- JA002786
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03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1)	13	JA002145- JA002175
03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2)	13	JA002176- JA002210
11/29/2012	Defendant's Opposition to Plaintiff's Counter Motion for Partial Summary Judgment Re: Real Parties in Interest	13	JA002054- JA002065
04/08/2013	Defendant's Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002471- JA002500
05/10/2013	Defendant's Supplemental Brief in Support of Its Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002652- JA002658
07/08/2015	Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document	62	JA009645- JA009652

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07/08/2015	Errata to Plaintiffs' Motion Pursuant to NRCp 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/Conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page, 2, Lines 8 through 13 and the Judgment at Page 2, Lines 18 through 23 to Delete the Same or Amend the Same to Reflect the True Fact that Plaintiff Prevailed on their Entitlement to the First Claim for Relief for an Accounting, and Damages for their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and that Defendant Never Received a Judgment in its form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment"	62	JA009653- JA009662
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06/29/2015	Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to N.R.C.P. 52 (B) And N.R.C.P. 59, As Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 And May 13, 2015, And as Such, Is A Fugitive Document	53	JA008328- JA008394
12/08/2015	Notice of Defendant Pardee Homes of Nevada's Non-Reply and Non-Opposition to "Plaintiff's Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees"	69	JA010896- JA010945
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07/25/2014	Notice of Entry of Order Granting Motion to Expunge Lis Pendens	48	JA007574- JA007578
06/05/2013	Notice of Entry of Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002665- JA002669
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05/13/2015	Notice of Entry of Order on Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007712- JA007717
07/10/2015	Notice of Entry of Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009755- JA009758
01/12/2017	Notice of Entry of Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013645- JA013648
04/03/2013	Notice of Entry of Order re Order Denying Defendants Motion for Summary Judgment	16	JA002465- JA002470

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10/12/2017	Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014144- JA014146
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07/01/2016	Pardee Homes of Nevada's Reply in Support of Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	82	JA013197-JA013204
03/23/2016	Pardee Homes of Nevada's Response to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011214-JA011270
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06/06/2016	Pardee's Motion for Attorney's Fees and Costs	72	JA011590-JA011614
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07/08/2015	Pardee's Supplemental Briefing in Support of its Emergency Motion to Stay Execution of Judgment	62	JA009711- JA009733
08/25/2014	Plaintiff's Accounting Brief Pursuant to the court's Order Entered on June 25, 2014	49	JA007647- JA007698
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06/29/2015	Plaintiffs' Motion for Attorney's Fees and Costs	52-53	JA008216- JA008327
07/24/2015	Plaintiffs' Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution	67	JA010482- JA010522

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03/14/2016	Plaintiffs' Motion to Settle Two (2) Competing Judgments and Orders	70	JA011168- JA011210
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07/17/2015	Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees	65-67	JA010203- JA010481
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11/04/2016	Plaintiffs' Reply Brief in Support of Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013603- JA013612
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01/11/2016	Plaintiffs' Reply to Defendants Consolidated Response to (1) Plaintiffs' Notice of Non-Reply and Non-Opposition to Plaintiff's Opposition to Pardee's Motion to Amend Judgment and Countermotion for Attorney's Fees And (2) Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	69	JA010954- JA010961
07/15/2013	Plaintiffs Reply to Defendants Counterclaim	17	JA002724- JA002731
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09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment Entered on June 15, 2015	68	JA010768- JA010811
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59	68	JA010723- JA010767
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09/27/2013	Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment	21	JA003204- JA003209
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10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
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<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
10/28/2013	Trial Exhibit 20	34	JA005238- JA005254
10/23/2013	Trial Exhibit 21	28	JA004454
10/28/2013	Trial Exhibit 23	34	JA005255- JA005260
10/30/2013	Trial Exhibit 23a	39	JA005816- JA005817
10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
10/23/2013	Trial Exhibit 25	28	JA004455- JA004462
10/24/2013	Trial Exhibit 26	31	JA004792- JA004804
10/30/2013	Trial Exhibit 27	39	JA005818- JA005820
10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
10/29/2013	Trial Exhibit 29	36	JA005498- JA005511
10/24/2013	Trial Exhibit 30	31	JA004805- JA004811
12/13/2013	Trial Exhibit 31a	48	JA007385- JA007410
12/12/2013	Trial Exhibit 39	46	JA006936- JA006948

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12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
10/23/2013	Trial Exhibit 6 – <b>filed under seal</b>	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – <b>filed under seal</b>	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – <b>filed under seal</b>	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – <b>filed under seal</b>	27	JA004313- JA004319
10/23/2013	Trial Exhibit AA	27	JA004101- JA004102
10/23/2013	Trial Exhibit BB	27	JA004103
10/23/2013	Trial Exhibit CC	27	JA004104
10/23/2013	Trial Exhibit DD	27	JA004105
10/23/2013	Trial Exhibit EE	27	JA004106- JA004113
10/23/2013	Trial Exhibit FF	27	JA004114- JA004118
10/23/2013	Trial Exhibit GG	27	JA004119- JA004122
10/23/2013	Trial Exhibit HH	27	JA004123

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/23/2013	Trial Exhibit II	27	JA004124
10/23/2013	Trial Exhibit JJ	27	JA004125
10/23/2013	Trial Exhibit KK	27	JA004126- JA004167
10/23/2013	Trial Exhibit LL	27	JA004168
10/23/2013	Trial Exhibit MM	27	JA004169
10/23/2013	Trial Exhibit NN	27	JA004170- JA004174
10/23/2013	Trial Exhibit OO	27	JA004175- JA004183
10/23/2013	Trial Exhibit PP	27	JA004184- JA004240
10/23/2013	Trial Exhibit QQ	27	JA004241- JA004243
10/23/2013	Trial Exhibit RR	27	JA004244- JA004248
10/23/2013	Trial Exhibit SS	27	JA004249- JA004255
10/23/2013	Trial Exhibit TT	27	JA004256- JA004262
10/23/2013	Trial Exhibit UU	27	JA004263- JA004288
10/24/2013	Trial Exhibit VV	31	JA004791

Date	Document Description	Volume	Labeled
12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935

Dated this 28<sup>th</sup> day of February, 2018.

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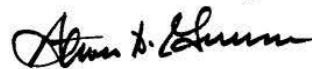
## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano LLP, and on the 28<sup>th</sup> day of February, 2018, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

/s/ Beau Nelson  
An Employee of McDonald Carano LLP

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DISTRICT COURT  
CLARK COUNTY, NEVADA

  
CLERK OF THE COURT

JAMES WOLFRAM, et al., )  
 )  
Plaintiffs, )  
 )  
vs. ) CASE NO. A-10-632338-C  
 ) DEPT. NO. IV  
PARDEE HOMES OF NEVADA, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HON. KERRY EARLEY, DISTRICT JUDGE

On Tuesday, March 5, 2013

At 8:30 a.m.

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.  
JAMES M. JIMMERSON, ESQ.  
LYNN M. HANSEN, ESQ.

For the Defendants: PATRICIA K. LUNDVALL, ESQ.  
AARON D. SHIPLEY, ESQ.

Reported by: Jennifer D. Church, RPR, CCR No. 568

Jennifer D. Church, CCR No. 568  
District Court, Dept. IV

JA002211

1 TUESDAY, MARCH 5, 2013, 8:30 A.M.

2 LAS VEGAS, NEVADA

3 -oOo-

4 THE COURT: Case A-632338, James Wolfram versus  
5 Pardee Homes of Nevada. Good morning, Counsel. Nice to  
6 see you.

7 MR. JIMMERSON: Good morning.

8 MS. LUNDVALL: Good morning, Your Honor. Pat  
9 Lundvall on behalf of Pardee Homes of Nevada. I'm with  
10 McDonald Carano Wilson. And Aaron Shipley, one of my  
11 partners, is with me here today.

12 THE COURT: I saw his affidavit. And you are  
13 for Pardee.

14 MR. JIMMERSON: Judge, Good morning. Jim  
15 Jimmerson, Lynn Hansen, and James M. Jimmerson on behalf  
16 of the plaintiffs, James Wolfram and Walter Wilkes.

17 This is maybe your first appearance to meet our  
18 son, who joined our firm in July. He was a white collar  
19 lawyer in New York City for a couple, and he saw the  
20 light and decided to --

21 THE COURT: To come back home.

22 MR. JIMMERSON: -- come back away from the dark  
23 side to the bright side.

24 THE COURT: Nice to meet you.

25 Do you have one of the clients with you?

1 MR. JIMMERSON: We do. This is Mr. Wolfram.

2 THE COURT: Nice to meet you, Mr. Wolfram.

3 THE COURT: So we have two things. We have  
4 Pardee's motion for summary judgment, and then we have  
5 the countermotion by plaintiffs, correct, on the  
6 assignments?

7 MR. JIMMERSON: That's right, Your Honor.

8 THE COURT: Let's start with the summary  
9 judgment by Defendant Pardee. I will tell you, I have  
10 read through everything, but please keep your record.

11 MR. JIMMERSON: We apologize for the infliction  
12 of emotional distress.

13 MS. LUNDVALL: Your Honor, I'm going to do a  
14 little old school today. It's been a long time since  
15 I've used poster boards, but I thought that in light of  
16 how new the courtroom was and how difficult it is to try  
17 to set up screens and whatnot for any type of a  
18 PowerPoint, I brought three poster boards which are  
19 simply excerpts from exhibits.

20 THE COURT: That's perfectly fine.

21 MS. LUNDVALL: I'm going to be referring to  
22 these today. I think if I put them here, the Court can  
23 see them. If, in fact, Counsel wishes to move so they  
24 have a better preview of them, I obviously have no  
25 opposition to that.

1           THE COURT: Okay. Mr. Jimmerson, if you can't  
2 see, you can certainly move wherever you need to.

3           MR. JIMMERSON: I'll sit in the jury box.

4           THE COURT: Actually, I've had a couple trials.  
5 We're getting the JAVS system. We're actually getting  
6 things better, but everything's kind of at an angle.

7           MS. LUNDVALL: I will tell you this is the  
8 first time I've been in your courtroom. Had I  
9 recognized how low your podium was, I probably would  
10 have worn shorter shoes today.

11          THE COURT: I asked. It's short for me and I'm  
12 short. It's the county. Right? We had a trial and  
13 they all quit using it because they were getting hunched  
14 over.

15          MS. LUNDVALL: I understand. I say that only  
16 as far as if I lose eye contact with you or if it  
17 appears that I'm referring to my notes, my apologies.

18          THE COURT: I'm fine. That would be the least  
19 of my problems.

20          MS. LUNDVALL: A very tiny bit of context then  
21 as we begin argument on this motion --

22          MR. JIMMERSON: Could I interrupt just for a  
23 second?

24          THE COURT: Yes.

25          MR. JIMMERSON: My son needs to appear in a

1 department here on the same floor, fortunately. So if  
2 he leaves, it's no disrespect to the Court.

3 THE COURT: No problem. Leave when you need to  
4 go. In fact, if you want to go out that side door  
5 because Ms. Hansen is sitting there, that's fine too.

6 MS. LUNDVALL: Just to give a tiny bit of  
7 context, this case arises from the development that is  
8 out Highway 95. It was a development that was beginning  
9 to get some legs until we got pretty hard hit by the  
10 economy in 2008, and that is basically the context. The  
11 context arises from the Coyote Springs land development.

12 THE COURT: I'm familiar with it. It's in  
13 Lincoln and Clark. I am familiar with it.

14 MS. LUNDVALL: I don't know if you've golfed  
15 the course out there. It is really the only true --

16 THE COURT: It's the only thing out there,  
17 isn't it?

18 MS. LUNDVALL: It's the only thing out there.  
19 And while they have great acclaim for the value of the  
20 course, that's about what's it out there at this point  
21 in time.

22 This is a breach of contract case. While there  
23 are three claims that have been alleged or asserted  
24 within the context of the Complaint, all three claims  
25 pivot around demonstration of a breach of contract. So,

1 therefore, I'm going to focus argument today then on the  
2 contract and on the allegations then of breach.

3 The contract that's at issue is a Commission  
4 Agreement. That Commission Agreement, I've got some  
5 excerpts today that I'm going to be going through.

6 THE COURT: I have it in front of me.

7 MS. LUNDVALL: Thank you.

8 THE COURT: September 1, 2004 letter, very  
9 familiar with it.

10 MS. LUNDVALL: That Commission Agreement had  
11 various capitalized terms contained within the  
12 Commission Agreement. Those capitalized terms per the  
13 Commission Agreement then referred a reader then back to  
14 the Option Agreement that was entered into between  
15 Coyote Springs Investment, which people refer to as CSI  
16 throughout the papers --

17 THE COURT: I know what you mean.

18 MS. LUNDVALL: -- and Pardee, and so that's  
19 where the definitions of the capitalized terms come  
20 from.

21 I think it's also important to set the context  
22 then, and that is that this case is a bench trial.  
23 Neither party has requested a jury. And so, therefore,  
24 if, in fact, the summary judgment is not granted, we  
25 are -- this is a presentation to the bench.

1           THE COURT: I read everything knowing that. I  
2 want you to know that. I spent a lot of hours. I did  
3 go through everything.

4           MS. LUNDVALL: There is an admission by both  
5 sides that the contract that is at issue and the terms  
6 are clear and unambiguous. The consequence of that is  
7 that any form of parol evidence that would try to be  
8 offered to interpret or vary the terms, that would be  
9 inadmissible given that admission.

10          THE COURT: You are saying there's an admission  
11 that this is clear?

12          MS. LUNDVALL: And unambiguous.

13          THE COURT: The terms. But that doesn't say  
14 that the performance under the contract could also be an  
15 issue, not just parol evidence. So we're not going to  
16 try to change the terms of the contract. But as I  
17 review it, am I correct, it's more of a performance  
18 under the contract?

19          MS. LUNDVALL: That would be correct,  
20 Your Honor. From that standpoint --

21          THE COURT: I apologize. I don't mean to stop  
22 you.

23          MS. LUNDVALL: I'm glad you are.

24          THE COURT: It just helps me because I worked  
25 so hard on following it, and I want to make sure I was



1 on the right track.

2 MS. LUNDVALL: I'm glad that you are. And I  
3 suppose if I step back from this, the admission that the  
4 terms are clear and unambiguous only deals with what is  
5 the plain meaning then that is to be ascribed to those  
6 terms. It does not mean somehow that the performance or  
7 the parties' conduct then has been stipulated in any  
8 fashion. I'm not making that suggestion.

9 THE COURT: Okay. That was my impression, but  
10 I want to make sure. Thank you.

11 MS. LUNDVALL: I think one other context that  
12 is helpful, as well, is that the factual predicate to  
13 this case all deals with land transfers. From Coyote  
14 Springs, land that was owned by Coyote Springs  
15 Investment, CSI, to Pardee. And obviously, because of  
16 the statute of frauds, any of those land transfers then,  
17 there's going to be a writing, there's going to be a  
18 piece of paper, there's going to be a document that  
19 involves such a transfer. So I think that that is also  
20 helpful in trying to demonstrate what the parties'  
21 performance has been under the Commission Agreement.

22 I also think that we may have finally resolved  
23 the issue concerning the plaintiffs' standing to bring  
24 suit.

25 THE COURT: My impression is that they actually

1 gave you the documentation, because I looked through it  
2 for their countermotion. So can I assume then, on the  
3 countermotion on the assignments, that that can be  
4 granted or that you are not saying that Mr. Wolfram and  
5 Mr. Wilkes do not have standing or --

6 MS. LUNDVALL: At this point in time,  
7 absolutely, Your Honor.

8 THE COURT: All right. I wanted to -- that's  
9 perfect. Okay.

10 MS. LUNDVALL: This was an issue that was  
11 important to Pardee from the context of ensuring that we  
12 didn't have duplicative suits.

13 THE COURT: I thought you -- honestly, the  
14 motion probably got you where you needed to go on that.  
15 So I don't find any reason that you shouldn't file it,  
16 but I certainly was going to tell you I'm going to grant  
17 the countermotion because they did supply the  
18 documentation on the assignments and with the affidavits  
19 by Jerry Masini and the other people. I figured you  
20 were probably okay with that.

21 MS. LUNDVALL: And in the final reply brief  
22 then they also, as you know, supplied the last and final  
23 assignment that was necessary. So, therefore, there's  
24 no reason for us to fuss over that issue.

25 THE COURT: I'm going to go ahead for the

1 record and grant plaintiffs' countermotion for summary  
2 judgment regarding the assignments that Mr. Wolfram and  
3 Mr. Wilkes are the real party in interest, that they  
4 have legal assignments for rights under the commission  
5 letter of September 1, 2004.

6 MS. LUNDVALL: Thank you, Your Honor.

7 THE COURT: You're welcome. Now we're in your  
8 summary judgment.

9 MS. LUNDVALL: Let me turn then to the  
10 statement of undisputed facts.

11 THE COURT: That's in here too.

12 MS. LUNDVALL: From my perspective, you know,  
13 what we did as far as in bringing our reply then to you  
14 is that after we had filed our motion for summary  
15 judgment, we had set forth what we understood was the  
16 statement of undisputed facts.

17 The opposition did not identify where there  
18 were points of contention, but in the reply then what we  
19 tried to do then was to identify where those points of  
20 contention are. What I'm going to recite to the Court  
21 is what I believe are the statement of undisputed facts  
22 for which there has been no contest then by the  
23 plaintiffs.

24 THE COURT: That is helpful. Because I did one  
25 too, so it would be helpful.

1 MS. LUNDVALL: First, the plaintiffs both  
2 testified that this case is one principally for breach  
3 of contract. Pardee is a residential home builder. The  
4 plaintiffs -- and what I'm now going to do is just  
5 simply recite then who the parties are to the Commission  
6 Agreement because there's no dispute then as to who  
7 those parties are at this point in time.

8 The plaintiffs, or Mr. Wolfram and Mr. Wilkes,  
9 both of them were real estate agents that were working  
10 in our community then. Neither one of them were  
11 brokers, and both of them worked through then their  
12 separate brokerage firms.

13 So the Commission Agreement itself was actually  
14 between Award and General. They signed on behalf of  
15 those two realty companies, through those two  
16 brokerages, and now we have resolved then the issue as  
17 to their particular standing to sue.

18 THE COURT: They've taken assignments from  
19 Award, which was Mr. Masini's company, and General,  
20 which was for Mr. Wilkes. They were at two separate  
21 companies. So that's not in dispute. We're all okay on  
22 that.

23 MS. LUNDVALL: The time context of this case is  
24 in late 2002. Mr. Wolfram and Mr. Wilkes had been  
25 acquainted then with the principal of Coyote Springs.

1 That principal was Harvey Whittemore. He was the  
2 managing member then of Coyote Springs Investment, LLC.  
3 And then as we indicated, Coyote Springs, it's actually  
4 a total of 43,000 acres that straddles Clark County and  
5 Lincoln County. There's only about 30,000 of it that is  
6 developable, and that's the information that you pulled  
7 then from the parties' agreements.

8 Late in 2002 Mr. Wolfram and Mr. Wilkes also  
9 knew Jon Lash. Jon Lash was a principal with Pardee  
10 Homes of Nevada. And so they went to, both to  
11 Mr. Whittemore and to Mr. Lash, and offered to do an  
12 introduction between those two gentlemen. And they did  
13 make that introduction.

14 Incidentally, Mr. Whittemore, during his  
15 testimony, identified that he already had Pardee on the  
16 list of home builders that he intended to talk to, but  
17 it was Mr. Wilkes and Mr. Wolfram, though, that  
18 originally put these two together.

19 They attended a meeting between Mr. Lash on  
20 behalf of Pardee. He brought with him a gentleman by  
21 the name of Cliff Andrews, who is also with Pardee, and  
22 Mr. Whittemore on behalf of CSI. Mr. Wolfram and  
23 Mr. Wilkes were at that initial meeting. And there was  
24 just simply general discussion as to whether or not that  
25 CSI on one hand and Pardee on the other hand had an

1 interest then in working toward the joint development  
2 then of Coyote Springs. That is undisputed.

3 It is also undisputed that that is the last  
4 meeting they attended and --

5 THE COURT: I think it was the only meeting  
6 they attended; correct? That Mr. Wolfram and Mr. Wilkes  
7 was included in, my understanding.

8 MS. LUNDVALL: That's correct. It was the  
9 first and the last.

10 THE COURT: Okay.

11 MS. LUNDVALL: And quite candidly, it was  
12 understandable. Both of these organizations had their  
13 own legal staff, their own legal counsel. And whatever  
14 agreement then that was ultimately reached between CSI  
15 and Pardee then was a result of months of negotiation  
16 primarily back and forth between the legal counsel then  
17 as to going forward.

18 THE COURT: And that's how they ended up with  
19 their Option Agreement. Okay.

20 MS. LUNDVALL: That's correct, Your Honor.

21 Mr. Whittemore's testimony was that he had an  
22 interest in selling certain portions of the land that  
23 had been designated then for single family detached  
24 production residential lots. And that's a little bit of  
25 a mouthful, but I think it's important to keep into

1 context that with a planned unit development, there's  
2 always different portions of it that have either been  
3 zoned or planned or that there's tentative maps for  
4 different types of development.

5 THE COURT: It was multi-use. I understood  
6 that. He had custom homes on the golf course. He had  
7 some single family. He had some multi-uses. So single  
8 family detached homes is what you are representing is  
9 what the agreement was about?

10 MS. LUNDVALL: That's correct, Your Honor. And  
11 Pardee then had an interest then in buying into the  
12 single family detached production residential lots.

13 That initial meeting, it's undisputed, led to  
14 several months of negotiations between Pardee and CSI,  
15 and they ultimately ended up with a written agreement.  
16 That written agreement was offered as Exhibit D to our  
17 motion for summary judgment. It is captioned the Option  
18 Agreement.

19 And, in sum, Pardee had agreed to purchase that  
20 single family residential lot from CSI. The original  
21 purchase price then under the Option Agreement that was  
22 entered into was \$66 million. And there was a schedule  
23 of when there was going to be takedowns.

24 THE COURT: My understanding of takedown, you  
25 just take certain ones over a period of time?

1 MS. LUNDVALL: That's correct, Your Honor. In  
2 other words, it wasn't that a total of \$66 million --

3 THE COURT: At one time.

4 MS. LUNDVALL: -- at one time, and a deed, as  
5 far as given back then to Pardee, at one time. It was  
6 basically a progression then of takedowns for the  
7 purchase of that.

8 THE COURT: Which was going to result in the  
9 \$66 million at the end?

10 MS. LUNDVALL: Correct.

11 That Option Agreement, I think there's a couple  
12 provisions that are of note in the Option Agreement. It  
13 appended what they called an Option Property Deed to the  
14 Option Agreement. And the Option Agreement had two  
15 components to it. Number one was the outright purchase  
16 that Pardee was making. The second component was what  
17 was referred to as the Option Property. In other words,  
18 there was other land.

19 THE COURT: Was that what you referred to as  
20 the Purchase Property versus the Option Property?

21 MS. LUNDVALL: Absolutely, Your Honor.

22 THE COURT: That's the terminology I picked up.  
23 So when you say outright purchase, in the documents it's  
24 been referred to as the Purchase Property, and then  
25 throughout the documents it's the Option Property.



1 MS. LUNDVALL: That's correct.

2 THE COURT: Can I ask this? In the  
3 \$66 million, did that include Purchase Property and  
4 Option Property? It did not?

5 MS. LUNDVALL: It did not.

6 THE COURT: It was all Purchase Property?

7 MS. LUNDVALL: It was all Purchase Property.

8 THE COURT: That's what I wrote down, but I  
9 wanted to make sure.

10 MS. LUNDVALL: That's correct.

11 THE COURT: Okay. Option Property is -- okay.

12 MS. LUNDVALL: And if you look at Pardee's  
13 Option Agreement, it had -- it's the very first  
14 paragraph. The first paragraph under the Option  
15 Agreement dealt with the Purchase Property.

16 THE COURT: I saw that, okay.

17 MS. LUNDVALL: How it was going to be  
18 purchased, the time frames in which it was going to be  
19 purchased, the takedown schedules.

20 And then you go to paragraph number 2.  
21 Paragraph number 2 set forth the option for the Option  
22 Property. In other words, there was other land that was  
23 available at Coyote Springs.

24 THE COURT: This is one question I had. Was  
25 the other land they were looking at merely single family

1 dwellings, other land available, or the other multi-use  
2 custom lots and stuff? That's what I was trying to  
3 figure out.

4 MS. LUNDVALL: No. The Option Property  
5 specifically deals with single family production  
6 detached residential lots.

7 So, in other words, the original purchase was  
8 going to be 1,500 acres, but there was an awful lot of  
9 land as far as that was available at Coyote Springs.

10 THE COURT: So the original purchase for the  
11 \$66 million was 1,500 acres?

12 MS. LUNDVALL: That's correct.

13 THE COURT: And those had been designated by --  
14 I'll just say CSI, it's easier -- had been designated by  
15 CSI as single family detached homes?

16 MS. LUNDVALL: Yes.

17 THE COURT: Here's my question: Were there  
18 other single family detached lots that CSI had already  
19 designated or was there part of the acres that he had  
20 that they still hadn't decided what the use was going to  
21 be?

22 MS. LUNDVALL: They still hadn't decided what  
23 the use was going to be.

24 THE COURT: That's what I was trying to  
25 understand. So the option was there that Pardee could

1 get more single family production detached lots, but it  
2 had not been designated as of that time where it was  
3 going to be or for sure if CSI was going to do it? That  
4 was just something that was going to be decided in the  
5 future after this original \$66 million?

6 MS. LUNDVALL: That's correct, Your Honor.

7 And if you think about this, that makes sense.  
8 Coyote Springs was going to be a huge development. They  
9 were in very early stages of that development at the  
10 time that Pardee and CSI got together. There weren't  
11 firm maps. There weren't specific deeds. There weren't  
12 specific property lines that had been developed at that  
13 point in time. And so to the extent that the Option  
14 Property was going to be other single family detached  
15 residential lots that had been designated by CSI at some  
16 point in the future.

17 THE COURT: Okay. I wasn't sure about that.  
18 That helps me. It just was going to be CSI had the  
19 freedom to decide what they were going to designate as  
20 single family production detached lots in the future.  
21 They didn't make any promises like, We'll go so many  
22 more acres, or anything like that?

23 MS. LUNDVALL: No.

24 THE COURT: It was an early stage. Okay.

25 MS. LUNDVALL: CSI was the master developer.

1 CSI still had that power by which to do that.

2 THE COURT: They had the freedom to be able to  
3 decide as they went along how they wanted to designate?

4 MS. LUNDVALL: That's correct.

5 Now, the one thing I think that is important  
6 that when you take a look at the Option Agreement is  
7 that the parties made reference to the fact that that  
8 option had to be noticed basically to the world.

9 THE COURT: It wasn't an exclusive option to  
10 Pardee?

11 MS. LUNDVALL: Yes.

12 THE COURT: It was an option?

13 MS. LUNDVALL: But they had to put the world on  
14 notice, so to speak.

15 THE COURT: So they were going to -- if they  
16 designated more single family production detached lots,  
17 Horton Builders or somebody else could still see it and  
18 maybe want to do it? It wasn't exclusive just to  
19 Pardee. Is that what you are saying?

20 MS. LUNDVALL: No.

21 MR. JIMMERSON: No.

22 MS. LUNDVALL: This is what I'm saying, and  
23 maybe the terminology I'm using -- let me see if I can  
24 explain.

25 THE COURT: Okay. I want to make sure I

1 understand.

2 MS. LUNDVALL: One of the things that is  
3 important within real property transactions is that if  
4 you have an interest in real property, that you want  
5 basically the world to know. That's why you file your  
6 deed. That's why you record it within the recorder's  
7 office so somebody doesn't come and try to sell it away,  
8 through whether on oral agreement or --

9 THE COURT: Because it's yours.

10 MS. LUNDVALL: It's yours.

11 Pardee had an interest as far as in the other  
12 property that may in the future be designated for single  
13 family production. So there was an Option Memorandum  
14 that was going to be recorded both in Lincoln County, as  
15 well as in Clark County.

16 Now, what that did is it prevented CSI from  
17 going to DR Horton --

18 THE COURT: And selling.

19 MS. LUNDVALL: -- and selling, saying, Hey --

20 THE COURT: I thought that was a first option,  
21 so maybe that's the same terminology. They have a legal  
22 interest in that option. They have to give it to them  
23 first. And then if Pardee says, You know what, we've  
24 developed all we want in these properties, we're not  
25 going to do it -- but they had an exclusive option that

1 if CSI in the future was going to designate single  
2 family production lots at the CSI Coyote Springs  
3 Development, Pardee had that right?

4 MS. LUNDVALL: That's correct, Your Honor.

5 THE COURT: That's a legal right.

6 MS. LUNDVALL: That's a legal right.

7 THE COURT: That's what the option gave them  
8 when they refer to Option Property.

9 MS. LUNDVALL: That's correct, Your Honor.

10 THE COURT: Thank you.

11 MS. LUNDVALL: And there was a very specific  
12 process that was set forth within the parties' Option  
13 Agreement. Paragraph 9 indicated how the option could  
14 be exercised. There had to be a written notice sent  
15 then from Pardee to CSI indicating that they were going  
16 to exercise that option either in whole or in part.  
17 Okay. So there would be a written piece of paper in  
18 that context.

19 Also what you would see is that there was an  
20 Option Property deed. So if Pardee had actually  
21 exercised its option and Pardee had acquired Option  
22 Property, there would be an Option Property deed.

23 THE COURT: It's actually titled that, Option  
24 Property deed?

25 MS. LUNDVALL: Yes, Your Honor. That was

1 appended then to the Option Agreement as an exhibit to  
2 the Option Property.

3 And so there was also very specific escrow  
4 instructions written in the Option Agreement that set  
5 forth then how it was that the Option Property  
6 memorandum was to be recorded, how it would require  
7 written notice of an exercise of an option, and how  
8 there would be a written Option Property deed to be  
9 recorded.

10 THE COURT: So it's a three-part; the Option  
11 Property memo, written notice of the exercise of the  
12 option, and the Option Property deed. All of that would  
13 be available if Pardee had exercised any option for that  
14 property?

15 MS. LUNDVALL: That's correct.

16 And in actuality, when you take a look then at  
17 kind of the sum total of what would happen if you did  
18 this in a step-by-step progression, CSI is the master  
19 developer then. They would have to designate land as a  
20 single family detached production residential lots.  
21 There would be tentative maps that would have to be  
22 approved by that. So you would have writings or  
23 documents for that purpose.

24 THE COURT: Would they have to file those  
25 tentative maps? Would that have to be recorded or just

1 part of their Option Agreement?

2 MS. LUNDVALL: I don't believe that they have  
3 to be recorded.

4 THE COURT: But it would be somehow part of the  
5 Option Agreement or somehow recorded somewhere as part  
6 of their development documents?

7 MS. LUNDVALL: That's correct, Your Honor.  
8 There would have to be a written notice of option  
9 exercised by Pardee. There would have to be a specific  
10 escrow that would have to be opened with escrow  
11 instructions drawn. There would have to be then money  
12 exchanged in an Option Property deed. And as part of  
13 any type of land transfer, we all know that you have to  
14 pay transfer taxes. So there would be a written  
15 document for that as well. At each one of those steps  
16 there would be a written document then indicating that  
17 Pardee had purchased Option Property.

18 THE COURT: And these are all documents that  
19 would have had to have happened and would be available  
20 for production if it did happen?

21 MS. LUNDVALL: If it did happen.

22 THE COURT: Or they would be able to find;  
23 correct? That's not something they have to just rely on  
24 Pardee to produce to them? Because there was some  
25 issues, that's why I'm asking that. The written notice



1 of option, if you did not produce it to them, could the  
2 plaintiffs get that someplace else? I assume from like  
3 Stewart Title. Is that what actually happened?

4 MS. LUNDVALL: That's correct. But from this  
5 standpoint, if there would have been --

6 MR. JIMMERSON: Excuse me. Could I make an  
7 objection at this point. I'll just sit down. We do not  
8 concede that any of this is undisputed facts, Judge.

9 THE COURT: I absolutely understand that. I've  
10 read everything. I think we segued from disputed facts  
11 to kind of telling me how it works. I understood that.

12 MR. JIMMERSON: Thank you, ma'am.

13 THE COURT: But it does help me with the  
14 process. It does help me where to look for such  
15 documents. So I appreciate it.

16 MS. LUNDVALL: Thank you, Your Honor.

17 THE COURT: So your point is none of -- this  
18 didn't happen and there's no documentation to prove that  
19 it happened. Right? You want to go to the basics;  
20 right?

21 MS. LUNDVALL: That's correct, Your Honor.

22 There were two amendments to the Option  
23 Agreement that happened prior to the Commission  
24 Agreement being entered into.

25 THE COURT: Okay. So prior to the letter,

1 which is the contract here, which was September 2004,  
2 there were two options even before that was done.  
3 Correct?

4 MS. LUNDVALL: Yes. There were two amendments.

5 THE COURT: Okay, two amendments.

6 MS. LUNDVALL: One amendment was simply an  
7 early release of some monies.

8 THE COURT: So that has no significance?

9 MS. LUNDVALL: No significance.

10 The second amendment did have significance then  
11 to the plaintiffs in this action. Why? Because it took  
12 the Purchase Property Price from \$66 million to  
13 \$84 million. And also, when you take a look, the amount  
14 of land then that was being purchased went from 1,500 to  
15 1,950 acres.

16 THE COURT: Okay. So that's, hence, why the  
17 price went up?

18 MS. LUNDVALL: That's correct.

19 THE COURT: So originally the Option Agreement  
20 said the Purchase Property, as defined, was 1,500 acres,  
21 which they agreed to a price of \$66 million. Then  
22 before this letter of September 1, 2004, which is the  
23 Commission Agreement, the contract, they had already  
24 increased it to 1,950 acreage at the price of  
25 \$84 million.

1 MS. LUNDVALL: That's correct, Your Honor.

2 THE COURT: Okay. That was the second  
3 amendment. Okay.

4 MS. LUNDVALL: Now, one of the things then that  
5 we get to is the Commission Agreement. The Court  
6 already has the date on the Commission Agreement.

7 THE COURT: I do. I have it in front of me and  
8 I looked through it the best I could.

9 MS. LUNDVALL: We've already identified who the  
10 parties were to that Commission Agreement. And one of  
11 the things that was testified to during both Mr. Wilkes'  
12 deposition as well as Mr. Wolfram's deposition is that  
13 any duty to pay a commission from Pardee to either of  
14 the individuals then would originate then from the  
15 Commission Agreement.

16 I'm going to highlight then the portions of the  
17 Commission Agreement that were identified as being at  
18 issue. And I think, like I said, the easiest way for me  
19 to have done that was to create a poster board.

20 THE COURT: That's strictly on page 1. In all  
21 honesty, it is small, but I can read it.

22 MS. LUNDVALL: I thought that so that the Court  
23 would have the provisions easily available, that's why I  
24 put it on a poster board.

25 THE COURT: Thank you.

1 MS. LUNDVALL: It's Exhibit G to our motion.  
2 These were the excerpts that were identified during the  
3 depositions then as being breached. These were the  
4 breaches that were alleged at issue or the portions that  
5 were alleged at issue.

6 The one thing that we started with is  
7 subparagraph (i).

8 THE COURT: Make sure I understand. What you  
9 are saying is the plaintiffs in deposition said the only  
10 thing in the agreement that was breached is what you put  
11 up there -- do you call it small "i"? I don't know  
12 how -- "i," double "i," and triple "i." I didn't get  
13 that impression. I thought there was other breaches,  
14 like whether they gave documentation, but --

15 MS. LUNDVALL: From the standpoint -- what I  
16 did is I gave them the Commission Agreement and I said,  
17 Highlight what portions do you think that Pardee is in  
18 breach of.

19 THE COURT: That's asking the plaintiffs  
20 themselves, not -- okay.

21 MS. LUNDVALL: So we knew basically what was at  
22 issue in this case. They identified then these  
23 paragraphs, and they identified the second paragraph,  
24 which is found here that deals with what I call the  
25 notice provisions. It's found on page 2.

1 THE COURT: I'm aware of both of those.

2 MS. LUNDVALL: So those are the portions of the  
3 agreement then that I'm going to focus on. One of the  
4 things is that Pardee agreed to pay a certain percentage  
5 of the Purchase Property Price. Pardee didn't agree to  
6 pay based on the amount of acreage or number of acreage  
7 or paragraphs 1 and 2. They agreed to pay based upon  
8 the Purchase Property Price. We know that Purchase  
9 Property Price was \$84 million.

10 THE COURT: That's -- I don't know. Do you  
11 consider that an undisputed fact?

12 MS. LUNDVALL: Yes, I do. From our  
13 perspective, we laid that out in our motion for summary  
14 judgment. They mirrored that in their opposition when  
15 they set forth --

16 THE COURT: Mr. Jimmerson, do you agree the  
17 \$84 million, that that is an undisputed?

18 MR. JIMMERSON: The \$84 million is the Purchase  
19 Price Property, Your Honor.

20 THE COURT: I thought so, but I wanted to make  
21 sure.

22 MR. JIMMERSON: And the formula, as  
23 Ms. Lundvall will tell you, the formula for commission  
24 is different for Purchase Price Property than for  
25 option.

1           THE COURT: Than for option. I understand  
2 that. Okay.

3           MS. LUNDVALL: So what you get then is that the  
4 focus is on the Purchase Property Price both in  
5 paragraph 1 and paragraph 2. Because basically Pardee  
6 said, We'll pay you a straight four percent on the first  
7 \$50 million, and then it's going to be one and a half  
8 percent on anything above \$50 million.

9           THE COURT: To the aggregate amount of  
10 \$16 million.

11          MS. LUNDVALL: And so from this perspective, we  
12 know that the Purchase Property Price went up to  
13 \$84 million because of the two amendments.

14          So if you run through that calculation, that  
15 calculation, you take four percent of the first 50  
16 million, and one and a half percent then of the next 34,  
17 you end up with \$2,510,000.

18          THE COURT: That's strictly math.

19          MS. LUNDVALL: That's strictly math,  
20 \$2,510,000.

21          THE COURT: \$2,510,000. Correct?

22          MS. LUNDVALL: It's undisputed then that the  
23 plaintiffs have received those monies. They received  
24 all of --

25          THE COURT: They received -- there was a couple

1 places where they got -- are you going to talk about  
2 that too, where they got more than the \$2,510,000?

3 MS. LUNDVALL: They actually were paid more.

4 THE COURT: I was trying to figure it out, but  
5 maybe you'll tell me. Okay.

6 MS. LUNDVALL: So from this perspective, they  
7 were all paid through escrow at each one of the  
8 takedowns that Pardee did on this Purchase Property.  
9 They were paid through escrow.

10 The plaintiffs also admit, as we've just now  
11 heard from Mr. Jimmerson, that Pardee had paid  
12 \$84 million to CSI. And so that is an undisputed issue.  
13 We know that based upon Pardee's testimony,  
14 Mr. Whittemore's testimony on behalf of CSI. We also  
15 know that then on the escrow documents.

16 We also know based upon the plain language then  
17 of subparagraph (iii) that there was no commission that  
18 was due and owing to the plaintiffs unless Pardee  
19 purchased Option Property. Option Property is in caps,  
20 and that Option Property purchase had to be pursuant to  
21 paragraph 2 of the Option Agreement.

22 So, really, it's this (iii) that I see that the  
23 parties principal issues are for purposes of this  
24 motion.

25 And then you turn to the notice provision,

1 which is found down at the first portion. There's two  
2 sentences to the notice provision. The first sentence  
3 says that Pardee is going to provide a copy of the  
4 written option exercise notice that would be given  
5 pursuant to paragraph 2 of the Option Agreement. So, in  
6 other words, if Pardee chose to purchase Option  
7 Property, it had to give a written notice to CSI.

8 THE COURT: Which is what you talked about  
9 initially as the stepped process for the option. Okay.

10 MS. LUNDVALL: If, in fact, by deduction then,  
11 if they never did that, there was nothing to give to the  
12 plaintiffs. Okay? In other words --

13 THE COURT: You are saying if they didn't do  
14 the Option Agreement, they didn't have to do the next  
15 part of the sentence?

16 MS. LUNDVALL: That's correct. In other words,  
17 if Pardee had never exercised its option --

18 THE COURT: And that's your position.

19 MS. LUNDVALL: That's our position.

20 THE COURT: I got that loud and clear. Pardee  
21 says, We never exercised any option, we just did the  
22 Purchase Property. And that's where we're at.

23 MS. LUNDVALL: That's correct. So if we never  
24 sent a written notice, there would be nothing to send  
25 then to the plaintiffs. Okay?



1           THE COURT: Right. If you didn't exercise it,  
2 you would not have an -- can I ask this too, because it  
3 was a question I had. How long is this Option Agreement  
4 for? Because I know that property is still sitting up  
5 there. Who knows if it will ever be developed. How  
6 long does Pardee have to exercise an option?

7           MS. LUNDVALL: 2045.

8           THE COURT: 2045. Okay. That was a question I  
9 had.

10          So here's the other question I had: Is it  
11 disputed that Mr. Wilkes and Mr. Wolfram still would  
12 have, if it happens with Pardee sometime between now and  
13 2045 -- you are saying they do not. There's a time  
14 certain on this when they could do the option? Like if  
15 Pardee decides next year to do it, this would not come  
16 into play?

17          MS. LUNDVALL: Well, if Pardee next year says,  
18 You know what, we've got -- right now Pardee has enough  
19 for 16,000 homes out there.

20          THE COURT: And they've not developed anything.  
21 I understand.

22          MS. LUNDVALL: But let's say, just for the sake  
23 of argument, if Pardee says, You know what, we want more  
24 property for single family detached residences --

25          THE COURT: Other than what we've paid for for

1 the 84 million, we're going to exercise our option under  
2 the Option Agreement.

3 MS. LUNDVALL: That's correct. They would  
4 send written -- well, first there would have to be a  
5 designation by CSI. Number two, there would have to be  
6 a written notice then by Pardee.

7 Pardee at that point in time, let's say it  
8 happens tomorrow, Pardee would be obligated to send a  
9 copy of that written notice.

10 THE COURT: That's what I was trying -- to  
11 Mr. Wolfram and to Mr. Wilkes. So this is still good?

12 MS. LUNDVALL: Absolutely.

13 THE COURT: That's what I wanted to make sure.  
14 So this -- which is what their interest was. And I  
15 noticed they said, We want to know for our children or  
16 grand -- whatever, if we still have an interest, I want  
17 them to be able to know, if Pardee does exercise an  
18 option up to 2045, that the Commission Agreement of  
19 September 1, 2004 will be honored by Pardee.

20 MS. LUNDVALL: That's correct.

21 THE COURT: You agree that's undisputed, they  
22 do -- if that does happen, if there is an option like  
23 you said exercised, then they still would have an  
24 interest up to 2045?

25 MS. LUNDVALL: Absolutely. In addition to

1 getting the option notice, they also get a commission.

2 THE COURT: Right. That's what I was asking.  
3 They have a right under this letter. Okay.

4 MS. LUNDVALL: And that commission --

5 THE COURT: Okay. So that's undisputed then.  
6 That's not an issue. I was afraid maybe looking at it  
7 that that was an issue, but it's not.

8 The issue is you are saying, We haven't done  
9 any yet. We haven't exercised any options for Option  
10 Property. We have paid them everything due and owing  
11 under the purchase.

12 MS. LUNDVALL: That's correct, Your Honor.

13 THE COURT: I didn't mean to simplify it, but  
14 that helps me.

15 MS. LUNDVALL: Thank you, Your Honor.

16 So basically the way I see this case then is  
17 that it boils down to whether or not that Pardee has  
18 exercised this option and purchased any Option Property.  
19 So, therefore, that's the place where the parties  
20 diverge in their motion practice.

21 We filed our motion for summary judgment. We  
22 set forth our statement of facts. In opposition, they  
23 didn't identify which of those statements of facts was,  
24 you know, disputed. They set forth their own.

25 But when you cross-reference where the parties

1 then begin to diverge is in the brief they contend that  
2 we have exercised Option Property, that we have  
3 purchased Option Property.

4 THE COURT: That's one thing. But also, I'll  
5 be honest, I actually read your motion -- I probably  
6 should do the reverse and read the opposition first.  
7 But I read your motion first, and I, on my own, looked  
8 at the notice and wondered, if you look at their  
9 Complaint, you get the feeling we just needed -- we  
10 don't know.

11 And if you read the testimony -- I read -- I  
12 had certain excerpts, so not full evidence, as you know,  
13 like I would in a bench trial, if you read Mr. Wolfram  
14 and Mr. Wilkes, it's like, We don't know, but we want to  
15 make sure that everything, that we have gotten it. We  
16 had that one meeting, and then they felt like they  
17 weren't getting all the documentation.

18 So I focused in on what call -- and it does  
19 help me -- the notice provision. And I thought that was  
20 an area of question of fact. And then when I start  
21 reading their opposition, that was like in the first  
22 couple of pages.

23 So I thought that -- I agree with you. I  
24 think -- I do want to qualify. I do think they feel  
25 they have a case that an Option Property was exercised.

1 I don't know what they have to prove it.

2 But I thought second part was whether they --  
3 and the language that I looked at is Pardee shall keep  
4 each of you reasonably -- reasonably informed as to all  
5 matters relating to the amount and due dates of your  
6 commission. And that's where I kind of really focused  
7 for this summary judgment because that seems to be the  
8 gist of a lot of the Complaint.

9 That's why you did the accounting. I feel like  
10 that was the basis for that claim, because -- and I know  
11 you listed for me every time you did -- not you. Every  
12 time Pardee -- not personalizing it to you -- your  
13 client, Pardee, sent letters by Jon Lash or however it  
14 was done.

15 But I honestly felt the lawsuit came because  
16 they just didn't know. And if you read the excerpts I  
17 had from the depositions they were honest about it.  
18 Wolfram and Wilkes said, That may be it all, we just  
19 have a feeling there's more or we don't know.

20 And I understand the idea of acres. I  
21 understand that really makes it a little more complex.  
22 Like you said, it's based on Purchase Property Price.  
23 We get into -- I didn't get maps on the acres. I  
24 understand that kind of clouds it -- does that make  
25 sense to you? -- on what information they needed.

1           But that is where I focused too, if that helps  
2 you. I'm kind of going there. And I have real  
3 questions for them on what they have to show that Pardee  
4 has done to exercise their option.

5           Could you address for me then how you think  
6 there is not a material -- a genuine issue of material  
7 fact regarding what I called -- you called and I liked  
8 it -- the notice provision of the agreement of  
9 September 1, 2004?

10           MS. LUNDVALL: Good deal.

11           THE COURT: That is where I focused.

12           MS. LUNDVALL: Good deal.

13           THE COURT: If you don't mind, that helps me.

14           MS. LUNDVALL: I'm going to mix this up just a  
15 tiny bit then.

16           THE COURT: I don't want to cut you off from  
17 your --

18           MS. LUNDVALL: What I'll do then is I'm going  
19 to come back to the other issue.

20           THE COURT: We can come back because I do want  
21 to know what's going to be evidence.

22           MS. LUNDVALL: So from this perspective, we got  
23 first issue then, this is the notice provision of the  
24 parties' agreement. As I discussed before, there are  
25 two sentences there. That first sentence then is if we

1 exercise --

2 THE COURT: They have to get notice.

3 MS. LUNDVALL: -- then they get a copy as far  
4 as what we exercise.

5 As before, if we have never exercised the  
6 option under paragraph 2 of the Option Agreement, then  
7 there's nothing to give to them.

8 THE COURT: Correct.

9 MS. LUNDVALL: That would be undisputed,  
10 Your Honor.

11 THE COURT: Of course. If you didn't do it,  
12 there would be nothing to -- if you never had an option  
13 exercised, then you never have to give notice of  
14 something you didn't do, as basic as that sounds.  
15 That's what you are saying?

16 MS. LUNDVALL: That's what I'm saying.

17 The second provision then says that, In  
18 addition, Pardee shall keep each of you reasonably  
19 informed as to all matters relating to the amounts and  
20 the due date of your commission payments.

21 Plain language then says as to the amount and  
22 due dates of your commission payments. So, therefore,  
23 what we have to do is say, Okay, the amount and the due  
24 dates of your commission payments. When were they  
25 entitled to a commission payment?

1           THE COURT: But the question I have on that is  
2 they don't know. I don't think they are arguing that --  
3 for the 86 million, they got the notice, what they  
4 needed. I think what they are saying is, We don't know  
5 if we were entitled to the commission, any further  
6 commission payments. It was a lack of information.  
7 That's where I think they are going.

8           And what you are going to do is say, Hey, wait  
9 a minute, there was nothing to give them, so we didn't  
10 violate that. Correct?

11          MS. LUNDVALL: That's correct. Because if you  
12 take a look, Your Honor, there were a series of letters  
13 that were sent.

14          THE COURT: Back and forth, yes.

15          MS. LUNDVALL: Yes. Those letters then --

16          THE COURT: I have them starting with  
17 August 23, your Exhibit K from Jon Lash.

18          MS. LUNDVALL: That's where we begin.

19          THE COURT: Okay.

20          MS. LUNDVALL: And we can begin with this  
21 context as a summary of all those letters. Number one,  
22 those letters tell the plaintiffs, We've never exercised  
23 any Option Property.

24          Number two, they say we have paid in full the  
25 Purchase Property Price, which was \$84 million, by



1 Pardee to CSI. And you've been paid your commissions in  
2 full on those \$84 million.

3 The fourth thing that those letters do is that  
4 they go even further, and they give the specific  
5 breakdown. They give as to the takedowns that Pardee  
6 made purchases for those \$84 million.

7 And so those letters that are found at  
8 Exhibit K, L, M and N, particularly Exhibit N, which is  
9 Mr. Lash's very last letter --

10 THE COURT: That's the November 24, 2009 Lash  
11 letter.

12 MS. LUNDVALL: That's correct. And what  
13 Mr. Lash does then is he goes through and he tries to  
14 summarize. He tells them for all of these Purchase  
15 Property Price payments, across which their commissions  
16 are going to be paid, he tells them when Pardee made  
17 those payments to CSI, what they totaled, which was  
18 \$84 million, and all of those commission payments then  
19 were based upon that \$84 million.

20 He also summarizes that there's been no Option  
21 Property that has been purchased. So between those  
22 letters then, they explain then to the plaintiffs what  
23 it is that, number one, that they were entitled to,  
24 number two, what they were paid, and number three, how  
25 Pardee hasn't exercised any Option Property.

1           So that's where we get to the notice provisions  
2 then, Your Honor. I will tell you that it is my  
3 impression that it really wasn't until Mr. Wolfram's  
4 deposition did he acknowledge that he was getting  
5 commissions on the Purchase Property Price, not acreage.

6           THE COURT: That is a clouded issue. I have to  
7 be honest. I understand.

8           MS. LUNDVALL: But the plain language of the  
9 contract --

10          THE COURT: And the letter.

11          MS. LUNDVALL: -- the Commission Agreement  
12 makes it very clear that it's the Purchase Property  
13 Price --

14          THE COURT: Not per acre.

15          MS. LUNDVALL: -- not per acre that everything  
16 pivots around.

17          So let me see if I can go back then to the  
18 issue of whether or not Pardee has purchased any Option  
19 Property.

20          THE COURT: Okay. I would appreciate it.

21          MS. LUNDVALL: Number one, there is a  
22 difference between the evidence that was offered by the  
23 plaintiffs and the explanation of that evidence within  
24 their briefs. In other words, the plaintiffs suggest  
25 that we have exercised Option Property. That's what