


1 defense. If there had been, Defendant presumably would have responded soon after the  
2 disclosure of this category of damages and not waited until weeks before trial to make its  
3 grievance known to the Court. Moreover, Defendant more than likely would have taken  
4 Plaintiffs up on their offer to answer an interrogatory on this matter. Ultimately, Plaintiffs'  
5 Eighth Supplement to their 16.1 disclosures addresses Defendant's concerns and is strong  
6 evidence that any deficiency in Plaintiffs' disclosures was not willful and does not merit  
7 exclusion of these damages.

8 **III. CONCLUSION**

9 Based on the foregoing, Defendant's motion in limine to exclude Plaintiffs' Claim for  
10 Compensation for Time as an Element of Damages (MIL #2) should be denied. Not only  
11 have Plaintiffs established that this category of damages is the foreseeable result of  
12 Defendant's breach of contract, but also Defendant has failed to adequately demonstrate  
13 that the discovery sanction of exclusion of evidence is an appropriate reaction to the  
14 alleged discovery violations. Defendant's have complied with N.R.C.P. 16.1 and presented  
15 a calculation of Plaintiffs' damages. As such, Plaintiffs respectfully request that the motion  
16 be denied

17 DATED this 20<sup>th</sup> day of March, 2013.

18 JIMMERSON HANSEN, P.C.

19  
20   
21 JAMES J. JIMMERSON, ESQ.  
22 Nevada State Bar No. 000264  
23 LYNN M. HANSEN, ESQ.  
24 Nevada State Bar No. 000244  
25 JAMES M. JIMMERSON, ESQ.  
26 Nevada State Bar No. 012599  
27 415 So. Sixth St., Ste. 100  
28 Las Vegas, NV 89101  
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR DAMAGES IN THE FORM OF COMPENSATION FOR TIME (MIL #2) was made on the 20<sup>th</sup> day of March, 2013, as indicated below:

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

       By facsimile, pursuant to EDCR 7.26 (as amended)

       By receipt of copy as indicated below

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

  
An employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.  
JAMES J. JIMMERSON, ESQ.  
Nevada State Bar No. 000264  
JAMES M. JIMMERSON, ESQ.  
Nevada State Bar No. 12599  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
Telephone: (702) 388-7171  
Facsimile: (702) 380-6406  
[jji@jimmersonhansen.com](mailto:jji@jimmersonhansen.com)  
[jmj@jimmersonhansen.com](mailto:jmj@jimmersonhansen.com)  
Attorneys for Plaintiff  
JAMES WOLFRAM and WALT WILKES

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALT WILKES,	)	
	)	
Plaintiffs,	)	Case No.: A-10-632338-C
	)	
v.	)	Department No. IV
	)	
PARDEE HOMES OF NEVADA,	)	
	)	
Defendant.	)	
	)	

**AFFIDAVIT OF JAMES M. JIMMERSON, ESQ. IN SUPPORT OF PLAINTIFFS'**  
**OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PLAINTIFFS' CLAIM FOR**  
**DAMAGES IN THE FORM OF COMPENSATION FOR TIME (MIL #2)**

I, JAMES M. JIMMERSON, ESQ., am over the age of eighteen (18) and am not a party to this action. I am personally familiar with the facts set forth herein, with the exception of those facts stated on information and belief and as to those facts, I believe them to be true.

1. Your Affiant is an attorney at law, duly licensed to practice before all of the Courts in the State of Nevada.

1           2.     Your Affiant is an associate with the law firm of Jimmerson Hansen, P.C.,  
2 attorneys retained to represent Plaintiffs, JAMES WOLFRAM and WALT WILKES, in the  
3 above-captioned action.

4           3.     Your Affiant has personal knowledge of the facts and circumstances  
5 surrounding the issues discussed in the instant Motion and make this Affidavit based upon  
6 said knowledge.

7           4.     This Affidavit is made in support of Defendant's Motion in Limine to Exclude  
8 Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2) and is made  
9 in good faith.

10          5.     Exhibit 1, the attached copy of the Commission Agreement dated September  
11 1, 2004, is true and accurate.

12          6.     Exhibit 2, attached copy of the letter from John Lash to James Wolfram and  
13 Walt Wilkes dated March 14, 2008, is true and accurate.

14          7.     Neither Defendant, nor its counsel served Plaintiffs with any interrogatories  
15 or requests for admission and upon receiving Plaintiffs' Fifth Supplement to their N.R.C.P.  
16 16.1 disclosures in 2012 during the discovery period, Defendant failed to make any  
17 requests for specification of Plaintiffs' damages.

18          8.     On February 28, 2013, your Affiant offered counsel for Defendant, Aaron Shipley,  
19 to have Plaintiffs answer an interrogatory on Plaintiffs' claim for damages arising from their  
20 time spent attempting to retrieve the documents and information owed to them under the  
21 September 1, 2004 Commission Letter Agreement. Counsel for Defendant did not accept  
22 the offer.

23     / / /

24     / / /

25     / / /



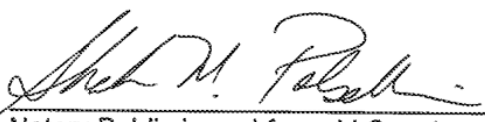
1 FURTHER YOUR AFFIANT SAYETH NAUGHT.

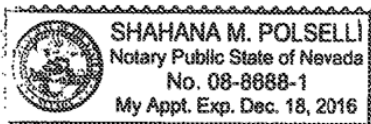
2 DATED this 20<sup>th</sup> day of March, 2013.

3  
4  
5   
6 JAMES M. JIMMERSON, ESQ.

7 Subscribed and Sworn to me

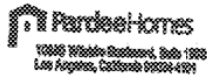
8 this 20<sup>th</sup> day of March, 2013.

9  
10  
11   
12 Notary Public in and for said County  
and State.



## **Exhibit 1**

## **Exhibit 1**



LEE E. JAAK  
Sr. Vice President  
(818) 475-6325 ext. 201  
(818) 444-1258

September 1, 2004

Mr. Walt Wilkes  
General Realty Group, Inc.  
10761 Turquoise Valley Dr.  
Las Vegas, Nevada 89144-4141

Mr. Jim Wolfman  
Award Realty Group  
10761 Turquoise Valley Dr.  
Las Vegas, Nevada 89144-4143

Re: Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of June 1, 2004, as amended (the "Option Agreement") between Coyote Springs Investment LLC ("Coyote") and Pardee Homes of Nevada ("Pardee")

Gentlemen:

This letter is intended to confirm our understanding concerning the pending purchase by Pardee from Coyote of certain real property located in the Counties of Clark and Lincoln, Nevada pursuant to the above-referenced Option Agreement. Except as otherwise defined herein, the capitalized words used in this Agreement shall have the meanings as set forth in the Option Agreement.

In the event Pardee approves the transaction during the Contingency Period, Pardee shall pay to you (one-half to each) a broker commission equal to the following amounts:

- (i) Pardee shall pay four percent (4%) of the Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the remaining Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the Option Property purchased by Pardee pursuant to paragraph 2 of the Option Agreement, Pardee shall pay one and one-half percent (1-1/2%) of the amount derived by multiplying the number of acres purchased by Pardee by Forty Thousand Dollars (\$40,000).

PH 000135

Mr. Walt Wilkes  
Mr. Jim Wolfgram  
September 1, 2004  
Page 2

Pandee shall make the first commission payment to you upon the Initial Purchase Closing (which is scheduled to occur thirty (30) days following the Settlement Date) with respect to the aggregate Deposits made prior to that time. Pandee shall make each additional commission payment pursuant to clauses (i) and (ii) above concurrently with the applicable Purchase Property Price payment to Coyote. Thereafter, Pandee shall make each commission payment pursuant to clause (iii) above concurrently with the close of escrow on Pandee's purchase of the applicable portion of the Option Property; provided, however, that in the event the required Parcel Map creating the applicable Option Parcel has not been recorded as of the scheduled Option Closing, as described in paragraph 9(c) of the Option Agreement, the commission shall be paid into escrow concurrently with Pandee's deposit of the Option Property Price into Escrow and the commission shall be paid directly from the proceeds of said Escrow.

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

In the event the Option Agreement terminates for any reason whatsoever prior to Fardes's purchase of the entire Purchase Property and Option Property, and Fardes thereafter purchases any portion of the Entire Site from Seller, at the closing of such purchase, Fardes shall pay to you a commission in the amount determined as described above as if the Option Agreement remained in effect.

For purposes of this Agreement, the term "Pardes" shall include any successor or assignee of Pardes's rights under the Option Agreement, and Pardes's obligation to pay the commission to you at the times and in the manner described above shall be binding upon Pardes and its successors and assigns. Pardes, its successors and assigns, shall take no action to circumvent or avoid the obligation to you as set forth in the Agreement. Nevertheless, in no event shall you be entitled to any commission or compensation as a result of the resale or transfer by Pardes or its successor in interest of any portion of the Radire Site after such property has been acquired from Seller and commission paid to you.

In the event any sum of money due hereunder remains unpaid for a period of thirty (30) days, said sum shall bear interest at the rate of ten percent (10%) per annum from the date due until paid. In the event either party brings an action to enforce its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs.

This Agreement represents our entire understanding concerning the subject matter hereof, and all oral statements, representations, and negotiations are hereby merged into this Agreement and are superseded hereby. This Agreement may not be modified except by a written instrument signed by all of us. Nothing herein contained shall create a partnership, joint venture or employment relationship between the parties hereto unless expressly set forth to the contrary. The language of this Agreement shall be construed under the laws of the State of Nevada according to its normal and usual meaning, and not strictly for or against either you or Perdue.

PH 000136

Mr. Walt Wilkes  
Mr. Jim Wolfson  
September 1, 2004  
Page 3


Our signatures below will represent our binding agreement to the above.

Sincerely,

PARDEE HOMES OF NEVADA,  
a Nevada corporation

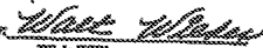
  
John B. Lash  
Senior Vice President

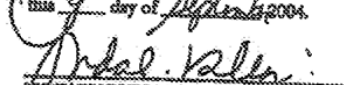


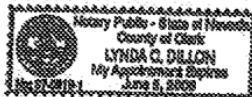
SUBSCRIBED and SWORN to before me this  
1st day of September 2004.  
  
NOTARY PUBLIC in and for the County of  
Los Angeles, State of California

Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By:   
Walt Wilkes

SUBSCRIBED and SWORN to before me  
this 1 day of September 2004.  
  
NOTARY PUBLIC in and for the County  
of Clark, State of Nevada



\\fs01\cbs\Documents\Legal\Legal Documents\Land Acq - JLS\Attachments\2004\to\p\0304\_PH000137.doc

PH 000137

Mr. Walt Wilkes  
Mr. Jim Wolfman  
September 1, 2004  
Page 4

AWARD REALTY GROUP

Sr. Jim Wolfman  
Jim Wolfman

SUBSCRIBED and SWORN to before me  
this 1st day of SEPT, 2004.

Virginia Attleson  
NOTARY PUBLIC in and for the County  
of Clark, State of Nevada



\\cedar01\ff\house\ff\Leased\Buy documents\Land Acq - JSL\Letter\2004\Letter090104\_P1\000002.doc

PH 000138

## **Exhibit 2**

## **Exhibit 2**



10800 Wilshire Boulevard, Suite 1900  
Los Angeles, California 90024-4101

**JOHN S. LASH**  
Executive Vice President  
Chief Operating Officer  
(310) 478-3828, ext. 251  
(310) 448-1208

March 14, 2008

Mr. Jim Wolfram  
D & W REAL ESTATE, LLC  
(formerly Award Realty Group)  
212 Canyon Dr.  
Las Vegas, NV 89107

Mr. Walt Wilkes  
GENERAL REALTY GROUP, INC.  
212 Canyon Dr.  
Las Vegas, NV 89107

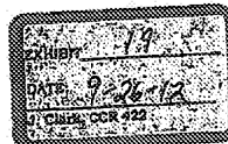
Re: That certain broker agreement dated September 1, 2004 (the "Agreement"), by and between Pardee Homes of Nevada ("Pardee") and D & W Real Estate, LLC (successor to Award Realty Group) and General Realty Group, Inc. (collectively "Brokers"), regarding the Coyote Springs Development.

Gentlemen:

Thank you for your February 1, 2008 correspondence, in which you assert that the above-referenced Agreement is applicable to all transactions related to the Coyote Springs development. Pardee respectfully disagrees.

As you might expect, Pardee has reviewed the Agreement for clarification of its responsibilities for paying commissions. Pursuant to the Agreement, you are entitled to only that compensation related to the Purchase Property and the Option Property, as those terms are defined in the Agreement. Pardee has already paid you more than Two Million Dollars (\$2,000,000) for your efforts on the Purchase Property. In addition, you will receive one and one-half percent (1.5%) of the value of the Option Property that Pardee purchases.

Pardee's purchase of the Purchase Property and Option Property, both of which are intended for single family detached residential development, is a separate and distinct



001

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JA002432



Mr. Wolfram  
D&W REAL ESTATE, LLC; and  
Mr. Wilkes  
GENERAL REALTY GROUP, INC.  
March 14, 2008  
Page 2

transaction from the purchase of any other property. Brokers were not involved in any subsequent purchases, nor are any subsequent purchases related to the type of property covered by the Agreement. Therefore, we cannot justify application of the Agreement to include unrelated property.

As of this date, Fardee has not exercised any option to purchase the Option Property. As required by the Agreement, we will provide you with copies of each written option exercise notice in a timely fashion. ~~However, we respectfully decline your request to provide surveyed plat maps.~~ There should be no confusion over what property has been purchased. All commissions and purchase monies have been paid through the same escrow account simultaneously. Thus, production of the documentation you request serves no purpose of mutual benefit.

I am hopeful this letter provides the clarification you need. Naturally, if there is additional information to consider, please pass it along. In the meantime, thank you for your ongoing professional courtesy.

Sincerely,

PARDIE HOMES NEVADA

  
Jon E. Lash  
Executive Vice President &  
Chief Operating Officer

  
CLERK OF THE COURT

0154  
JIMMERSON HANSEN, P.C.  
JAMES J. JIMMERSON, ESQ.  
Nevada State Bar No. 000264  
LYNN M. HANSEN, ESQ.  
Nevada State Bar No. 000244  
JAMES M. JIMMERSON, ESQ.  
Nevada State Bar No. 12599  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
Telephone: (702) 388-7171  
Facsimile: (702) 380-6406  
[jji@jimmersonhansen.com](mailto:jji@jimmersonhansen.com)  
[jmi@jimmersonhansen.com](mailto:jmi@jimmersonhansen.com)  
Attorneys for Plaintiff  
JAMES WOLFRAM and WALT WILKES

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALT WILKES,	)	
	)	
Plaintiffs,	)	Case No.: A-10-632338-C
	)	Department No. IV
v.	)	
	)	
PARDEE HOMES OF NEVADA,	)	HEARING DATE:
	)	HEARING TIME:
Defendant.	)	
	)	

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their counsel of record, JAMES J. JIMMERSON, ESQ., LYNN M. HANSEN, ESQ., and JAMES M. JIMMERSON, ESQ. of the law firm of JIMMERSON HANSEN, P.C. and hereby file this Motion for Leave to File a Second Amended Complaint. This Motion is based on the pleadings and papers on file, the attached affidavit and exhibits, the Memorandum of


///

///

1 Points and Authorities attached hereto and arguments of counsel at the hearing of this  
2 Motion.

3 DATED this 21<sup>ST</sup> day of March, 2013.

4 JIMMERSON HANSEN, P.C.

5  
6   
7 JAMES M. JIMMERSON, ESQ.  
8 Nevada State Bar No. 000264  
9 LYNN M. HANSEN, ESQ.  
10 Nevada State Bar No. 000244  
11 JAMES M. JIMMERSON, ESQ.  
12 Nevada State Bar No. 012599  
13 415 So. Sixth St., Ste. 100  
14 Las Vegas, NV 89101  
15 Attorneys for Plaintiffs

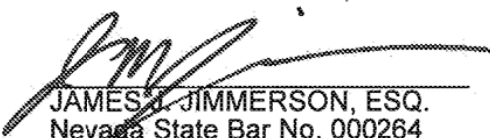
16 **NOTICE OF MOTION**

17 TO: ALL INTERESTED PARTIES:

18 PLEASE TAKE NOTICE that the undersigned will bring **MOTION FOR LEAVE TO**  
19 **FILE A SECOND AMENDED COMPLAINT** on for hearing before the above-entitled Court  
20 on the 23 day of May 2013, at the hour of 8 : 30 .m., of said date, in  
21 Dept. IV, or as soon thereafter as counsel may be heard.

22 DATED this 21<sup>st</sup> day of March 2013.

23 JIMMERSON HANSEN, P.C.

24   
25 JAMES M. JIMMERSON, ESQ.  
26 Nevada State Bar No. 000264  
27 LYNN M. HANSEN, ESQ.  
28 Nevada State Bar No. 000244  
JAMES M. JIMMERSON, ESQ.  
Nevada State Bar No. 012599  
415 So. Sixth St., Ste. 100  
Las Vegas, NV 89101  
Attorneys for Plaintiffs

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION  
FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

I. INTRODUCTION

Plaintiffs commenced this action against Pardee Homes of Nevada ("Pardee") on December 29, 2010 with the filing of the Complaint. On January 14, 2011, within the time to file an amended complaint as of right, Plaintiffs filed their Amended Complaint. To date this is the pleading governing this action.

Plaintiffs now move the Court to grant them leave to further amend their Complaint in order to more particularly plead special damages.<sup>1</sup> As the Court heard during the oral argument on the motions for summary judgment, Defendant contends that special damages were not adequately pled in the Amended Complaint. However, the Court rightly confirmed that after each claim for relief in the Amended Complaint, Plaintiffs stated their entitlement to attorney's fees. See Exhibit 2 at 60:13-23, a true and correct copy of pages 59-67 from the transcript from the hearing on March 5, 2013, attached hereto. Despite this fact, Defendant's counsel argued that that was not enough under *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001). Defendant's counsel argued that the attorney's fees need to be specifically pled as special damages as part of the relief. The colloquy was as follows:

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

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

THE COURT: You have to plead more?

///

<sup>1</sup> Pursuant to EDCR 2.30, the proposed Second Amended Complaint is attached hereto as Exhibit 1.

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

*Id.*

Plaintiffs' position is that the Amended Complaint adequately alleges Plaintiffs' damage claims, including their claim for attorney's fees as damages. Plaintiffs' defense of the Amended Complaint on this issue is found in their Opposition to Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorney's Fees as an Element of Damages (MIL #1). However, in the event the Court finds that the Amended Complaint does not adequately state Plaintiffs' claims for attorney's fees as damages, Plaintiffs bring this motion for leave to file a Second Amended Complaint.

As the Court will see from comparing the Amended Complaint to the proposed Second Amended Complaint, the only substantive changes are the damage claims under each claim for relief and in the general prayer for relief. To the extent that Defendant believes that Plaintiffs must use specific phrases such as "special damages" to satisfy the pleading standard set forth in *Sandy Valley*, the Second Amended Complaint does so. Therefore, the Court should grant Plaintiffs' Motion for Leave to File Their Amended Complaint.

## II. LEGAL ARGUMENT

### A. Legal Standard

As the Court is well aware, the decision to grant a party leave to amend its pleading lies with the sound discretion of the Court. *See Whealon v. Sterling*, 121 Nev. 662, 665, 119 P.3d 1241, 1244 (2005). Nevada Rule of Civil Procedure 15 sets forth the process for how a party may move to amend its pleading and how the Court should consider such a motion. N.R.C.P. 15 states in pertinent part:

(a) **Amendments.** A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of

1 court or by written consent of the adverse party; and leave shall be  
2 freely given when justice so requires...

3 N.R.C.P. 15(a). The Nevada Supreme Court has adopted the federal standard in granting  
4 leave under this Rule, holding that "leave to amend shall be freely given when justice so  
5 requires; [and] this mandate is to be heeded." *Marschall v. City of Carson*, 85 Nev. 107,  
6 112, 464 P.2d 494, 498 (1970) (citing *Forman v. Davis*, 371 U.S. 178 (1962)). In applying  
7 this standard, the Nevada Supreme Court stated in *Stephens v. Southern Nevada Music*  
8 *Company*, 89 Nev. 104, 507 P.2d 138 (1973), "We have held that in the absence of any  
9 apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part  
10 of the movant—the leave sought should be freely given." *Id.* Consistent with this directive,  
11 the Nevada Supreme Court has held that without a showing of prejudice resulting from the  
12 amendment, it is well within the Court's discretion to freely grant leave to amend. See  
13 *Whealon*, 121 Nev. at 666.

14 **B. Justice Requires the Court Grant Plaintiffs Leave to File a Second**  
15 **Amended Complaint**

16 The Court should grant Plaintiffs' Motion for Leave to Amend, since the request is  
17 not made in bad faith or for the purposes of delay, and will not prejudice Defendant.  
18 Plaintiffs have consistently claimed their entitlement to their attorney's fees as a form  
19 damages, even if Defendant misinterpreted the Amended Complaint. Defendant has been  
20 on notice of Plaintiffs' damage claims from the filing of the Amended Complaint, and has, in  
21 the course of discovery, received copies of redacted billing and cost statements.

22 Furthermore, there would have been no need for this motion if Defendant did not  
23 argue that Plaintiffs' claims for special damages were not pled with enough specificity. It is  
24 in the hope of satisfying Defendant's concerns that this Motion is made. As such, no  
25 argument can be made that Plaintiffs' Motion is being made in bad faith or for an improper  
26 purpose such as needless delay.

27 Finally, Defendant would not be prejudiced as a result of granting the Motion. As  
28 referenced earlier, Defendant is in receipt of redacted billing statements, current as of  
February, 2013. Additionally, since the subject of attorney's fees will inevitably be

1 examined due to the attorney's fees provision in the September 1, 2004 Commission Letter  
2 Agreement, properly classifying them as damages does not disadvantage Defendant. This  
3 is undisputed since Pardee's counsel agrees (at least hypothetically), that if Plaintiffs  
4 succeed in establishing Defendant's liability, they have also succeeded in demonstrating  
5 that they have been harmed. From the March 5, 2013 hearing:

6 THE COURT: Say you didn't -- hypothetically, okay, that  
7 Pardee did breach, that they did not keep Mr. Wolfram and Mr.  
8 Wilkes reasonably informed regarding payment of the  
9 commissions. You are saying Pardee could breach that, but  
10 you cannot find a scenario that there would be any damages  
11 from that?

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

16 Exhibit 2, at 63:23-64:9. If counsel for Defendant believes, at least hypothetically, that  
17 Plaintiffs would have been harmed and some value would have been lost as a result of  
18 Defendant's breach, than Defendant will not be prejudiced by allowing the amendment.  
19 Therefore, the Court should grant Plaintiffs' Motion for Leave to File a Second Amended  
20 Complaint.

21 ///

22 ///


23 ///

1           III.     CONCLUSION

2           Pursuant to N.R.C.P. 15(a), the Court may grant leave to amend pleadings when  
3 justice so requires. Because the proposed Second Amended Complaint will not prejudice  
4 Defendant and is not made in bad faith, the Court should grant Plaintiffs' Motion for Leave  
5 to Amend Their Complaint. For the reasons set forth above, the Court should grant  
6 Plaintiffs' motion.

7           DATED this 21<sup>st</sup> day of March, 2013.

8  
9   JIMMERSON HANSEN, P.C.

10  
11     
12   JAMES J. JIMMERSON, ESQ.  
13   Nevada State Bar No. 000264  
14   LYNN M. HANSEN, ESQ.  
15   Nevada State Bar No. 000244  
16   JAMES M. JIMMERSON, ESQ.  
17   Nevada Bar No. 012599  
18   415 So. Sixth St., Ste. 100  
19   Las Vegas, NV 89101  
20   Attorneys for Plaintiffs



CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy **PLAINTIFFS' MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT** was made on the 21<sup>st</sup> day of March, 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 facsimile, pursuant to EDCR 7.26 (as amended)
- ☐ By receipt of copy as indicated below

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

  
An employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.  
JAMES J. JIMMERSON, ESQ.  
Nevada State Bar No. 000264  
JAMES M. JIMMERSON, ESQ.  
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Attorneys for Plaintiff  
JAMES WOLFRAM and WALT WILKES

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALT WILKES,	)	
	)	
Plaintiffs,	)	Case No.: A-10-632338-C
	)	
v.	)	Department No. IV
	)	
PARDEE HOMES OF NEVADA,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF JAMES M. JIMMERSON, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION  
FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

I, JAMES M. JIMMERSON, ESQ., am over the age of eighteen (18) and am not a party to this action. I am personally familiar with the facts set forth herein, with the exception of those facts stated on information and belief and as to those facts, I believe them to be true.

1. Your Affiant is an attorney at law, duly licensed to practice before all of the Courts in the State of Nevada.

2. Your Affiant is an associate with the law firm of Jimmerson Hansen, P.C., attorneys retained to represent Plaintiffs, JAMES WOLFRAM and WALT WILKES, in the above-captioned action.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1187

1 3. Your Affiant has personal knowledge of the facts and circumstances  
2 surrounding the issues discussed in the instant Motion and make this Affidavit based upon  
3 said knowledge.

4 4. This Affidavit is made in support of Plaintiff's Motion for Leave to File a  
5 Second Amended Complaint and is made in good faith.

6 5. Exhibit 1, which is the attached copy of Proposed Second Amended  
7 Complaint, is true and accurate.


8 6. Exhibit 2, which is the attached copy of pages 59-67 from the transcript from  
9 the hearing on March 5, 2013, is true and accurate.

10 FURTHER YOUR AFFIANT SAYETH NAUGHT.

11 DATED this 20<sup>th</sup> day of March, 2013.

12  
13   
14 JAMES M. JIMMERSON, ESQ.

15  
16  
17 Subscribed and Sworn to me  
18 this 21<sup>st</sup> day of March, 2013.

19   
20 Notary Public in and for said County  
21 and State.

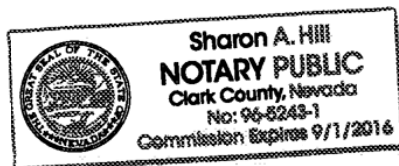


EXHIBIT “1”

EXHIBIT “1”

**SAC**

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James Wolfram and Walt Wilkes

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JAMES WOLFRAM,  
WALT WILKES,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**SECOND AMENDED COMPLAINT**

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

**GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

26          8.     On or about April 23, 2009, Plaintiffs sent a letter to Defendant requesting  
27    documents, which detail the purchases and sales of certain real property for which  
28    Plaintiffs believe are part of the property outlined in the Option Agreement and, therefore,  
29    property for which they are entitled to receive a commission. A parcel map was also  
30    requested to identify which properties had been sold.

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

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

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

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

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

14. Defendant responded to the May 17, 2010, letter with a letter dated June 14, 2010. In that letter, Defendant denied breaching the covenants contained in the Commission Letter, but did not reply or address any particular concern, including, but not limited to: the discrepancy between the representations made by Defendant in the November 24, 2009, letter and information and records found in the Clark County Recorder's Office and the Clark County Assessor's Office, the request as to why closing

1 escrow documents were being withheld, and the request for all relevant closing escrow  
2 documents.

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

6 **FIRST CLAIM FOR RELIEF**

7 **(Accounting)**

8 16. Plaintiffs incorporate each of the allegations contained within paragraphs 1  
9 through 15 above.

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

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

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

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



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

3                                   **SECOND CLAIM FOR RELIEF**

4                                   **(Breach of Contract)**

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

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

9           24. Defendant has a duty to honor its contractual obligations. Defendant has  
10 failed and refused to perform its obligations pursuant to the terms and conditions of the  
11 Commission Letter.

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

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

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

24                                   **THIRD CLAIM FOR RELIEF**

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

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

28

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

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

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

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

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

22 ///

23 ///

24 ///

1 WHEREFORE, Plaintiffs pray as follows:

2 1. For the documents promised to them including, but not limited to, an  
3 accurate parcel map with Assessor's Parcel numbers, and an accounting of all transfers or  
4 title or sales.

5 2. For general damages in a sum in excess of \$10,000.00.

6 3. For special damages in a sum in excess of \$10,000.00

7 3. For cost of suit.

8 4. For reasonable attorney's fees.

9 5. For such further relief as the Court deems proper.

10 DATED this \_\_\_\_ day of March, 2013.

11  
12 JIMMERSON HANSEN, P.C.

13  
14 By \_\_\_\_\_  
15 JAMES J. JIMMERSON, ESQ.  
16 Nevada Bar No. 000264  
17 jjj@jimmersonhansen.com  
18 415 So. Sixth St., Ste. 100  
19 Las Vegas, NV 89101  
20 (702) 388-7171  
21 Attorney for Plaintiffs  
22 JAMES WOLFRAM and WALT WILKES  
23  
24  
25  
26  
27  
28

EXHIBIT “2”

EXHIBIT “2”

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 --

**RESPONSE TO REQUEST NO. 2:**

Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures: Bates Nos. PH 000111-000116; and PH 000141-000151.

Discovery is ongoing and Pardee has not yet completed its investigation of all of the circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its response to this request.

**REQUEST NO. 3:**

Please produce all parcel maps or maps of any kind evidencing all sales, gifts, transfers or assignments of all real estate from Coyote Springs to Pardee Homes from the beginning of their relationship through the present date.

**RESPONSE TO REQUEST NO. 3:**

Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures: Bates Nos. PH 000111-000116; and PH 000141-000151.

Discovery is ongoing and Pardee has not yet completed its investigation of all of the circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its response to this request.

**REQUEST NO. 4:**

Please produce copies of all documents of sales, gifts, transfers, assignments, and all escrow instructions and settlement statements for all transfers of real estate, including sales, gifts, transfers or assignments, from Coyote Springs to Pardee Homes, from the beginning of the relationship to the present date.

**RESPONSE TO REQUEST NO. 4:**

Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures: Bates Nos. PH 000128-000131; and PH 000238-000241.

Discovery is ongoing and Pardee has not yet completed its investigation of all of the circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its response to this request.

1 **REQUEST NO. 5:**

2 Please produce copies of all deeds of any type from Coyote Springs to Pardee Homes for  
3 any real estate sold, gifted, transferred or assigned at any time from Coyote Springs to Pardee  
4 Homes from the beginning of the relationship through the present date.

5 **RESPONSE TO REQUEST NO. 5:**

6 Without waiving the aforementioned objections, Pardee does not currently have any  
7 documents that are responsive to this request.

8 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
9 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
10 response to this request.

11 **REQUEST NO. 6:**

12 Please produce copies of all books of account, ledgers, bookkeeping records or any other  
13 documents maintained by Pardee Homes in the ordinary course of their business evidencing  
14 payments made by Pardee Homes to Coyote Springs for any and all purchases, transfers or  
15 assignments, or receipt by gift of real estate from Coyote Springs to Pardee Homes.

16 **RESPONSE TO REQUEST NO. 6:**

17 Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures:  
18 Bates Nos. PH 000111-000116; PH 000128-000131; and PH 000238-000241.

19 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
20 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
21 response to this request.

22 **REQUEST NO. 7:**

23 Please produce copies of any and all books of account, ledgers, bookkeeping records or  
24 any other documents maintained in the ordinary course of business by Pardee Homes reflecting  
25 all calculations, or computations evidencing or demonstrating Pardee Homes' calculation of  
26 commissions owed by it to Plaintiffs, as well as all records evidencing payments of the same  
27 from Pardee Homes to Plaintiffs.

28

1 RESPONSE TO REQUEST NO. 7:

2 Without waiving the aforementioned objections, see Pardee's NRCP 16.1 disclosures:  
3 Bates Nos. PH 000111-000116; PH 000128-000131; and PH 000238-000241.

4 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
5 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
6 response to this request.

7 REQUEST NO. 8:

8 Please produce copies of all checks, wire transfers, cashier's checks, or any evidence of  
9 payments from Pardee Homes to Award Realty, General Realty, James Wolfram and/or Walt  
10 Wilkes relating to any and all sales, gifts, transfers or assignments of real estate from Coyote  
11 Springs to Pardee Homes.

12 RESPONSE TO REQUEST NO. 8:

13 Without waiving the aforementioned objections, see Pardee's NRCP 16.1 disclosures:  
14 Bates Nos. PH 000111-000116; PH 000128-000131; and PH 000238-000241.

15 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
16 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
17 response to this request.

18 Dated this 26th day of October, 2011.

19 McDONALD CARANO WILSON LLP

20   
21 PAT LUNDVALL (#37610)

22 AARON D. SHIPLEY (#8258)  
23 2300 West Sahara Avenue, Suite 1000  
24 Las Vegas, Nevada 89102

25 Attorneys for Defendant Pardee Homes of Nevada  
26  
27  
28



McDONALD-CARANO-WILSON

100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501  
TEL: 775-780-2870 • FAX: 775-780-2870  
PHONE 775-780-2800 • FAX 775-780-2820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that  
on the 26th day of October, 2011, I served a true and correct copy of the foregoing  
DEFENDANT PARDEE HOMES OF NEVADA'S RESPONSES TO PLAINTIFFS'  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS via US Mail on the following:

James J. Jimmerson  
Amanda J. Brookhyser  
JIMMERSON, HANSEN, P.C.  
415 S. Sixth Street, Ste 100  
Las Vegas, NV 89101  
Attorney for Plaintiffs

Kara A. Jensen

An Employee of McDonald Carano Wilson LLP

231134v1

1 **RESP**  
2 PAT LUNDVALL  
3 Nevada Bar No. 3761  
4 AARON D. SHIPLEY  
5 Nevada Bar No. 8258  
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13 *Attorneys for Defendant*  
14 *Pardee Homes of Nevada*

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 JAMES WOLFRAM,  
12 WALT WILKES

13 Plaintiffs,

14 vs.

15 PARDEE HOMES OF NEVADA,

16 Defendant.

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

**DEFENDANT PARDEE HOMES OF  
NEVADA'S RESPONSES TO  
PLAINTIFFS' SECOND REQUEST  
FOR PRODUCTION OF  
DOCUMENTS**

17 Defendant Pardee Homes of Nevada ("Pardee"), by and through its counsel, McDonald  
18 Carano Wilson LLP, hereby submits the following responses to Plaintiffs' Second Request for  
19 Production of Documents ("Requests"). Discovery and investigation are continuing and Pardee  
20 reserves the right to supplement and amend these responses.

**GENERAL RESPONSES AND OBJECTIONS**

- 21 1. These responses are made solely for the purpose of this action.
- 22 2. Pardee reserves the right to make any and all evidentiary objections to the
- 23 introduction of any of these responses and/or any information contained therein (including,
- 24 without limitation, documents) into evidence at any hearing in this case or otherwise. Each
- 25 response is subject to all objections as to competence, relevance, materiality, propriety,
- 26 admissibility, and exclusion of any statement herein as if any portion of the requests were asked
- 27 of, or if any statement contained herein was made by, a witness present and testifying in court,
- 28

1 all of which objections and grounds are reserved and may be interposed at the time of any  
2 hearing or trial in this matter. Plaintiff should not imply or infer the admission of any matter  
3 from these responses or any information produced, except as explicitly stated.

4 3. These responses are based upon information presently known and ascertained by  
5 Pardee. However, Pardee has not yet completed his investigation of all of the circumstances  
6 relating to this dispute and has not completed discovery or preparation for trial in this matter.  
7 Accordingly, the responses herein are submitted without prejudice to utilizing subsequently  
8 discovered or recalled information. Pardee reserves the right to amend, add to, delete from, or in  
9 any other manner modify these responses after it has completed his discovery and investigation  
10 efforts and has ascertained all relevant facts.

11 4. Pardee objects to each request (and any portion thereof) to the extent that it  
12 purports to call for privileged information, including information protected by the attorney-client  
13 privilege, work product doctrine, and/or investigative privilege. Pardee's attorneys join in these  
14 objections to the extent that the right to protect information from discovery belongs to those  
15 attorneys. In making his responses to the requests, and/or in producing documents for  
16 inspection and/or copying, Pardee will not produce any such information.

17 5. Pardee objects to each request (and any portion thereof) to the extent that it seeks  
18 the disclosure of the identities of, or any work generated by, non-testifying consulting experts  
19 retained by or at the direction of Pardee's attorneys in anticipation of preparation for this and/or  
20 other threatened or pending litigation in connection with the rendering of legal advice to Pardee.  
21 Pardee's attorneys join in these objections to the extent that the right to protect information from  
22 discovery belongs to those attorneys. In making its responses to the requests, and/or in  
23 producing documents for inspection and/or copying, Pardee will not produce any such privileged  
24 items.

25 6. Pardee objects to each request (and any portion thereof) to the extent that it is  
26 overly or unduly burdensome, vague, ambiguous, unintelligible, uncertain, incomprehensible,  
27 compound, oppressive, intrusive of the privacy or proprietary rights of Pardee and/or third  
28 parties, overbroad, irrelevant, not reasonably calculated to lead to the discovery of admissible

evidence, fails to identify the information requested with reasonable or adequate particularity, or seeks to impose upon Pardee burdens beyond those established under the Nevada Rules of Civil Procedure or Nevada law.

7. Pardee has performed a reasonable inquiry in search of information as required by the Nevada Rules of Civil Procedure and has made every reasonable effort to locate the information described herein, which effort has been made in good faith. Pardee cannot affirm, however, that “all” such information has been supplied. Although Pardee believes that all such information has been produced that is within Pardee’s possession and/or control, Pardee will supplement these responses in accordance with the applicable discovery rules in the event that Pardee discovers that it has inadvertently failed to provide information within its responses.

8. Pardee objects to each request that uses language such as “each and every” or similar broad language. Such requests are onerous, burdensome, harassing, prejudicial, and overly broad. Each request asking “any” and “all” or “each and every” is objectionable and such an inquiry, in essence, is a request for evidence and not discoverable information. See, e.g., United States v. Renault, Inc., 27 F.R.D. 23, 26-27 (S.D.N.Y. 1960). Moreover, Pardee has no possible means of making the all-encompassing identifications that such a broadly-worded request requires.

9. Pardee objects to each request (and any portion thereof) to the extent that it seeks to impose a burden upon Pardee to search for information or documents in the possession, custody, or control of persons or entities other than Pardee for the reason that such a request is overly broad and beyond the scope of discovery allowed by the Nevada Rules of Civil Procedure. Pardee also objects to any request that seeks to require it to search for documents or information in the possession, custody, or control of unnamed persons or entities other than Pardee, including, but not limited to, information that is in the possession, custody, or control of public entities, for the reason that such a request is unduly burdensome, expensive, harassing, and beyond the obligations imposed upon Pardee by the Nevada Rules of Civil Procedure.

10. As stated above, Pardee objects to all requests to the extent that such requests call for the production of privileged and/or protected information. In the event that Pardee

1 unintentionally produces information that is privileged and/or protected, such production is  
2 inadvertent and made without the intent to waive Pardee's privileges and/or protections  
3 applicable thereto. In the event that privileged and/or protected information is unintentionally  
4 produced, Pardee requests that all such information (including copies of any documents) be  
5 promptly returned to Pardee or its attorneys of record, and Pardee expressly reserves all  
6 objections to any use of such information in this litigation.

7 11. The restatement of any specific objection in the context of these responses shall  
8 not be construed to imply waiver of any unstated objections addressed by these General  
9 Objections, or any other applicable privilege or exemption from discovery and the counterparts  
10 under the laws of any jurisdiction that may be applicable.

11 Subject to and without waiving the aforementioned general objections, Pardee responds  
12 as follows:

#### 13 DOCUMENT REQUESTS AND RESPONSES

##### 14 REQUEST NO. 9:

15 Please produce any and all legal descriptions and parcel numbers for all parcels sold,  
16 gifted, transferred, or assigned by Coyote Springs Investments, LLC to Pardee Homes from the  
17 beginning of their relationship through the present date.

##### 18 RESPONSE TO REQUEST NO. 9:

19 Pardee objects to this request to the extent that it seeks documents or information in the  
20 possession, custody, or control of unnamed persons or entities other than Pardee, including, but  
21 not limited to, information that is in the possession, custody, or control of public entities or  
22 agencies. Without waiving this and/or any of the additional aforementioned objections, see  
23 Response to Request No. 1 in Pardee's Responses to Plaintiffs' First Request for Production of  
24 Documents.

25 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
26 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
27 response to this request.  
28

**REQUEST NO. 10:**

Please produce copies of any and all copies of all parcel maps in the possession of Pardee Homes evidencing the real estate subject to any written agreement, sales agreement, purchase agreement, option agreement or assignment agreement between Coyote Springs Investments, LLC and Pardee Homes, regardless of when said parcel maps were created.

**RESPONSE TO REQUEST NO. 10:**

Pardee objects to this request to the extent that it seeks documents or information in the possession, custody, or control of unnamed persons or entities other than Pardee, including, but not limited to, information that is in the possession, custody, or control of public entities or agencies. Without waiving this and/or any of the additional aforementioned objections, *see* Responses to Requests Nos. 2 and 3 in Pardee's Responses to Plaintiffs' First Request for Production of Documents.

Discovery is ongoing and Pardee has not yet completed its investigation of all of the circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its response to this request.

**REQUEST NO. 11:**

Please produce any and all copies of sales agreements, purchase agreements, option agreements, letter agreements, commission agreements, or any amendments, addendums or additions thereto entered into by Coyote Springs Investments, LLC and Pardee Homes from the beginning of their relationship to the present date

**RESPONSE TO REQUEST NO. 11:**

Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures: Bates Nos. PH 000001-000080; PH 000081-000090; PH 000091-000093; PH 000152-000232.

Discovery is ongoing and Pardee has not yet completed its investigation of all of the circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its response to this request.

**REQUEST NO. 12:**

Please produce any and all exhibits of the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, including but not limited to, Exhibit A-1 and A-2 of the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions.

**RESPONSE TO REQUEST NO. 12:**

Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures: Bates Nos. PH 000047-000080; PH 000200-000232.

Discovery is ongoing and Pardee has not yet completed its investigation of all of the circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its response to this request.

**REQUEST NO. 13:**

Please produce any and all BLM Reconfiguration documents as to any and all parcels, as set forth within Paragraph A, Page 1 of the Option Agreement, did occur (sp?)

**RESPONSE TO REQUEST NO. 13:**

Pardee objects to this request to the extent that it is unclear what is being requested. Further, Pardee objects to the extent that it seeks documents or information in the possession, custody, or control of unnamed persons or entities other than Pardee, including, but not limited to, information that is in the possession, custody, or control of public entities or agencies.

Discovery is ongoing and Pardee has not yet completed its investigation of all of the circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its response to this request.

**REQUEST NO. 14:**

Please produce any and all maps or exhibits that defines (sp?) the "Entire Site" as referenced in Paragraph A, Page 1 of the Option Agreement for the Purchase of Real Property and Joint Escrow Instruction.

**RESPONSE TO REQUEST NO. 14:**

Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures: Bates Nos. PH 000048-000050.

1 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
2 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
3 response to this request.

4 **REQUEST NO. 15:**

5 Please produce any and all recorded maps of any final subdivision map and all copies of  
6 all easements effecting the same.

7 **RESPONSE TO REQUEST NO. 15:**

8 Pardee objects to this request to the extent that it seeks documents or information in the  
9 possession, custody, or control of unnamed persons or entities other than Pardee, including, but  
10 not limited to, information that is in the possession, custody, or control of public entities or  
11 agencies.

12 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
13 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
14 response to this request.

15 **REQUEST NO. 16:**

16 Please produce all documents, including maps, evidence, and initial purchase closing set  
17 forth in the Option Agreement.

18 **RESPONSE TO REQUEST NO. 16**

19 Without waiving the aforementioned objections, *see* Responses to Request Nos. 2, 3, 4,  
20 and 5 in Pardee's Responses to Plaintiffs' First Request for Production of Documents.

21 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
22 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
23 response to this request.

24 **REQUEST NO. 17:**

25 Please produce any and all documents, escrow instructions, parcel maps, settlement  
26 statements, closing documents evidencing buyers' interest of its option to purchase a portion of  
27 the Option Property as set forth within the general meaning of Paragraph 9 of the Option  
28 Agreement.



1 **RESPONSE TO REQUEST NO. 17:**

2 Without waiving the aforementioned objections, Pardee does not currently have any  
3 documents that are responsive to this request.

4 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
5 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
6 response to this request.

7 **REQUEST NO. 18:**

8 Please produce any and all correspondence between Pardee Homes, and any of its  
9 officers, directors, representatives, lawyers to Plaintiffs', Plaintiffs' agents, representatives or  
10 lawyers, from the beginning of this litigation to the present date, including all emails, text  
11 messages, or the like.

12 **RESPONSE TO REQUEST NO. 18:**

13 Pardee objects to this request to the extent that it purports to call for privileged  
14 information, including information protected by the attorney-client privilege, work product  
15 doctrine, and/or investigative privilege

16 **REQUEST NO. 19:**

17 Please provide a list of witnesses you intend to call at the time of trial, and a synopsis of  
18 each witness' testimony.

19 **RESPONSE TO REQUEST NO. 19:**

20 Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures.  
21 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
22 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
23 response to this request.

24 **REQUEST NO. 20:**

25 Please provide a list of the document(s) or exhibit(s) you intend to use at trial, and a  
26 synopsis of the contents of such document(s) or exhibit(s), what each document or exhibit is  
27 being used to prove, and what the name of the witness who will laying the foundation for such  
28 document(s) or exhibit(s).

1 RESPONSE TO REQUEST NO. 20

2 Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures.  
3 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
4 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
5 response to this request.

6 REQUEST NO. 21

7 Please provide the name of each and every expert you intend to call at the time of trial,  
8 the occupation of said expert witness and a synopsis of his or her testimony.

9 RESPONSE TO REQUEST NO. 21

10 Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures.  
11 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
12 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
13 response to this request.

14 Dated this 9th day of January, 2012.

15 McDONALD CARANO WILSON LLP

16 

17 PAT LUNDVALL (#3761)

18 AARON D. SHIPLEY (#8258)

19 2300 West Sahara Avenue, Suite 1000

20 Las Vegas, Nevada 89102

21 *Attorneys for Defendant Pardee Homes of Nevada*

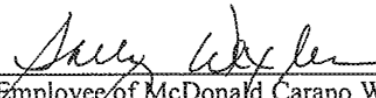
McDONALD-CARANO-WILSON<sup>3</sup>

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P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 9 day of January 2012, I served a true and correct copy of the foregoing **DEFENDANT PARDEE HOMES OF NEVADA'S RESPONSES TO PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS** via US Mail on the following:

Lynn M. Hansen  
Amanda J. Brookhyser  
JIMMERSON, HANSEN, P.C.  
415 S. Sixth Street, Ste 100  
Las Vegas, NV 89101  
*Attorney for Plaintiffs*

  
An Employee of McDonald Carano Wilson LLP

240994

JA002404

## **Exhibit 4**

## **Exhibit 4**

II.

**LIST OF DOCUMENTS PROVIDED BY DEFENDANT**

Based on information reasonably available, the following categories of documents are in Defendant's possession, custody or control and may be used by it to support its claims or defenses.

Beg Bates Number	End Bates Number	Document Description
PH 000001	PH 000080	Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005
PH 000081	PH 000090	Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated August 31, 2004
PH 000091	PH 000093	Amendment to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated July 28, 2004
PH 000095	PH 000098	Coyote Springs Property Maps
PH 000099	PH 000101	Letter to Charles Curtis from Jim Jimmerson re Coyote Springs Real Estate Commissions dated August 26, 2009
PH 000102	PH 000104	Letter to Jim Stringer from Jim Jimmerson re Wolfram Award Realty Group v. Pardee Homes dated April 23, 2009
PH 000105	PH 000106	Letter to Jim Stringer from Jim Jimmerson re Jim Wolfram Award Realty Group and Walt Wilkes General Realty - Pardee Homes dated May 19, 2009
PH 000107	PH 000123	Letter to Jon E. Lash from Jim Jimmerson re Coyote Springs Real Estate Commissions dated May 17, 2010
PH 000124	PH 000127	Letter to Jim Wolfram from John Lash dated November 24, 2009
PH 000128	PH 000131	Letter to Jim Wolfram from Jim Stringer re Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of March 28, 2005, as amended (the "Agreement"), between Pardee Homes of Nevada ("Pardee") and Coyote Springs Investment LLC (the "Coyote") dated April 6, 2009
PH 000132	PH 000132	Letter to Jim Jimmerson from Charles Curtis re Coyote Springs Real Estate Commissions dated July 10, 2009

Beg Bates Number	End Bates Number	Document Description
PH 000133	PH 000134	Letter to Walt Wilkes and Jim Wolfram from Jon Lash re Letter Agreement dated September 1, 2004 (The "Commission Agreement") between General Realty Group, Inc. and Award Realty Group (Collectively "Brokers") and Pardee Homes of Nevada ("Pardee") dated August 23, 2007
PH 000135	PH 000138	Letter to Walt Wilkes and Jim Wolfram from Jon Lash re Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of June 1, 2004, as amended (the "Option Agreement") between Coyote Springs Investment LLC ("Coyote") and Pardee Homes of Nevada ("Pardee") dated September 1, 2004
PH 000139	PH 000140	Letter to John Lash from Jim Wolfram dated February 1, 2008
PH 000141	PH 000144	Letter to John Lash from Jim Wolfram enclosing a map of purchases on Coyote Springs dated April 21, 2010
PH 000145	PH 000151	Maps of Coyote Springs
PH 000152	PH 000232	Option Agreement for the Purchase of Real Property and Joint Escrow Instructions

1. Privilege log attached hereto.

2. Any and all documents and/or other tangible things identified and/or produced by any other party, person, or entity in connection with the above-captioned lawsuit.

3. Any and all documents and/or other tangible things identified and/or produced in the course of any discovery in the above-captioned lawsuit.

4. Any and all documents and/or tangible things identified in or attached to any pleadings and/or other papers filed by any party, person, or entity in connection with the above-captioned lawsuit.

Defendant reserves the right to amend, supplement, or add to this 16.1 disclosure to include any other documents or persons or entities that may have information relevant to the issues of this case, including without limitation expert, impeachment, or rebuttal witnesses.

10/26/11

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1 **DISC**  
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13 *Attorneys for Defendant*  
14 *Pardee Homes of Nevada*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,  
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**DEFENDANT'S FIRST SUPPLEMENT  
TO ITS INITIAL DISCLOSURE  
STATEMENT AND PROPOSED  
WITNESS STATEMENT PURSUANT TO  
NRCP 16.1**

16 PARDEE HOMES OF NEVADA (collectively "Defendant" or "Pardee") hereby  
17 supplements its Initial Disclosure Statement by providing the following documents:

Beg Bates Number	End Bates Number	Document Description
PH 000238	PH 000241	Chicago Title Ledger Listing dated 4/6/2009

20 Defendant reserves the right to amend, supplement, or add to this 16.1 disclosure to  
21 include any other documents or persons or entities that may have information relevant to the  
22 issues of this case, including without limitation expert, impeachment, or rebuttal witnesses.

23 Dated this 26th day of October, 2011.

24 McDONALD CARANO WILSON LLP

25 ASL  
PAT LUNDVALL (#3761)

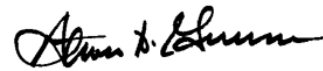
26 AARON D. SHIPLEY (#8258)

27 2300 West Sahara Avenue, Suite 1000

28 Las Vegas, Nevada 89102

*Attorneys for Defendant Pardee Homes of Nevada*

JA002408



CLERK OF THE COURT

**OPPS**

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Attorneys for Plaintiff  
JAMES WOLFRAM and WALT WILKES

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and WALT WILKES,

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

Case No.: A-10-632338-C  
Department No. IV

HEARING DATE: April 26, 2013  
HEARING TIME: 8:30 a.m.

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PLAINTIFFS'  
CLAIM FOR DAMAGES IN THE FORM OF COMPENSATION FOR TIME (MIL #2)**

Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their counsel of record, JAMES J. JIMMERSON, ESQ., LYNN M. HANSEN, ESQ., and JAMES M. JIMMERSON, ESQ. of the law firm of JIMMERSON HANSEN, P.C. hereby submits their Opposition to Defendant's Motion in Limine to Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2). This Opposition is based on the pleadings and papers on

///

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


JA002409



1 file, the attached affidavit and exhibits, the Memorandum of Points and Authorities attached  
2 hereto and arguments of counsel at the hearing of this Motion.

3 DATED this 20<sup>th</sup> day of March, 2013.

4  
5 JIMMERSON HANSEN, P.C.

6  
7   
8 JAMES J. JIMMERSON, ESQ.  
9 Nevada State Bar No. 000264  
10 LYNN M. HANSEN, ESQ.  
11 Nevada State Bar No. 000244  
12 JAMES M. JIMMERSON, ESQ.  
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16 Attorneys for Plaintiffs  
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28

1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**  
2                   **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR**  
3                   **DAMAGES IN THE FORM OF COMPENSATION FOR TIME (MIL #2)**

4                   **I. INTRODUCTION**

5                   After the recent briefing and hearing on the parties' Motions for Summary  
6                   Judgment, the Court is familiar with the operative facts in this action. Accordingly, only  
7                   those facts which are relevant to the present motion in limine are provided below.

8                   Plaintiffs' and Defendant's commission agreement concerning the notice to be  
9                   provided and commissions to be paid in connection with certain land transactions between  
10                  Pardee Homes of Nevada ("Pardee") and Coyote Springs Investment, LLC ("CSI") was  
11                  reduced to writing in a Commission Letter Agreement dated September 1, 2004. This  
12                  Commission Letter Agreement was signed by Jon Lash, James Wolfram, and Walt Wilkes.  
13                  See Exhibit 1, a true and correct copy of the Commission Letter Agreement attached  
14                  hereto. No other written agreements between Plaintiffs and Defendant have been  
15                  executed which serve to affect the September 1, 2004 Commission Letter Agreement. It is  
16                  Defendant's failure to comply with the terms of the Commission Letter Agreement which  
17                  caused Plaintiffs to institute this action.

18                  Plaintiffs have stated claims for breach of contract, breach of the implied covenant  
19                  of good faith and fair dealing, and accounting. While it is apparent that Plaintiffs have not  
20                  been paid the commissions as owed to them according to the Option Property formula  
21                  stated in the Commission Letter Agreement and Pardee has attempted to unilaterally  
22                  reduce the amount of land Plaintiffs may receive a commission from, it is the effect of  
23                  Defendant's failure to notify and inform Plaintiffs of the transactions between Pardee and  
24                  CSI, as required by the Commission Letter Agreement,<sup>1</sup> which is the subject of the present  
25                  Motion in Limine: Plaintiffs' claim for damages in the form their time and effort they have  
26                  been forced to expend to acquire the documents owed to them under the Commission  
27                  Letter Agreement.

28                  

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<sup>1</sup> Among other notice provisions, Defendant promised to "keep each of you [Plaintiffs]  
reasonably informed as to all matters relating to the amount and due dates of your  
commission payments." Exhibit 1 at 2.

1 Defendant promised to keep Plaintiffs reasonably "reasonably informed as to all  
2 matters relating to the amount and due dates of [their] commission payments." *Id.* Instead  
3 of complying with this contractual obligation, Defendant stonewalled Plaintiffs at every turn  
4 whenever they attempted to get the information owed to them. Defendant's behavior  
5 included outright denials of information and records to Plaintiffs, with one explanation  
6 being, "production of the documentation you request serves no purpose of mutual benefit,"  
7 and instructions to representatives of Chicago Title to not give Plaintiffs the information  
8 they are entitled to. See Exhibit 2, a true and accurate copy of a letter dated March 14,  
9 2008 from Jon Lash to James Wolfram and Walt Wilkes attached hereto. As such,  
10 Plaintiffs were left with nothing but their own faculties in piecing together the land  
11 transactions between Pardee and CSI from public documents—an impossible task they  
12 have now discovered.

13 Plaintiffs are entitled to be compensated in the form of damages for the time and  
14 effort needed in their attempts to retrieve the documents, records and information they are  
15 entitled to under the Commission Letter Agreement. Not only was this time and effort  
16 reasonably foreseeable by the parties in forming their agreement, but there has not been  
17 any willful violations of the rules of discovery warranting exclusion of this evidence.  
18 Plaintiffs have been open and honest about their difficulties getting the information; they  
19 have made appropriate 16.1 disclosures of these damages; and, most recently, in an effort  
20 to reduce the workload on the Court, Plaintiffs offered to answer an interrogatory on this  
21 issue, but the request went unaccepted by Defendant. As such, Pardee's requested  
22 exclusion of the evidence of Plaintiffs' time and effort as an element of damages would be  
23 inappropriate.

## 24 II. LEGAL ARGUMENT

### 25 A. Legal Standard for Motions in Limine

26 The Nevada Supreme Court has recognized that District Courts have "broad  
27 discretion in determining the admissibility of evidence" both at trial and in deciding pre-trial  
28 motions in limine. *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 492, 117

1 P.3d 219, 226 (2005); *see also* Nev. R. Civ. P. 16(c)(3); EDCR 2.47. Indeed, "all relevant  
2 evidence is admissible at trial unless otherwise excluded by law or the rules of evidence."  
3 *FGA, Inc. v. Giglio*, 278 P.3d 490, 499, 128 Nev. Adv. Op. 26 (2012).

4 Likewise, it is an abuse of discretion for the Court to grant a motion in limine without  
5 finding that the challenged evidence is inadmissible on all potential grounds. *See Id.*;  
6 *State ex rel. Dept. of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376,  
7 551 P.2d 1096 (1976); *cf. Born v. Eisenman*, 114 Nev. 854, 962 P.2d 1227 (1998).  
8 Further, the Court should deny a pre-trial motion in limine without a showing that mere  
9 mention of the challenged evidence would be prejudicial to the moving party. *See FGA,*  
10 *Inc.*, 278 P.3d at 399; *Leiper v. Margolis*, 111 Nev. 1012, 1014, 899 P.2d 574, 575 (1995);  
11 *Sheehan*, 121 Nev. at 492; *see also Kelly v. New West Federal Savings*, 49 Cal. App. 4th  
12 659, 670, 56 Cal. Rptr. 2d 803, 808 (Cal. Ct. App. 1996) (Motions in limine function to  
13 "preclude the presentation of evidence deemed inadmissible and prejudicial by the moving  
14 party."). As such, when the Court cannot make these definitive findings, it should defer its  
15 ruling on the admissibility of evidence until trial when it knows the context of questioning  
16 seeking to admit the evidence at issue. *See Barcus v. State*, 92 Nev. 289, 291, 550 P.2d  
17 411, 412 (1976) ("We will have to see what the questions are, and we will have to see what  
18 the answers are."); *see also Kelly*, 49 Cal. App. 4th at 671 (Waiting until the evidence is  
19 actually offered to rule on evidence "serves to focus the issue and to protect the record.").

20 Finally, threshold rulings on evidentiary issues are "generally superfluous" when the  
21 Court is the trier of fact. *U.S. v. Heller*, 551 F.3d 1108, 1112 (9th Cir. 2009). In bench  
22 trials, motions in limine are in effect, "coals to Newcastle," since the Court is being asked to  
23 withhold prejudicial information from the trier of fact when the Court is, itself, the trier of  
24 fact. *Id.* Moreover, in such instances, the Court is presumed to only consider admissible  
25 evidence when rendering its decisions. *Landis v. American Potash & Chemical Corp.*, 78  
26 Nev. 424, 437, 375 P.2d 402, 409 (1962).

27 ///

28 ///

1           **B. Plaintiffs' Damages for Time Spent are Recoverable**

2           Plaintiffs spent significant time attempting to recover the documents and information  
3 they were owed under the Commission Letter Agreement. Had Defendant not breached its  
4 contract, Plaintiffs would not have needed to spend this time looking for documents already  
5 given to them. As a result of this breach, Plaintiffs must be compensated for their time.<sup>2</sup>  
6 As stated by the Nevada Supreme Court, "It is fundamental that contract damages are  
7 prospective in nature and are intended to place the nonbreaching party in as good a  
8 position as if the contract had been performed." *Colorado Environments, Inc. v. Valley*  
9 *Grading Corp.*, 105 Nev. 464, 470, 779 P.2d 80, 84 (1989). Damages arising from breach  
10 of contract must (1) arise from the breach of contract and (2) "be such as may reasonably  
11 be supposed to have been in the contemplation of both parties." *See Clark County School*  
12 *Dist. v. Rolling Plains Const., Inc.*, 117 Nev. 101, 106, 16 P.3d 1079, 1082 (2001)  
13 (disapproved of on other grounds, 117 Nev. 948 ). Stated another way, "the damages  
14 claimed for the breach of contract must be foreseeable." *Id.* Applying this standard to  
15 Plaintiffs' action, the Court must find that Plaintiffs' claim for damages to compensate them  
16 for time spent are foreseeable and deny the Motion.

17           It is natural and foreseeable that Plaintiffs, in the event they were denied the  
18 information and records promised to them by Defendant, would seek out alternative  
19 sources of that information. First, because the information concerned the availability of  
20 commissions to be paid to Plaintiffs, they would naturally inquire as to the land transactions  
21 to determine if any money is owed them. Second, Pardee's Option to buy land from CSI  
22 lasted for forty (40) years. Given that both Plaintiffs were over sixty (60) years of age at  
23 the time the Commission Letter Agreement was executed, it is foreseeable that Plaintiffs  
24 would be concerned as to their families' abilities to track the land purchases to which they  
25 would be entitled a commission when Plaintiffs have passed on. As such, the damages for

26  
27 <sup>2</sup> This particular category of damages is available to be awarded. *See Gray v. Don Miller &*  
28 *Associates, Inc.*, 35 Cal.3d 498; 505, 674 P.2d 253, 256 (Cal. 1984); *Barthels v. Santa*  
*Barbara Title Co.*, 28 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 570, 581-82 (Cal. App. Ct.  
1994).

1 Plaintiffs' time and effort attempting to get information owed to them by Pardee is  
2 foreseeable and compensable.

3 It is telling that Defendant failed to explain why this category of damages was not  
4 reasonably foreseeable other than stating, "Because Plaintiffs' personal time commitments  
5 in investigating their claims were not reasonably contemplated by either party to the  
6 contract, this claim for damages is also inappropriate." Mot. at 6.<sup>3</sup> Not only did Defendant  
7 not cite to any affidavit, deposition transcript, or exhibit in support of this contention, but  
8 also Defendant did not present any argument to support this conclusory statement.  
9 Defendant's silence in this regard is evidence that the Court should deny the Motion since  
10 the only analysis and argumentation on point supports Plaintiffs.

11 Finally, even if the Court is unsure as to the foreseeability of these damages, the  
12 Court must defer its ruling on this issue because foreseeability of damages is generally "a  
13 question of fact." *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 1294, 885 P.2d 580, 582 (1994);  
14 *Daniel v. Hilton Hotels*, 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982). Therefore, the  
15 Court must deny Defendant's Motion in Limine and hear evidence on this issue.

16 **C. Exclusion of Evidence of this Category of Damages as a Discovery**  
17 **Sanction is Inappropriate**

18 Defendant requests that evidence of Plaintiffs' damages in the form of time spent  
19 attempting to recover the information and documents they are entitled to under the  
20 Commission Letter Agreement be excluded, alleging that "Because of Plaintiffs failure to  
21 adequately articulate their position and compute their claim for damages, Pardee was  
22 afforded no opportunity to conduct any adequate discovery on these issues." Mot. at 6. In  
23 effect, Defendant requests that the Court sanction Plaintiffs for their alleged failure to  
24 comply with N.R.C.P. 16.1.<sup>4</sup> However, such a sanction is inappropriate and runs afoul of  
25

26  
27 <sup>3</sup> Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of  
28 Compensation for Time is cited in this Opposition as "Mot. at \_\_\_\_."

<sup>4</sup> Defendant's Motion alleges, "Put simply, Plaintiffs did not accomplish this requirement in  
their NRCP 16.1 mandatory disclosures."

1 the Nevada Rules of Procedure and the Nevada Supreme Court's jurisprudence on the  
2 same.

3 In order to subject Plaintiffs to a discovery sanction, the Court must find that  
4 Plaintiffs willfully violated the rules of discovery or the Court's orders. As stated in *Clark*  
5 *County School Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 391, 168 P.3d 87, 93 (2007),  
6 "a district court may impose sanctions only when there has been willful noncompliance with  
7 the discovery order or willful failure to produce documents under N.R.C.P. 16.1." *Id.*  
8 Similarly, "sanctions may only be imposed where there has been willful noncompliance  
9 with the court's order, or where the adversary process has been halted by the actions of  
10 the nonresponsive party." *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651,  
11 747 P.2d 911, 913 (1987). Furthermore, "fundamental notions of fairness and due process  
12 require that discovery sanctions be just and relate to the specific conduct at issue." *GNLV*  
13 *Corp. v. Service Control Corp.*, 111 Nev. 866, 870, 900 P.2d 323, 325 (1995). However,  
14 before a party may even move for a discovery sanction, the movant must have "conferred  
15 or attempted to confer with the party not making the disclosure in an effort to secure the  
16 disclosure without court action." N.R.C.P. 37(a)(2)(A); see also E.D.C.R. 2.34(d) (requiring  
17 that "[m]oving counsel must set forth in the affidavit what attempts to resolve the discovery  
18 dispute were made, what was resolved and what was not resolved, and the reasons  
19 therefor.").

20 Applying the Nevada Rules of Civil Procedure, the Eighth Judicial District Court  
21 Rules, and the standards set forth by the Nevada Supreme Court, the Court may not  
22 exclude evidence of Plaintiffs' time since (1) Defendant's counsel failed to comply with  
23 N.R.C.P. 37(a)(2)(A) and E.D.C.R. 2.34 by failing to appropriately certify that parties'  
24 counsel met and conferred over the discovery dispute; and (2) Plaintiffs were not willfully  
25 non-compliant with the rules of discovery, both prerequisites for imposing sanctions.

26 ///

27 ///

1 1. Defendant's Failure to Comply with N.R.C.P. 37(a)(2)(A) and E.D.C.R.  
2 2.34 Warrants Denial of the Motion

3 As made clear in N.R.C.P. 37 and E.D.C.R. 2.34, parties' counsel are required to  
4 meet and confer before the filing of a motion in connection with a discovery dispute so that,  
5 if possible, the moving party could "secure the disclosure without court action." N.R.C.P.  
6 37(a)(2)(A). Further, E.D.C.R. 2.34 requires that counsel certify the reasons why the  
7 discovery dispute could not resolved. See E.D.C.R. 2.34 ("Moving counsel must set forth  
8 in the affidavit what attempts to resolve the discovery dispute were made, what was  
9 resolved and what was not resolved, and the reasons therefor.").

10 However, Defendant's declaration attached to the motion is devoid of the reasons  
11 why the discovery dispute could not be resolved. All the declaration of Aaron D. Shipley,  
12 Esq. states is:

13 On February 28, 2013, I spoke to James M. Jimmerson,  
14 counsel for Plaintiffs, via telephone, as required by EDCR 2.47.  
15 We discussed issues relevant to this Motion. We disagreed on  
16 the issue of whether Plaintiffs could properly seek damages in  
17 the form of compensation for their time allegedly investigating  
18 their claims against Pardee. Ultimately we were unable to  
19 resolve this issue during our telephone conference.

20 See Declaration of Aaron D. Shipley, Esq., at ¶ 4, attached to Defendant's motion. No  
21 reference is made to any effort to acquire the requested information and no explanation is  
22 given as to why Defendant could not acquire the information about Plaintiffs' damages.  
23 Without this information, not only is Defendant's Motion in Limine procedurally defective, it  
24 ignores the fact the Plaintiffs offered to produce any information Defendant desired on the  
25 topic via answering an interrogatory on point. See Affidavit of James M. Jimmerson, Esq.  
26 in Support of Plaintiffs' Opposition to Defendant's Motion to Continue Trial at ¶ 7.<sup>5</sup>

27 <sup>5</sup> Paragraph 7 states: "On or about February 28, 2013, your Affiant again spoke with  
28 counsel for Defendant, Aaron Shipley, to discuss a possible resolution as stated above.  
Mr. Shipley stated the offered solution was declined. It was further discussed that two  
Motions in Limine would likely be filed by Defendant: (1) challenging the availability of  
attorney's fees as damages, and (2) challenging the availability of compensation for  
Plaintiff's time and effort attempting to get information promised to them under the  
Commission Letter Agreement as damages (and quantification of the same). In an effort to  
perhaps reduce the number of Motions in Limine and to more efficiently litigate this action,



2. Plaintiffs did not Willfully Violate N.R.C.P. 16.1,  
Requiring Denial of the Motion

Defendant's primary argument in support of the Motion in Limine is that Plaintiffs did not compute their compensation for time damages in their N.R.C.P. 16.1 disclosures. However, Plaintiffs' disclosed the compensation for time as an element of damages during the discovery period. Further, in Plaintiffs' most recent supplement to its N.R.C.P. 16.1 disclosures, Plaintiffs compute the damages to the dollar. As stated in the most recent supplement:

Finally, Plaintiffs must be compensated for the time and effort expended attempting to discover from public records what information was owed to them under the Commission Letter Agreement. **Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed \$6,400.00 for their time.**

Plaintiffs' Eighth Supplement to Their 16.1 Disclosures (emphasis in original). Albeit late, the supplement satisfies N.R.C.P. 16.1 computation requirement.

Further, Defendant was on notice of this aspect of damages as early as James Wolfram's deposition in 2011, when Mr. Wolfram testified at numerous points the lengths he went to in trying to get the information he was promised. Specifically, Mr. Wolfram stated:

Q. You understand that deeds are a matter of public record, correct?

A. Yeah. I went down to the recorder's office because I could get no information from Pardee. I spent hours down there. I know you've seen my map.

an offer was made by your Affiant to Mr. Shipley that Plaintiffs would be willing to answer an Interrogatory quantifying the time and effort damages and eliminating the need to brief a motion on that issue. Your Affiant explained that since the issue of damages was being decided by the Court, as it is part of Defendant's Motion for Summary Judgment, further briefing is unnecessary. As of the filing of the Opposition, your Affiant had not heard from Defendant's counsel on whether it would agree to the discussed solution."

1 Wolfram Deposition at 90:12-16.<sup>6</sup>

2 Q. Okay. Tell me what type of information it is that you need to  
3 determine if you've been damaged or not?

4 A. Work that I've done. I've called and I've talked to people. No  
5 one would give me anything. That's the reason I ended up with  
6 an attorney.

7 Wolfram Deposition at 102:14-19.

8 Q. Okay. After having an opportunity to review the letter and  
9 take a look at the closing statements that were attached to it,  
10 did you call Mr. Stringer to ask him any questions?

11 A. I don't remember which times I called Mr. Stringer, but I  
12 probably called him more than one time, and I couldn't get an  
13 answer. That's the reason I had my attorney give Mr. Stringer a  
14 call, which you have letters to that effect, also.

15 Wolfram Deposition at 112:5-13.

16 Q. Okay. When you retired, any of the documents or the  
17 records that you had in your office in your home at that point in  
18 time did you discard anything?

19 A. What I have in my records are probably what I have. I didn't  
20 throw it away. I don't have very much. You asked me how thick  
21 that file was. The title companies would give me nothing.  
22 They'd say we have to talk to Jon Lash. If I call over there, they  
23 say, trust me...

24 Wolfram Deposition at 54:15-24. All of these statements combined with Plaintiffs' 16.1  
25 disclosures (and supplements thereto) put Defendant on notice that a portion of Plaintiffs'  
26 damages arise from the time Mr. Wolfram spent attempting to acquire the information they  
27 were promised.<sup>7</sup>

28 <sup>6</sup> A certified copy of Mr. Wolfram's deposition is found as Exhibit 1 to Plaintiffs' Opposition  
to Defendant's Motion for Summary Judgment and Countermotion for Partial Summary  
Judgment.

<sup>7</sup> Defendant attempts to argue that "Plaintiffs' claim is completely unsubstantiated..." in an  
effort to exclude Plaintiffs' evidence of damages. Mot. at 5 and 7. However, Mr. Wolfram's  
deposition testimony is compelling evidence of Plaintiffs' damage claims. Further, the  
Court has already ruled on this issue in denying Defendant's Motion for Summary  
Judgment. In its Motion for Summary Judgment, Defendant argued that Plaintiffs were not  
able to be compensated for this category of damages, but nothing at the hearing on the  
motions for summary judgment or the Court's minute order suggested that these damages  
were unavailable to Plaintiffs (the Court Order has not been submitted yet, as it still being  
drafted). If Defendant is attempting to relitigate the Motion for Summary Judgment in its  
Motion in Limine, the Court must deny the motion as an inappropriate form for a motion for  
reconsideration.

1        Moreover, Defendant did nothing to gain discovery on this aspect of Plaintiffs'  
2 damages. Defendant never served Plaintiffs with any interrogatories or requests for  
3 admission, and upon receiving Plaintiffs' Fifth Supplement to their N.R.C.P. 16.1  
4 disclosures in 2012 during the discovery period, Defendant failed to make any requests for  
5 specification of Plaintiffs' damages. See Affidavit of James M. Jimmerson, Esq. at ¶ 7  
6 attached hereto. Even when Plaintiffs offered to answer an interrogatory on this issue to  
7 avoid this motion practice, Defendant did not accept the offer: electing to file its motion  
8 instead. *Id.* at ¶ 8. Defendant cannot be allowed to bathe in its own ignorance and later  
9 claim that Plaintiffs should be precluded from introducing evidence of their damages on the  
10 grounds that Defendant was not given enough information.<sup>8</sup> Such is not the law and the  
11 motion must be denied.

12        Finally, Defendant's motion may not be granted because it has failed to establish  
13 that Plaintiffs willfully failed to comply with the rules of discovery warranting exclusion of  
14 evidence. As stated above, the Nevada Supreme Court has repeatedly required the party  
15 requesting discovery sanctions to establish that the opposing party willfully failed to comply  
16 with the discovery rules or a Court order. See *Richardson Const., supra*. Stated another  
17 way, only when a party's failure to respond to discovery functions to halt the adversarial  
18 process, may the district court issue discovery sanctions and preclude the introduction of  
19 the evidence at issue. See *Fire Ins. Exchange, supra*. Defendant's motion is silent as to  
20 how the adversarial process has been halted due to the alleged failure to comply with  
21 N.R.C.P. 16.1. And for good reason. There has been no harm to the ability for the Court  
22 to adjudicate Plaintiffs' claims on their merits or the Defendant's ability to present a  
23

24        <sup>8</sup> It is curious that Defendant in a Motion in Limine argues to exclude evidence on  
25 discovery grounds when Defendant has thus far sat silent on the issue. If Defendant's  
26 claims were genuinely centered on discovery concerns and were not just about limiting  
27 damage exposure, Defendant's motion would be styled to request information—not  
28 suppress it. This transparent attempt to short-circuit Plaintiffs' avenues to recovery cannot  
stand as it is contrary to Nevada's stated strong public policy favoring the adjudication of  
legal disputes on their merits. See *Scrimmer v. Eighth Jud. Dist. Court ex rel. County of  
Clark*, 116 Nev. 507, 517-18, 998 P.2d 1190, 1196 (2000) ("[T]he district court should  
recognize that good public policy dictates that cases be adjudicated on their merits.").

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

**Case No.: 72371**

Electronically Filed  
~~Feb 28 2018~~ 11:30 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 15 OF 88**

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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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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
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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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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
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11/07/2012	Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment	2	JA000322-JA000351
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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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06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion to Amend Judgment; and Opposition to Plaintiffs' Countermotion for Attorney's Fees	82	JA013183- JA013196
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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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
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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 to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59	68	JA010723- JA010767
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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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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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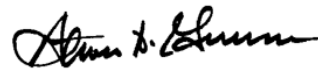
Attorneys for Appellant

## **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



CLERK OF THE COURT

**OPPS**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and WALT WILKES, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
PARDEE HOMES OF NEVADA, )  
 )  
Defendant. )

Case No.: A-10-632338-C  
Department No. IV

HEARING DATE: April 26, 2013  
HEARING TIME: 8:30 a.m.

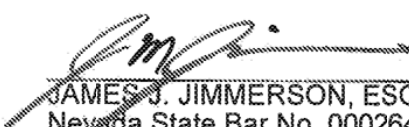
**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE  
TO EXCLUDE PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES  
AS AN ELEMENT OF DAMAGES (MIL #1)**

Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their counsel of record, JAMES J. JIMMERSON, ESQ., LYNN M. HANSEN, ESQ., and JAMES M. JIMMERSON, ESQ. of the law firm of JIMMERSON HANSEN, P.C. hereby submits their Opposition to Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1). This Opposition is based on the pleadings and papers on file, the attached affidavit and exhibits, the Memorandum of

1 Points and Authorities attached hereto and arguments of counsel at the hearing of this  
2 Motion.

3 DATED this 20<sup>th</sup> day of March, 2013.  
4

JIMMERSON HANSEN, P.C.

  
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1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**  
2                   **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR**  
3                   **ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES (MIL #1)**

4                   **I.       INTRODUCTION**

5                   After the recent briefing and hearing on the parties' Motions for Summary  
6                   Judgment, the Court is familiar with the operative facts in this action. Accordingly, only  
7                   those facts which are relevant to the present motion in limine are provided below.

8                   Plaintiffs' and Defendant's commission agreement concerning the notice to be  
9                   provided and commissions to be paid in connection with certain land transactions between  
10                  Pardee Homes of Nevada ("Pardee") and Coyote Springs Investment, LLC ("CSI") was  
11                  reduced to writing in a Commission Letter Agreement dated September 1, 2004. This  
12                  Commission Letter Agreement was signed by Jon Lash, James Wolfram, and Walt Wilkes.  
13                  See Exhibit 1, a true and correct copy of the Commission Letter Agreement attached  
14                  hereto. No other written agreements between Plaintiffs and Defendant have been  
15                  executed which serve to affect the September 1, 2004 Commission Letter Agreement. It is  
16                  Defendant's failure to comply with the terms of the Commission Letter Agreement which  
17                  caused Plaintiffs to institute this action.

18                  Plaintiffs have stated claims for breach of contract, breach of the implied covenant  
19                  of good faith and fair dealing, and accounting. While it is apparent that Plaintiffs have not  
20                  been paid the commissions as owed to them according to the Option Property formula  
21                  stated in the Commission Letter Agreement and Pardee has attempted to unilaterally  
22                  reduce the amount of land Plaintiffs may receive a commission from, it is the effect of  
23                  Defendant's failure to notify and inform Plaintiffs of the transactions between Pardee and  
24                  CSI, as required by the Commission Letter Agreement, which is the subject of the present  
25                  Motion in Limine: Plaintiffs' claim for damages in the form the attorney's fees and costs  
26                  they have been forced to expend to acquire the documents owed to them under the  
27                  Commission Letter Agreement.

28                  Nevada law permits for the recovery of attorney's fees as damages resulting from a  
breach of contract when such fees are pleaded as special damages and are the natural



1 and proximate consequence of the breach. Such is the case for Plaintiffs. The  
2 Commission Letter Agreement ensured that Plaintiffs would receive formal notice of the  
3 sale of Option Property and would be kept reasonably informed as to all matters relating to  
4 the amount and due dates of Plaintiffs' commission payments. Denial of this information  
5 has forced Plaintiffs to seek counsel and file suit to acquire the power to compel the  
6 production of documents from Pardee and to subpoena documents and records from third  
7 parties—power granted only through the judicial process. Hence, the cost of acquiring  
8 representation to institute and conduct such process is a natural and foreseeable harm to  
9 Plaintiffs for which they are entitled to recoup as damages.<sup>1</sup>

## 10 II. LEGAL ARGUMENT

### 11 A. Legal Standard for Motions in Limine

12 The Nevada Supreme Court has recognized that District Courts have "broad  
13 discretion in determining the admissibility of evidence" both at trial and in deciding pre-trial  
14 motions in limine. *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 492, 117  
15 P.3d 219, 226 (2005); *see also* Nev. R. Civ. P. 16(c)(3); EDCR 2.47. Indeed, "all relevant  
16 evidence is admissible at trial unless otherwise excluded by law or the rules of evidence."  
17 *FGA, Inc. v. Giglio*, 278 P.3d 490, 499, 128 Nev. Adv. Op. 26 (2012).

18 Likewise, it is an abuse of discretion for the Court to grant a motion in limine without  
19 finding that that the challenged evidence is inadmissible on all potential grounds. *See Id.*;  
20 *State ex rel. Dept. of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376,  
21 551 P.2d 1096 (1976); *cf. Born v. Eisenman*, 114 Nev. 854, 962 P.2d 1227 (1998).  
22 Further, the Court should deny a pre-trial motion in limine without a showing that mere  
23 mention of the challenged evidence would be prejudicial to the moving party. *See FGA,*  
24 *Inc.*, 278 P.3d at 399; *Leiper v. Margolis*, 111 Nev. 1012, 1014, 899 P.2d 574, 575 (1995);  
25 *Sheehan*, 121 Nev. at 492; *see also Kelly v. New West Federal Savings*, 49 Cal. App. 4th

26  
27 <sup>1</sup> As the Court is aware, the Commission Letter Agreement contains an attorney's fees  
28 provision, whereby the parties agreed that in the event a cause of action was filed to  
enforce a party's rights under the Agreement, the prevailing party would be entitled to its  
reasonable attorney's fees. *See Exhibit 1 at 2.*

1 659, 670, 56 Cal. Rptr. 2d 803, 808 (Cal. Ct. App. 1996) (Motions in limine function to  
2 "preclude the presentation of evidence deemed inadmissible and prejudicial by the moving  
3 party."). As such, when the Court cannot make these definitive findings, it should defer its  
4 ruling on the admissibility of evidence until trial when it knows the context of questioning  
5 seeking to admit the evidence at issue. *See Barcus v. State*, 92 Nev. 289, 291, 550 P.2d  
6 411, 412 (1976) ("We will have to see what the questions are, and we will have to see what  
7 the answers are."); *see also Kelly*, 49 Cal. App. 4<sup>th</sup> at 671 (Waiting until the evidence is  
8 actually offered to rule on evidence "serves to focus the issue and to protect the record.").

9 Finally, threshold rulings on evidentiary issues are "generally superfluous" when the  
10 Court is the trier of fact. *U.S. v. Heller*, 551 F.3d 1108, 1112 (9th Cir. 2009). In bench  
11 trials, motions in limine are in effect, "coals to Newcastle," since the Court is being asked to  
12 withhold prejudicial information from the trier of fact when the Court is, itself, the trier of  
13 fact. *Id.* Moreover, in such instances, the Court is presumed to only consider admissible  
14 evidence when rendering its decisions. *Landis v. American Potash & Chemical Corp.*, 78  
15 Nev. 424, 437, 375 P.2d 402, 409 (1962).

#### 16 **B. Nevada Law Permits the Recovery of Attorney's Fees as Damages**

17 As the Court knows, Nevada permits the award of attorney's fees as consequential  
18 damages resulting from a breach of contract. *See Clark County School Dist. v. Rolling*  
19 *Plains Const., Inc.*, 117 Nev. 101, 105-106, 16 P.3d 1079, 1082 (2001) ("[T]he award of  
20 attorney fees as consequential damages did not reach beyond the scope of the CCSD-  
21 Richardson agreement...[and] we conclude that the award of consequential damages was  
22 an appropriate remedy."). However, the availability of attorney's fees as consequential  
23 damages is limited to situations where (1) the attorney's fees are pleaded as special  
24 damages in the complaint; and (2) the fees are the natural and proximate result of the  
25 conduct at issue. The Nevada Supreme Court in *Sandy Valley Assoc. v. Sky Ranch*  
26 *Estates Owners Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001) articulated this standard,  
27 stating:  
28

1 In contrast, when a party claims it has incurred attorney fees as  
2 foreseeable damages arising from tortious conduct or a breach  
3 of contract, such fees are considered special damages. They  
4 must be pleaded as special damages in the complaint pursuant  
5 to NRCP 9(g) and proved by competent evidence just as any  
6 other element of damages. The mention of attorney fees in a  
7 complaint's general prayer for relief is insufficient to meet this  
8 requirement. Finally, when attorney fees are considered as an  
9 element of damages, they must be the natural and proximate  
10 consequence of the injurious conduct. If more than one claim is  
11 presented in a complaint, the party claiming fees as damages  
12 must prove the fees as to each claim.

13 *Id.* at 956-57 (internal citations omitted). In applying this standard the Court should deny  
14 the motion since Plaintiffs' damage claims for attorney's fees have been pleaded as special  
15 damages and because they are the natural and proximate result of Defendant's conduct.

16 **C. Plaintiffs are Entitled to Present Evidence of their Attorney's Fees as  
17 Damages**

18 Plaintiffs' attorney's fees are compensable damages under Nevada law.  
19 Defendant's principal argument in support of its Motion in Limine to Exclude Plaintiffs'  
20 Claim for Attorneys' Fees as an Element of Damages (MIL #1) is, "Plaintiffs have only  
21 generally alleged attorneys fees...In their Amended Complaint, a recovery of attorneys'  
22 fees was only mentioned in the Plaintiffs' general prayer for relief." Mot. at 6.<sup>2</sup> However,  
23 an examination of the Amended Complaint confirms that this argument is without merit and  
24 Plaintiffs did in fact specifically<sup>1</sup> plead attorney's fees as damages, consistent with the  
25 requirements of *Sandy Valley*.

26 Plaintiffs' Amended Complaint states three claims for relief: (1) accounting; (2)  
27 breach of contract; and (3) breach of the implied covenant of good faith and fair dealing.  
28 Under each of these three claims for relief Plaintiffs specifically state an entitlement to  
attorney's fees for that particular cause of action. Under the claim for relief for accounting,  
the Amended Complaint states, "Plaintiffs are also entitled to an award of reasonable  
attorneys' fees and costs." See Amended Complaint at ¶ 20, a true and correct copy of  
which is attached hereto as Exhibit 2. Under the claim for relief for breach of contract, the

<sup>2</sup> Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an  
Element of Damages is cited as "Mot. at \_\_\_."

1 Amended Complaint states, "As a result of Defendant's breach of contract, Plaintiffs have  
2 been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an  
3 award of reasonable attorneys' fees and costs." *Id.* at ¶ 25. And under the third claim for  
4 relief breach of the covenant of good faith and fair dealing, "As a direct and proximate  
5 result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiffs have  
6 been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an  
7 award of reasonable attorneys' fees and costs." *Id.* at ¶ 30. Finally, in the prayer for relief,  
8 the Amended Complaint states, "WHEREFORE, Plaintiffs pray as follows:...4. For  
9 reasonable attorney's fees." *Id.*

10 In spite of the actual text of the Amended Complaint, where Plaintiffs' claim their  
11 entitlement to attorney's fees for each of their claims for relief, Defendant argues that  
12 Plaintiffs' claim for attorney's fees is "only mentioned in the Plaintiffs' general prayer for  
13 relief." Mot. at 6. This statement is inaccurate. As the Court is well aware, "the last  
14 portion of the complaint is the prayer for relief." *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1,  
15 21, 62 P.3d 720, 733 (2003). Further, the general prayer seeks relief applicable to the  
16 entire complaint and is not specific to a particular cause of action. *See Gomes v.*  
17 *Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 1151 n. 4, 121 Cal Rptr. 3d 819,  
18 821 (Cal. App. Ct. 2011). Conversely, claims for special damages may not be only found  
19 in the general prayer for relief. Nevada Rule of Civil Procedure 9(g) requires that special  
20 damages be stated for particular causes of action and mandates, "when items of special  
21 damages are claimed, they shall be specifically stated." N.R.C.P. 9(g). Interpreting the  
22 federal counterpart to N.R.C.P. 9(g), courts have held that special damages must be pled  
23 for specific causes of action, as they are "those resulting from the commission in question  
24 and not normally associated with the claim." *Greater New York Auto Dealers Ass'n v.*  
25 *Environmental Systems Testing, Inc.*, 211 F.R.D. 71, 78 (E.D.N.Y. 2002) (internal citations  
26 omitted).<sup>3</sup> The Court, in applying this standard to Plaintiffs' Amended Complaint, must find

27  
28 <sup>3</sup> Federal cases interpreting the Federal Rules of Civil Procedure are "strong persuasive  
authority because the Nevada Rules of Civil Procedure are based in large part upon their

1 that attorney's fees are specifically pled for each cause of action, satisfying the  
2 requirement that they be pled as special damages.<sup>4</sup>

3 Once the Court concludes that the Amended Complaint adequately pleads  
4 attorney's fees as special damages, the Court must deny the motion in limine. While  
5 attorney's fees must be the "natural and proximate result of the injurious conduct," in order  
6 to be considered an element of damages, Defendant has failed to even claim in its motion  
7 in limine that Plaintiffs' attorney's fees in this action are not the natural and proximate result  
8 of Defendant's conduct, effectively conceding the point.

9 As a direct result of Pardee's failure to provide Plaintiffs the documents and  
10 information owed to them under the Commission Letter Agreement, Plaintiffs were forced  
11 to engage an attorney and use the tools of discovery to acquire some of these  
12 documents—tools only available to them after Plaintiffs filed suit against Pardee. And even  
13 after Plaintiffs were allowed to request documents from Pardee, Pardee failed to provide  
14 the information to Plaintiffs. See Exhibit 3, a true and correct copy of Defendant Pardee's  
15 Responses to Plaintiffs' First and Second Requests for Production of Documents, attached  
16 hereto, and Exhibit 4, a true and correct copy of the Index to Defendant's N.R.C.P. 16.1  
17 productions, attached hereto. Looking at Defendant's Responses to Requests 1, 3, 4, 5, 9-  
18 11, 16, and 17, it is clear that Defendant failed to produce copies of any of the  
19 amendments to the Amended and Restated Option Agreement, which were explicitly  
20 requested by Plaintiffs. It was only after Plaintiffs were able to recover documents by  
21 subpoena from CSI did Plaintiffs receive at least some of the documents owed to them  
22 under the Commission Letter Agreement. See Affidavit of James M. Jimmerson, Esq. at  
23 ¶ 9 attached hereto; see also Exhibits 13-20 attached to Plaintiffs' Opposition to  
24

25 federal counterparts." *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53,  
38 P.3d 872, 876 (2002) (internal citations omitted).

26 <sup>4</sup> Even if the Court were to find that the Amended Complaint does not adequately plead  
27 attorney's fees as special damages, at the hearing on the motions for summary judgment  
28 the Court permitted Plaintiffs to file a motion for leave to file a further amended complaint  
for the purposes of more particularly pleading damages. That motion is being filed  
contemporaneously with this Opposition.

1 Defendant's Motion for Summary Judgment and Countermotion for Partial Summary  
2 Judgment, true and correct copies of Amendments 1 through 8 to the Amended and  
3 Restated Option Agreement, containing "CSI\_Wolfram" bates stamps. But without the  
4 requested accounting, Plaintiffs are still unsure whether they are in receipt of all of the  
5 information owed to them. Given the necessity of employing the tools of discovery and  
6 prosecuting a suit for accounting to acquire these documents, Plaintiff's attorney's fees are  
7 compensable damages. See *Burch v. Argus Properties, inc.*, 92 Cal. App. 3d 128, 154  
8 Cal. Rptr. 485, (Cal. Ct. App. 1979) ("Here, Burch would have known the \$5,000 advanced  
9 for costs was not to be returned and would not have needed to litigate this issue if Argus  
10 had provided him with the quarterly accounting required under section 10146. The fees  
11 here were reasonable.").

12 Defendant relies on *Reyburn Lawn & Landscaping Designers, Inc. v. Plaster Dev.*  
13 *Co., Inc.*, 127 Nev. Adv. Op. 26, ---, 255 P.3d 268, 279 n. 11 (2011), stating that the  
14 holding in *Sandy Valley* was a "rather narrow exception to the rule prohibiting attorney fees  
15 awards absent express authorization" to support its motion, but fails to explain how  
16 Plaintiffs' action does not fit within the exception. *Id.* Indeed, this silence is telling  
17 because the language in *Sandy Valley* and its progeny confirm the validity of Plaintiffs'  
18 claims. In *Sandy Valley*, the Nevada Supreme Court stated:

19 Attorney fees may also be awarded as damages in those cases  
20 in which a party incurred the fees in recovering real or personal  
21 property acquired through the wrongful conduct of the  
22 defendant or in clarifying or removing a cloud upon the title to  
property. Finally, actions for declaratory or injunctive relief may  
involve claims for attorney fees as damages when the actions  
were necessitated by the opposing party's bad faith conduct.

23 *Sandy Valley*, 117 Nev. at 957-58. Further, in *Horgan v. Felton*, 123 Nev. 577, 585-86,

24 ///

25 ///

26 ///

1 170 P.3d 982, 978-88 (2007) the Nevada Supreme Court clarified its decision in *Sandy*  
2 *Valley*, stating:

3 The clear majority rule is that attorney fees incurred in  
4 removing spurious clouds from a title qualify as special  
5 damages in an action for slander of title. As stated by the  
6 Washington Supreme Court, attorney fees are permissible as  
7 special damages in slander of title actions because "the  
8 defendant ... by intentional and calculated action leaves the  
9 plaintiff with only one course of action: that is, litigation....  
10 Fairness requires the plaintiff to have some recourse against  
11 the intentional malicious acts of the defendant." However, no  
12 authority appears to support the proposition that attorney fees  
13 are available as special damages in a case to remove a cloud  
14 upon title when no claim for slander of title has been alleged,  
15 and in fact, authority to the contrary exists.

16 *Id.* (internal citations omitted).

17 As seen in the two excerpts above, in both *Sandy Valley* and *Horgan* the court  
18 focused on the necessity of the legal action resulting from the defendant's conduct and  
19 causing the expenditure of attorney's fees as well as the wrongfulness of the defendant's  
20 actions in determining the availability of attorney's fees as damages. Taking the example  
21 of removing a cloud upon title, the court held that it was not enough that legal action was  
22 necessary to clarify legal title, the aggrieved party must also prosecute a claim for slander  
23 of title to recover fees resulting from a defendant's wrongful conduct. Now when applied to  
24 this action, it is clear that Plaintiffs were only able to get the documents and information  
25 they were entitled to once they filed suit and were granted the tools of discovery to get  
26 some of those records. Furthermore, prosecution of a claim for accounting is necessary to  
27 ensure that Plaintiffs receive all of the documents and information they are entitled to and  
28 not just those acquired through the use of discovery tools. It is clear that had it not been  
for the wrongful actions of Defendant in failing to give Plaintiffs the information and  
documents, the use of discovery mechanisms would not have been necessary and a claim

///

///

///


1 for accounting unwarranted. As such, Plaintiffs' are entitled to claim their attorney's fees  
2 as damages.<sup>5</sup>

3 **III. CONCLUSION**

4 Based on the foregoing, Defendant's Motion in Limine to Exclude Plaintiffs' Claim  
5 for Attorneys' Fees as an Element of Damages (MIL #1) should be denied. Not only have  
6 Plaintiffs adequately pled the attorney's fees as special damages in the Amended  
7 Complaint, but also the fees are a natural and proximate result of Defendant's conduct,  
8 bringing them within the scope of permissible damage claims. As such, Plaintiffs  
9 respectfully request that the motion be denied.

10 DATED this 20<sup>th</sup> day of March, 2013.

11 JIMMERSON HANSEN, P.C.

12  
13   
14 JAMES J. JIMMERSON, ESQ.  
15 Nevada State Bar No. 000264  
16 LYNN M. HANSEN, ESQ.  
17 Nevada State Bar No. 000244  
18 JAMES M. JIMMERSON, ESQ.  
19 Nevada State Bar No. 012599  
20 415 So. Sixth St., Ste. 100  
21 Las Vegas, NV 89101  
22 Attorneys for Plaintiffs

23  
24 <sup>5</sup> Defendant makes a one-sentence claim that "Plaintiffs did not articulate its current  
25 position until a very late N.R.C.P. 16.1 disclosure." Mot. at 6. However, Pardee fails to  
26 explain its position (1) as to how the disclosure was "late" since it was made during the  
27 discovery period; (2) why it would take a N.R.C.P. 16.1 disclosure to learn that Plaintiffs  
28 were claiming their fees as damages in light of the pleading in the Amended Complaint; or  
analysis, the Court must conclude that Plaintiffs' disclosure of their attorney's does not  
impact their admissibility at trial.



CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES (MIL #1) was made on the 20<sup>th</sup> day of March, 2013, as indicated below:

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

       By facsimile, pursuant to EDCR 7.26 (as amended)

       By receipt of copy as indicated below

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JAMES WOLFRAM and WALT WILKES

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALT WILKES,	)	
	)	
Plaintiffs,	)	Case No.: A-10-632338-C
	)	
v.	)	Department No. IV
	)	
PARDEE HOMES OF NEVADA,	)	
	)	
Defendant.	)	
<hr/>		

AFFIDAVIT OF JAMES M. JIMMERSON, ESQ.

I, JAMES M. JIMMERSON, ESQ., am over the age of eighteen (18) and am not a party to this action. I am personally familiar with the facts set forth herein, with the exception of those facts stated on information and belief and as to those facts, I believe them to be true.

1. Your Affiant is an attorney at law, duly licensed to practice before all of the Courts in the State of Nevada.

2. Your Affiant is an associate with the law firm of Jimmerson Hansen, P.C., attorneys retained to represent Plaintiffs, JAMES WOLFRAM and WALT WILKES, in the above-captioned action.

1           3.     Your Affiant has personal knowledge of the facts and circumstances  
2 surrounding the issues discussed in the instant Motion and make this Affidavit based upon  
3 said knowledge.

4           4.     This Affidavit is made in support of Defendant's Motion in Limine to Exclude  
5 Plaintiffs' Claims for Attorneys' Fees as an Element of Damages (MIL #1) and is made in  
6 good faith.

7           5.     That the attached copy of the Commission Agreement dated September 1,  
8 2004, is true and accurate.

9           6.     That the attached copy of the Amended Complaint is true and accurate.

10          7.     That the attached copy of Defendant Pardee Home's Responses to Plaintiff's  
11 First and Second Request for Production of Documents are true and accurate.

12          8.     The attached copy of the index to Defendants 16.1 disclosures is true and  
13 accurate.

14          9.     That on or about August 24, 2012 in response to a subpoena, third party  
15 Coyote Springs Investment, LLC produced the following documents, among others:


- 16           a.     Pardee and CSI entered into an Amendment No. 1 to Amended and  
17 Restated Option Agreement for the Purchase of Real Property and  
18 Joint Escrow Instructions dated July 28, 2016;
- 19           b.     Amended No. 2 to Amended and Restated Option Agreement for the  
20 Purchase of Real Property and Joint Escrow Instructions dated  
21 September 30, 2006;
- 22           c.     Amended No. 3 to Amended and Restated Option Agreement for the  
23 Purchase of Real Property and Joint Escrow Instructions dated  
24 November 22, 2006;
- 25           d.     Amended No. 4 to Amended and Restated Option Agreement for the  
26 Purchase of Real Property and Joint Escrow Instructions December  
27 dated 20, 2007;
- 28

- 1 e. Amended No. 5 to Amended and Restated Option Agreement for the  
2 Purchase of Real Property and Joint Escrow Instructions dated May  
3 12, 2008;  
4 f. Amended No. 6 to Amended and Restated Option Agreement for the  
5 Purchase of Real Property and Joint Escrow Instructions dated  
6 January 30, 2009;  
7 g. Amended No. 7 to Amended and Restated Option Agreement for the  
8 Purchase of Real Property and Joint Escrow Instructions dated April  
9 24, 2009; and  
10 h. Amended No. 8 to Amended and Restated Option Agreement for the  
11 Purchase of Real Property and Joint Escrow Instructions dated June  
12 18, 2009.

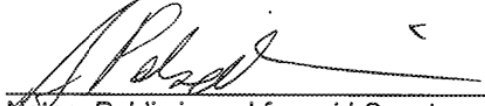
13 10. That on or about August 27, 2012, your Affiant supplemented Plaintiffs'  
14 N.R.C.P. 16.1 disclosures and produced the above mentioned documents.

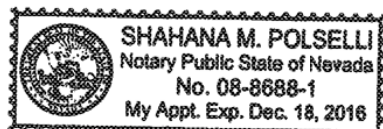
15 FURTHER YOUR AFFIANT SAYETH NAUGHT.

16 DATED this 20th day of March, 2013.

17  
18   
19 JAMES M. JIMMERSON, ESQ.

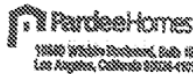
20  
21  
22 Subscribed and Sworn to me  
23 this 20<sup>th</sup> day of March, 2013.

24   
25 Notary Public in and for said County  
26 and State.



## **Exhibit 1**

## **Exhibit 1**



122 E. 11th St.  
2nd Floor  
Phoenix, AZ 85004  
(602) 478-3000 ext. 261  
(602) 468-4288

September 1, 2004

Mr. Walt Wilkes  
General Realty Group, Inc.  
10761 Turquoise Valley Dr.  
Las Vegas, Nevada 89144-4141

Mr. Jim Wolfman  
Award Realty Group  
10761 Turquoise Valley Dr.  
Las Vegas, Nevada 89144-4141

Re: Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of June 1, 2004, as amended (the "Option Agreement") between Coyote Springs Investment LLC ("Coyote") and Pardee Homes of Nevada ("Pardee")

Gentlemen:

This letter is intended to confirm our understanding concerning the pending purchase by Pardee from Coyote of certain real property located in the Counties of Clark and Lincoln, Nevada pursuant to the above-referenced Option Agreement. Except as otherwise defined herein, the capitalized words used in this Agreement shall have the meanings as set forth in the Option Agreement.

In the event Pardee approves the transaction during the Contingency Period, Pardee shall pay to you (one-half to each) a broker commission equal to the following amounts:

- (i) Pardee shall pay four percent (4%) of the Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the remaining Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the Option Property purchased by Pardee pursuant to paragraph 2 of the Option Agreement, Pardee shall pay one and one-half percent (1-1/2%) of the amount derived by multiplying the number of acres purchased by Pardee by Forty Thousand Dollars (\$40,000).

PH 000135

Page 2

Pardee shall make the first commission payment to you upon the Initial Purchase Closing (which is scheduled to occur thirty (30) days following the Settlement Date) with respect to the aggregate Deposits made prior to that time. Pardee shall make each additional commission payment pursuant to clauses (i) and (ii) above concurrently with the applicable Purchase Property Price payment to Coyote. Thereafter, Pardee shall make each commission payment pursuant to clause (iii) above concurrently with the close of escrow on Pardee's purchase of the applicable portion of the Option Property; provided, however, that in the event the required Parcel Map creating the applicable Option Parcel has not been recorded as of the scheduled Option Closing, as described in paragraph 9(c) of the Option Agreement, the commission shall be paid into escrow concurrently with Pardee's deposit of the Option Property Price into Escrow and the commission shall be paid directly from the proceeds of said Escrow.

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

In the event the Option Agreement terminates for any reason whatsoever prior to Pender's purchase of the entire Purchase Property and Option Property, and Pender thereafter purchases any portion of the Entire Site from Seller, at the closing of such purchase, Pender shall pay to you a commission in the amount determined as described above as if the Option Agreement remained in effect.

For purposes of this Agreement, the term "Pardee" shall include any successor or assignee of Pardee's rights under the Option Agreement, and Pardee's obligation to pay the commission to you at the times and in the manner described above shall be binding upon Pardee and its successors and assigns. Pardee, its successors and assigns, shall take no action to circumvent or avoid its obligation to you as set forth in this Agreement. Nevertheless, in no event shall you be entitled to any commission or compensation as a result of the sale or transfer by Pardee or its successor in interest of any portion of the Haisle Site after such property has been acquired from Seller and commission paid to you.

*In the event any sums of money due hereunder remain unpaid for a period of thirty (30) days, said sums shall bear interest at the rate of ten percent (10%) per annum from the date due until paid. In the event either party brings an action to enforce its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs.*

This Agreement represents our entire understanding concerning the subject matter hereof, and all oral statements, representations, and negotiations are hereby merged into this Agreement and are superseded hereby. This Agreement may not be modified except by a written instrument signed by all of us. Nothing herein contained shall create a partnership, joint venture or employment relationship between the parties hereto unless expressly set forth to the contrary. The language of this Agreement shall be construed under the laws of the State of Nevada according to its usual and usual meaning, and not strictly for or against either you or Pades.

[illegible]

PH 000136

Mr. Walt Wilkes  
Mr. Jim Wolfgram  
September 1, 2004  
Page 3


Our signatures below will represent our binding agreement to the above.

Sincerely,

**PARDER HOMES OF NEVADA,**  
a Nevada corporation

  
J. E. Lash  
Senior Vice President



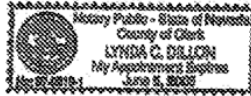
SUBSCRIBED and SWORN to before me this  
28th day of September, 2004.  
  
NOTARY PUBLIC in and for the County of  
Los Angeles, State of California

အိတ္တကုသိုလ် ဝါ အသမ္ဘုဒ္ဓိကုသိုလ်

GENERAL REALTY GROUP, INC.

By Walt Wilkes  
Walt Wilkes

SUBSCRIBED and SWORN to before me  
this 4 day of September, 2004.  
Arden Kaller  
NOTARY PUBLIC in and for the County  
of Clark, State of Nevada



ಇದರಲ್ಲಿ ಒಂದೊಂದು ಸಂಖ್ಯೆಯು ಒಂದು ಸಂಖ್ಯೆಯನ್ನು ಸೂಚಿಸುತ್ತದೆ. ಈ ಸಂಖ್ಯೆಗಳು 1 ರಿಂದ 100 ರವರೆಗೆ ಇರುತ್ತವೆ. ಈ ಸಂಖ್ಯೆಗಳು 1 ರಿಂದ 100 ರವರೆಗೆ ಇರುತ್ತವೆ.

PH 000137



Mr. Walt Wilcox  
Mr. Jim Wolfman  
September 1, 2004  
Page 4

AWARD REALTY GROUP

Dr. *Jim Wolfson*  
Jim Wolfson

SUBSCRIBED and SWORN to before me  
this 6 day of SEPT, 2004.

*Virginia Uttsam*  
 \_\_\_\_\_  
 NOTARY PUBLIC in and for the County  
 of Clark, State of Nevada



විකල්පයක් ලෙස, ආයතනිකව පිළිගන්නා සියලුම සේවකයන්ගේ සහ සේවිකාවන්ගේ සංඛ්‍යාව - 2022 වසර තුළ පිළිගන්නා සේවකයන්ගේ සංඛ්‍යාව

PH 000138

## **Exhibit 2**

## **Exhibit 2**



CLERK OF THE COURT

1 COMP  
2 JIMMERSON HANSEN, P.C.  
3 JAMES J. JIMMERSON, ESQ.  
4 Nevada Bar No. 000264  
5 jjj@jimmersonhansen.com  
6 415 So. Sixth St., Ste. 100  
7 Las Vegas, NV 89101  
8 (702) 388-7171  
9 Attorney for Plaintiffs  
10 James Wolfram and Walt Wilkes

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

8 JAMES WOLFRAM,  
9 WALT WILKES,

10 Plaintiffs,

11 vs.

12 PARDEE HOMES OF NEVADA,

13 Defendant.

CASE NO.: A-10-632338-C  
DOCKET NO.: XXIII

14 AMENDED COMPLAINT

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

18 GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

21           8.     On or about April 23, 2009, Plaintiffs sent a letter to Defendant requesting  
22 documents, which detail the purchases and sales of certain real property for which  
23 Plaintiffs believe are part of the property outlined in the Option Agreement and, therefore,  
24 property for which they are entitled to receive a commission. A parcel map was also  
25 requested to identify which properties had been sold.

26           9.     Defendant replied to Plaintiff's April 23, 2009, letter with a letter dated July  
27 10, 2009. The July 10 letter failed to provide the documents requested by the Plaintiffs.  
28

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

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

8           12.     Plaintiffs relied upon Defendant's representations made in the November 24,  
9     2009 letter as being truthful and accurate.

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

21          14.     Defendant responded to the May 17, 2010, letter with a letter dated June 14,  
22     2010. In that letter, Defendant denied breaching the covenants contained in the  
23     Commission Letter, but did not reply or address any particular concern, including, but not  
24     limited to: the discrepancy between the representations made by Defendant in the  
25     November 24, 2009, letter and information and records found in the Clark County  
26     Recorder's Office and the Clark County Assessor's Office, the request as to why closing  
27     escrow documents were being withheld, and the request for all relevant closing escrow  
28     documents.

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

## FIRST CLAIM FOR RELIEF

(Accounting)

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

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

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

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

20. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs.

## SECOND CLAIM FOR RELIEF

**(Breach of Contract)**

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

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

1       23. Defendant has a duty to honor its contractual obligations. Defendant has  
2 failed and refused to perform its obligations pursuant to the terms and conditions of the  
3 Commission Letter.

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

6       25. As a result of Defendant's breach of contract, Plaintiffs have been forced to  
7 bring this matter before the Court. Accordingly, Plaintiffs are entitled to an award of  
8 reasonable attorneys' fees and costs.

9                               **THIRD CLAIM FOR RELIEF**

10                           **(Breach of Good Faith and Fair Dealing)**

11       26. Plaintiffs reallege and incorporate herein each and every allegation contained  
12 in paragraphs 1 through 25, inclusive, herein above.

13       27. Defendant Pardee owed, and continues to owe, Plaintiffs a duty of good faith  
14 and fair dealing to do everything under the Commission Letter that Defendant is required  
15 to do to further the purposes of the Commission Letter and to honor the terms and  
16 conditions thereof to the best of its ability.

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

21       29. As a direct and proximate result of Defendant's breach of the covenant of  
22 good faith and fair dealing, Plaintiffs have been damaged in a sum in excess of \$10,000.00  
23 according to proof of trial, together with attorney's fees and interest to accrue at the legal  
24 rate.

25       30. As a direct and proximate result of Defendant's breach of the covenant of  
26 good faith and fair dealing, Plaintiffs have been forced to bring this matter before the Court.  
27 Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.  
28

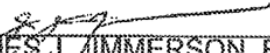
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WHEREFORE, Plaintiffs prays as follows:

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

DATED this 14 day of January, 2011.

JIMMERSON HANSEN, P.C.

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



## **Exhibit 3**

## **Exhibit 3**

1 **RESP**  
 2 PAT LUNDVALL  
 3 Nevada Bar No. 3761  
 4 AARON D. SHIPLEY  
 5 Nevada Bar No. 8258  
 6 McDONALD CARANO WILSON LLP  
 7 2300 West Sahara Avenue, Suite 1000  
 8 Las Vegas, Nevada 89102  
 9 (702) 873-4100  
 10 (702) 873-9966 Facsimile  
 11 [lundvall@mcdonaldcarano.com](mailto:lundvall@mcdonaldcarano.com)  
 12 [ashipley@mcdonaldcarano.com](mailto:ashipley@mcdonaldcarano.com)  
 13 *Attorneys for Defendant*  
 14 *Pardee Homes of Nevada*

DISTRICT COURT  
 CLARK COUNTY, NEVADA

11 JAMES WOLFRAM,  
 12 WALT WILKES

Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

Defendant.

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

DEFENDANT PARDEE HOMES OF  
 NEVADA'S RESPONSES TO  
 PLAINTIFFS' FIRST REQUEST  
 FOR PRODUCTION OF  
 DOCUMENTS

17 Defendant Pardee Homes of Nevada ("Pardee"), by and through its counsel, McDonald  
 18 Carano Wilson LLP, hereby submits the following responses to Plaintiffs' First Request for  
 19 Production of Documents ("Requests"). Discovery and investigation are continuing and Pardee  
 20 reserves the right to supplement and amend these responses.

GENERAL RESPONSES AND OBJECTIONS

1. These responses are made solely for the purpose of this action.
2. Pardee reserves the right to make any and all evidentiary objections to the introduction of any of these responses and/or any information contained therein (including, without limitation, documents) into evidence at any hearing in this case or otherwise. Each response is subject to all objections as to competence, relevance, materiality, propriety, admissibility, and exclusion of any statement herein as if any portion of the requests were asked of, or if any statement contained herein was made by, a witness present and testifying in court,

all of which objections and grounds are reserved and may be interposed at the time of any hearing or trial in this matter. Plaintiff should not imply or infer the admission of any matter from these responses or any information produced, except as explicitly stated.

3. These responses are based upon information presently known and ascertained by Pardee. However, Pardee has not yet completed his investigation of all of the circumstances relating to this dispute and has not completed discovery or preparation for trial in this matter. Accordingly, the responses herein are submitted without prejudice to utilizing subsequently discovered or recalled information. Pardee reserves the right to amend, add to, delete from, or in any other manner modify these responses after it has completed his discovery and investigation efforts and has ascertained all relevant facts.

4. Pardee objects to each request (and any portion thereof) to the extent that it purports to call for privileged information, including information protected by the attorney-client privilege, work product doctrine, and/or investigative privilege. Pardee's attorneys join in these objections to the extent that the right to protect information from discovery belongs to those attorneys. In making his responses to the requests, and/or in producing documents for inspection and/or copying, Pardee will not produce any such information.

5. Pardee objects to each request (and any portion thereof) to the extent that it seeks the disclosure of the identities of, or any work generated by, non-testifying consulting experts retained by or at the direction of Pardee's attorneys in anticipation of preparation for this and/or other threatened or pending litigation in connection with the rendering of legal advice to Pardee. Pardee's attorneys join in these objections to the extent that the right to protect information from discovery belongs to those attorneys. In making its responses to the requests, and/or in producing documents for inspection and/or copying, Pardee will not produce any such privileged items.

6. Pardee objects to each request (and any portion thereof) to the extent that it is overly or unduly burdensome, vague, ambiguous, unintelligible, uncertain, incomprehensible, compound, oppressive, intrusive of the privacy or proprietary rights of Pardee and/or third parties, overbroad, irrelevant, not reasonably calculated to lead to the discovery of admissible

1 evidence, fails to identify the information requested with reasonable or adequate particularity, or  
2 seeks to impose upon Pardee burdens beyond those established under the Nevada Rules of Civil  
3 Procedure or Nevada law.

4 7. Pardee has performed a reasonable inquiry in search of information as required  
5 by the Nevada Rules of Civil Procedure and has made every reasonable effort to locate the  
6 information described herein, which effort has been made in good faith. Pardee cannot affirm,  
7 however, that "all" such information has been supplied. Although Pardee believes that all such  
8 information has been produced that is within Pardee's possession and/or control, Pardee will  
9 supplement these responses in accordance with the applicable discovery rules in the event that  
10 Pardee discovers that it has inadvertently failed to provide information within its responses.

11 8. Pardee objects to each request that uses language such as "each and every" or  
12 similar broad language. Such requests are onerous, burdensome, harassing, prejudicial, and  
13 overly broad. Each request asking "any" and "all" or "each and every" is objectionable and such  
14 an inquiry, in essence, is a request for evidence and not discoverable information. See, e.g.,  
15 United States v. Renault, Inc., 27 F.R.D. 23, 26-27 (S.D.N.Y. 1960). Moreover, Pardee has no  
16 possible means of making the all-encompassing identifications that such a broadly-worded  
17 request requires.

18 9. Pardee objects to each request (and any portion thereof) to the extent that it seeks  
19 to impose a burden upon Pardee to search for information or documents in the possession,  
20 custody, or control of persons or entities other than Pardee for the reason that such a request is  
21 overly broad and beyond the scope of discovery allowed by the Nevada Rules of Civil  
22 Procedure. Pardee also objects to any request that seeks to require it to search for documents or  
23 information in the possession, custody, or control of unnamed persons or entities other than  
24 Pardee, including, but not limited to, information that is in the possession, custody, or control of  
25 public entities, for the reason that such a request is unduly burdensome, expensive, harassing,  
26 and beyond the obligations imposed upon Pardee by the Nevada Rules of Civil Procedure.

27 10. As stated above, Pardee objects to all requests to the extent that such requests call  
28 for the production of privileged and/or protected information. In the event that Pardee

1 unintentionally produces information that is privileged and/or protected, such production is  
2 inadvertent and made without the intent to waive Pardee's privileges and/or protections  
3 applicable thereto. In the event that privileged and/or protected information is unintentionally  
4 produced, Pardee requests that all such information (including copies of any documents) be  
5 promptly returned to Pardee or its attorneys of record, and Pardee expressly reserves all  
6 objections to any use of such information in this litigation.

7 11. The restatement of any specific objection in the context of these responses shall  
8 not be construed to imply waiver of any unstated objections addressed by these General  
9 Objections, or any other applicable privilege or exemption from discovery and the counterparts  
10 under the laws of any jurisdiction that may be applicable.

11 Subject to and without waiving the aforementioned general objections, Pardee responds  
12 as follows:

13 **DOCUMENT REQUESTS AND RESPONSES**

14 **REQUEST NO. 1:**

15 Please produce all legal descriptions and parcel numbers for all parcels sold, gifted,  
16 transferred, or assigned by Coyote Springs to Pardee Homes from the beginning of their  
17 purchases through the present date.

18 **RESPONSE TO REQUEST NO. 1:**

19 Without waiving the aforementioned objections, *see* Pardee's NRCP 16.1 disclosures:  
20 Bates Nos. PH 000001-000098; PH 000111-000116; PH 000124-000131; and PH 000141-  
21 000151; 000152-000232.

22 Discovery is ongoing and Pardee has not yet completed its investigation of all of the  
23 circumstances relating to this dispute. Therefore, Pardee reserves the right to supplement its  
24 response to this request.

25 **REQUEST NO. 2:**

26 Please produce copies of all parcel maps in the possession of Pardee Homes evidencing  
27 the real estate subject to the parties' written agreement, dated the 28th day of March, 2005,  
28 regardless of when said parcel maps were created.