

EXHIBIT C

Aaron Shipley

From: Pat Lundvall
Sent: Monday, August 05, 2013 12:29 PM
To: 'jmj@jimmersonhansen.com'; 'jjj@jimmersonhansen.com'
Cc: Aaron Shipley; Brian Grubb
Subject: RE: Request to withdraw various of Plaintiffs' MIL

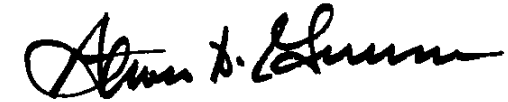
Pursuant to your request, this message is your "written" confirmation of my oral statements concerning our stipulations to plaintiffs' trial exhibits made during the EDCR 2.67 conference. See the attached Plaintiffs' Trial Exhibit List. You'll see in the "Offered" column, we have noted which exhibits we stipulate to admissibility. It is my intention to honor my statements concerning the admissibility of those proffered exhibits, and we again request that your office move to withdraw the following motions in limine:

1. MIL to Admit the September 1, 2004 Commission Letter Agreement (MIL #1);
2. MIL to Admit the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #2);
3. MIL to Admit Amendment to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #3);
4. MIL to Admit Amendment No. 2 to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #4);
5. MIL to Admit the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #5);
20. MIL to Admit the April 6, 2009 Letter from Jim Stringer Jr. to James Wolfram (MIL #20);
23. MIL to Admit the July 10, 2009 Letter from Charles Curtis to James J. Jimmerson, Esq. (MIL #23) ; and
24. MIL to Admit the March 14, 2008 Letter from Jon Lash to James Wolfram and Walt Wilkes (MIL #24).

Finally, we also request that you move to withdraw No. 25, MIL to Permit James J. Jimmerson, Esq. to Testify Concerning Plaintiffs' Attorney's Fees and Costs (MIL #25), based upon our conversation at the EDCR 2.67 meeting.

It is our understanding that your office will move to withdraw the above motions in limine and that our office will need to file any type of response to the same. If this is not your understanding please advise immediately, so we can respond appropriately.

<Plaintiff's Exhibit List - Recieved at 2.67 - stipulations noted.pdf>



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

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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 submit their Opposition to Defendant's Motion for Partial Summary Judgment. This Opposition is based on the pleadings and papers on file, the attached affidavit and exhibits, the Memorandum

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

3 DATED this 6th day of August, 2013.

5 JIMMERSON HANSEN, P.C.

6
7 /s/ James J. Jimmerson, Esq.
8 JAMES J. JIMMERSON, ESQ.
9 Nevada State Bar No. 000264
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
2 **DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

3 **I. INTRODUCTION AND BRIEF STATEMENT OF FACTS**

4 Plaintiffs' first and principal cause of action against Defendant Pardee Homes of
5 Nevada ("Pardee") is one for an accounting. Pardee, by virtue of contracting with Plaintiffs'
6 predecessors in interest, owe Plaintiffs a duty to properly account for the land transactions
7 at Coyote Springs affecting Plaintiffs' commission payments. As the Court is now well
8 aware, Pardee deliberately chose not to inform Mr. Wolfram and Mr. Wilkes about the eight
9 amendments to the Amended and Restated Option Agreement, despite numerous
10 requests for that information. As a result of Pardee's wrongful behavior, Plaintiffs have
11 been left no other choice than to file suit and state their claim for accounting.

12 Defendant, desperate for any possible result which would not require it to perform
13 its duty to account, now, for the first time in this action, claims that no cause of action for
14 accounting exists. Defendant goes so far as to appeal to the Court's decision in another
15 case, *Isam Abunadi v. Isaac Farah et al.*, Case No. A668168, for support for its meritless
16 position. However, as the Court will surely recall, in *Abunadi*, it did not dismiss a claim for
17 accounting alone. No, it dismissed the cause of action entitled "Accounting and
18 Constructive Trust." See Exhibit 1, a true and correct copy of the Verified Complaint in
19 *Abunadi*, attached hereto. And the Court made the right decision because there is no
20 claim for "accounting and constructive trust."

21 However, there is an independent claim for accounting. Aside from the myriad of
22 authorities supporting Plaintiffs' position, as will be seen below, Defendant's own words
23 and actions in this case betray its new argument. The Court will remember Defendant's
24 Motion for Summary Judgment where Defendant stated the elements for a claim for
25 accounting. Now Defendant is asking the Court to ignore its own representations to the
26 Court in favor of its current arguments. The Court will also remember the numerous
27 occasions where Defendant drew the Court's attention to the scheduling order in this action
28 and made arguments as to the timeliness of certain matters. It surely cannot be lost on the

1 Court that that same Defendant is now failing to consider the scheduling order in filing its
2 Motion for Partial Summary Judgment. These radical changes in position are further proof
3 that Plaintiffs' claims are meritorious.

4 II. LEGAL ARGUMENT

5 A. Legal Standard

6 Under Nevada Rule of Civil Procedure 56, for Defendant to succeed on its Motion
7 for Summary Judgment, Pardee must demonstrate and the Court must find that "there is
8 no genuine issue as to any material fact..." and that Defendant is entitled to judgment as a
9 matter of law. *Fire Ins. Exch. v. Cornell*, 120 Nev. 303, 305, 90 P.3d 978, 979 (2004). In
10 deciding a motion for summary judgment, the evidence and all reasonable inferences
11 drawn from the evidence, must be viewed in a light most favorable to the non-moving
12 party. See *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 137, 206 P.3d 572, 575 (2009). In
13 other words, summary judgment is only "appropriate where there is no legally sufficient
14 evidentiary basis for a reasonable jury to find for the non-moving party." *Delgado v.*
15 *American Family Ins. Group*, 125 Nev. 564, 571, 217 P.3d 563, 568 (2009). Ultimately, if
16 the party opposing summary judgment would be entitled to prevail "under any reasonable
17 construction of the evidence, and any acceptable theory of law," summary judgment
18 against that non-moving party cannot be sustained. *Harris v. Itzhaki*, 183 F.3d 1043, 1050
19 (9th Cir. 1999).

20 B. Plaintiffs' Claim for an Accounting is a Valid Cause of Action Under 21 Nevada Law

22 The Nevada Supreme Court holds that an equitable claim for an accounting is an
23 independent cause of action. In *Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705, 712
24 (1910), the court confirmed the validity of a claim for accounting stating, "It is also well
25 settled in law that one party to a joint adventure may sue the other at law for the breach of
26 contract, or share of the profits or losses, or a contribution for advances made in excess of
27 his share, but the remedy at law does not preclude a suit in equity for an accounting."
28 *Id.* (emphasis supplied). Further confirming the availability of this cause of action, the

1 Nevada Supreme Court, 50 years later, described the broad discretion the Court has in
2 providing for an accounting, holding:

3 We have no statutory provision as to the method of procedure
4 when it has been made to appear that an accounting should be
5 ordered, but it seems that a court of equity has wide discretion
6 in this matter—it may refer a case to a referee in the first
7 instance, or it may take the account itself, or it may, before
8 making an order of reference or before taking the account itself,
order that an account be rendered, duly verified. To like effect
are *Ideal Packing Co. v. Brice*, 132 Cal. App. 2d 582, 282 P.2d
957; *Schefski v. Anker*, 216 Cal. 624, 15 P.2d 744; *Puim v.*
Callahan, 135 Cal. App. 2d 70, 286 P.2d 526; *Gibbs v. District*
Court, 86 Utah 314, 44 P.2d 504.

9 *Foster v. Bank of America Nat. Trust and Sav. Ass'n.*, 77 Nev. 365, 369, 365 P.2d 313, 316
10 (1961). The Nevada Supreme Court's extensive reliance on California law in this area is
11 notable because California, with its larger body of caselaw, explicitly provides that
12 accounting is an independent cause of action.¹

13 California courts have repeatedly held that there is a valid cause of action for an
14 accounting. The California Supreme Court in 1993, affirmed the trial court's judgment on
15 an accounting cause of action. See *Howard v. Babcock*, 6 Cal. 4th 409, 426, 863 P.2d
16 150, 161 (Cal. 1993) ("We direct that the Court of Appeal remand the matter to the trial
17 court for a determination, consistent with our opinion, whether the terms of article X are
18 reasonable, and for any further award on the accounting causes of action made necessary
19 by that determination."). In *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179, 92 Cal.
20 Rptr. 3d 696, 715 (Cal. App. 2009), the court stated the elements for a claim for an
21 accounting. And in *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, n.3, 98
22 Cal. Rptr. 2d 661, (Cal. App. 2000), the court distinguished between the remedy for a
23 constructive trust and the cause of action for accounting, stating:

24 Glue-Fold's complaint had a fourth cause of action seeking
25 imposition of a constructive trust and an accounting. The
26 former is not an independent cause of action but merely a type
of remedy for some categories of underlying wrong. (See 5
Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 796, p. 252.)

27 ¹ In *Foster*, the Nevada Supreme Court also relied on Utah precedent for support. Like
28 California, Utah also recognizes a cause of action for accounting. See *Stewart v. K&S Co.,*
Inc., 591 P.2d 433 (Utah 1979).

1 The latter is treated as a cause of action available to a
2 wronged fiduciary (*id.* at §§ 775–777, pp. 233–235), which is
3 subject to the statute of limitations governing the nature of the
4 underlying wrong.

5 *Id.* (emphasis supplied).

6 Just like Nevada courts look to California decisions for guidance, Defendant also
7 relied upon California caselaw when explaining how a party would establish a cause of
8 action for accounting in its Motion for Summary Judgment. Defendant stated:

9 **Plaintiffs' Claim for an Accounting Fails Under Nevada**
10 **Law.**

11 This cause of action requires a showing that a relationship
12 exists between a plaintiff and defendant that requires an
13 accounting, and that some balance is due the plaintiff that can
14 only be ascertained by an accounting. See Teselle v.
15 McCloughlin, 173 Cal. App. 4th 156, 179 (2009). The right to an
16 accounting can arise from defendant's possession of money or
17 property which, because of the defendant's relationship with the
18 plaintiff, the defendant is obliged to surrender. *Id.*

19 See Exhibit 2, a true and correct copy of page 14 from Defendant's Motion for Summary
20 Judgment, attached hereto. As the Court can readily surmise, Defendant is now
21 completely reversing field and implicitly arguing that it was mistaken in making these
22 statements in the Motion for Summary Judgment. Such a 180 degree change in position
23 evidences the weakness in Defendant's arguments.

24 Defendant relies on two federal court decisions to support its argument, *Dairy*
25 *Queen, Inc. v. Wood*, 396 U.S. 469 (1962), and *Hackett v. Feeney*, Case No. 2:09-CV-
26 2075-RLH-LRL, 2010 WL 1416870, at *3 (D. Nev. April 1, 2010). However, the Motion is
27 devoid of analysis explaining these courts' reasoning in holding that an accounting is only a
28 remedy and not an independent cause of action. Without more, the Court is not able to
grant Defendant's Motion.

Moreover, federal caselaw from Nevada and California confirms the validity of
Plaintiffs' claim for accounting. For example, in *Oracle USA, Inc. v. Rimini Street, Inc.*, No.
2:10-CV-00106-LRH-PAL, 2010 WL 3257933, at *6 (D. Nev. Aug. 13, 2010), the court
held, "An action for an accounting is a proceeding in equity for the purpose of obtaining a

1 judicial settlement of the accounts of the parties in which proceedings the court will
2 adjudicate the amount due, administer full relief, and render complete justice." *Id.*
3 Likewise, in *Mobius Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-
4 RJJ, 2012 WL 194434, at *8 (D. Nev. Jan. 23, 2012), the court stated, "Under Nevada law,
5 in order to prevail on a claim for inspection and accounting, a plaintiff must establish the
6 existence of a relationship of special trust between plaintiff and defendant." *Id.*

7 In California, the federal courts have gone one step further and explained that an
8 accounting is a claim for relief and is distinct from equitable remedies. From *Dahon North*
9 *America, Inc. v. Hon*, Case No. 2:11-CV-05835-ODW (JCGx), 2012 WL 1413681, at *12
10 (C.D. Cal. April 24, 2012):

11 Constructive trust and equitable lien are equitable remedies.
12 *United States v. Pegg*, 782 F.2d 1498, 1499 (9th Cir. 1986);
13 *Kenneally v. Bank of N.S.*, 711 F.Supp.2d 1174, 1190 (S.D.
14 Cal. 2010). Neither constructive trust nor equitable lien is an
15 independent cause of action and must be dismissed. On the
16 other hand, accounting is an independent cause of action.
17 *Berster Techs., LLC v. Christmas*, No. S-11-1541 KJM JFM,
18 2011 U.S. Dist. LEXIS 127402, at *30 (E.D. Cal. Oct. 3, 2011)
19 (citing *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179, 92
20 Cal. Rptr. 3d 696 (2009)). This cause of action requires (1) a
21 showing that a relationship exists between the plaintiff and
22 defendant that requires an accounting; and (2) that some
23 balance is due to the plaintiff that can only be ascertained by
24 an accounting. *Id.* An accounting requires a relationship, but
25 not necessarily a fiduciary relationship. See *id.*

26 *Id.* Likewise, in *Harvey G. Ottovich Revocable Living Trust Dated May 12, 2006 v.*
27 *Washington Mutual, Inc.*, Case No. C 10-02842 WHA, 2010 WL 3769459, at *4 (N.D. Cal.
28 Sept. 22, 2010), the court held:

29 Plaintiffs' fifth claim was a demand for accounting. An
30 accounting may take the form of a legal remedy or an equitable
31 claim. A request for a legal accounting must be tethered to
32 relevant actionable claims. To state a claim for accounting the
33 complaint must allege: (1) a relationship or other circumstances
34 appropriate to the remedy; and, (2) a balance due from the
35 defendant to the plaintiff that can only be ascertained by an
36 accounting. *Brea v. McGlashan*, 3 Cal. App. 2d 454, 460, 39
37 P.2d 877 (1934).

1 *Id.* Considering all of the caselaw in support of Plaintiff's claim, the Court should find that a
2 cause of action for accounting does exist and deny the motion.

3 Finally, the timing of Defendant's Motion bears examination. As the Court is surely
4 aware, the Scheduling Order of November 8, 2011, set the deadline for filing dispositive
5 motions for September 28, 2012 and the Second Amended Order Setting Civil Non-Jury
6 Trial set the deadline for filing pre-trial motions for July 18, 2013. Defendant filed its Motion
7 for Partial Summary Judgment on July 22, 2013, after both of these deadlines had passed.
8 While Plaintiffs are not requesting that the Court deny the Motion simply on timeliness
9 grounds, Plaintiffs would like the Court to notice that Defendant failed to timely file its
10 Motion despite so boldly reminding the Court about the terms of the Scheduling Order in
11 the past. Defendant's change in conduct is further evidence that it knows that Plaintiffs'
12 claims are well-founded and meritorious. Why else would Defendant so radically change
13 its position to the Court?

14 **III. CONCLUSION**

15 For the reasons set forth above, Plaintiffs respectfully request that the Court deny
16 Defendant's Motion for Partial Summary Judgment.

17 DATED this 1st day of August, 2013.

18 JIMMERSON HANSEN, P.C.

19
20 /s/ James J. Jimmerson, Esq.
JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
21 LYNN M. HANSEN, ESQ.
Nevada State Bar No. 000244
22 JAMES M. JIMMERSON, ESQ.
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23 415 So. Sixth St., Ste. 100
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Attorneys for Plaintiffs
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT was made on the 6th
day of August, 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
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Las Vegas, NV 89102
Attorneys for Defendant


An employee of JIMMERSON HANSEN, P.C.

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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.)	

DECLARATION OF CARRIE J. PRIMAS, ESQ. IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

I, CARRIE J. PRIMAS, 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. I am an attorney at law, duly licensed to practice before all of the Courts in the State of Nevada.

2. I am 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) 388-7471 - Facsimile (702) 387-1167

3. Upon information and belief, I believe the facts and circumstances surrounding the issues discussed in the instant Motion and make this Declaration based upon said information and belief.

4. This Declaration is made in support of Plaintiffs' Opposition to Defendant's Motion for Partial Summary Judgment and is made in good faith.

5. Exhibit 1, the attached copy of the Verified Complaint in *Isam Abunadi v. Isaac Farah et al.*, Case No. A668168, is true and accurate.

6. Exhibit 2, the attached copy of page 14 from Defendant's Motion for Summary Judgment, is true and accurate.

DATED this 6^h day of August, 2013.

Carrie Primas
CARRIE J. PRIMAS, ESQ.

EXHIBIT "1"

EXHIBIT "1"



CLERK OF THE COURT

COMJD

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ISAM ABUNADI,

Plaintiff,

vs.

ISSAC FARAH; an individual; ASMAA
GHANIM; an individual, and DOES 1-10
and ROES 11-20, inclusive;

Defendants.

Case No.:

A- 12 - 668168 - C

Dept.:

I V

VERIFIED COMPLAINT FOR
COMPENSATORY AND PUNITIVE
DAMAGES

&

DEMAND FOR JURY TRIAL

Exempt from Arbitration
Equitable Relief Requested-NAR 3(A))

COMES NOW Plaintiff Isam Abunadi ("Mr. Abunadi" or "Plaintiff"), by and through his
attorneys of record, Jesse Sbaih & Associates, Ltd., and hereby complains, avers and alleges as follows:

I.

PARTIES

1. At all times relevant herein, Mr. Abunadi was a resident of the State of California.

2. Plaintiff is informed and believes and thereon alleges that, at all times relevant herein, Defendant Issac Farah ("Mr. Farah") was a resident of the County of Clark, State of Nevada.

3. Plaintiff is informed and believes and thereon alleges that, at all times relevant herein, Defendant Asmaa Ghanim ("Ms. Ghanim") was Mr. Farah's wife and a resident of the County of Clark, State of Nevada.

4. Based on information and belief, at all relevant times, Mr. Farah and Ms. Ghanim (collectively "Defendants") were the partners, joint ventures, agents, co-conspirators, servants, and/or employees of each of the other Defendant herein, and were acting at all relevant times within the scope, purpose and authority of said partnership, joint venture, agency, service, employment, and conspiracy, and with the knowledge, consent, permission, acquiescence, and ratification of their co-defendants.

5. Plaintiff is informed and believes and thereon alleges that all Defendants are the alter egos of one another, despite their respective registration with the secretaries of state in which the Defendants are incorporated or registered in that, inter alia, all the Defendants have common officers, members, directors, and owners. Adherence to the separate existence of these Defendants as an entity distinct from one another would permit an abuse of corporate privilege and would sanction a fraud in common.

6. The true names and capacities, whether individual, corporate, associate or otherwise of other Defendants hereinafter designated as Does 1-10 and Roe Corporations 11-20, inclusive, who are in some manner responsible for the injuries described herein, are unknown to Plaintiff at this time who therefore sue said Defendants by such fictitious names and will seek leave of the Court to amend this Complaint to show their true names and capacities when ascertained.

II.

GENERAL FACTUAL ALLEGATIONS

7. In or about 2006, Mr. Abunadi met Mr. Farah and Ms. Ghanim, Mr. Farah's wife. They soon all became close and trusted friends.

1 8. In or about early January 2011, Mr. Farah called Mr. Abunadi, who lived in San Diego at
2 the time, on the telephone and represented to Mr. Abunadi that he owned a car lot in Las Vegas,
3 Nevada.

4 9. During the telephone call, Mr. Farah inquired about whether Mr. Abunadi would be
5 interested in purchasing some vehicles at the car auction in Las Vegas, having Mr. Farah sell them at his
6 car lot for a profit, and equally splitting said profits. Mr. Abunadi liked the idea presented by Mr.
7 Farah, his trusted friend.

8 10. On or about January 14, 2011, Mr. Abunadi travelled to Las Vegas, Nevada to meet with
9 Mr. Farah and to attend the car auction. While at the auction, Mr. Farah, once again, told Mr. Abunadi
10 that, if Mr. Abunadi bought some vehicles, he would try to sell the vehicles on his car lot for a profit
11 and would return the purchase price plus 50% of the profits to Mr. Abunadi once each car is sold.

12 11. On that date, January 14, 2011, in reliance on Mr. Farah's statements, Mr. Abunadi
13 purchased six (6) vehicles for the total sum of \$40,490.00 from the car auction, which Mr. Abunadi
14 turned over to Mr. Farah to sell and split the profits.

15 12. In or about February 2011, Mr. Farah called Mr. Abunadi on the telephone and
16 represented to Mr. Abunadi that he had acquired an RV (residential vehicle) lot and a residential lot in
17 Pahrump, Nevada, which generates monthly income.

18 13. During that telephone call, Mr. Farah advised Mr. Abunadi that he would love for Mr.
19 Abunadi to become a partner with him and inquired about whether Mr. Abunadi would be interested in
20 becoming an equal partner in the two (2) lots.

21 14. Based on Mr. Farah's representations that he owned the two (2) lots in Pahrump, Nevada
22 and that monthly income could be derived from becoming an equal partner, Mr. Abunadi liked the idea
23 and wanted to explore it further.

24 15. As a result, on or about February 25, 2011, Mr. Abunadi travelled from San Diego to Las
25 Vegas to meet with Mr. Farah regarding the two (2) lots in Pahrump, Nevada.

26 16. Upon arriving in Las Vegas, Mr. Farah and Mr. Abunadi drove to Pahrump, Nevada for
27 Mr. Abunadi to see the two (2) lots, which were adjacent to one another.
28

1 17. Upon arriving at the two (2) lots, Mr. Farah, once again, represented to Mr. Abunadi that
2 he owned each of the two (2) lots located at 2740 W. Ambler Way, a motor home park (the "RV Lot")
3 and 2770 W. Ambler Way, a lot with a home built on it (the "Residential Lot") (collectively the
4 "Pahrump Properties").

5 18. Mr. Farah also represented to Mr. Abunadi that the RV Lot earned a net monthly rental
6 income of approximately \$1,000.00 and the Residential Lot earned a net monthly rental income of
7 approximately \$750.00.

8 19. At that time, on February 25, 2012 at the Pahrump Properties, Mr. Farah further
9 represented to Mr. Abunadi that he had paid the total sum of about \$200,000.00 for the two (2) lots and
10 that he would make Mr. Abunadi an equal partner and share with Mr. Abunadi the income from the
11 Pahrump Properties if Mr. Abunadi paid him the sum of \$135,000.00.

12 20. On or about February 25, 2011, while at the Pahrump Properties, Mr. Abunadi asked Mr.
13 Farah when the 50% interest in the Pahrump Properties would be transferred to him.

14 21. In response, on or about February 25, 2011 while at the Pahrump Properties, Mr. Farah
15 represented to Mr. Abunadi that he would record two (2) quitclaim deeds giving Mr. Abunadi 50%
16 interest in each of the Pahrump Properties once Mr. Abunadi wires \$135,000.00 to Mr. Farah's bank
17 account.

18 22. Later that day, on February 25, 2011, Mr. Abunadi, a person who profoundly trusted Mr.
19 Farah and in good faith reliance on Mr. Farah's promise and agreement that 50% ownership interest in
20 the Pahrump Properties would be transferred to Mr. Abunadi immediately after the wire transfer
21 transaction takes place, Mr. Abunadi wired the sum of \$135,300.00 directly to Mr. Farah's bank
22 account.

23 23. After the wire transfer transaction was completed on or about February 25, 2011, Mr.
24 Farah did not transfer 50% interest in the Pahrump Properties to Mr. Abunadi.

25 24. Since the end of February 2011, Mr. Abunadi has repeatedly asked Mr. Farah about the
26 status of recording the quitclaim deeds giving Mr. Abunadi 50% interest in each of the Pahrump
27 Properties, the status of payment of the income generated by the Pahrump Properties, and the status of
28 the vehicles that Mr. Farah promised to sell and share in the profits with Mr. Abunadi.

1 25. Invariably, Mr. Farah and Ms. Ghanim, Mr. Farah's wife, would give Mr. Abunadi the
2 runaround and find excuses for delay.

3 26. On September 5, 2012, Mr. Abunadi, while in Las Vegas, confronted Mr. Farah and Ms.
4 Ghanim about their refusal to transfer the 50% ownership interest in the Pahrump Properties, failure to
5 pay 50% of the rental income generated from the Pahrump Properties since February 25, 2011, and the
6 refusal to pay Mr. Abunadi the \$40,490.00 Mr. Abunadi paid for the vehicles at the auction and 50% of
7 the profits from the sale of said vehicles.

8 27. In response, Mr. Farah and Ms. Ghanim, in the presence of Mr. Abunadi and a notary at
9 a UPS store (located Silverado Ranch and Las Vegas Blvd.), executed two (2) quitclaim deeds
10 transferring interest of the Pahrump Properties to Mr. Abunadi.

11 28. As Mr. Abunadi became relieved that Mr. Farah had honored his promise to convey 50%
12 interest in the Pahrump Properties to Mr. Abunadi, Mr. Farah and Ms. Ghanim immediately demanded
13 another \$90,000.00 from Mr. Abunadi in exchange for the executed quitclaim deeds.

14 29. At that point, Mr. Abunadi advised Mr. Farah and Ms. Ghanim that he and Mr. Farah
15 had agreed that Mr. Abunadi would only pay the sum of \$135,300.00, which was wired to Mr. Farah on
16 or about February 25, 2011 and that there is no reason for him to pay another \$90,000.00 to obtain his
17 50% interest in the Pahrump Properties.

18 30. In response, Mr. Farah and Ms. Ghanim advised Mr. Abunadi that, unless Mr. Abunadi
19 paid the additional \$90,000.00 demanded, they would not transfer any interest to the Pahrump
20 Properties to Mr. Abunadi, would keep the \$135,300.00 Mr. Abunadi wired to Mr. Farah's bank
21 account on or about February 25, 2011, and would not return the \$40,490.00 Mr. Abunadi invested in
22 vehicles on January 14, 2011 and/or the profits derived from the sale of said vehicles.

23 31. On or about September 6, 2012, Mr. Abunadi, for the first time, learned that Mr. Farah
24 did not own the Pahrump Properties on February 25, 2011.

25 31. According to the Nye County assessor records, Mr. Farah and Ms. Ghanim purchased the
26 RV Lot for \$141,000.00 on March 22, 2011, less than a month after Mr. Abunadi wired Mr. Farah the
27 sum \$135,300.00.

1 32. Mr. Abunadi believes that Mr. Farah and Ms. Ghanim, in conspiracy with one another to
2 defraud Mr. Abunadi, used Mr. Abunadi's \$135,300.00 wire and proceeds from the sale of the six (6)
3 vehicles Mr. Abunadi purchased at the auction towards the purchase of the RV Lot.

4 33. According to the Nye County assessor records, Mr. Farah and Ms. Ghanim purchased the
5 Residential Lot on October 27, 2011.

6 34. Mr. Abunadi believes that Mr. Farah and Ms. Ghanim, in conspiracy to defraud Mr.
7 Abunadi, used Mr. Abunadi's \$135,300.00 wire and proceeds from the sale of the vehicles Mr. Abunadi
8 purchased at the auction towards the purchase of the Residential Lot.

9 35. To date, Mr. Farah and Ms. Ghanim (record owners of the Pahrump Properties) have
10 refused and continue to refuse to transfer 50% ownership interest in the Pahrump Properties to Mr.
11 Abunadi, have refused to pay 50% of the rental income derived from the Pahrump Properties to Mr.
12 Abunadi, and have refused to pay Mr. Abunadi the \$40,490.00 he paid for the vehicles at the auction on
13 or about January 14, 2011 and/or 50% of the profits from the sale of said vehicles.

14 **FIRST CLAIM FOR RELIEF**

15 **(Breach of Contract v. Mr. Farah)**

16 36. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 35 above
17 as if fully incorporated herein.

18 37. The January 14, 2011 agreement between Mr. Abunadi and Mr. Farah for Mr. Abunadi to
19 purchase \$40,490.00 worth of vehicles from the auction and for Mr. Farah to sell said vehicles and
20 return the purchase price and 50% of the profits to Mr. Abunadi formed a legal and binding contract (the
21 "Vehicle Contract").

22 38. The February 25, 2011 agreement between Mr. Abunadi and Mr. Farah for Mr. Abunadi
23 to pay the sum of \$135,000.00 in exchange for 50% interest in the Pahrump Properties and 50% of the
24 rental income formed a legal and binding contract (the "Pahrump Properties Contract").

25 39. Plaintiff performed or was excused from performing all other obligations under the
26 Vehicle Contract and the Pahrump Properties Contract.

27 40. Mr. Farah materially breached the Vehicle Contract when he refused to pay Mr. Abunadi
28 the \$40,490.00 Mr. Abunadi invested to purchase the vehicles from the car auction on January 14, 2011
and 50% of the profits Mr. Farah derived from the sale of said vehicles.

41. Mr. Farah materially breached the Pahrump Properties Contract because he refused to convey to Mr. Abunadi 50% interest in the Pahrump Properties and has renounced Mr. Abunadi's 50% interest in the Pahrump Properties.

42. As a direct and proximate result of Mr. Farah's breach of the Vehicle Contract and Pahrump Properties Contract (collectively the "Agreements"), Plaintiff sustained actual, consequential, and special damages in excess of \$10,000.00.

43. As a direct and proximate result of Mr. Farah's illegal and wrongful conduct, Plaintiff had to retain the services of an attorney to file this action. Therefore, Plaintiff is entitled to an award of reasonable attorney's fees and costs of suit.

SECOND CLAIM FOR RELIEF

(Tortious Breach of Contract v. Mr. Farah)

44. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 43 above as if fully incorporated herein.

45. The Agreements between Mr. Abunadi and Mr. Farah are valid and enforceable.

46. All of the obligations of Mr. Abunadi under the Agreements were performed or excused.

47. As fully described herein, Mr. Farah breached the Agreements by repudiating them and usurping their benefits for his own personal benefit.

48. Mr. Farah's material breach of the Agreements was unreasonable and was calculated to cause harm to Mr. Abunadi and to deprive Mr. Abunadi of the benefits created in the subject matter of the Agreements.

49. As the direct and proximate result of Mr. Farah's tortious breach of the Agreements, Mr. Abunadi has suffered and will continue to suffer actual, special and consequential damages in an amount far in excess of Ten Thousand Dollars (\$10,000.00).

50. Ordinary contract damages will not adequately compensate Mr. Abunadi for the injuries sustained as a result of Mr. Farah's conduct. Therefore, Mr. Abunadi is entitled to recover damages in tort.

51. Ordinary contract damages will not hold Mr. Farah fully accountable for his misconduct towards Mr. Abunadi.

52. The misconduct by Mr. Farah, as fully described herein, was fraudulent, malicious, and oppressive under NRS 42.005. Therefore, Mr. Abunadi is entitled to an award of punitive damages.

53. Mr. Abunadi has been compelled to engage the services of attorneys to prosecute this action and is entitled to an award of attorney's fees and costs incurred herein.

THIRD CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing v. Mr. Farah)

54. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 53 above as if fully incorporated herein.

55. There exists in law and all contracts a covenant of good faith and fair dealing.

56. Mr. Farah breached the covenant of good faith and fair dealing as relating to the Agreements by engaging in conduct described in this Complaint.

57. As a direct and proximate result of Mr. Farah's misconduct, Plaintiff has suffered actual, special, and consequential damages in excess of \$10,000.00.

58. As a further, direct, and proximate result of Mr. Farah's breach of the Agreements, Plaintiff has been compelled to retain attorneys to prosecute this action. Therefore, Plaintiff is entitled to an award of attorney fees.

FOURTH CLAIM FOR RELIEF

(Rescission-Fraud in the Inducement v. Mr. Farah)

59. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 58 above as if fully incorporated herein.

60. At the time the Agreements were entered into, Mr. Farah made false representations to Mr. Abunadi as set forth above and regarding his intent to abide by and perform the obligations set forth in the Agreements.

61. At the time the Agreements were entered into, Mr. Farah knew that his representations, which are set forth above, and regarding his ability to comply with the Agreements were false.

62. By making the false representations to Mr. Abunadi, Mr. Farah intended to cause/induce Mr. Abunadi to agree to, among other things, the formation of the Agreements and transfer nearly \$178,000.00 in vehicles and cash to Mr. Farah.

63. Mr. Abunadi justifiably relied on Mr. Farah's misrepresentations and entered into the Agreements in good faith.

64. As a direct and proximate result of the misrepresentations of Mr. Farah and Mr. Abunadi's justifiable reliance thereon, Mr. Abunadi has suffered actual, special, and consequential damages in excess of \$10,000.00.

65. The conduct by Mr. Farah, as described herein, constitutes fraud in the inducement entitling Mr. Abunadi to the equitable remedy of rescission of the Agreements, which would place Mr. Abunadi in the position he occupied prior to the formation of the Agreements.

66. Upon rescission of the Agreements, Mr. Abunadi would be entitled to re-possession of his \$40,490.00 used to purchase the vehicles from the car auction on January 14, 2011 and the \$135,300.00 Mr. Abunadi wired to Mr. Farah for 50% interest in the Pahrump Properties.

67. As a further, direct, and proximate result of Mr. Farah's fraudulent conduct, Mr. Abunadi has been compelled to retain attorneys to prosecute this action. Therefore, Mr. Abunadi is entitled to an award of attorneys' fees.

FIFTH CLAIM FOR RELIEF

(Intentional Misrepresentation v. Mr. Farah)

68. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 67 above as if fully incorporated herein.

69. Mr. Farah made unequivocal promises on January 14, 2011 and February 25, 2011 to Mr. Abunadi that he would perform certain obligations in exchange for Mr. Abunadi paying Mr. Farah approximately \$175,000.00 in personal property and cash.

70. Mr. Farah's false and misleading statements to Mr. Abunadi were intended to cause/induce Mr. Abunadi to give up his interest and possession of approximately \$175,000.00 in personal property and cash.

71. Mr. Abunadi justifiably relied on the representations of Mr. Farah by agreeing to the terms of the Agreements in exchange for payment of approximately \$175,000.00 in personal property and cash to Mr. Farah.

1 72. Mr. Farah failed to perform, among other things, his obligations under the Agreements
2 as described in this Complaint.

3 73. Mr. Abunadi's demands to Mr. Farah to comply with the terms and spirit of the
4 Agreements have proved futile.

5 74. At the time the parties entered into the Agreements, Mr. Farah had no intention of
6 complying with and/or performing his obligations in the Agreements.

7 75. As a direct and proximate result of the misrepresentations of Mr. Farah and Mr.
8 Abunadi's justifiable reliance thereon, Mr. Abunadi has suffered actual, special, and consequential
9 damages in excess of \$10,000.00.

10 76. The conduct by Mr. Farah, as described herein, was fraudulent, malicious, and
11 oppressive under NRS 42.005, entitling Mr. Abunadi to an award of punitive damages.

12 77. As a further, direct, and proximate result of Mr. Farah's fraudulent conduct, Mr.
13 Abunadi has been compelled to retain attorneys to prosecute this action. Therefore, Mr. Abunadi is
14 entitled to an award of attorneys' fees.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Civil Conspiracy v. Mr. Farah and Ms. Ghanim)**

17 78. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 77 above
18 as if fully incorporated herein.

19 79. Mr. Farah and his wife, Ms. Ghanim, for their own financial gain, by acting in concert,
20 intended to accomplish an unlawful objective for the purposes of harming Mr. Abunadi.

21 80. As a direct and proximate result of the misconduct by Mr. Farah and Ms. Ghanim and
22 each of them, Mr. Abunadi has suffered actual, special, and consequential damages in excess of
23 \$10,000.00.

24 81. The conduct by Mr. Farah and Ms. Ghanim and each of them, as described herein, was
25 fraudulent, malicious, and oppressive under NRS 42.005, entitling Mr. Abunadi to an award of punitive
26 damages.

27 82. As a further, direct, and proximate result of the misconduct by Mr. Farah and Ms.
28 Ghanim and each of them, Mr. Abunadi has been compelled to retain attorneys to prosecute this action.
Therefore, Mr. Abunadi is entitled to an award of attorneys' fees.

102. Defendants have engaged in conduct specifically designed to deprive Mr. Abunadi of his fifty percent (50%) interest in the Pahrump Properties and in the \$40,490.00 plus 50% of all profits Defendants earned from the sale of the vehicles Mr. Abunadi transferred to Mr. Farah on January 14, 2011.

103. Defendants are presently continuing in the acts complained of herein, all to Plaintiff's irreparable harm.

104. Plaintiff has no adequate remedy at law in that:

a. Defendants should not be allowed to assert unfettered ownership over the Pahump Properties or take any action based thereupon until the rights of Plaintiff can be determined by this Court;

b. It is extremely difficult to ascertain the amount of damages that will afford Plaintiff adequate relief for the acts complained of herein;

c. Plaintiff will be compelled to prosecute a multiplicity of actions, one each time Defendants attempt to enter into an agreement to sell/lease the RV Lot and/or the Residential Lot;

d. Unless the wrongful conduct of Defendants is restrained and enjoined, Plaintiff's interest in the RV Lot and the Residential Lot will be irreparably injured through the loss of large sums of money Plaintiff is legally and equitably entitled to.

105. As a direct and proximate result of the continued wrongful conduct by Defendants, there is and will continue to be an actual irreparable harm suffered by Plaintiff.

106. Plaintiff has no adequate remedy at law and will continue to suffer irreparable injury and loss resulting from Defendants' actions unless this Court enters an Order enjoining Defendants and any person or entity in act of concert or participation with them from committing any of the acts herein complained of, including:

a. Any attempt to sell, transfer, and/or convey the RV Lot and the Residential Lot;

and

b. Any attempt to lease and/or encumber the RV Lot and the Residential Lot.

THIRTEENTH CLAIM FOR RELIEF

(Attorneys' Fees/Special Damages v. Mr. Farah and Ms. Ghanim)

1 107. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 106
2 above as if fully incorporated herein.

3 108. As a result of the conduct of Defendants, and each of them, Mr. Abunadi sustained
4 damages including, but not limited to, attorneys' fees and costs for the prosecution, legal advice, and
5 representation herein.

6 109. Mr. Abunadi was forced to retain the services of attorneys to prosecute this matter.

7 110. Mr. Abunadi seeks recovery of attorneys' fees, costs, and expenses.

8 **WHEREFORE**, Mr. Abunadi prays for judgment against Mr. Farah and Ms. Ghanim, jointly
9 and/or severally, where applicable as follows:

10 a. For compensatory damages in a sum according to proof at trial;

11 b. For special damages in a sum according to proof at trial;

12 c. For punitive damages in a sum according to proof at trial;

13 d. For interest and pre-judgment interest at the statutory rate until the amount of
14 judgment is paid in full;

15 e. For a declaration that (1) Mr. Farah failed to honor his obligations under the Vehicle
16 Contract and the Pahrump Properties Contract; (2) Mr. Abunadi is entitled to recover \$40,490.00 plus
17 50% of all profits earned from the sale of the vehicles Mr. Abunadi transferred to Mr. Farah on January
18 14, 2011; (3) Mr. Abunadi is entitled to a 50% ownership interest in the Pahrump Properties; and (4)
19 Mr. Abunadi is entitled to 50% of all net income Defendants derived from the Pahrump Properties since
20 February 25, 2011.

21 f. For injunctive relief enjoining Mr. Farah, Ms. Ghanim, and any person or entity in act
22 of concert or participation with them from committing any of the acts herein complained of, including,
23 but not limited to, any attempt to lease, encumber, transfer, assign, sublease, dispose, hypothecate,
24 pledge, refinance, and/or sell the subject RV Lot and Residential Lot;

25 ///

26 ///

27 ///

28 ///

1 g. For attorney's fees and costs of suit incurred; and

2 h. For such other and further relief as the Court may deem appropriate.

3 DATED this 11th day of September, 2012.

4 JESSE SBAIH & ASSOCIATES, LTD.

5
6 By /s/ Jesse M. Sbaih
7 Jesse M. Sbaih (#7898)
8 Ines Olevic-Saleh (#11431)
9 170 South Green Valley Parkway, Suite 280
 Henderson, Nevada 89012
 Attorneys for Plaintiff

10
11 DEMAND FOR JURY TRIAL

12 ISAM ABUNADI, by and through the law firm of Jesse Sbaih & Associates, Ltd., hereby
13 demands a jury trial of all issues in the above-captioned matter.

14 DATED this 11th day of September, 2012.

15 JESSE SBAIH & ASSOCIATES, LTD.

16
17 By /s/ Jesse M. Sbaih
18 Jesse M. Sbaih (#7898)
19 Ines Olevic-Saleh (#11431)
20 170 South Green Valley Parkway, Suite 280
21 Henderson, Nevada 89012
22 Attorneys for Plaintiff
23
24
25
26
27
28

[illegible]

I, Isam Abunadi, am the Plaintiff in the above-captioned action and I have reviewed the foregoing Verified Complaint and the contents thereof. The contents in the Verified Complaint are true to the best of my own knowledge including those matters stated on information and belief, of which I believe to be true.

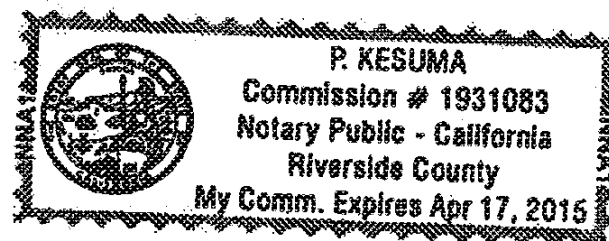
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this _____ day of _____, 2012.

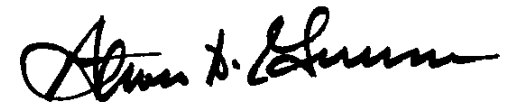
NOTARY PUBLIC in and for said
County and State

State of California
County of Riverside
Subscribed and sworn to (or affirmed) before me on this 11TH
day of SEPTEMBER 20 12 by ISAM ABUHADI

proved to me on the basis of satisfactory evidence to be the person(s)
who appeared before me.

Signature _____





CLERK OF THE COURT

RPLY
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Attorneys for Defendant
Pardee Homes of Nevada

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

**REPLY IN SUPPORT OF
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hearing Date: September 23, 2013
Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

Plaintiffs' Opposition ("Opposition") to defendant Pardee Homes of Nevada's ("Pardee") Motion for Partial Summary Judgment ("Motion") fails because Plaintiffs cannot establish that a claim for an accounting is a legally recognized cause of action under Nevada law, not simply a remedy. This is the same result that this Court reached in Isam Abunadi v. Isaac Farah, et al., Case No. 668168, holding that an accounting is a remedy, not a legal cause of action. Plaintiffs acknowledge that their claim is founded upon an alleged breach of the Commission Agreement. Opposition 1:4-61 ("Pardee, by virtue of contracting with Plaintiffs' predecessors in interest, owe Plaintiffs a duty to properly account for the land transactions at Coyote Springs affecting Plaintiffs' commission payments."). Plaintiffs' Opposition makes clear that one of the "remedies"

1 that Plaintiffs seek for the alleged breach of contract is an accounting. Therefore,
2 Plaintiffs effectively concede that an accounting is a remedy.

3 Plaintiffs falsely claim that Pardee changed its argument regarding Plaintiffs'
4 accounting cause of action. Wrong. In its original motion for summary judgment
5 Pardee argued: "Put simply, access to information and documents obviates the need
6 for a cause of action for an accounting. Moreover, without owing any obligation to
7 Plaintiffs, Pardee has no duty to account for anything." See Pardee's Motion for
8 Summary Judgment filed on October 24, 2012. Those were a summary of Pardee's
9 two arguments. And in its reply, Pardee argued: "Plaintiffs have failed to establish that
10 Pardee breached the Commission Agreement. Therefore, Plaintiffs claim for . . .
11 accounting . . . fall[s] as a matter of law. See Pardee's Reply in Support of Motion for
12 Summary Judgment. Pardee's position has never changed. Pardee continues to
13 believe that Plaintiffs cannot prove a "breach" of the Commission Agreement. Without
14 a breach, Plaintiffs get no remedy -- damages or an accounting. But that does not
15 change the fact that an accounting is a remedy.

16 When the Court pronounced its ruling in the Abunadi case on July 9, 2013, the
17 Court confirmed that an accounting is not a separate cause of action, only a remedy.
18 This case is no different than the Abunadi case. Therefore, it is appropriate for the
19 Court to take the same approach and analysis regarding the accounting cause of action
20 in this case as it did in Abunadi.

21 **I. Plaintiffs' Opposition Fails to Establish that Their Claim for an Accounting**
22 **is Anything More than a Duplicative Claim for Breach of Contract.**

23 Plaintiffs attempt to distract the Court's attention from the single issue before the
24 Court. Plaintiffs advance the false allegation that Pardee refused to provide Plaintiffs
25 with relevant information regarding the land transactions at Coyote Springs.
26 Specifically, Plaintiffs allege that Pardee failed to inform Plaintiffs of the various
27 amendments to the Amended and Restated Option Agreement. If accepted at face
28 value, this allegation is the basis of Plaintiffs' allegation that Pardee breached the

Commission Agreement. The specific requirements set forth in the Commission Agreement are as follows:

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 dates of your commission payments.

See Commission Agreement (Exhibit A) at p.2.

Put plainly, after Pardee paid commissions on the \$84 Million Purchase Property Price, Pardee had no duty to provide Plaintiffs with any documents or amendments to the AROA **unless it involved the actual purchase of Option Property, as defined in paragraph 2 of the AROA.** The various amendments to the AROA referenced in the Plaintiffs' Opposition had absolutely nothing to do with the purchase of Option Property as defined in paragraph 2 of the AROA. Therefore, Pardee's duty to provide copies of "each written exercise notice" along with information "relating to the amount and due dates of [their] commission payments" was never triggered.

But the Court need not resolve these issues to resolve Pardee's present motion for partial summary judgment. That raises the single issue of whether an accounting is a remedy or a separate legal cause of action.

II. Plaintiffs' Opposition Fails to Establish that Claim for Accounting In This Case Is a Proper Cause of Action Rather than a Remedy.

Plaintiffs cite to a handful of cases in an attempt to justify their position that an accounting is a legal cause of action rather than a remedy. Notably, they cite to Botsford v. Van Riper, 33 Nev. 156, 110 P.705, 712 (1910). The Nevada Supreme Court in Botsford confirmed that there are multiple **remedies** for breach of contract. Id. One of those remedies is an accounting. That decision confirms this Court was correct in Abunadi in holding that accounting is a remedy, not a separate legal claim for relief. That decision applies to the case at bar.

At common law, a claim for an “account” was typically used “to compel one occupying a confidential relationship to render over to the other that which was his due.” Peoples Finance & Thrift Co. of Visalia v. Bowman, 58 Cal.App. 2d 729, 137 P.2d 729, 732 (Cal.App. 1943). Further, such an equitable proceeding was deemed appropriate “where ... the accounts are so complicated that an ordinary legal action demanding a fixed sum is impracticable.” Civic Western Corp. v. Zila Industries, Inc., 66 Cal.App.3d 1, 135 Cal.Rptr. 915, 923 (Cal.App. 1977). This case involves neither a confidential relationship, nor a complex accounting that would justify or support an independent cause of action for an accounting. Plaintiffs have not made their allegations. Those would be the **additional** reasons why Plaintiffs are not entitled to the remedy of an accounting for any alleged breach of contract.

Plaintiffs cite to Glue-Fold, Inc. v. Slautterback Corp. for the notion that a cause of action for an accounting is distinguishable from a cause of action for constructive trust and is available to a wronged fiduciary. 82 Cal. App. 4th 1018, n.3, 98 Cal Rptr. 2d 661 (Cal. App. 2000). That case is distinguishable because no fiduciary relationship exists between Pardee and Plaintiffs. The relationship between Pardee and Plaintiffs is an arms-length business relationship governed by the Commission Letter Agreement. At no time did Pardee owe Plaintiffs any fiduciary duty. In fact, **Plaintiffs have not even alleged such a duty existed in this case.**

The cases cited by Plaintiffs from the United States District Court, District of Nevada, are also distinguishable from this case. In Oracle USA, Inc. v. Rimini Street, Inc., 2:10-CV-00106-LRH-PAL, 2010 WL 3257933, at *6 (D. Nev. Aug. 13, 2010), in allowing an accounting claim to withstand a motion to dismiss, the court clarified that an accounting claim is typically allowed **where a fiduciary relationship exists**, but may be extended to nonfiduciaries where “dealings between the parties are so complex that an equitable master, and not a jury, is required to sort out the various dealings between the parties.” Id., quoting Leonard v. Optimal Payments, Ltd. (In re Nat’l Audit Def. Network), 332 B.R. 896, 918-19 (Bankr.D.Nev 2005). In considering a motion to

1 dismiss, the court allowed the claim to stand because the record before the court was
2 insufficient to determine the full relationship between the parties. Id.

3 Likewise, in Mobius Connections Group, INC. v. Techskills, LLC, No. 2:10-CV-
4 01678-GMN-RJJ, 2012 WL 194434, at *8 (D. Nev. Jan. 23, 2012), the court allowed the
5 accounting claim because a fiduciary relationship existed between the parties. Id.
6 Also, the operative contract between the parties allowed the plaintiff to receive a
7 percentage of monies collected by defendant. Id. Because the monies were collected
8 and held, plaintiffs were entitled to review the defendant's cash collections and
9 expenses on a quarterly basis. Id. In this case, Plaintiffs are entitled to commissions
10 only if Pardee purchases Option Property at Coyote Springs. If such a transaction
11 takes place, the title company, not Pardee, will handle the transaction and make the
12 necessary commission payments to Plaintiffs. **Once again, Plaintiffs have not**
13 **alleged that the transactions are so complex that an accounting is necessary.**

14 Finally, the California cases cited by Plaintiffs further bolster the notion that a
15 claim for accounting is only justifiable in limited circumstances where there is a special
16 relationship between the parties and the dealings are so complex that the balance due,
17 if any, can only be ascertained by a formal accounting. These are not the
18 circumstances or the allegations of this case.


1 Simply put, an accounting is a remedy that is being requested as a consequence
2 of Plaintiffs' allegation that Pardee breached a contract. The legal cause of action is
3 breach of contract. The remedy is accounting. Since an accounting is not a separate
4 legal cause of action, Plaintiffs' first claim for relief must be dismissed.¹

5 RESPECTFULLY SUBMITTED this 16th day of September, 2013.

6
7 McDONALD CARANO WILSON LLP

8
9 /s/ Pat Lundvall
10 Pat Lundvall (#3761)
11 Aaron D. Shipley (#8258)
12 2300 West Sahara Avenue, Suite 1000
13 Las Vegas, Nevada 89102
14 Attorneys for Defendant Pardee Homes of
15 Nevada

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27 ¹ Pardee's motion is timely because of the changes to the start of trial in this matter.
28 Moreover, the Court has never held Plaintiffs' to the timeframes set forth in the Scheduling
Order because of the changes to the trial calendar. Surely the Court would not treat Pardee any
different under the exact same circumstances.

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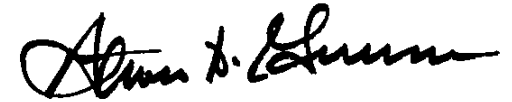
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 16th day of September, 2013, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** via hand delivery on the following:

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

/s/Melissa A. Merrill
An Employee of McDonald Carano Wilson LLP

285462



CLERK OF THE COURT

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Pardee Homes of Nevada

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

**REPLY IN SUPPORT OF
DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE PLAINTIFFS' CLAIM FOR
ATTORNEYS' FEES AS AN ELEMENT
OF DAMAGES**

(MIL #1)

Hearing Date: September 23, 2013
Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

Plaintiffs' Opposition ("Opposition") to defendant Pardee Homes of Nevada's ("Pardee") Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1) ("Motion") fails because under Nevada law attorneys' fees cannot be recovered as an element of damages in this breach of contract case.

Plaintiff's claim that they are entitled to attorneys' fees as an element of their damages is based on an alleged breach of the Commission Agreement. Plaintiffs claim that Pardee failed to provide requested information to Plaintiffs -- information Pardee contends had nothing to do with any commissions earned by Plaintiffs -- which forced

1 Plaintiffs to seek counsel and file suit. The problem with this premise is that while it
2 accurately describes the allegations of a typical breach of contract case, they are not
3 allegations involving the special limited circumstances described by the Nevada
4 Supreme Court which may warrant a claim for attorneys' fees as an element of
5 damages, rather than as a cost of litigation. Because this is a straight forward breach
6 of contract case, Plaintiffs should be barred from claiming and presenting evidence of
7 their attorneys' fees as an element of their alleged damages at trial.

8 In Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc., the seminal case
9 on this particular issue, the Nevada Supreme Court discussed the difference between
10 attorneys' fees as a cost of litigation and attorneys' fees as an element of damages.
11 See id., 117 Nev. at 955, 35 P.3d at 968-969. The court acknowledged that attorneys'
12 fees cannot be recovered as a cost of litigation unless authorized by agreement,
13 statute, or rule. See id., 117 Nev. at 956, 35 P.3d at 969 (internal citation omitted). "As
14 an **exception to the general rule**, a district court may award attorney fees as special
15 damages in **limited circumstances**." Horgan v. Felton, 123 Nev. 577, 583, 170 P.3d
16 982, 986 (2007) (emphasis added).

17 The Nevada Supreme court has clarified that attorneys' fees may be awarded as
18 special damages in only a narrow handful of circumstances, such as: third-party actions
19 involving title insurance or bonds, insurance or indemnity actions, slander of title
20 actions, malicious prosecution, trademark infringement, or false imprisonment. See
21 Sandy Valley, 117 Nev. at 957-58, 35 P.3d at 970; see also Horgan, 123 Nev. at 586-
22 87, 170 P.3d at 988-89; see also Reyburn Lawn & Landscape Designers, Inc. v. Plaster
23 Dev. Co., Inc., 127 Nev. Adv. Op. 26, ---, 255 P.3d 268, 279 n. 11 (Jun. 2, 2011).

24 As the Court is aware, this case involves a written contract which contains a
25 provision whereby the prevailing party may seek an award of its attorneys' fees. In
26 other words, the parties expressly agreed upon the circumstances under which
27 attorneys fees can be recovered. Therefore, unless this case fits a narrow exception to
28

1 the general rule, attorneys' fees may be sought as a cost of litigation at the conclusion
2 of trial through post-trial motion practice.

3 Plaintiffs argue that Nevada law allows attorneys' fees as special damages in
4 this case because "Plaintiffs were only able to get the documents and information they
5 were entitled to once they filed suit and were granted the tools of discovery to get some
6 of those records." See Opposition, at 8:18-21. Plaintiffs cite to the Sandy Valley and
7 Horgan decisions to support this position. This is a crude stretching of Nevada law. In
8 interpreting Sandy Valley, the Horgan decision is very careful to limit, not expand, the
9 types of cases that would warrant attorneys' fees as special damages. For example, an
10 action to quiet or clarify title does not rise to the level to warrant attorneys' fees as
11 damages. Horgan, 123 Nev. at 587, 170 P.2d at 988. Rather, attorneys' fees are
12 available only in slander of title cases. Id., 123 Nev. at 587, 170 P.2d at 988. As
13 quoted by Plaintiffs in the Opposition, the Horgan decision makes it clear that in order
14 to support the proposition that attorneys' fees are available as special damages, there
15 must be elements of "intentional malicious acts" and "calculated action" on the part of a
16 defendant that forced the plaintiff into litigation. 123 Nev. at 585-86, 170 P.2d at 987-88
17 (internal quotation omitted); see also Plaintiffs' Opposition, at 8:3-10.


18 Plaintiffs cannot prove, nor have they even alleged, that Pardee acted
19 intentionally or maliciously to hide information and documents from Plaintiffs. The
20 evidence in this case shows that Plaintiffs were provided with information and
21 commission payments until every dollar of the commissions owed to them under the
22 Commission Agreement was paid. Then, when Plaintiffs began inquiring about other
23 takedowns, Pardee explained to them (on multiple occasions) that no such exercise of
24 Option Property had occurred. Pardee believed it was acting within its contractual right
25 to do so. There has been no evidence produced in this case that shows that Pardee
26 acted in a calculated, intentional, or malicious manner when dealing with Plaintiffs. The
27 timely commission payments and multiple communications regarding the status of the
28 project indicate the opposite. Therefore, this is not the type of case that warrants

attorneys' fees as special damages. Rather, the attorneys' fees provision in the Commission Agreement allows for attorneys' fees and costs to the prevailing party, which is a determination that out of necessity will be made post trial, not during the trial. In sum, the Court should grant Pardee's Motion.

DATED this 16th day of September, 2013.

McDONALD CARANO WILSON LLP

/s/ Pat Lundvall
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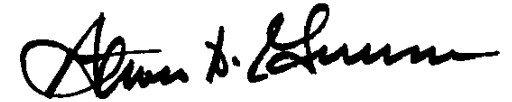
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 16th day of September, 2013, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES** via U.S. Mail on the following:

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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

**REPLY IN SUPPORT OF
DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE PLAINTIFFS' CLAIM FOR
DAMAGES IN THE FORM OF
COMPENSATION FOR TIME**

(MIL #2)

Hearing Date: September 23, 2013
Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

Plaintiffs' Opposition¹ ("Opposition") to defendant Pardee Homes of Nevada's ("Pardee") Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2) ("Motion") fails because Nevada law does not allow for

¹ Plaintiffs filed their original Opposition to Defendant's Motion in Limine to [Exclude] Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2) on March 20, 2013. On July 22, 2013, Plaintiffs filed a Supplemental Opposition to Defendant's Motion in Limine to [Exclude] Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2). Both briefs will be referred to collectively as the "Opposition."

1 parties to recover damages related to compensation for their alleged time investigating
2 and/or litigating their claims..²

3 In the Opposition, Plaintiffs also fail to establish that the parties' potential
4 personal time commitments were reasonably contemplated when they executed the
5 Commission Letter Agreement. Without such, their claim for damages in the form of
6 compensation for their alleged time and effort is inappropriate. See Hilton Hotels Corp.
7 v. Butch Lewis Prods., 109 Nev. 1043, 1046 (1993); see also Las Vegas Oriental, Inc.
8 v. Sabella's of Nevada, Inc., 97 Nev. 311, 313, 630 P.2d 255, 256 (1981). In fact,
9 Plaintiffs apparently had not contemplated this element of alleged damages until
10 several months into discovery, and was not articulated until Plaintiffs produced their
11 Seventh Supplement to NRCP 16.1 Disclosure of Witnesses and Documents, a copy of
12 which was attached as Exhibit B to the Motion. In sum, Pardee could not possibly
13 foresee that Plaintiffs would request documents and information to which they were not
14 entitled, let alone foresee that Plaintiffs might seek compensation for their alleged time
15 and effort to obtain such documents and information.

16 In deposition, Mr. Wolfram attempted to morph Pardee's duty to keep Plaintiffs
17 reasonably informed into a duty to compensate Plaintiffs for their time and efforts.

18 **Q. Is there any language within the commission agreement that**
19 **suggests to you that you are entitled to be compensated for your**
20 **time and your efforts?**

21 A. Well, to me it infers it when it says, You are to be kept reasonably
22 informed. The minute I wasn't reasonably – be informed, then I – and no
23 one would tell me – and I mean to tell you, I really tried to work with
24 Pardee and their attorneys over there. That's the reason I had to get an
25 attorney, because nobody would work with me. After I was reasonably
26 informed, I wouldn't be here. It's as simple as that.

27 See Transcript of Deposition of James Frederick Wolfram ("Wolfram Depo."), a copy of
28 which is attached hereto as Exhibit A, at 13:5-15. This is a crude stretching of the clear

² Pardee clearly objects to Plaintiffs' claim for compensation for their time and effort as an element of their alleged damages in the case. However, if the Court deems such a claim permissible in this case under Nevada law, Pardee has asserted a Counterclaim for its time and effort damages as well.

1 and unambiguous language in the Commission Letter Agreement. Put simply, this
2 misinterpretation of the Commission Letter Agreement is not enough to establish that
3 time and effort damages was reasonably contemplated by the parties when they
4 executed the Commission Letter Agreement. Therefore, Plaintiffs should be precluded
5 from seeking such damages at trial.

6 Plaintiffs cite two cases in their Opposition (p.4 fn. 2) to support of their claim
7 that Plaintiffs are entitled to compensation for time and effort as an element of their
8 damages. However, both cases are clearly distinguishable from this case. In Gray v.
9 Don Miller & Assoc., Inc., a prospective buyer relied on false misrepresentations made
10 by a real estate broker. 35 Cal. 3d 498, 502, 674 P.2d 253, 254 (Cal. 1984). The
11 broker falsely told the buyer that a seller of real property had accepted the buyer's offer.
12 Id. In reliance on the broker's misrepresentations, the buyer expended time and effort
13 planning how to use the property. Id. at 504, 256. The California Supreme Court
14 upheld the trial court's decision that the buyer's reliance was justified and that the buyer
15 could recover damages from the buyer's time spent planning a business to operate on
16 the site. Id. The holding in Gray affirming the award of damages for the plaintiff's time
17 was directly linked to the finding of the defendant's fraud. The holding in Gray does not
18 stand for the proposition that a party can recover damages for its time and effort spent
19 preparing for litigation when the party thinks the other party is in breach of the
20 underlying contract. In the instant case, there are no allegations of fraud against
21 Pardee. Their claim for compensation is related to the time they spent when they
22 thought Pardee was in breach of the Commission Letter Agreement.

23 Like Gray, the holding in Barthels v. Santa Barbara Title Co. does not stand for
24 the proposition that a party can recover damages for its time and effort spent preparing
25 for litigation. 28 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 579, 582 (Cal. App. Ct. 1994).
26 In Barthels, a dentist sued a title abstractor for negligence. Id. at 677. The title
27 abstractor told the dentist that a beachfront property the dentist bought had a fifteen-
28 foot access easement. Id. In reality, the property only had a seven-foot access

1 easement and, as a result, the dentist could not obtain a building permit. Id. At trial,
2 the dentist recovered only 3.5% of damages he sought for the time he devoted to the
3 development of the parcel up until the time he learned of the title defect. Id. at 678.
4 The Court of Appeals upheld those damages because they were incurred before the
5 title company's negligence was discovered. Id. at 680.


6 Again, in contrast to the dentist in Barthels, Plaintiffs in this case spent time and
7 effort trying to obtain documents and information after they thought Pardee had
8 breached its obligations under the terms of the Commission Letter Agreement. In other
9 words, Plaintiffs are seeking to be compensated for their time preparing to initiate
10 litigation against Pardee. Nevada law does not allow such a claim for damages.

11 Based on the foregoing, Pardee requests the Court issue an order *in limine* to
12 preclude impermissible evidence, in the form of documents, testimony, expert opinions
13 and all other evidence, at trial on the issue of Plaintiffs' alleged damages related to
14 compensation for their alleged time commitment investigating their claims.

15 RESPECTFULLY SUBMITTED this 16th day of September, 2013.

16 McDONALD CARANO WILSON LLP

17
18 /s/ Aaron D. Shipley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 16th day of September, 2013, I served a true and correct copy of the foregoing **REPLY TO OPPOSITION TO DEFENDANT’S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS’ CLAIM FOR DAMAGES IN THE FORM OF COMPENSATION FOR TIME** via U.S. Mail on the following:

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Lynn M. Hansen
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Attorney for Plaintiffs

/s/ Melissa A. Merrill
An Employee of McDonald Carano Wilson LLP

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1 outside the scope of what the court has allowed, as drafted
2 by the order that you prepared.

3 MR. JIMMERSON: No, it is not. That narrow
4 reading of the order would then necessarily prohibit my
5 cross-examination at all of the issues, because your reading
6 would suggest that I would not be allowed to take any of the
7 discovery, so, therefore, all my questions would be
8 prohibited which you clearly do not agree is the proper
9 interpretation.

10 MS. LUNDVALL: Well, what you're not doing is
11 you're not following up on any of the questions or
12 clarifying, for purposes of the record, anything that I've
13 done. You're going into a whole new topic area for which --
14 that I didn't ask any questions.

15 MS. HANSEN: We're spending a lot of time on this
16 objection. Just get the question answered.

17 Q. (By Mr. Jimmerson) How did John lash respond when
18 you told him that you were getting the documents?

19 A. When I talked to John and I asked for maps and
20 things to that nature, John responded by saying, Jim, trust
21 us. You -- you're just going to have to go on trust. And I
22 told John, you know, I didn't necessarily want to go on
23 trust. I wanted to -- I wanted to see what was happening.
24 I needed -- I needed maps of the overall property and maps
25 of what they had purchased. And he said, No, you're going


1 to have to go on trust.

2 Then another time when I called over, he said, I'm
3 out of this now. It's out of my hands. You're going to
4 have to talk to the attorney, Mr. Stringer. And he sent me
5 to Mr. Stringer. Then I asked Mr. Stringer the same
6 questions. And he was very nice on the first conversation.
7 He said he was going to get me a bunch of information and
8 send that stuff over to me, but he didn't. And I had talked
9 to him again. And there's letters. You know, you have
10 letters.

11 When he didn't, then I called John and John said,
12 Well -- it was Mr. Curtis. Attorney Curtis was involved.
13 He was taking -- when I called Mr. Curtis, he was very blunt
14 and says, You have to trust us. Now, God love them, if they
15 were paying me. That -- that's fine if they were actually
16 paying me what they owed me, but I had no record of what --
17 what was going on. And if the shoe were on the other foot,
18 I promise you that if John was -- I was in his position, he
19 was in mine, and I told him just to trust me on all this
20 stuff, those corporate attorneys would have sued me in a
21 minute to find out what was going on.

22 Q. What, if anything, did John Lash say to you that
23 would suggest that it was not foreseeable that you would
24 have to go out and get these records?

25 A. They wouldn't -- they wouldn't -- told me they



DISTRICT COURT
CLARK COUNTY, NEVADA

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. KERRY EARLEY, DISTRICT JUDGE

On Tuesday, July 23, 2013

At 8:30 a.m.

APPEARANCES:

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

For the Defendants: PATRICIA K. LUNDVALL, ESQ.
(via telephone)

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

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

1 TUESDAY, JULY 9, 2013, 8:30 A.M.

2 LAS VEGAS, NEVADA

3 -oOo-

4 THE COURT: I'm going to call A632338, Wolfram
5 versus Pardee Homes of Nevada, for a status check.

6 Good morning, Ms. Lundvall. You are on the
7 phone?

8 MS. LUNDVALL: Good morning, Your Honor. I am
9 on the phone.

10 THE COURT: Good morning, Mr. Jimmerson and
11 Ms. Hansen.

12 MS. HANSEN: Good morning, Judge.

13 MR. JIMMERSON: Good morning.

14 THE COURT: It looks like we got our order on
15 all our timing on our supplements, correct, and the
16 motions in limine --

17 MR. JIMMERSON: Yes, we did, Your Honor.

18 THE COURT: -- all worked out, plus any 16.1
19 supplements?

20 MR. JIMMERSON: Yes. We received defendant's
21 16.1 supplement, and we filed -- we served ours last
22 Friday pursuant to the Court's order.

23 THE COURT: Okay. And then do we have
24 Mr. Jimmerson's deposition noticed?

25 MR. JIMMERSON: No. She elected not to take

1 the deposition.

2 THE COURT: Okay. All right. Is there
3 anything -- are we all back on square one then? I
4 looked through all the motions and everything. I think
5 we are.

6 Ms. Lundvall, are we pretty much on course for
7 the motions in limine then August 19th?

8 MS. LUNDVALL: From Pardee's perspective, we
9 are on track for all the motions that are calendared for
10 August 19th.

11 THE COURT: Terrific. All right. Any other
12 issues that we need to -- while we have everybody in
13 court? Are we ready to go?

14 MR. JIMMERSON: We'll be serving some
15 discovery. I was hoping to see Ms. Lundvall here today
16 and hand it to her, but we'll be serving it on her
17 office today, and hopefully scheduling whatever
18 depositions are necessary to discover her claim.

19 THE COURT: Okay.

20 All right. Ms. Lundvall, did you hear that?
21 They have some discovery they were going to give you,
22 but they'll get it to your office today.

23 MS. LUNDVALL: That would be great.

24 THE COURT: Okay. Terrific. Okay. I'll see
25 you back here August 19th.

1 MS. HANSEN: Thank you, Judge.

2 THE COURT: Thank you, Ms. Lundvall. Thank you
3 for appearing.

4 MS. LUNDVALL: Thank you.

5 -oOo-

6 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
7 PROCEEDINGS.

8

9 */s/ Jennifer D. Church*

10 JENNIFER D. CHURCH, CCR. No. 568, RPR

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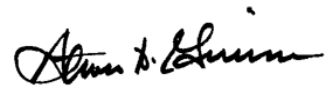
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DISTRICT COURT
CLARK COUNTY, NEVADA

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 RESPONSE TO
PLAINTIFFS' MOTIONS IN LIMINE #1-5;
AND #20-25**

Hearing Date: August 19, 2013
Hearing Time: 8:30 a.m.

20 Defendant Pardee Homes of Nevada ("Pardee") responds to Plaintiffs' Motions in
21 Limine #1-5 and #20-25 (collectively the "Motions"). Pardee files this Response because
22 the Motions are moot. During the parties' EDCR 2.67 conference held on July 25, 2013,
23 Pardee stipulated to the admissibility of exhibits that are the subjects of the Motions (the
24 "Subject Exhibits"). Further, Pardee stipulated to allow Mr. Jimmerson to testify concerning
25 Plaintiffs' attorney's fees and costs in the event the Court deems it appropriate to allow
26 Plaintiffs to seek an award of attorney's fees as an element of damages during their case in
27 chief. Pardee does not stipulate to Plaintiffs' theory that attorneys' fees may be sought as
28 an element of damages in this breach of contract case. Pardee's Motion in Limine to

McDONALD • CARANO • WILSON LLP
2300 WEST SAHARA AVENUE • SUITE 1200 • LAS VEGAS, NEVADA
PHONE (702) 873-4100 • FAX (702) 873-9966

1 Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1) is
2 currently pending and is scheduled for hearing on August 19, 2013.

3 Despite multiple requests that Plaintiffs withdraw the Motions based on the
4 stipulations reached during the EDCR 2.67 conference, Plaintiffs inexplicably refused.
5 Plaintiffs' refusal to withdraw the Motion has led Pardee to spend unnecessary time filing
6 this Response, and will undoubtedly lead to the waste of judicial resources.

7 **POINTS AND AUTHORITIES**

8 This case is scheduled for a bench trial on September 9, 2013. On July 18, 2013,
9 exactly one week before counsel were scheduled to meet and confer pursuant to EDCR
10 2.67, Plaintiffs filed 25 motions in limine, 24 of which seek to have the Court deem certain
11 exhibits "admissible for all purposes." Because these motions were filed one week before
12 counsel were scheduled to disclose their potential trial exhibits and discuss whether they
13 could stipulate to the admissibility of any of the proposed exhibits, these motions are
14 premature and a waste of the Court's time. Not only is the timing of the filing of these
15 motions questionable, the subject matter of the motions is improper.

16 In the Motions, Plaintiffs go to great lengths to claim that they made attempts to get
17 Pardee to stipulate to the admissibility of their proposed trial exhibits. As made clear in
18 the email exchanges between counsel, many of which are attached as exhibits to the
19 Motions, Pardee simply reserved its right to make those determinations at the appropriate
20 time.

21 Generally, NRCP 16.1(a)(3)(C) requires that parties make pre-trial disclosures at
22 least 30 days before trial. "Within 14 days thereafter, unless a different time is specified
23 by the court, a party may serve a list disclosing ... (ii) any objection, together with the
24 grounds therefor, that may be made to the admissibility of materials identified..." *Id.* In
25 this case, trial is currently scheduled to begin on September 9, 2013. Pre-trial disclosures
26 are due August 9, 2013, and any objections would be made 14 days thereafter. Those
27 timeframes have not even yet arrived.

1 Further, pursuant to EDCR 2.67(a), "the designated trial attorneys for all the parties
2 must meet together to exchange their exhibits and list of witnesses, and arrive at
3 stipulations and agreements, all for the purpose of simplifying the issues to be tried."
4 During this conference between counsel, "all exhibits must be exchanged and examined
5 and counsel must also exchange a list of the names and addresses of all witnesses..."
6 Id. In this case, a meeting of counsel pursuant to EDCR 2.67 did not technically need to
7 occur until sometime prior to calendar call, which is currently scheduled for August 19,
8 2013. However, in order to accommodate Plaintiffs' counsel's vacation schedule counsel
9 conducted the conference on July 25, 2013—approximately three weeks before it needed
10 to occur.

11 During the July 25, 2013 EDCR 2.67 conference, counsel for each party disclosed
12 and exchanged potential trial exhibits. Counsel for Pardee engaged in good faith
13 discussions regarding all of the potential exhibits and an agreement regarding the
14 admissibility of many of the exhibits was reached. In fact, Pardee's counsel stipulated to
15 the admissibility of the Subject Exhibits.

16 On Thursday, August 1, 2013, Pardee's counsel sent an email to Plaintiffs' counsel
17 requesting that Plaintiffs withdraw the Motions due to the parties' stipulation regarding the
18 admissibility of the Subject Exhibits. A copy of Pat Lundvall's email to James M.
19 Jimmerson dated August 1, 2013 is attached hereto as **Exhibit A**. Despite this and
20 subsequent follow up requests, Plaintiffs' counsel inexplicably refused to withdraw the
21 Motions. A copy of James M. Jimmerson's email to Pat Lundvall dated August 1, 2013 is
22 attached hereto as **Exhibit B**. In a final attempt to have Plaintiffs withdraw the Motions,
23 Pardee's counsel sent another email to Plaintiffs' counsel confirming the prior agreement
24 as to the admissibility of several proposed exhibits. A copy of Pat Lundvall's email to
25 James M. Jimmerson and James J. Jimmerson dated August 5, 2013 is attached hereto
26 as **Exhibit C**. Plaintiffs have not withdrawn their Motions.

1 Plaintiffs' refusal to withdraw the Motions has led Pardee to spend unnecessary
2 time and expense filing this Opposition, and will undoubtedly lead to the waste of judicial
3 resources. In sum, the Motions are moot and should therefore be denied.

4 RESPECTFULLY SUBMITTED this 5th day of August, 2013.

5 McDONALD CARANO WILSON LLP
6

7 By: /s/ Pat Lundvall

8 PAT LUNDVALL (NSBN 3761)
9 AARON D. SHIPLEY (NSBN 8258)
10 McDONALD CARANO WILSON LLP
11 2300 West Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102
13 Telephone: (702) 873-4100
14 Facsimile: (702) 873-9966
15 lundvall@mcdonaldcarano.com
16 ashipley@mcdonaldcarano.com

17 *Attorneys for Defendant*
18 *Pardee Homes of Nevada*
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LVDOCS-#284284-v2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 5th day of August, 2013, I served a true and correct copy of the foregoing **DEFENDANT PARDEE HOMES OF NEVADA'S RESPONSE TO PLAINTIFFS' MOTIONS IN LIMINE #1-5; #20-25** by depositing a copy of the same in the U.S. Mail, postage prepaid, to the parties at the addresses listed below:

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

/s/ Melissa A. Merrill
An employee of McDonald Carano Wilson LLP

EXHIBIT A

Aaron Shipley

From: Pat Lundvall
Sent: Thursday, August 01, 2013 12:33 PM
To: James M. Jimmerson, Esq.
Cc: Aaron Shipley; Brian Grubb
Subject: Request to withdraw various of Plaintiffs' MIL
Attachments: image001.jpg

As we repeatedly advised, we fully intended to comply with our obligations under EDCR 2.67, and we did so. Our compliance makes certain of your MIL's moot. Please withdraw those motions so that we do not have to waste time responding to them. For your convenience, below is a highlighted list of your MIL's. I believe that it is accurate. The highlighted ones are the ones now moot. Thank you for your anticipated cooperation. Here's hoping you are enjoying your vacation.

Plaintiffs' Motions in Limine:

1. MIL to Admit the September 1, 2004 Commission Letter Agreement:
2. MIL to Admit the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions:
3. MIL to Admit Amendment to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions
4. MIL to Admit Amendment No. 2 to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions
5. MIL to Admit the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions
6. MIL to Admit Amendment No. 1 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions
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13. MIL to Admit Amendment No. 8 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions
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15. MIL to Admit Plat map Recorded in the Clark County Recorder's Office in Book 138, Page 51
16. MIL to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 116, Page 34
17. MIL to Admit Parcel map Recorded in the Clark County Recorder's Office in File 117, Page 18
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19. MIL to Admit Parcel map Recorded in the Clark County Recorder's Office in File 113, Page 55
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23. MIL to Admit the July 10, 2009 Letter from Charles Curtis to James J. Jimmerson, Esq.
24. MIL to Admit the March 14, 2008 Letter from Jon Lash to James Wolfram and Walt Wilkes
25. MIL to Permit James J. Jimmerson, Esq. to Testify Concerning Plaintiffs' Attorney's Fees and Costs

EXHIBIT B

Aaron Shipley

From: James M. Jimmerson, Esq. <jmj@jimmersonhansen.com>
Sent: Thursday, August 01, 2013 2:51 PM
To: Pat Lundvall
Cc: Stephanie Spilotro; Kim Stewart; James J. Jimmerson, Esq.; Aaron Shipley; Brian Grubb
Subject: RE: Request to withdraw various of Plaintiffs' MIL

Pat,

I never said your word is worthless. We need the letter simply for confirmation and we would ask for it from any opposing counsel. We've cooperated in the past and I believe that we will continue to cooperate. In that spirit, I would hope you would understand our need to protect our client's interests just as we surely understand your need to protect your client's interests--even if our needs might be interpreted to be redundant (a la belt and suspenders). I look forward to the letter.

Sincerely,

James M. Jimmerson
Associate
Jimmerson Hansen, P.C.
415 South Sixth Street, Suite 100
Las Vegas, NV 89101
P: (702) 388-7171
F: (702) 380-6417

-----Original Message-----

From: Pat Lundvall [mailto:plundvall@mcdonaldcarano.com]
Sent: Thursday, August 01, 2013 2:37 PM
To: James M. Jimmerson, Esq.
Cc: Stephanie Spilotro; Kim Stewart; James J. Jimmerson, Esq.; Aaron Shipley; Brian Grubb
Subject: Re: Request to withdraw various of Plaintiffs' MIL

Thank you for letting me know my word is worthless and the exhibit lists we have sent in writing indicating our stipulation to the admissibility of certain of your proffered exhibit is worthless as well. A letter will be forthcoming.

Pat Lundvall

On Aug 1, 2013, at 2:26 PM, "James M. Jimmerson, Esq." <jmj@jimmersonhansen.com> wrote:

> Pat,

>

> As I stated in my email, I am not looking to force you to file non-oppositions. I offered a stip and order as an alternative to avoid the filing of non-oppositions. If you believe that a withdrawal of the motions is best, we need a formal letter specifying each exhibit we have agreed upon and stating that they are authentic and admissible for all purposes in this action. Because the pretrial memorandum is due after the oppositions are due, we are currently without any written confirmation of agreements on the specific exhibits at issue. We would be pleased to withdraw the motions once we are in receipt of that letter (a pdf of the letter via email is fine).

>

> Thank you for working to get us dates and I assume you will send us the letter concerning Mr. Lash when you have a chance.

>

> Sincerely,

>

> James M. Jimmerson

> Associate

> Jimmerson Hansen, P.C.

> 415 South Sixth Street, Suite 100

> Las Vegas, NV 89101

> P: (702) 388-7171

> F: (702) 380-6417

>

>

>

> -----Original Message-----

> From: Pat Lundvall [mailto:plundvall@mcdonaldcarano.com]

> Sent: Thursday, August 01, 2013 2:12 PM

> To: James M. Jimmerson, Esq.

> Cc: Aaron Shipley; Brian Grubb; Stephanie Spilotro; Kim Stewart

> Subject: Re: Request to withdraw various of Plaintiffs' MIL

>

> We will not file notices of non-opposition for motions that are moot. It is your responsibility to notify the court they are moot. You can inform the court that the reason they are moot is because at the Rule 2.67 conference we stipulated to their admission.

>

> Dates will follow for the depositions in California.

>

> Pat Lundvall

>

> On Aug 1, 2013, at 2:02 PM, "James M. Jimmerson, Esq." <jmj@jimmersonhansen.com> wrote:

>

>> Pat,

>>

>> I did not receive any highlights on the motions we have agreed upon. From our EDCR 2.67 conference I am aware, however, which exhibits we have come to an agreement on. For those exhibits we have agreed upon, I believe the best course of action would be to file notices of non-opposition to those motions (meaning you would not have to respond) or we can jointly file a stip and order on the exhibits we have agreed upon. This way the Court is fully aware upon either the filing of the non-oppositions or the filing of the stip and order that there has been agreement on the admissibility of the documents. Mere withdrawal of the motions does not fully communicate the agreement of the parties in the same way. If you would like me to put together a first draft of the stip and order I would be pleased to do so.

>>

>> Also, as we discussed at the EDCR 2.67 conference, we are looking for convenient dates and times for the depositions of Mr. Curtis and Mr. Stringer. If you could, please send us those dates and times and we will take their depositions in California. As for Mr. Lash, you said you would send a letter to us confirming your position that he has no discoverable information as to the Counterclaim. If you could, please send us that confirmatory letter at your earliest convenience.

>>

>> Finally, please find attached the Word version of our exhibit list. If you have any questions or concerns, please let me know.

>>

>> Sincerely,

>>

>> James M. Jimmerson
>> Associate
>> Jimmerson Hansen, P.C.
>> 415 South Sixth Street, Suite 100
>> Las Vegas, NV 89101
>> P: (702) 388-7171
>> F: (702) 380-6417

>>

>>

>>

>> -----Original Message-----

>> From: Pat Lundvall [mailto:plundvall@mcdonaldcarano.com]

>> Sent: Thursday, August 01, 2013 12:33 PM

>> To: James M. Jimmerson, Esq.

>> Cc: Aaron Shipley; Brian Grubb

>> Subject: Request to withdraw various of Plaintiffs' MIL

>>

>> As we repeatedly advised, we fully intended to comply with our obligations under EDCR 2.67, and we did so. Our compliance makes certain of your MIL's moot. Please withdraw those motions so that we do not have to waste time responding to them. For your convenience, below is a highlighted list of your MIL's. I believe that it is accurate. The highlighted ones are the ones now moot. Thank you for your anticipated cooperation. Here's hoping you are enjoying your vacation.

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>>

>> 2. MIL to Admit the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions:

>>

>> 3. MIL to Admit Amendment to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions

>>

>> 4. MIL to Admit Amendment No. 2 to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions

>>

>> 5. MIL to Admit the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions

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>> 6. MIL to Admit Amendment No. 1 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions

>>

>> 7. MIL to Admit Amendment No. 2 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions

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>>

>> 9. MIL to Admit Amendment No. 4 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions

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>>
>> 25. MIL to Permit James J. Jimmerson, Esq. to Testify Concerning Plaintiffs' Attorney's Fees and Costs
>>
>> <Proposed Exhibit List.docx>

James M. Jimmerson, Esq.

From: James M. Jimmerson, Esq.
Sent: Monday, July 15, 2013 1:54 PM
To: Aaron Shipley
Cc: 'jjj@jimmersonhansen.com'; Kim Stewart; Stephanie Spilotro
Subject: Wolfram v. Pardee

Aaron,

Just wanted to check in with you again regarding the proposed agreements on the admissibility of the documents we discussed (i.e. the contracts, the recorded maps, the written communications between the parties) as well as perhaps an agreement on whether James J. Jimmerson, Esq. can testify as to the attorney fees and costs consistent with Nevada Rule of Professional Conduct 3.7(a)(2).

Rule 3.7. Lawyer as Witness.

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
- (1) The testimony relates to an uncontested issue;
 - (2) The testimony relates to the nature and value of legal services rendered in the case; or
 - (3) Disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

For the purposes of the documents we would like to agree on as to their admissibility, the list is the same as last time in March, plus the recorded maps.

1. September 1, 2004 Commission Letter Agreement signed by Jon Lash, James Wolfram, and Walt Wilkes
2. Option Agreement For The Purchase Of Real Property And Joint Escrow Instructions – May, 2004
3. Amendment to Option Agreement For the Purchase of Real Property and Joint Escrow Instructions dated July 28, 2004.
4. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated August 31, 2004.
5. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005.
6. Amendment No. 1 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated July 28, 2006.
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16. August 23, 2007 letter from Mr. Lash to Walt Wilkes and Jim Wolfram.
17. March 14, 2008 letter from Jon Lash to Jim Wolfram and Walt Wilkes.
18. August 26, 2009 letter from Jim Jimmerson to Charles Curtis.
19. May 19, 2009 letter from Jim Jimmerson to Jim Stringer.
20. May 17, 2010 letter from Jim Jimmerson to Jon Lash.
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22. February 1, 2008 letter from Jim Wolfram to Jon Lash.
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25. Parcel Map recorded in the Clark County Recorder's Office in File 98, page 57, bates PLTF 10463 through PLTF 10468.
26. Plat Map recorded in the Clark County Recorder's Office in Book 138, page 51, bates PLTF 10427 through PLTF 10438.
27. Parcel Map recorded in the Clark County Recorder's Office in File 116, page 35, bates PLTF 10439 through PLTF 10440.
28. Parcel Map recorded in the Clark County Recorder's Office in File 117, page 18, bates PLTF 10441 through PLTF 10443.
29. Plat Map recorded in the Clark County Recorder's Office in Book 140, page 57, bates PLTF 10444 through PLTF 10456.
30. Parcel Map recorded in the Clark County Recorder's Office in File 113, page 55, bates PLTF 10457 through PLTF 10462.

When you are free please drop me a line. Thanks.

James M. Jimmerson

Associate

Jimmerson Hansen, P.C.
415 South Sixth Street, Suite 100
Las Vegas, NV 89101
P: (702) 388-7171
F: (702) 380-6417

JIMMERSONHANSEN
800.446.7944 (702) 388-7171

(MIL #25) DECLARATION
Exhibit 9

(MIL #25) DECLARATION
Exhibit 9

James M. Jimmerson, Esq.

From: Pat Lundvall [plundvall@mcdonaldcarano.com]
Sent: Monday, July 15, 2013 2:27 PM
To: James M. Jimmerson, Esq.
Cc: Aaron Shipley
Subject: RE: Wolfram v. Pardee

Aaron forwarded your message for response. In accord with EDCR 2.67, we will come to our meeting scheduled for July 25 at 4p prepared to discuss your requested stipulations. Particularly when it comes to stipulations concerning the admissibility of exhibits, I only offer a stipulation after having had the opportunity to actually see the exhibit being proposed. Sometimes stray marks or hand-written notations have been made to documents that may affect their import and admissibility.

From: Aaron Shipley
Sent: Monday, July 15, 2013 2:00 PM
To: Pat Lundvall
Subject: FW: Wolfram v. Pardee

From: James M. Jimmerson, Esq. [mailto:jmj@jimmersonhansen.com]
Sent: Monday, July 15, 2013 1:54 PM
To: Aaron Shipley
Cc: James J. Jimmerson, Esq.; Kim Stewart; Stephanie Spilotro
Subject: Wolfram v. Pardee

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When you are free please drop me a line. Thanks.

James M. Jimmerson

Associate

Jimmerson Hansen, P.C.
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F: (702) 380-6417

JIMMERSONHANSEN
ATTORNEYS AT LAW

(MIL #25) DECLARATION
Exhibit 10

(MIL #25) DECLARATION
Exhibit 10

James M. Jimmerson, Esq.

From: Pat Lundvall [plundvall@mcdonaldcarano.com]
Sent: Wednesday, July 17, 2013 5:18 PM
To: James M. Jimmerson, Esq.
Cc: Aaron Shipley; James J. Jimmerson, Esq.; Kim Stewart; Stephanie Spilotro
Subject: Re: Wolfram v. Pardee part 1
Attachments: image004.png; image001.png

Thank you for your message. EDCR 2.67 contemplates that the parties will exchange their exhibits and offer stipulations to their admissibility at our meeting scheduled for July 24. We will come prepared to do that.

I hope that you, like I, are going to present your proposed exhibits in the manner required for use at trial. Thank you for doing so.

On Jul 17, 2013, at 3:34 PM, "James M. Jimmerson, Esq." <jmj@jimmersonhansen.com> wrote:

> Pat and Aaron,
>
> Please find attached the versions (email 1 of 2) of the documents that I would like to stipulate concerning their admissibility. I have not attached the maps because they are of a size which cannot be scanned. As you know, when we produced the maps in hard copy they were quite large. The maps we would like to agree concerning their admissibility are certified copies of the maps you have in your possession. To the extent you cannot see our maps right now, I would stipulate to using your maps as the admitted documents as they are identical to the certified copies in our possession (so long as there are no material alterations to your version).
>
> Also, I just wanted to follow up on the lawyer as witness issue. Is there still disagreement on this issue or can we agree that James J. Jimmerson can testify as to the attorney's fees and costs?
>
> Thank you for your attention to this. If you have any questions or concerns, please let me know.
>
> Sincerely,
>
> James M. Jimmerson
> Associate
> Jimmerson Hansen, P.C.
> 415 South Sixth Street, Suite 100
> Las Vegas, NV 89101
> P: (702) 388-7171
> F: (702) 380-6417
> [logo.jpg]<<http://www.jimmersonhansen.com/>>
>
> From: Pat Lundvall [mailto:plundvall@mcdonaldcarano.com]
> Sent: Monday, July 15, 2013 2:27 PM
> To: James M. Jimmerson, Esq.
> Cc: Aaron Shipley
> Subject: RE: Wolfram v. Pardee
>
> Aaron forwarded your message for response. In accord with EDCR 2.67, we will come to our meeting scheduled for July 25 at 4p prepared to discuss your requested stipulations. Particularly when it comes to stipulations concerning the admissibility of exhibits, I only

offer a stipulation after having had the opportunity to actually see the exhibit being proposed. Sometimes stray marks or hand-written notations have been made to documents that may affect their import and admissibility.

>

> From: Aaron Shipley

> Sent: Monday, July 15, 2013 2:00 PM

> To: Pat Lundvall

> Subject: FW: Wolfram v. Pardee

>

>

>

> From: James M. Jimmerson, Esq. [mailto:jmj@jimmersonhansen.com]

> Sent: Monday, July 15, 2013 1:54 PM

> To: Aaron Shipley

> Cc: James J. Jimmerson, Esq.; Kim Stewart; Stephanie Spilotro

> Subject: Wolfram v. Pardee

>

> Aaron,

>

> Just wanted to check in with you again regarding the proposed agreements on the admissibility of the documents we discussed (i.e. the contracts, the recorded maps, the written communications between the parties) as well as perhaps an agreement on whether James J. Jimmerson, Esq. can testify as to the attorney fees and costs consistent with Nevada Rule of Professional Conduct 3.7(a)(2).

>

>

> Rule 3.7. Lawyer as Witness.

>

> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

>

> (1) The testimony relates to an uncontested issue;

>

> (2) The testimony relates to the nature and value of legal

> services rendered in the case; or

>

> (3) Disqualification of the lawyer would work substantial hardship on the client.

>

> (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

>

> For the purposes of the documents we would like to agree on as to their admissibility, the list is the same as last time in March, plus the recorded maps.

>

>

> 1. September 1, 2004 Commission Letter Agreement signed by Jon lash, James Wolfram, and Walt Wilkes

>

> 2. Option Agreement For The Purchase Of Real Property And Joint Escrow Instructions - May, 2004

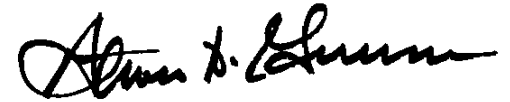
>

> 3. Amendment to Option Agreement For the Purchase of Real Property and Joint Escrow Instructions dated July 28, 2004.

>

- > 4. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated August 31, 2004.
- >
- > 5. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005.
- >
- > 6. Amendment No. 1 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated July 28, 2006,
- >
- > 7. Amendment No. 2 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated September 30, 2006.
- >
- > 8. Amendment No. 3 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated November 22, 2006.
- >
- > 9. Amendment No. 4 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated December 20, 2007.
- >
- > 10. Amendment No. 5 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated May 12, 2008.
- >
- > 11. Amendment No. 6 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated January 30, 2009.
- >
- > 12. Amendment No. 7 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated April 24, 2009.
- >
- > 13. Amendment No. 8 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated June 18, 2009.
- >
- > 14. April 6, 2009 letter from Jim Stringer Jr. to Jim Wolfram.
- >
- > 15. November 24, 2009 letter from Jon Lash to Jim Wolfram.
- >
- > 16. August 23, 2007 letter from Mr. Lash to Walt Wilkes and Jim Wolfram.
- >
- > 17. March 14, 2008 letter from Jon Lash to Jim Wolfram and Walt Wilkes.
- >
- > 18. August 26, 2009 letter from Jim Jimmerson to Charles Curtis.
- >
- > 19. May 19, 2009 letter from Jim Jimmerson to Jim Stringer.
- >
- > 20. May 17, 2010 letter from Jim Jimmerson to Jon Lash.
- >
- > 21. July 10, 2009 letter from Charles Curtis to Jim Jimmerson.
- >
- > 22. February 1, 2008 letter from Jim Wolfram to Jon Lash.
- >
- > 23. April 21, 2010 letter from Jim Wolfram to Jon Lash.
- >
- > 24. April 23, 2009 Letter from Jim Jimmerson to Jim Stringer.
- >
- > 25. Parcel Map recorded in the Clark County Recorder's Office in File 98, page 57, bates PLTF 10463 through PLTF 10468.
- >
- > 26. Plat Map recorded in the Clark County Recorder's Office in Book 138, page 51, bates PLTF 10427 through PLTF 10438.

>
> 27. Parcel Map recorded in the Clark County Recorder's Office in File 116, page 35, bates
PLTF 10439 through PLTF 10440.
>
> 28. Parcel Map recorded in the Clark County Recorder's Office in File 117, page 18, bates
PLTF 10441 through PLTF 10443.
>
> 29. Plat Map recorded in the Clark County Recorder's Office in Book 140, page 57, bates
PLTF 10444 through PLTF10456.
>
> 30. Parcel Map recorded in the Clark County Recorder's Office in File 113, page 55, bates
PLTF 10457 through PLTF 10462.
>
> When you are free please drop me a line. Thanks.
>
> James M. Jimmerson
> Associate
> Jimmerson Hansen, P.C.
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> [logo.jpg]<<http://www.jimmersonhansen.com/>>
>
> <image004.png>
> <image001.png>
> <Amended Restated Option Agreement PLTF 81-127, PH 47-80.pdf>
> <Amendment No. 1 Restated Amended Option Agreement CSI 1095-1109.pdf>
> <Amendment No. 2 to Option Agreement CSI 1550-1581.pdf> <Amendment No.
> 2 to Restated Amended Option Agreement CSI 1110-1112.pdf> <Amendment
> No. 3 to Amended and Restated Option Agreement CSI 1114-1115.pdf>
> <Amendment No. 4 to Amended and Restated Option Agreement CSI
> 1116-1122.pdf> <Amendment No. 5 to Amended and Restated Option
> Agreement CSI 1123-1132.pdf> <Amendment No. 6 to Amended and Restated
> Option Agreement CSI 1133-1143.pdf> <Amendment No. 7 to Amended and
> Restated Option Agreement CSI 1144-1163.pdf> <Amendment No. 8 to
> Amended and Restated Option Agreement CSI 1164-1256.pdf> <Amendment to
> Option Agreement CSI 1583-1585.pdf> <April 6, 2009 ltr from Stringer
> to Wolfram PH 128-131.pdf>



CLERK OF THE COURT

MPSJ
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AARON D. SHIPLEY (NSBN 8258)
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Attorneys for Defendant
Pardee Homes of Nevada

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

**DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Hearing Date:
Hearing Time:

Pursuant to Rule 56 of the Nevada Rules of Civil Procedure, defendant Pardee Homes of Nevada ("Pardee") moves the Court for an Order granting partial summary judgment in favor of Pardee and against plaintiffs James Wolfram ("Wolfram") and Walt Wilkes ("Wilkes") (collectively "Plaintiffs") on their first cause of action for an accounting in their Second Amended Complaint ("Complaint"). As plead by Plaintiffs, the claim for an accounting is a remedy, not a legal cause of action. There are no genuine issues of material fact regarding this issue. Accordingly, partial summary judgment in Pardee's favor is appropriate.

///

///

///

1 This motion is supported by the following Memorandum of Points and
2 Authorities, the supporting Exhibits, the papers and pleadings on file in this matter, and
3 any argument the Court may permit at the hearing of this matter.

4 RESPECTFULLY SUBMITTED this 22nd day of July, 2013.

5 McDONALD CARANO WILSON LLP

6
7 /s/Pat Lundvall

8 Pat Lundvall (#3761)

9 Aaron D. Shipley (#8258)

2300 West Sahara Avenue, Suite 1000

Las Vegas, Nevada 89102

Attorneys for Defendant Pardee Homes of Nevada

12 **NOTICE OF MOTION**

13 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

14 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
15 will bring the foregoing **DEFENDANT'S MOTION FOR PARTIAL SUMMARY**
16 **JUDGMENT** on for hearing before the above-entitled Court on the 27 day of
17 August, 2013, at the hour of 8 : 30 a.m. or as soon thereafter as counsel
18 may be heard.
19

20 RESPECTFULLY SUBMITTED this 22nd day of July, 2013.

21 McDONALD CARANO WILSON LLP

22 /s/ Pat Lundvall

23 Pat Lundvall (#3761)

24 Aaron D. Shipley (#8258)

2300 West Sahara Avenue, Suite 1000

Las Vegas, Nevada 89102

Attorneys for Defendant Pardee Homes of Nevada

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 9, 2013, this Court held oral argument on a motion for summary judgment in Isam Abunadi v Isaac Farah et al., Case No. A668168. The Court granted summary judgment on the accounting cause of action, holding that accounting is a remedy, not a legal cause of action.

In the case at bar, Plaintiffs too have asserted “accounting” as a legal cause of action. For the same reasons articulated by the Court in Abunadi, Pardee seeks partial summary judgment on Plaintiffs’ accounting claim.

II. STATEMENT OF UNDISPUTED FACTS

Plaintiffs’ Second Amended Complaint asserts “accounting” as its first claim for relief. **Exhibit A.**

III. LEGAL ARGUMENT

A. Standard For Summary Judgment.

Pursuant to Nev. R. Civ. P. 56(c), a moving party is entitled to summary judgment when there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. The “availability of summary proceedings promotes judicial economy and reduces litigation expense associated with actions clearly lacking in merit.” Elizabeth E. v. ADT Security Systems West, 108 Nev. 889, 892, 839 P.2d 1308, 1310 (1992). “Rule 56 should not be regarded as a ‘disfavored procedural shortcut’ but instead ‘as an integral part of the . . . rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.’” Wood v. Safeway, Inc., 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (citing and adopting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)). ‘

1 **B. Plaintiffs' Claim for an Accounting Is a Remedy Rather than a Legal**
2 **Cause of Action Under Nevada Law.**

3 Plaintiffs' first cause of action is for an accounting. An accounting is an equitable
4 remedy, not an independent cause of action. See Dairy Queen, Inc. v. Wood, 369 U.S.
5 469, 478 (1962); see also Hackett v. Feeney, No. 2:09-cv-2075-RLH-LRL, 2010 WL
6 1416870, at *3 (D. Nev. April 1, 2010) (holding that the court need not address a claim
7 for accounting on a motion to dismiss because it is a remedy, is not a claim for relief or
8 a cause of action).

9 In the present case, the Complaint asserts as follows:

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

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

21 Despite being plead as an independent claim for an accounting, it is clear that Plaintiffs
22 are actually alleging a breach of the Commission Agreement. Paragraph 17 even cites
23 to the terms of the Commission Agreement. If all elements are proven, Plaintiffs'
24 second claim for relief would be the legitimate theory to assert breach of contract.
25
26
27
28

1 **IV. CONCLUSION**

2 Based upon the foregoing, it is apparent that no genuine issue of material fact is
3 in dispute concerning Plaintiffs' claim for an accounting. Thus, partial summary
4 judgment is appropriate and Pardee respectfully requests the Court enter summary
5 judgment in favor of Pardee and against Plaintiffs on the first cause of action.

6 RESPECTFULLY SUBMITTED this 22nd day of July, 2013.

7 McDONALD CARANO WILSON LLP

8 /s/ Pat Lundvall

9 Pat Lundvall (#3761)

10 Aaron D. Shipley (#8258)

11 2300 West Sahara Avenue, Suite 1000

12 Las Vegas, Nevada 89102

13 Attorneys for Defendant Pardee Homes of
14 Nevada

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
3 and that on the 23rd day of July, 2013, I served a true and correct copy of the foregoing
4 **DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** via hand delivery
5 on the following:

6 James J. Jimmerson
7 James M. Jimmerson
8 JIMMERSON, HANSEN, P.C.
9 415 S. Sixth Street, Ste 100
10 Las Vegas, NV 89101
11 *Attorney for Plaintiffs*

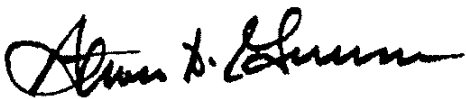
12 /s/Melissa A. Merrill
13 An Employee of McDonald Carano Wilson LLP

14
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282971

EXHIBIT A



CLERK OF THE COURT

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(702) 388-7171
Attorney for Plaintiffs
James Wolfram and Walt Wilkes

DISTRICT COURT

CLARK COUNTY, NEVADA

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

SECOND AMENDED COMPLAINT

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **FIRST CLAIM FOR RELIEF**

10 **(Accounting)**

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

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

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

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

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

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

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

6 **SECOND CLAIM FOR RELIEF**

7 **(Breach of Contract)**

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

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

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

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

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

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

27 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

24 ///

25 ///

26 ///

27

28

WHEREFORE, Plaintiffs pray as follows:

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

DATED this 6th day of June, 2013.

JIMMERSON HANSEN, P.C.

By 
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
jjj@jimmersonhansen.com
JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
jmj@jimmersonhansen.com
415 So. Sixth St., Ste. 100
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Attorney for Plaintiffs
JAMES WOLFRAM and WALT WILKES

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

CERTIFICATE OF SERVICE

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


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

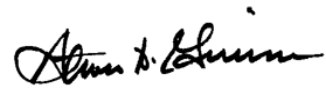
☐ By electronic service through the E-filing system

☐ By facsimile, pursuant to EDCR 7.26

☐ By receipt of copy as indicated below

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


An Employee of JIMMERSON HANSEN, P.C.



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: August 19, 2013
HEARING TIME: 8:30 a.m.


PLAINTIFFS' SUPPLEMENTAL 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 submit their Supplemental Opposition to Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2). This supplemental opposition is based on the pleadings and papers on file, the attached exhibits, the Memorandum of the

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

3 DATED this 22nd day of July, 2013.

4 JIMMERSON HANSEN, P.C.

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**SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES 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. Legal Standard Governing the Availability of Damages for Breach of Contract Claims

Plaintiffs' original opposition brief¹ set forth the legal standard used to determine whether certain damages are available for breach of contract claims. As stated in the Opposition:

It is fundamental that contract damages are prospective in nature and are intended to place the nonbreaching party in as good a position as if the contract had been performed." *Colorado Environments, Inc. v. Valley Grading Corp.*, 105 Nev. 464, 470, 779 P.2d 80, 84 (1989). Damages arising from breach of contract must (1) arise from the breach of contract and (2) "be such as may reasonably be supposed to have been in the contemplation of both parties." See *Clark County School Dist. v. Rolling Plains Const., Inc.*, 117 Nev. 101, 106, 16 P.3d 1079, 1082 (2001) (disapproved of on other grounds, 117 Nev. 948).

Opp. at 4.

II. Mr. Wolfram Recently Testified and Produced New Documents Further Bolstering Plaintiffs' Claim for Time and Effort Damages

On May 31, 2013, Defendant took Mr. Wolfram's deposition concerning Plaintiffs' claims for attorney fee damages and time and effort damages. Mr. Wolfram explained his claims for time and effort damages as follows:

Q. My question to you is limited to: Why do you believe that you're entitled to your time and effort?

A. Because I had no information as to what the sales were, what was going on. I didn't have the amendments, and I feel as though that I was doing Pardee's work. It would have been very simple for Pardee just to send me over some parcel numbers, some acreage, title company, a few things like that. And -- and we wouldn't even be here today. I had to find out what was going on. If it hadn't been for a letter from a friend, I wouldn't even know that Pardee had bought property. And it went on further up to the 84 million, if that's what we're -- we're getting at. It --

¹ Plaintiffs' Opposition to Defendant's Motion in Limine to Plaintiffs' Claim for Damages in the Form of Compensation for Their Time (MIL #2) is cited herein as, "Opp. at ____."

1 Q. What letter from a friend?

2 A. That's how I -- I found out that Pardee had bought more
3 property. I had searched and searched. And I was having
4 trouble. And one day Walt's friend called him. He had been
5 over at Nevada Title, and he was going through some records
6 over there. And he called Walt. He said -- told Walt, you know,
7 Pardee -- I hope you get your commission. Pardee's buying
8 more land. And it was an email. And then I really started
9 digging when I found that out.

10 See Exhibit 1, a true and correct copy of portions of the Certified Deposition Transcript of
11 James Wolfram from May 31, 2013 ("Wolfram Dep."), attached hereto, at 9:19-10:14.

12 Mr. Wolfram further testified that the September 1, 2004 Commission Letter
13 Agreement contemplated that Plaintiffs would be entitled to receive the information they
14 sought to receive through their efforts. Mr. Wolfram explained that he was not interested in
15 everything Pardee was doing, and instead was only interested in the activities that related
16 to Mr. Wilkes and him, stating:

17 Q. Is there any language within the commission agreement
18 that suggests to you that you are entitled to be
19 compensated for your time and your efforts?

20 A. Well, to me it infers it when it says, You are to be kept
21 reasonably informed. The minute I wasn't reasonably -- be
22 informed, then I -- and no one would tell me -- and I mean to
23 tell you, I really tried to work with Pardee and their attorneys
24 over there. That's the reason I had to get an attorney, because
25 nobody would work with me. After I was reasonably informed, I
26 wouldn't be here. It's as simple as that.

27 Q. And what is the information, then, you claim to which
28 you were entitled to?

A. If I would have had -- I mentioned if I would have had a
parcel number, I would have had number of acres, I would
have the title company, recording date, the price which,
actually, is public record anyway, but just a few simple things
like that. There was a letter sent -- that was sent to Mr. Curtis
and Mr. Stringer just putting down those things. It wouldn't take
a title company or Pardee five minutes in the computer to come
up with those answers and send them to me.

I am not after anything in the amendments that do not pertain
to me. I can care less how Pardee builds their homes and does
all that stuff. If there's anything in an amendment that pertained
to me, I think they should let me know about it. And the rest of
this stuff is not my business.

1 *Id.* at 13:5-14:7.

2 Moreover, Mr. Wolfram confirmed that the parties understood that it would be
3 foreseeable that Plaintiffs would go looking for the information and records they were
4 entitled to when explaining how Pardee's Chief Operating Officer, Jon Lash, responded
5 when he was told Plaintiffs were looking for the information. Specifically Mr. Lash told Mr.
6 Wolfram to trust him. He did not respond the he was surprised that Mr. Wolfram would be
7 making the inquiry or that Mr. Wolfram would feel that he was entitled to the information.
8 Mr. Wolfram stated:

9 **Q. (By Mr. Jimmerson) How did John Lash respond when**
10 **you told him that you were getting the documents?**

11 A. When I talked to John and I asked for maps and things to
12 that nature, John responded by saying, Jim, trust us. You --
13 you're just going to have to go on trust. And I told John, you
14 know, I didn't necessarily want to go on trust. I wanted to -- I
15 wanted to see what was happening. I needed -- I needed maps
16 of the overall property and maps of what they had purchased.
17 And he said, No, you're going to have to go on trust.

18 Then another time when I called over, he said, I'm out of this
19 now. It's out of my hands. You're going to have to talk to the
20 attorney, Mr. Stringer. And he sent me to Mr. Stringer. Then I
21 asked Mr. Stringer the same questions. And he was very nice
22 on the first conversation. He said he was going to get me a
23 bunch of information and send that stuff over to me, but he
24 didn't. And I had talked to him again. And there's letters. You
25 know, you have letters.

26 When he didn't, then I called John and John said, Well -- it was
27 Mr. Curtis. Attorney Curtis was involved. He was taking --
28 when I called Mr. Curtis, he was very blunt and says, You have
to trust us. Now, God love them, if they were paying me. That --
that's fine if they were actually paying me what they owed me,
but I had no record of what -- what was going on. And if the
shoe were on the other foot, I promise you that if John was -- I
was in his position, he was in mine, and I told him just to trust
me on all this stuff, those corporate attorneys would have sued
me in a minute to find out what was going on.

29 *Id.* at 64:17-65:21. The absence of surprise or curiosity as to why Mr. Wolfram or Mr.
30 Wilkes was taking it upon themselves to get the information is further evidence that Mr.
31 Lash understood that it was foreseeable that Plaintiffs would search for the information if

1 Pardee did not provide it as required under the Commission Letter Agreement. In telling
2 Mr. Wolfram to trust him, Mr. Lash was simply hoping that Mr. Wolfram would not go
3 asking questions.

4 Finally, Mr. Wolfram explained how many hours he believed he had spent trying to
5 get the documents he and Mr. Wilkes were entitled to. Specifically, Mr. Wolfram stated
6 that he had spent at least 80 hours—and most likely significantly more—trying to get the
7 information Plaintiffs were supposed to be provided under the September 1, 2004
8 Commission Letter Agreement. Mr. Wolfram testified:

9 **Q. (By Mr. Jimmerson) Okay. How many hours would you**
10 **say you worked between November of 2008 or 2009 and**
11 **December of 2010?**

12 A. You know, it's like I explained, when I had originally put
13 down the hours, I put something down I thought would be
14 reasonable. Once I had time to -- I don't know. I didn't keep
15 track of the time. Once I put down my hours and had 80 and I
16 went back and had time to look at the depositions and prepare and
17 do all this stuff, I realized that that is well less than the time I
18 have in it.

19 *Id.* at 55:17-56:1. Further explaining how he could be so sure that he spent at least 80
20 hours working on getting the information, Mr. Wolfram testified that one of the maps he
21 drew as part of a letter to Pardee requesting information took him days. Mr. Wolfram
22 stated specifically:

23 **Q. And how much time and effort did you put into creating**
24 **this map?**

25 A. I guess if you wanted to put it in terms -- it isn't in terms of
26 hours. It's days. I had to go out. I went to the title companies. I
27 went to the recorder's office. I went down to planning and
28 zoning. I had a master planner. I went to development around
the corner. I -- I went to the recorder's office. Recorder's office
is where I finally ended up, not at the office. They said the only
person that could tell me was the person that was drawing the
maps and sectioning out the property for Pardee in the back.
And they gave me that gentleman. And I went back there. And
he spent a lot of time with me. And I put this map together.

But I'm talking over a period of time. We're not talking hours.
We're talking a few days to put this together. Everybody was
different. When you went to --

1 *Id.* at 40:14-41:5.

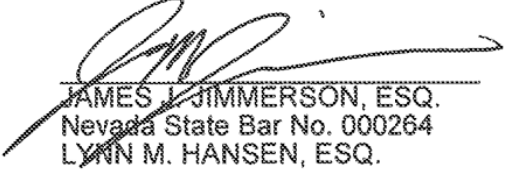
2 Overall, the most recent evidence further confirms Plaintiffs' entitlement to their time
3 and effort damages. Mr. Wolfram and Mr. Wilkes are entitled to the information promised
4 to them under the Commission Letter Agreement. When that information was withheld,
5 Plaintiffs did what Mr. Lash understood was foreseeable: they sought the information from
6 other sources. As such, Plaintiffs should be compensated for their time and effort.

7 **III. Conclusion**

8 Plaintiffs respectfully request that the Court takes into consideration the new
9 evidence recently discovered when deciding the motions in limine. In further support of
10 Plaintiffs' Oppositions thereto, Plaintiffs respectfully request that the Court deny
11 Defendant's motions.

12 DATED this 22ND day of July, 2013.

JIMMERSON HANSEN, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' SUPPLEMENTAL
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 22ND day of July, 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.

EXHIBIT 1

EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA

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

DEPOSITION OF JAMES FREDERICK WOLFRAM
LAS VEGAS, NEVADA
FRIDAY, MAY 31, 2013

REPORTED BY: VANESSA LOPEZ, CCR NO. 902
JOB NO.: 182441

JA002796

1 reflect and go back and read the deposition, I put down 80
2 hours. You know, now that I've had time to go back and --
3 and look at the stuff, I have so much more time involved in
4 this than 80 hours. It's unreal. And I think that my time
5 is probably as important as your time or my attorneys' time.
6 And that's the reason I'm asking for it, but my damages --
7 they do not reflect what I'm really, really here for. They
8 go second to finding a way to track -- a mechanism to track
9 where sales are so my family can follow what's going on.
10 They've -- they're not my first priority, but I think I
11 should get something for all the time that I have involved
12 in it.

13 Q. As I indicated, Mr. Wolfram, I'm only going to ask
14 you questions concerning the topic areas for which the court
15 allowed us to do additional discovery. You indicated that
16 you believe that you're entitled to your time and your
17 effort.

18 A. Right.

19 Q. My question to you is limited to: Why do you
20 believe that you're entitled to your time and effort?

21 A. Because I had no information as to what the sales
22 were, what was going on. I didn't have the amendments, and
23 I feel as though that I was doing Pardee's work. It would
24 have been very simple for Pardee just to send me over some
25 parcel numbers, some acreage, title company, a few things

1 like that. And --- and we wouldn't even be here today. I
2 had to find out what was going on. If it hadn't been for a
3 letter from a friend, I wouldn't even known that Pardee had
4 bought property. And it went on further up to the
5 84 million, if that's what we're --- we're getting at. It ---

6 Q. What letter from a friend?

7 A. That's how I --- I found out that Pardee had bought
8 more property. I had searched and searched. And I was
9 having trouble. And one day Walt's friend called him. He
10 had been over at Nevada Title, and he was going through some
11 records over there. And he called Walt. He said --- told
12 Walt, you know, Pardee --- I hope you get your commission.
13 Pardee's buying more land. And it was an email. And then I
14 really started digging when I found that out.

15 Q. Who was the friend?

16 A. Phil Zobrist.

17 Q. I'm sorry?

18 A. Phil Zobrist.

19 Q. And how do you spell Mr. Zobrist's last name,
20 please?

21 A. Z-O-B-R-I-S-T.

22 Q. And you indicated it was an email?

23 A. Yeah, it was an email to Walt.

24 Q. Did you save the email?

25 A. Yes.

1 Q. But you haven't produced it during the course of
2 this litigation?

3 A. I found it.

4 Q. When did you find it?

5 A. When I went back looking over all my stuff. It --
6 it -- in fact, I think it might have been that Walt may have
7 sent that to me. Well, I know he sent it to me, but I can't
8 recollect the exact date that he sent it to me. Let's put
9 it that way.

10 Q. Was it after this litigation was filed?

11 A. It was -- I can give you a date. It was before --
12 it was before I found out, on that letter from John -- when
13 he sent his map over to me. It was before that. That's --
14 that's how I started forming my map several months before
15 that. When I -- when I saw the -- when I saw the email, I
16 knew that Pardee had -- had purchased some land.

17 Q. When was the last time you saw this email?

18 A. Well, I probably read it, I don't know, a couple
19 days ago, maybe.

20 Q. It was one of the things that you reviewed in
21 preparation for the deposition then?

22 A. Yeah, it was on that one, mm-hmm.

23 Q. And in reviewing, then, that letter, it helped you
24 prepare, then, for this deposition, did it not?

25 A. Yeah, it helped prepare me, but I -- after I had

1 found out about a long time ago, I knew what was in the
2 email. I -- because at that particular time, I -- after I
3 received that email, I called Pardee and no one would let me
4 know at all if land had been taken down. So after several
5 calls, I went to Nevada Title because Zobrist had originated
6 that through Nevada Title. And I went over there and -- and
7 they made me a copy and that's what I have.

8 MS. LUNDVALL: All right. This email would fall
9 within the scope of the previous request that I made.

10 Q. (By Ms. Lundvall) Back to you, Mr. Wolfram.

11 You indicate that you believe you're entitled to
12 your time and effort as damages, then, in this litigation.
13 Correct?

14 A. I -- I do.

15 Q. And is that an expectation that you had at the
16 time that you entered into the commission agreement with
17 Pardee?

18 A. No, I never thought this was going to happen.
19 I -- I thought that I would be informed about everything. I
20 thought -- you know, knowing John, I thought everything was
21 going to be up front and they send me information. If I
22 would have just had -- there was no reason, really, for us
23 to be here. If I had had -- just had some basic
24 information, parcel numbers, sales price which is public
25 record -- sales price, title company, recording. Just a

1 letter that I sent over to the attorney, Mr. Curtis and
2 Mr. Stringer in California -- if I'd have just had those
3 things, we wouldn't be sitting here today. Just a simple
4 thing. That's all.

5 Q. Is there any language within the commission
6 agreement that suggests to you that you are entitled to be
7 compensated for your time and your efforts?

8 A. Well, to me it infers it when it says, You are to
9 be kept reasonably informed. The minute I wasn't
10 reasonably -- be informed, then I -- and no one would tell
11 me -- and I mean to tell you, I really tried to work with
12 Pardee and their attorneys over there. That's the reason I
13 had to get an attorney, because nobody would work with me.
14 After I was reasonably informed, I wouldn't be here. It's
15 as simple as that.

16 Q. And what is the information, then, you claim to
17 which you were entitled to?

18 A. If I would have had -- I mentioned if I would have
19 had a parcel number, I would have had number of acres, I
20 would have the title company, recording date, the price
21 which, actually, is public record anyway, but just a few
22 simple things like that. There was a letter sent -- that
23 was sent to Mr. Curtis and Mr. Stringer just putting down
24 those things. It wouldn't take a title company or Pardee
25 five minutes in the computer to come up with those answers

1 and send them to me.

2 I am not after anything in the amendments that do
3 not pertain to me. I can care less how Pardee builds their
4 homes and does all that stuff. If there's anything in an
5 amendment that pertained to me, I think they should let me
6 know about it. And the rest of this stuff is not my
7 business.

8 Q. How much time and effort damages do you believe
9 that you're entitled to?

10 A. You know, I put down 80 hours and I just --- that
11 was early on. And I just --- was it --- just a figure that I
12 come up with, but now that I've had time to sit down and
13 reflect on the deposition and go back and look at all that,
14 I got well more than that amount of time in this. And I --
15 I've --- but I put a reasonable amount on it, what I thought
16 was a very reasonable amount.

17 I mean, you attorneys get paid a high price.
18 Accountants get paid a very high price. A plumber, a
19 refrigerator man coming to my house would be charging me
20 \$200. I'm a professional also. I -- I think -- I think
21 what I'm asking, really, is nothing for the time and effort,
22 now that I've had time to go back and reflect on this after
23 the deposition. I've got many, many more hours than that in
24 this.

25 Q. You said you put down 80 hours. Did you also put

1 A. There was only one -- there was only one map that
2 John sent to me. And whatever the date is on that map --
3 and the only reason he sent that to me is because I had sent
4 this map to him and I -- he could see that I had land
5 outside the boundaries on here. This land down here also at
6 the bottom, the smaller pieces. I mean, if -- if they
7 didn't belong to me, I didn't want money, but I knew they
8 purchased them, and I wanted to know what they were.

9 Q. So sometime, either November of 2008 or November
10 of 2009, is when you began to create this map. Is that
11 correct?

12 A. I believe it was November, yes. Now, that's
13 coming off the top of my head right now.

14 Q. And how much time and effort did you put into
15 creating this map?

16 A. I guess if you wanted to put it in terms -- it
17 isn't in terms of hours. It's days. I had to go out. I
18 went to the title companies. I went to the recorder's
19 office. I went down to planning and zoning. I had a master
20 planner. I went to development around the corner. I -- I
21 went to the recorder's office. Recorder's office is where I
22 finally ended up, not at the office. They said the only
23 person that could tell me was the person that was drawing
24 the maps and sectioning out the property for Pardee in the
25 back. And they gave me that gentleman. And I went back

1 there. And he spent a lot of time with me. And I put this
2 map together.

3 But I'm talking over a period of time. We're not
4 talking hours. We're talking a few days to put this
5 together. Everybody was different. When you went to ---

6 Q. During any --

7 A. -- planning and zoning ---

8 Q. Hold on. Hold on.

9 A. Okay.

10 Q. During any of the search that you just described
11 for me, did you do a search for option property deeds?

12 A. I was just looking for parcels. I could tell if
13 it was option property if I had parcels, you know, over and
14 above, but I didn't know. The --- the original map ---

15 Q. Mr. Wolfram, I'm going to go back to my question,
16 please. Did you look for option property deeds?

17 A. I -- and I'm telling you if it was option property
18 that was picked up by John, then that would have been option
19 property. I was looking for any land sale that Pardee had
20 purchased, whether it was purchased property, acres, however
21 they did it. I was looking for any property that had been
22 purchased by Pardee.

23 Q. Turning your attention --

24 A. And -- but then I also -- let me clarify this
25 also. We have this map here, but I worked on the bottom

1 MR. JIMMERSON: It really is a very, very small
2 one.

3 MS. HANSEN: Okay. All right.

4 THE WITNESS: If you're going to be any time at
5 all, then let's take a break.

6 Q. (By Mr. Jimmerson) If we're not out in ten
7 minutes, I haven't done my job. So it's a short time, I
8 promise.

9 Now, when you say that you are confident now that
10 you've done more than 80 hours of work, are you referring to
11 the 80 hours between when you started working the
12 November 2008, 2009 time frame and when you filed suit in
13 December 2010?

14 A. Yeah.

15 MS. LUNDVALL: Objection. Leading.

16 THE WITNESS: Yes.

17 Q. (By Mr. Jimmerson) Okay. How many hours would
18 you say you worked between November of 2008 or 2009 and
19 December of 2010?

20 A. You know, it's like I explained, when I had
21 originally put down the hours, I put something down I
22 thought would be reasonable. Once I had time to -- I don't
23 know. I didn't keep track of the time. Once I put down my
24 hours and had 80 and I went back and had time to look at the
25 depositions and prepare and do all this stuff, I realized that

1 that is well less than the time I have in it.

2 Q. Well, I want to confirm exactly kind of the
3 starting point of -- you know, would it be fair to say that
4 you spent 80 hours between November 2008 or 2009 and
5 December 2010 working on this stuff?

6 MS. LUNDVALL: Objection. Leading.

7 THE WITNESS: Yeah, way -- well more than that
8 one -- once -- once I've had time to reflect on what I did.
9 I didn't -- I didn't keep track of records. I didn't think
10 I was going to have a lawsuit, but from the time you're
11 talking about on just the maps alone and all the traveling I
12 did to Coyote Springs and what have you and back, it's well
13 over 80 hours.

14 Q. (By Mr. Jimmerson) After we filed suit on your
15 behalf, how much time did you spend working on this stuff,
16 independent of the work that you did with us?

17 A. Hours. I mean, I spent -- I'd go in my office in
18 the morning. I'd stay in there till noon, 2:00 o'clock
19 sometimes. I mean, I -- I don't -- I don't have a
20 recollection. I didn't keep a record of that out -- but I
21 have long more than 80 hours from when I first started.

22 Q. Okay. But I just want to know kind of the end
23 mark, if it would be fair to say that you spent 80 hours
24 before you filed suit?

25 MS. LUNDVALL: Objection. Leading.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 11:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

JOINT APPENDIX – VOLUME 17 OF 88

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Chronological Index to Joint Appendix

Date	Document Description	Volume	Labeled
12/29/2010	Complaint	1	JA000001- JA000006
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02/11/2011	Amended Summons	1	JA000013- JA000016
03/02/2011	Answer to Amended Complaint	1	JA000017- JA000023
10/25/2011	Transcript re Discovery Conference	1	JA000024- JA000027
11/08/2011	Scheduling Order	1	JA000028- JA000030
11/29/2011	Order Setting Civil Non-Jury Trial	1	JA000031- JA000032
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
12/16/2011	Notice of Entry of Stipulated Confidentiality Agreement and Protective Order	1	JA000040- JA000048
08/27/2012	Transcript re Hearing	1	JA000049- JA000050
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06/29/2015	Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment – sections filed under seal	54-56	JA008395-JA008922
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10/23/2013	Trial Exhibit 12 – filed under seal	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – filed under seal	28	JA004361- JA004453
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235

Date	Document Description	Volume	Labeled
10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
10/28/2013	Trial Exhibit 20	34	JA005238- JA005254
10/23/2013	Trial Exhibit 21	28	JA004454
10/28/2013	Trial Exhibit 23	34	JA005255- JA005260
10/30/2013	Trial Exhibit 23a	39	JA005816- JA005817
10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
10/23/2013	Trial Exhibit 25	28	JA004455- JA004462
10/24/2013	Trial Exhibit 26	31	JA004792- JA004804
10/30/2013	Trial Exhibit 27	39	JA005818- JA005820
10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
10/29/2013	Trial Exhibit 29	36	JA005498- JA005511
10/24/2013	Trial Exhibit 30	31	JA004805- JA004811
12/13/2013	Trial Exhibit 31a	48	JA007385- JA007410
12/12/2013	Trial Exhibit 39	46	JA006936- JA006948

Date	Document Description	Volume	Labeled
12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – filed under seal	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – filed under seal	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – filed under seal	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

Date	Document Description	Volume	Labeled
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 28th day of February, 2018.

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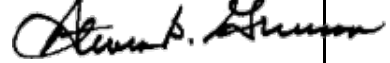
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 28th 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



DISTRICT COURT
CLARK COUNTY, NEVADA

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. KERRY EARLEY, DISTRICT JUDGE

On Tuesday, July 9, 2013

At 8:30 a.m.

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.
For the Defendants: PATRICIA K. LUNDVALL, ESQ.

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

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

1 TUESDAY, JULY 9, 2013, 8:30 A.M.

2 LAS VEGAS, NEVADA

3 -oOo-

4 THE COURT: Case A-632338, James Wolfram versus
5 Pardee Homes of Nevada.

6 Good morning, Counsel. Sorry. I thought it
7 was going to be short.

8 MR. J.M. JIMMERSON: James Jimmerson and James
9 Jimmerson on behalf of plaintiffs.

10 MS. LUNDVALL: Good morning, Your Honor. Pat
11 Lundvall on behalf of Pardee Homes of Nevada.

12 THE COURT: Nice to see you this morning.
13 I didn't see an opposition. I didn't miss it,
14 did I?

15 MS. LUNDVALL: No written opposition. Our
16 written opposition would have been due today. And so
17 since the order shortening time set the hearing for
18 today, I figured I would do an oral opposition.

19 THE COURT: All right. My understanding is
20 they want to just supplement the motions in limine that
21 had already been filed that are scheduled for 8/19.
22 Correct?

23 MR. J.M. JIMMERSON: Yes, Your Honor. We filed
24 our oppositions. We didn't have the new discovery that
25 you reopened a couple of months ago. We just wanted to

1 have the ability to alert the Court to some of the facts
2 in that new discovery, just as the defendants would have
3 the ability to do so on reply.

4 THE COURT: All right.

5 MS. LUNDVALL: Your Honor, what we had offered
6 to Counsel, when they made the request for us to be able
7 to stipulate to them filing the supplement, was to let
8 us see what you are proposing to supplement. No
9 different than like when you file a motion for leave to
10 amend your Complaint, you are obligated then to file
11 your Amended Complaint then so that Counsel have an
12 opportunity to take a look at what it is, what changes.

13 THE COURT: What they are stipulating to?

14 MS. LUNDVALL: Exactly.

15 THE COURT: I understand.

16 MS. LUNDVALL: So that's what we asked for, but
17 we didn't get that. And so that's why we were compelled
18 then to at least come to the Court today to file a
19 response then, or to lodge our response to their motion
20 for leave to supplement. All I'm interested in is
21 learning what it is that they are proposing or intending
22 to supplement.

23 Their suggestion is that somehow they think
24 that they are going to be, you know, short-sheeted in
25 some fashion because we have the opportunity for a reply

1 and have the opportunity then by which to include this
2 material, but that assumes that we would include the
3 material.

4 And so my suggestion to the Court is this: If
5 we don't include any material from these as far as the
6 additional discovery that was taken, then there's no
7 need then for them to somehow respond to what our reply
8 might include. And, therefore --

9 THE COURT: I got a different impression. I
10 got that you felt like the new information may support
11 the motions. Am I right on the motions? And this is a
12 bench trial. So I'm -- as you know, we've all invested
13 a lot of time. And to me, I want as many facts as I can
14 when I decide, because motions in limine will help all
15 of us.

16 MS. LUNDVALL: Absolutely.

17 THE COURT: Now that I've done two bench trials
18 since then, I realize being the trier of fact is -- I
19 thought it was tough in summary judgments. It's really
20 quite a very -- a burden on the court. It's a wonderful
21 position, but my last trial they felt sorry for me.
22 It's a tough position as trier of fact.

23 So I look at it, Ms. Lundvall, as getting me
24 all the facts. So -- and I assume if it does support or
25 if it doesn't, they are not going to add anything

1 anyway. Correct?

2 MR. J.M. JIMMERSON: Yes, Your Honor.

3 THE COURT: I think you just want the
4 opportunity.

5 MR. J.M. JIMMERSON: Yes, Your Honor.

6 THE COURT: Is that what I'm looking at?

7 MR. J.M. JIMMERSON: There are four motions
8 in limine pending before you.

9 THE COURT: I listed them all here.

10 MR. J.M. JIMMERSON: The one most pertinent has
11 to do with time and effort damages and specifically the
12 foreseeability of those time and effort damages. That
13 was the primary argument. So we would have discovery --
14 we have discovery directly on that point, as well as the
15 bases for those time and effort damage claims, as well
16 as the other three motions in limine. I don't think
17 they are as requiring of the new discovery.

18 However, the opportunity to supplement, if we
19 deem necessary, and their opportunity to use the new
20 discovery in their reply would also, as you said, give
21 you all the information that you need.

22 On the issue as to them asking, Can we see what
23 you are going to supplement with, that request was made
24 25 days after I originally asked them, Would you agree
25 to stipulate on a supplement? There have been a series

1 of negotiations back and forth. I understand people are
2 out of town. But after I extend twice the deadline to
3 let me know if we're going to get a supplement, I get,
4 Well, we want to see what you have to say. What choice
5 do I have but to just file the motion and ask you?

6 THE COURT: That's why I have the order
7 shortening time.

8 MR. J.M. JIMMERSON: Exactly, Your Honor.

9 MS. LUNDVALL: Your Honor, from my perspective,
10 Counsel is correct that when people are out of town,
11 there is a certain respect that is afforded to the fact
12 that maybe you are not available.

13 One of the things that we try to do is to be
14 cooperative with this and treat it no different or very
15 similar then to a motion for leave to amend a Complaint.
16 And all I asked for was just simply, Let me see what
17 your supplements look like and maybe we can consent.

18 And part of the reason that I had a little bit
19 of curiosity was when I went back through the motions
20 in limine themselves, they are all legal arguments.
21 They are not fact-based arguments for purposes of the
22 motion in limine.

23 And so to that extent then, it's like, okay,
24 what am I going to get a supplement on? Are they going
25 to supplement with additional legal citations? And,

1 therefore, we have to do the briefing all over again?
2 They tell me they are not going to do that, but then
3 they don't give me the supplement so I can confirm that.
4 That's all we asked for.

5 And so, therefore, we tried to be cooperative
6 with this, and our suggestion was simply this: That if,
7 in fact, Counsel wishes as far as to lodge a supplement,
8 then for them to be able to do so and to allow us then
9 the opportunity to be able to review that so that we
10 know what it is that they are seeking to supplement on
11 and that we can hold them at their word.

12 THE COURT: And would have been nice if it
13 could have worked out earlier, and I'm not finding fault
14 that -- you and I both know schedules are busy, but I'm
15 looking we're getting tighter here, and I want the
16 opportunity, especially to have as much time as I can,
17 because I went back through these too, as you can
18 imagine, and I'm not sure. I don't want to relitigate
19 what we've done before. And I understand I've got some
20 overlapping when I look at --

21 MS. LUNDVALL: There's no doubt about that.

22 THE COURT: Ms. Lundvall, I got it. I
23 certainly see. And so I'm not sure what facts are
24 necessary, but I also know it's a bench trial. I also
25 know I will follow the law.

1 So in that respect, at this point, since we're
2 getting closer -- and I would rather get it sooner than
3 later, can I be -- the more time you give me to look at
4 it, the better educated I am and the better I know,
5 because -- you know, so if it could have worked out, I
6 understand your point. It didn't.

7 So here's what I'd like to do. I want to just
8 put some time lines.

9 MS. LUNDVALL: Thank you, Your Honor.

10 THE COURT: If you could -- and I appreciate
11 it. I understand your point. And I know this has been
12 rough litigation, and I certainly respect both counsel
13 doing the very best they can. I hope you both
14 understand that. I don't think anybody is trying not to
15 cooperate. And I have learned the tougher the
16 litigation, it's just more and more issues, and it's
17 just hard to get together.

18 So if I pick the dates -- because the hearings
19 are August 19th. I did want to give Ms. Lundvall the
20 most time. So I picked, if it's okay, July 22nd for
21 your supplement. I know you still have time, but --

22 MR. J.M. JIMMERSON: That's Monday, Your Honor.
23 Correct?

24 THE COURT: The 22nd.

25 MR. J.M. JIMMERSON: That's a Monday?

1 THE COURT: It could be. I don't know. Is
2 that not a good day?

3 THE CLERK: Yes, it is a Monday.

4 MR. J.M. JIMMERSON: It's fine.

5 THE COURT: I was doing this late last night.
6 So I was just counting days, Counsel, to be honest. I
7 assume you probably already know what you are going to
8 say because you wouldn't have done this motion.

9 MR. J.M. JIMMERSON: Yes, Your Honor. That's a
10 perfectly fine date.

11 THE COURT: So, Ms. Lundvall, I wanted to give
12 you the most time. So I gave you until August 12th.

13 MS. LUNDVALL: Your Honor, that is fine. And
14 from our perspective, we will do our level best to make
15 sure that we get that to the Court before then.

16 THE COURT: If not, I did not want to do it
17 short, and I'll be able to see on the 22nd. And I know
18 a lot of the history. And I did like you, I went back
19 and looked at the motions. So these will not come out
20 of left field like other cases where I just get a case
21 and I get 20 motions in limine, I know nothing about the
22 facts of the case.

23 So I will go ahead and do that. And whoever
24 wants to do the order, that's fine with me.

25 MR. J.M. JIMMERSON: We'll prepare the order,

1 Your Honor.

2 THE COURT: And if you can get it to me early,
3 it would be appreciated. If not, I do not want to cut
4 you short, because I devoted the time to look to make
5 sure I have to read everything.

6 MS. LUNDVALL: We will get it to you early.

7 MR. J.J. JIMMERSON: May it please the Court, I
8 would just like to alert the Court to something that's
9 new in this case. For the first time the defendants
10 filed an Answer and Counterclaim, as opposed to an
11 Answer, just last Thursday or Friday. I only reference.
12 There's nothing pending before you today, but I did want
13 you to be aware of that.

14 It may be that we will be asking you for some
15 orders shortening time on different matters that relate
16 to this now first filed Counterclaim in a case that's
17 been pending for as long as it has. So I want you to be
18 aware.

19 THE COURT: Thank you.

20 MS. LUNDVALL: As far as since Mr. Jimmerson
21 brought that issue up, as far as allow me to elaborate.

22 THE COURT: Sure.

23 MS. LUNDVALL: You entered an order that
24 allowed them to file, I think it was a second or a third
25 Amended Complaint.

1 MR. J.M. JIMMERSON: Second.

2 MS. LUNDVALL: Second Amended Complaint.

3 That's Second Amended Complaint added for the first time
4 in this case, after the close of discovery, after the
5 motion practice, allowed them as far as to assert what
6 they call their time --

7 THE COURT: Time damages.

8 MS. LUNDVALL: -- time and effort damages.

9 THE COURT: Yes.

10 MS. LUNDVALL: Well, in a contract, you've got
11 bilateral situation. They incurred time and effort in
12 being able as far as to bring this case. Well, my
13 clients then incurred time and effort as well.

14 From this perspective, we don't believe that
15 their time and effort damages are recoverable. However,
16 if the Court finds that they are recoverable, from the
17 perspective that there's folks on the other side of this
18 contract, they too incurred time and effort.

19 THE COURT: But the time and effort damages
20 arose from the original contract.

21 MR. J.J. JIMMERSON: Correct.

22 MS. LUNDVALL: Exactly. And from our
23 perspective, we believe that our time and effort damages
24 arose from the original contract as well. And so from
25 the perspective of when they make unreasonable demands,

1 when they ask for things that they are not entitled to,
2 when my folks make response to those things that they
3 are not entitled to, then we are incurring --

4 THE COURT: This is prior to litigation?

5 MS. LUNDVALL: Prior to litigation, Your Honor,
6 just like --

7 THE COURT: Just make sure time and effort is
8 prior to -- okay.

9 MS. LUNDVALL: Just like they claim that they
10 incurred time and effort prior to litigation.

11 THE COURT: So that's the basis of the
12 Counterclaim?

13 MS. LUNDVALL: That is the basis of the
14 Counterclaim. When we filed, we were entitled to file
15 an Answer to their Second Amended Complaint.

16 THE COURT: I understand that completely.

17 MS. LUNDVALL: The rules permit me, when I file
18 an Answer, to also assert a Counterclaim, and so that's
19 what we did.

20 THE COURT: Okay. Now here's my question:
21 What is going to happen on finding the information
22 available to support those?

23 MR. J.M. JIMMERSON: We're already in
24 discussions, Your Honor.

25 MS. LUNDVALL: We've already indicated, as far

1 as to Counsel, that we intend to supplement our
2 Rule 16.1 as far as disclosures, things of that nature.
3 So we are already as far as into the conversations as to
4 what additional discovery may be needed.

5 The one thing that would be helpful, though,
6 from this Court, since this issue was brought up, is
7 what we would like to see is some type of a due date for
8 any of the supplemental limited discovery that the Court
9 permitted to end. Because one of the things that has
10 been, as the Court well knows, very frustrating for us
11 is --

12 THE COURT: I understand.

13 MS. LUNDVALL: -- that due date keeps moving,
14 and we keep getting new stuff and new stuff. So,
15 therefore, what we're trying to do is to figure out what
16 the universe of evidence is at a time prior to trial of
17 this case --

18 THE COURT: Sure.

19 MS. LUNDVALL: -- so that we know what it is
20 that we're facing and that we are not challenged then by
21 something brand-new that lands on our lap right before
22 trial.

23 THE COURT: I understand that. We have to have
24 a discovery cutoff.

25 MR. J.J. JIMMERSON: The burden of proof on the

1 Counterclaim is upon the defendant. So when are they
2 going to make their initial disclosures? I agree with
3 you. We need that date.

4 THE COURT: She's saying -- have you, as far as
5 your time and effort damages, have you at this point
6 produced everything that you are aware of to the
7 defendant?

8 MR. J.M. JIMMERSON: As for time and effort
9 damages, we have, Your Honor. As for attorneys' fees,
10 they, of course, are being supplemented as we accumulate
11 attorneys' fees.

12 THE COURT: That's like medical futures. At
13 some point we're going to cut it off.

14 MR. J.M. JIMMERSON: Yes, Your Honor.

15 THE COURT: It's got to have a cutoff
16 somewhere. So your point is well taken as far as the
17 plaintiffs supplementing.

18 And I understand attorneys' fees to the end,
19 you can add that, but we have to have some cutoff.
20 So --

21 MR. J.J. JIMMERSON: Agreed.

22 THE COURT: I don't have a calendar in front of
23 me.

24 MS. LUNDVALL: Typically what happens is that
25 45 days prior to trial is your typical discovery cutoff.

1 And so, therefore, that allows Counsel an adequate
2 opportunity to be able to put together, if they need,
3 motions in limine, whatever, as far as, you know, their
4 exhibits may be and also as far as being able to
5 determine then what witness testimony may be.

6 THE COURT: Are you saying 45 days for yours?

7 MS. LUNDVALL: Absolutely, Your Honor.

8 MR. J.J. JIMMERSON: How do we discover a
9 Counterclaim in three weeks?

10 MR. J.M. JIMMERSON: It's less than that. It's
11 11 days from now. It's ten days from now would be that
12 45-day cutoff.

13 THE COURT: That's --

14 MR. J.M. JIMMERSON: We're literally right now
15 trying to schedule maybe a deposition or two to the
16 people they designate, and we haven't even filed our
17 Answer yet, or excuse me, our reply yet, Your Honor.

18 THE COURT: That's not going to work. I
19 understand. I understand this all came back from
20 rulings, but we can only deal with what we have
21 time-wise.

22 So let's first start with as far as you
23 supplementing everything to defendant, can you do a
24 cutoff like within a week? Have you been in the
25 position where you've been able to ascertain everything?

1 MR. J.M. JIMMERSON: We can do it by the 45-day
2 cutoff, Your Honor, the same deadline for the motions in
3 limine. I believe it's the 18th.

4 THE COURT: August 19th.

5 MR. J.M. JIMMERSON: That's correct.

6 MR. J.J. JIMMERSON: August is trial?

7 MR. J.M. JIMMERSON: No. July 19th is the
8 45-day cutoff because we have a September 9th trial
9 date.

10 MS. LUNDVALL: Your Honor, from this
11 perspective, what you are suggesting, though, is this:
12 We're now making inroads on the Court's order. The
13 Court allowed us, Pardee, a limited opportunity to
14 conduct discovery into their new claims.

15 THE COURT: Right. Did we put a time frame on
16 that? Is that what you are saying?

17 MR. J.M. JIMMERSON: No, Your Honor. You said
18 that we could work it out between ourselves, and I think
19 we've cooperated fairly well on that issue.

20 MS. LUNDVALL: But what now is being requested
21 is that, We want more opportunity to give you more
22 stuff, Pat, that maybe you haven't seen before. That's
23 not what the Court's order was, and that's what I'm
24 trying as far as to make sure doesn't happen to us for
25 the second time.

1 THE COURT: Okay. And maybe I've learned. I
2 thought, Counsel, that you would work that out, to be
3 honest. Maybe I should be putting more deadlines.

4 MR. J.M. JIMMERSON: There have been no new
5 evidentiary documents, okay, that haven't -- from our
6 perspective, okay, in the last 30 days.

7 MS. LUNDVALL: There have been new witnesses
8 that have been disclosed. They've supplemented their
9 Rule 16.1 disclosures with new witnesses.

10 MR. J.M. JIMMERSON: Your Honor, that witness
11 is right here for the purpose of attorneys' fees
12 damages.

13 MS. LUNDVALL: They gave us a new witness.

14 THE COURT: Who is the new witness?

15 MS. LUNDVALL: Mr. Jimmerson.

16 THE COURT: Well, you knew very well he was
17 going to have to --

18 MS. LUNDVALL: No, no, no.

19 THE COURT: Who did you think was going to
20 testify?

21 MS. LUNDVALL: I had no idea. They are the
22 ones that had the burden. Hold on. I apologize. I
23 don't mean to be --

24 THE COURT: I'm confused now. That
25 doesn't make sense to me.

1 MS. LUNDVALL: Well, when I look at their
2 witness list and they claim that they are entitled to
3 attorneys' fees, and I have fashioned then as far as
4 already begun determining the scope of witness
5 testimony, who do I ask questions upon these attorneys'
6 fees? What I'm doing is I'm looking at their witness
7 list. And out of the blue --

8 THE COURT: We discussed this at that hearing
9 because my concern was I knew it was Mr. Jimmerson. I'm
10 like you, and I'm concerned there's a conflict. You all
11 remember, I brought that up. That was my biggest
12 concern.

13 So please don't tell me that because they
14 didn't list him until recently, you had no idea. Don't
15 say, No, no. Come on. I'm not going to buy that one
16 because I, myself, said -- I brought it up sua sponte,
17 I'm concerned about this now that I'm allowing this.
18 I've got someone who is -- and you are supposed to be
19 working on that, that that's a conflict.

20 MR. J.M. JIMMERSON: There is no conflict,
21 Your Honor. The Nevada Rules of Professional Conduct
22 say that the exception is fees and bills may be
23 testified.

24 THE COURT: That's fine. I just wanted to make
25 sure.

1 MS. LUNDVALL: Your Honor, from --

2 THE COURT: I don't think you were prejudiced
3 in that. Now, to say any other -- so the only witnesses
4 they just supplemented was Mr. Jimmerson himself.

5 MS. LUNDVALL: Let me back up just a second, if
6 I could, please. From this perspective, the typical
7 issue associated with recovering of attorneys' fees is,
8 as we had originally advocated, there's an attorney fee
9 clause within the contract. And post trial, when one
10 determines who is the prevailing party, then, in fact,
11 attorneys' fees come at issue.

12 THE COURT: I understand that. We've been
13 through this exact argument. I remember it very well.
14 That's a separate attorneys' fees than what I'm allowing
15 on the special damages.

16 MS. LUNDVALL: Precisely.

17 THE COURT: Believe me. As you know, I just
18 told them about Sandy Valley. You all have educated me
19 very well. I appreciate your briefing. I understand
20 the distinction. So there still may be, after the fact,
21 whoever wins under the contract -- I understand that
22 too, but we're not at that point.

23 MS. LUNDVALL: But the point I'm trying to make
24 is this: You identified to them that there may be
25 certain circumstances by which they could recover

1 attorneys' fees as special damages.

2 THE COURT: Correct.

3 MS. LUNDVALL: You also articulated to them
4 that it was their burden of proof. And then a couple
5 weeks later, then I get new witnesses from them. They
6 are the ones that are supplementing their own disclosure
7 even though your order was limited to us having the
8 opportunity to find out what information that they had.

9 THE COURT: I'm just trying to follow this.
10 But you won't know where to go if they don't supplement
11 to tell you where you need to do discovery. Of course,
12 if I allowed what I -- at least my 30 years of
13 litigation, if a judge allows us to -- I was very
14 specific, that area -- they have to supplement so you'll
15 know where to go.

16 MR. J.J. JIMMERSON: Correct.

17 THE COURT: You don't have to do a fishing
18 expedition. That would be totally unfair.

19 MR. J.J. JIMMERSON: They've already conducted
20 deposition discovery of Mr. Wolfram. So they know
21 exactly the time and effort damages.

22 THE COURT: But I'm more interested in making
23 sure we're doing this fair. So I envisioned that they
24 should supplement. I certainly envisioned
25 Mr. Jimmerson. And I was very adamant. That's not a

1 hard thing to figure out. They had already given you
2 billing prior to my ruling, remember. Because I looked
3 at the billings, so I know you already had some of it.

4 I wanted them to supplement as quickly as
5 possible, because I knew this was getting tight, so that
6 you would not be limited at all, as the defendant, on
7 discovery. Of course I wanted them to. Now, I thought
8 you could work it out since it was limited so it
9 wouldn't be stretched too much. Now I don't know.

10 Hopefully -- I just want to make sure. I agree
11 with you. They need to have an end point so that you
12 know that they've given you everything and you have
13 conducted full discovery. Are we at that point? Let me
14 ask that. As we sit here today, July 9th, are we at
15 that point for, let's just talk about your damages?

16 MR. J.M. JIMMERSON: Yes, Your Honor, with the
17 exception of, as you say, maybe one more supplement.
18 We've supplemented our bills through May.

19 THE COURT: That's like people getting new
20 medical. I understand.

21 MR. J.M. JIMMERSON: Exactly. So as far as
22 we're concerned on the merits for our damage claims,
23 we've established their damages. The amount will be
24 left up to your discretion.

25 MR. J.J. JIMMERSON: We can supplement the

1 final bills by the 19th of July.

2 THE COURT: So you've named all the witnesses.

3 Now, Ms. Lundvall, have you been able to
4 conduct the discovery you feel you need based on what
5 they've shown you in good faith in discovery will be the
6 evidence that they will present for those claims? Have
7 you had the opportunity to do that?

8 MS. LUNDVALL: Well, it would depend upon
9 whether or not the Court is going to permit them to
10 extend the discovery period.

11 THE COURT: I'm asking a very different
12 question. I'm asking you a very specific question.
13 Have you had the opportunity, as of today, which is
14 July 9th, to conduct the discovery you feel that is
15 adequate to address those damages?

16 MS. LUNDVALL: If, in fact, that Mr. Jimmerson
17 continues to be able to stand as a witness,
18 notwithstanding the fact that this disclosure came long
19 after the discovery cutoff, and this -- and you, when
20 you granted as far as their leave to amend, made it very
21 clear that you were not extending discovery generally.
22 You were only extending discovery to permit us the
23 opportunity by which to conduct discovery into what they
24 had disclosed. There was no --

25 THE COURT: But that doesn't answer my

1 question. Just answer my question.

2 MS. LUNDVALL: No, I have not.

3 THE COURT: I'm trying to get an answer. What
4 more do you need to do?

5 MS. LUNDVALL: I have to decide if I want to
6 take the deposition of Mr. Jimmerson.

7 THE COURT: Well, could you make that decision?

8 MS. LUNDVALL: Absolutely.

9 THE COURT: Can you make that decision now so
10 we can arrange to have his depo so I can get you a
11 discovery cutoff? Because obviously this isn't working
12 trying to work it together. I don't want either one of
13 you frustrated, and I don't want to be frustrated.

14 So my question is have you decided whether you
15 want to -- I don't know the issue. He's saying the law
16 is that they don't have a conflict. I assume you looked
17 into that issue whenever our last hearing was because I
18 was quite --

19 MR. J.M. JIMMERSON: You were concerned,
20 Your Honor.

21 THE COURT: Yes. I wasn't subtle about it. I
22 wanted to make sure that's not something else that's
23 going to be an issue. So I assume you knew from there,
24 as much as I did, what the research is. Have you done
25 the research to know what they are saying is true or not

1 or whether he can be a witness?

2 MS. LUNDVALL: I disagree with him, Your Honor.
3 So from this perspective, what I'm trying to -- what I
4 had asked for -- this conversation started because what
5 I was asking for was some type of a cutoff that I can
6 count on that I'm not going to get any new witnesses,
7 I'm not going to get any new documents. That's all I
8 asked for.

9 THE COURT: They just told you they have it as
10 of today. Am I reading that right? Is that --

11 MR. J.M. JIMMERSON: You are a hundred percent,
12 Your Honor.

13 THE COURT: I'm going to remember it. Okay.
14 So I know. Now my question is what more discovery,
15 Ms. Lundvall, do you want to take? Do you want to take
16 Mr. Jimmerson's deposition?

17 MS. LUNDVALL: From this perspective,
18 Your Honor, one of the things that -- I'm not trying to
19 be difficult. I have a client. My client requires me
20 to confer with issues that will expend their money. So
21 to that extent, I'm not prepared today to say if I'm
22 going to take Mr. Jimmerson's deposition or not.

23 THE COURT: Okay. So let's do it this way.

24 MS. LUNDVALL: I know I have the opportunity to
25 his deposition.

1 THE COURT: I understand that. Whether they
2 want to spend the money or not, I understand that.

3 Then let's do this: If your client does agree
4 that you can take Mr. Jimmerson's deposition, can we
5 agree on a date now? Is there some time that -- do you
6 have your calendar in your phone or something so that we
7 can leave here and so that she knows that's done?

8 MR. J.J. JIMMERSON: I am defending Judge
9 Steven Jones in a judicial discipline hearing the last
10 week of July. That is a commitment I cannot -- but
11 besides that, I will work -- if I'm not in court, I will
12 be in a deposition wherever Ms. Lundvall asks me to be.

13 THE COURT: So other than the last week of
14 July.

15 MR. J.J. JIMMERSON: That's correct. I am not
16 available the first ten days of August. I'm taking
17 personal time.

18 THE COURT: So basically we need to take it
19 ASAP from what I'm hearing.

20 MR. J.J. JIMMERSON: The next two weeks is
21 fine.

22 THE COURT: Ms. Lundvall, do you think you can
23 get ahold of your client within the next two weeks and
24 look at your calendar and get Mr. Jimmerson's deposition
25 done this week or next week?

1 Is that what you are saying to me, the 9th
2 through -- within this week or next week. Correct?

3 MR. J.M. JIMMERSON: Through the 19th,
4 Your Honor, I believe is the Friday.

5 THE COURT: Would that be feasible?

6 MS. LUNDVALL: Yes. It won't be this week,
7 Your Honor.

8 THE COURT: How about next week? And I'm sure
9 Mr. Jimmerson could do it at 5:00, I'm sure.

10 MR. J.J. JIMMERSON: If I'm not in court, she
11 just needs to tell me the time. I will be there. I'll
12 move everything else around to accommodate Ms. Lundvall.

13 THE COURT: That would be very appreciated,
14 because then we don't have -- so he will move his
15 schedule around. As long as he doesn't have a court
16 hearing, which we all know are hard to move, he will
17 make himself available next week.

18 And then they are not going to supplement with
19 any more witnesses. They are not going to supplement
20 with any more documents.

21 MR. J.J. JIMMERSON: Well, we are going to
22 supplement our bills, Judge.

23 THE COURT: I know. Other than continuing
24 bills, which we all know. Okay.

25 MS. LUNDVALL: Thank you, Your Honor.

1 THE COURT: Now, based on the discovery on the
2 Counterclaim we have to address, that has not gone away.
3 So have you -- I know you haven't even answered, but,
4 Ms. Lundvall, do you have your documents ready and
5 available and your witnesses to support your
6 Counterclaim?

7 MS. LUNDVALL: From the perspective of
8 typically our response is that those would not be due
9 until we get a reply. Maybe it might be helpful to
10 figure out when we'll get a reply.

11 THE COURT: You mean the Answer to the
12 Counterclaim?

13 MS. LUNDVALL: Yes.

14 THE COURT: But this isn't customary and
15 normal. I'm dealing with a whole different thing here.
16 So do you know -- I assume when you research and you
17 made the decision to do a Counterclaim, can you give me
18 a realistic time frame of when you would be able to -- I
19 mean, we don't have time to do the niceties anymore.
20 We're running out of time where we can lose our trial
21 date. Honestly, Counsel, I can only deal with what I
22 can. I can only push so hard. So in reality --

23 MS. LUNDVALL: We could do our disclosures, our
24 Rule 16.1 disclosures, by next Wednesday.

25 MR. J.J. JIMMERSON: Fine.

1 THE COURT: What is next Wednesday?

2 MS. LUNDVALL: Next Wednesday should be the
3 17th of July -- the 15th of July.

4 MR. J.M. JIMMERSON: No.

5 THE CLERK: The 17th.

6 THE COURT: July 17th. Okay. All right.

7 Then you have to have time to review that and
8 decide what discovery you need. Are you available? It
9 sounds like, Mr. Jimmerson --

10 MR. J.M. JIMMERSON: I'm taking -- not with my
11 father, but I'm taking ten days of personal time.

12 THE COURT: That's okay.

13 MR. J.J. JIMMERSON: Could I just ask, would
14 the Court consider a status check on this? This way the
15 deposition of Jim Jimmerson will be completed by next
16 week, we will have their initial disclosures, and we
17 will be in a position to --

18 THE COURT: Maybe you can tell me what you need
19 to do.

20 MR. J.M. JIMMERSON: -- see what we need to do,
21 if anything, after the disclosures. So if we had a
22 status check on the week of the 22nd --

23 THE COURT: That's what I was just going to
24 say.

25 MR. J.J. JIMMERSON: -- that might make sense.

1 THE COURT: When is the State Bar? I'm going
2 to the State Bar.

3 MR. J.J. JIMMERSON: I think it's the
4 Wednesday, Thursday of that week.

5 THE COURT: So we could do it Tuesday.

6 MR. J.M. JIMMERSON: The 23rd?

7 THE CLERK: I think you are going to be gone at
8 the end of --

9 THE COURT: Whenever the State Bar is. Just
10 run and ask Kelly.

11 (Pause in proceedings.)

12 THE COURT: Okay. Do we have dates?

13 THE CLERK: You will be gone July 24 through
14 the 26th.

15 THE COURT: So what date did we pick for the
16 status check?

17 MR. J.J. JIMMERSON: The 23rd, the day before?

18 THE COURT: That would be fine.

19 THE CLERK: July 23rd at 8:30.

20 THE COURT: For a status check.

21 MR. J.J. JIMMERSON: Yes.

22 THE COURT: And anything at that time that you
23 think that I could help, I'm more than willing. I very
24 much want to keep your trial date, and I know it's
25 important to all your clients.

1 MR. J.M. JIMMERSON: Absolutely, Your Honor.

2 THE COURT: I understand that.

3 MS. LUNDVALL: And, Your Honor, from this
4 perspective, if we agree as to what it is that we need
5 concerning the defendant's counterclaims, is it possible
6 we can let your chambers know that there's no need for
7 the status check?

8 THE COURT: Sure. Absolutely.

9 MS. LUNDVALL: Thank you.

10 THE COURT: We'll put it on just as a vehicle
11 if you need it.

12 MR. J.M. JIMMERSON: Thank you, Your Honor.

13 MR. J.J. JIMMERSON: Thank you, Judge.

14 THE COURT: You're welcome. I appreciate you
15 being here.

16 MR. J.M. JIMMERSON: Thank you very much,
17 Your Honor.

18 THE COURT: I'll see you soon.

19 -oOo-

20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
21 PROCEEDINGS.

22

23 */s/ Jennifer D. Church*

24 JENNIFER D. CHURCH, CCR. No. 568, RPR

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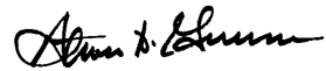
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CLERK OF THE COURT

CCAN

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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

PARDEE HOMES OF NEVADA,

Counterclaimant,

vs.

JAMES WOLFRAM, WALT WILKES,

Counterdefendants.

PLAINTIFFS' REPLY TO DEFENDANT'S COUNTERCLAIM

COME NOW Plaintiffs/Counterdefendants, JAMES WOLFRAM and WALT WILKES, by and through their undersigned counsel, James M. Jimmerson, Esq. of the law firm of Jimmerson Hansen P.C., and hereby reply to Defendant/Counterclaimant's Counterclaim as follows:

COUNTERCLAIM

1
2 1. In answering Paragraph 1 of Defendant's Counterclaim, Plaintiffs admit the
3 allegations contained therein.

4 2. In answering Paragraph 2 of Defendant's Counterclaim, Plaintiffs admit the
5 allegations contained therein.

6 3. In answering Paragraph 3 of Defendant's Counterclaim, Plaintiffs admit the
7 allegations contained therein.

8 4. In answering Paragraph 4 of Defendant's Counterclaim, Plaintiffs admit the
9 allegations contained therein.

10 5. In answering Paragraph 5 of Defendant's Counterclaim, Plaintiffs admit the
11 allegations contained therein.

12 6. In answering Paragraph 6 of Defendant's Counterclaim, Plaintiffs admit that
13 they attended a meeting at Defendant's Nevada office with Harvey Whittemore, Jon Lash,
14 and Klif Andrews. As to all other allegations contained in Paragraph 6, Plaintiffs are
15 without sufficient knowledge or information to form a belief as to the truth thereof and on
16 that basis deny the same.

17 7. In answering Paragraph 7 of Defendant's Counterclaim, Plaintiffs admit that
18 Mr. Whittemore expressed a desire to sell certain portions of real estate concerning the
19 Coyote Springs project. As to all other allegations contained in Paragraph 7, Plaintiffs are
20 without sufficient knowledge or information to form a belief as to the truth thereof and on
21 that basis deny the same.

22 8. In answering Paragraph 8 of Defendant's Counterclaim, Plaintiffs are
23 without sufficient knowledge or information to form a belief as to the truth of the
24 allegations therein and on that basis deny the same.

25 9. In answering Paragraph 9 of Defendant's Counterclaim, Plaintiffs admit that
26 Defendant and Coyote Springs Investment, LLC entered into a written agreement entitled
27 Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (the
28 "Option Agreement"), which set forth the terms of the agreement whereby Defendant

1 would purchase certain portions of real estate from Coyote Springs Investment, LLC.
2 Plaintiffs further admit that the Option Agreement was later amended. As to all other
3 allegations contained in Paragraph 9, Plaintiffs are without sufficient knowledge or
4 information to form a belief as to the truth thereof and on that basis deny the same.

5 10. In answering Paragraph 10 of Defendant's Counterclaim, Plaintiffs admit
6 that they (through their predecessors in interest) negotiated and entered into a
7 Commission Letter Agreement dated September 1, 2004 with Defendant. Plaintiffs further
8 admit that the Commission Letter Agreement governs, *inter alia*, the payment of
9 commissions from Defendant to Plaintiffs related to the purchases of property from Coyote
10 Springs Investment, LLC. Plaintiffs further admit that they accuse Defendant of breaching
11 the Commission Letter Agreement and that Defendant denies the accusation. As to all
12 other allegations contained in Paragraph 10, Plaintiffs are without sufficient knowledge or
13 information to form a belief as to the truth thereof and on that basis deny the same.

14 11. In answering Paragraph 11 of Defendant's Counterclaim, Plaintiffs admit
15 that Defendant paid them certain commissions on the purchase of property from Coyote
16 Springs Investment, LLC. As to all other allegations contained in Paragraph 11, Plaintiffs
17 deny the same.

18 12. In answering Paragraph 12 of Defendant's Counterclaim, Plaintiffs deny
19 each and every allegation contained therein.

20 13. In answering Paragraph 13 of Defendant's Counterclaim, the language of
21 the document speaks for itself. Plaintiffs deny all allegations inconsistent with the terms of
22 the document and all other allegations.

23 14. In answering Paragraph 14 of Defendant's Counterclaim, Plaintiffs deny
24 each and every allegation contained therein.

25 15. In answering Paragraph 15 of Defendant's Counterclaim, the language of
26 the document speaks for itself. Plaintiffs deny all allegations inconsistent with the terms of
27 the document and all other allegations.

28

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant/Counterclaimant fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant/Counterclaimant has waived and/or is estopped from pursuing their claims against Plaintiffs/Counterdefendants.

THIRD AFFIRMATIVE DEFENSE

Defendant/Counterclaimant is barred from pursuing their claims against Plaintiffs/Counterdefendants by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Defendant/Counterclaimant is barred from pursuing their claims against Plaintiffs/Counterdefendants by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

The Counterclaim and each and every allegation contained therein are ambiguous and uncertain, and thus fails to state a claim, in law or equity, against Plaintiffs/Counterdefendants.

SIXTH AFFIRMATIVE DEFENSE

Defendant/Counterclaimant is barred from recovery by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Defendant/Counterclaimant have explicitly and/or implicitly waived any rights or claims that may be asserted against Plaintiffs/Counterdefendants; therefore its claims are barred.

EIGHTH AFFIRMATIVE DEFENSE

Defendant/Counterclaimant is estopped to assert any rights or claims against Defendant/Counterclaimant by the doctrine of equitable estoppel, collateral estoppel, and/or res judicata.

1 **NINTH AFFIRMATIVE DEFENSE**

2 Defendant/Counterclaimant has not been damaged in any amount whatsoever in
3 that the alleged misconduct has not resulted in a loss and Defendant/Counterclaimant is
4 thereby barred from pursuing this action.

5 **TENTH AFFIRMATIVE DEFENSE**

6 Defendant/Counterclaimant failed to perform its obligations under any alleged
7 agreement between the parties and therefore, Defendant/Counterclaimant's claims are
8 barred.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 Any injuries or damages sustained or suffered by Defendant/Counterclaimant, as
11 alleged in their Counterclaim, were caused by a superseding, independent, or pre-existing
12 cause or condition, over which Plaintiffs/Counterdefendants had no control.

13 **TWELFTH AFFIRMATIVE DEFENSE**

14 Plaintiffs/Counterdefendants have incurred attorneys' fees and costs in the defense
15 of this action and are entitled to full reimbursement thereof.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiffs/Counterdefendants hereby incorporate by reference those affirmative
18 defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth
19 herein. Such defenses are herein incorporated by reference for the specific purpose of not
20 waiving any such defense. In the event further investigation or discovery reveals the
21 applicability of any such defenses, Plaintiffs/Counterdefendants reserve the right to seek
22 leave to court to amend this answer to specifically assert any such defense.

23 WHEREFORE, Plaintiffs/Counterdefendants pray for judgment as follows:

- 24 1. That Defendant/Counterclaimant takes nothing by virtue of this action and that
25 the same be dismissed with prejudice;
26 2. That Judgment be rendered in Plaintiffs/Counterdefendants favor and against
27 Defendant/Counterclaimant;
28


1 3. That Plaintiffs/Counterdefendants be awarded their attorney's fees and costs
2 incurred in the defense of this action; and

3 4. Such other and further relief as the Court may deem just and proper.

4 Dated this 15th day of July, 2013.

5 Respectfully submitted,

6 JIMMERSON HANSEN, P.C.

7
8  JAMES J. JIMMERSON, ESQ.

9 Nevada State Bar No. 000264

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16 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of **PLAINTIFFS' REPLY TO DEFENDANT'S COUNTERCLAIM** was made on the 15th day of July, 2013, as indicated below:

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

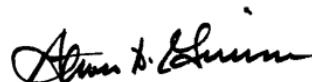
☐ By electronic service through the E-filing system

☐ By facsimile, pursuant to EDCR 7.26

☐ By receipt of copy as indicated below

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CLERK OF THE COURT

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9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

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

18 PLAINTIFFS' MOTION IN LIMINE TO PERMIT JAMES J. JIMMERSON, ESQ. TO
19 TESTIFY CONCERNING PLAINTIFFS' ATTORNEY'S FEES AND COSTS (MIL #25)

20 COME NOW, Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through
21 their counsel of record JAMES J. JIMMERSON, ESQ., LYNN M. HANSEN, ESQ., and
22 JAMES M. JIMMERSON, ESQ., of the law firm of JIMMERSON HANSEN, P.C., and
23 hereby submit their Motion in Limine to Permit James J. Jimmerson, Esq. to Testify
24 Concerning Plaintiffs' Attorney's Fees and Costs. This Motion is based on the pleadings
25 and papers on file, the attached Declaration of James M. Jimmerson, Esq. and exhibits

26 ///

27 ///

28 ///

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

3 DATED this 18th day of July, 2013.

4 JIMMERSON HANSEN, P.C.

5
6 /s/ James M. Jimmerson, Esq.
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13 JIMMERSON HANSEN, P.C.
14 415 South 6th Street, Suite 100
15 Las Vegas, Nevada 89101
16 Attorneys for Plaintiffs
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JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that the undersigned will bring PLAINTIFFS' MOTION IN LIMINE TO PERMIT JAMES J. JIMMERSON, ESQ. TO TESTIFY CONCERNING PLAINTIFFS' ATTORNEY'S FEES AND COSTS (MIL #25) on for hearing before the above-entitled Court on the 29 day of August 2013, at the hour of 8:30 AM, of said date, in Dept. IV, or as soon thereafter as counsel may be heard.

DATED this 18th day of July, 2013.

JIMMERSON HANSEN, P.C.

/s/ James M. Jimmerson, Esq.
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. 012599
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
Attorneys for Plaintiffs

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION IN LIMINE
TO PERMIT JAMES J. JIMMERSON, ESQ. TO TESTIFY CONCERNING PLAINTIFFS'
ATTORNEY'S FEES AND COSTS**

I. INTRODUCTION AND BRIEF STATEMENT OF FACTS

As the Court is aware, a critical element of Plaintiffs' damages are the attorney's fees and costs they have been forced to incur in order to prosecute this action. At the two most recent hearings, the Court expressed concern that there may be a conflict between James J. Jimmerson, Esq. acting as trial counsel and testifying concerning Plaintiffs' attorney fee damages. Since the Court first voiced its concern, Plaintiffs have researched the issue and have concluded that there is no conflict or ethical rule preventing Mr. Jimmerson from testifying as to the attorney's fees and costs. Specifically, Nevada Rule of Professional Conduct 3.7 contains a provision permitting attorneys to testify on the topic of their fees and the value thereof.

However, in the most recent hearing, Defendant disagreed that Mr. Jimmerson could testify on this matter. Since that hearing, Plaintiff has reached out to Defendant to ask if there is continued disagreement on this issue considering the text of Nevada's rule on point. See Declaration of James M. Jimmerson, Esq., at ¶¶ 16, 18, 20. Plaintiffs have not heard any response on this matter. *Id.* at ¶¶ 19 and 21. As such, Plaintiffs are left no choice but to brief the Court with a motion in limine on point.

II. LEGAL ARGUMENT

A. Legal Standard

The Nevada Supreme Court has recognized that District Courts have "broad discretion in determining the admissibility of evidence" both at trial and in deciding pre-trial motions in limine. *State ex rel. Dept. of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376, 551 P.2d 1096 (1976); *see also* Nev. R. Civ. P. 16(c)(3). Pursuant to NRS 47.060 and EDCR 2.47, a motion in limine is the appropriate vehicle to allow the Court to give a pretrial order on the admissibility of evidence. See EDCR 2.47 ("Motions in Limine"); NRS 47.060(1) ("[p]reliminary questions concerning the qualification of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by

1 the judge."). Not only are motions in limine to introduce evidence appropriate at a jury trial,
2 (see *Tinch v. State*, 113 Nev. 1170, 1175-1176, 946 P.2d 1061, 1064 (1997) (affirming
3 district court's ruling admitting evidence on pretrial motion in limine)), they are also
4 appropriate for a bench trial (see *Hook v. Baker*, Case No. C2-02-CV-901, 2004 WL
5 3113713, at *3-4 (S.D. Ohio Nov. 9, 2004) (granting motion in limine admitting evidence at
6 bench trial)).

7 **B. James J. Jimmerson, Esq. is Ethically Permitted to Testify as to**
8 **Plaintiffs' Attorney's Fees and Costs**

9 Mr. Jimmerson is permitted to testify on the issue of Plaintiffs' attorney's fees. He
10 has personal knowledge of them and of their value. The only question raised by Defendant
11 is whether the Nevada Rules of Professional conduct permit Mr. Jimmerson, as Plaintiffs'
12 trial attorney, to so testify. They do.

13 The Nevada Rules of Professional Conduct specifically permit attorneys to testify
14 when such testimony relates to the nature and value of legal services rendered in the case
15 stating:

16 **Rule 3.7. Lawyer as Witness.**

17 (a) A lawyer shall not act as advocate at a trial in which the
18 lawyer is likely to be a necessary witness unless:

- 19 (1) The testimony relates to an uncontested issue;
20 (2) **The testimony relates to the nature and value of**
21 **legal services rendered in the case; or**
22 (3) Disqualification of the lawyer would work substantial
23 hardship on the client.

24 (b) A lawyer may act as advocate in a trial in which another
25 lawyer in the lawyer's firm is likely to be called as a witness
26 unless precluded from doing so by Rule 1.7 or Rule 1.9.

27 Nev. R. Prof. C 3.7 (emphasis supplied). Because the proposed testimony would be
28 limited to the nature and value of the legal services rendered in this action, Mr.
Jimmerson's proposed testimony would fall squarely within the bounds of Rule 3.7(a)(2).

This conclusion finds support from other states' caselaw and legal treatises. For
example in Georgia, the court permitted counsel to testify at trial as to the legal fees
suffered by his client. See *Commercial Cas. Ins. Co. of Georgia v. Maritime Trade Center*

1 *Builders*, 257 Ga. App. 779, 783, 572 S.E.2d 319, 322 (Ga. App. 2002). In Texas, the
2 court allowed both parties' attorneys to testify about their fees. See *Rubinet v. Rubinet*,
3 Case No. 2-08-012-CV, 2009 WL 1372936, at *3 (Tex. App. June 4, 2009). Finally, in
4 Mississippi, the Supreme Court affirmed an award of attorney's fees after trial counsel
5 testified at trial. See *Mizell v. Mizell*, 708 So.2d 55, 65 (Miss. 1998). Like Nevada, all three
6 of these states have adopted the Model Rules of Professional Conduct.¹ As such, if there
7 were an ethical prohibition on trial attorneys testifying at trial, none of these courts would
8 have permitted such testimony.

9 Moreover, legal treatises support Plaintiffs' position. The Whittier Law Review has
10 explained the exception for attorneys testifying as to their attorney's fees, stating:

11 [T]he advocate-witness rule does not apply to testimony
12 regarding the "nature and value of legal services" rendered by
13 trial counsel. For example, certain types of lawsuits (such as
14 federal antitrust or civil rights litigation) allow the court to award
15 attorney fees to the victor. In determining the amount of the
16 award, the trial judge considers the assignment of labor and
17 legal obligations, the time expended, and the character of work
18 completed by each attorney. Although this information can be
19 gleaned through an affidavit, testimony by the relevant
20 attorneys is often easier and preferable. In such situations, the
21 advocate-witness rule does not prevent trial counsel from
22 testifying as to the nature and value of his legal services.

23 Avoiding a "Carnival Atmosphere": Trial Court Discretion and the Advocate Witness Rule,
24 18 Whittier L. Rev. 447, 461 (1997) (citing Richard K. Wydick, Trial Counsel as Witness:
25 The Code and the Model Rules, 15 U.C. Davis L. Rev. 651, 671 (1982); and Francis J.
26 Lynch, Application of the Advocate-Witness Rule, 1982 S. Ill. U. L.J. 291, 300-01).

27 Finally, the ABA comments to Model Rule 3.7 confirm that Mr. Jimmerson should be
28 entitled to testify about Plaintiffs' attorney's fees and costs. Explaining the rationale for the
rule, the ABA states:

¹ See *Alphabetical List of States Adopting Model Rules*, ABA Center for Professional
Responsibility,
http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html (accessed July 18, 2013).

Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

See ABA Model Rule 3.7, cmt. 3. All of these authorities cannot be wrong: when, as here, a trial attorney must testify as to the fees charged and the value thereof, courts permit that trial attorney to testify on that limited issue. Therefore, this Court should permit Mr. Jimmerson to testify as to Plaintiffs' attorneys' fees and costs.

III. CONCLUSION

Because Mr. Jimmerson is only contemplating as a witness to testify about Plaintiffs' attorney's fees and costs, the Court should grant the Motion, and permit him to testify on these limited matters.

DATED this 18th day of July, 2013.

JIMMERSON HANSEN, P.C.

/s/ James M. Jimmerson, Esq.
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. 012599
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' MOTION IN LIMINE TO PERMIT JAMES J. JIMMERSON, ESQ. TO TESTIFY CONCERNING PLAINTIFFS' ATTORNEY'S FEES AND COSTS (MIL #25) was made on the 18th day of July, 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.

1 **DECL**

2 JAMES J. JIMMERSON, ESQ.
Nevada Bar No.: 00264
3 LYNN M. HANSEN, ESQ.
Nevada Bar No.: 00244
4 JAMES M. JIMMERSON, ESQ.
Nevada Bar No.: 12599
5 JIMMERSON HANSEN, P.C.
415 South 6th Street, Suite 100
6 Las Vegas, Nevada 89101
7 Tel No.: (702) 388-7171; Fax No.: (702) 388-6406
lmh@jimmersonhansen.com
8 jmj@jimmersonhansen.com
Attorneys for Plaintiffs

9
10 **DISTRICT COURT**
CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and
12 WALT WILKES,
13
Plaintiffs,

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

14 vs.

15 PARDEE HOMES OF NEVADA,
16
17 Defendant.

18 **DECLARATION OF JAMES M. JIMMERSON, ESQ. IN SUPPORT OF**
19 **PLAINTIFFS' MOTION IN LIMINE TO PERMIT JAMES J. JIMMERSON, ESQ. TO**
20 **TESTIFY CONCERNING PLAINTIFFS' ATTORNEY'S FEES AND COSTS (MIL #25)**

21 I, JAMES M. JIMMERSON, ESQ., pursuant to NRS 53.045, declare under penalty
22 of perjury the following:

23 1. I am over the age of eighteen (18), am of sound mind, and am competent to
24 make this Declaration. This Declaration is made of my own personal knowledge except
25 where stated on information and belief, I believe them to be true.

26 2. I am an attorney at law, duly licensed to practice before all of the Courts in
27 the State of Nevada.
28

1 3. I am an associate with the law firm of Jimmerson Hansen, P.C., attorneys
2 retained to represent Plaintiffs, James Wolfram and Walt Wilkes in the above-captioned
3 action.

4 4. This Declaration is submitted in support of Plaintiff's Motion in Limine to
5 Permit James J. Jimmerson, Esq. to Testify Concerning Plaintiffs' Attorney's Fees and
6 Costs (MIL #25) (the "Motion"). It is made in good faith and not for any improper purpose.

7 5. On March 26, 2013, I emailed counsel for Defendant Aaron Shipley to
8 discuss certain matters, including a possible agreement on the admissibility of documents
9 so as to avoid filing motions in limine.

10 6. Later that week on March 29, 2013, I emailed and spoke with Mr. Shipley
11 Shipley over the phone concerning the possible stipulation to the admissibility of certain
12 documents. Attached hereto as Declaration Exhibit 1 is a true and correct copy of the
13 email from me to Aaron Shipley on March 29, 2013.

14 7. During that phone conversation with Mr. Shipley, Mr. Shipley stated that he
15 and Pat Lundvall would like to see a list of the documents that would be considered for
16 agreed upon admissibility. Attached hereto as Declaration Exhibit 2 is a true and correct
17 copy of the email from me to Aaron Shipley on March 29, 2013.

18 8. In response to that email and phone call, Mr. Shipley emailed me back
19 stating that discussions on the admissibility of documents is "not yet ripe" since there was
20 no EDCR 2.67 conference yet. Attached hereto as Declaration Exhibit 3 is a true and
21 correct copy of the email from Aaron Shipley to me on March 29, 2013.

22 9. The effects of not coming to an agreement on the admissibility of the
23 documents in question were averted as trial was continued until September 9, 2013.

24 10. Knowing that Defendant wished to conduct an EDCR 2.67 conference as the
25 vehicle to agree on the admissibility of documents, I sent an email to Mr. Shipley on June
26 19, 2013, 30 days before the deadline for filing motions in limine requesting available dates
27 for an EDCR 2.67 conference. No response was sent. Attached hereto as Declaration
28

1 Exhibit 4 is a true and correct copy of the email from me to Aaron Shipley on June 19,
2 2013.

3 11. On July 1, 2013, I spoke with Mr. Shipley over the phone about scheduling
4 an EDCR 2.67 conference. He said he would speak with Ms. Lundvall about finding dates.

5 12. The next day on July 2, 2013, I emailed Mr. Shipley reminding him about
6 getting some dates for an EDCR conference. Attached hereto as Declaration Exhibit 5 is a
7 true and correct copy of the email from me to Aaron Shipley on July 2, 2013.

8 13. On July 5, 2013, I emailed Mr. Shipley and Ms. Lundvall concerning
9 scheduling an EDCR 2.67 conference, suggesting possibly the next week. Attached
10 hereto as Declaration Exhibit 6 is a true and correct copy of the email from me to Aaron
11 Shipley and Pat Lundvall on July 5, 2013.

12 14. On July 8, 2013, 10 days before the deadline for motions in limine, Ms.
13 Lundvall replied to my email requesting dates for an EDCR 2.67 conference. The dates
14 given were July 24, 25, or 26, all of which were past the motion in limine filing deadline.
15 Attached hereto as Declaration Exhibit 7 is a true and correct copy of the email from Pat
16 Lundvall to me on July 8, 2013.

17 15. With those dates given to me counsel agreed to schedule the EDCR 2.67
18 conference on July 25, 2013.

19 16. Now knowing that no EDCR 2.67 conference was going to take place before
20 the motions in limine deadline, I sent an email to Mr. Shipley on July 15, 2013 to once
21 again ask if there could be agreement as to the admissibility of certain documents (e.g. the
22 contracts, the maps, and communications between the parties) as well as asking if
23 Defendant still took the position that James J. Jimmerson, Esq. could not testify as to
24 attorney fee damages. Attached hereto as Declaration Exhibit 8 is a true and correct copy
25 of the email from me to Aaron Shipley on July 15, 2013.

26 17. In response to the July 15, 2013 email, Ms. Lundvall emailed me later that
27 day and stated that she will come prepared to discuss the requested stipulations at the
28 EDCR 2.67 conference. She also stated that she does not agree to stipulate to the

1 admissibility of any documents until she can see them, being concerned that stray marks
2 or handwritten notes could "affect their import admissibility." Attached hereto as
3 Declaration Exhibit 9 is a true and correct copy of the email from Ms. Lundvall to me on
4 July 15, 2013.

5 18. In response to Ms. Lundvall, I sent her two emails containing the scanned
6 copies of the documents that I was suggesting we could agree on their admissibility on July
7 17, 2013. In that email I explained that the maps were not scanned because the size of
8 them prohibits them being scanned and that the copies hand-delivered to them during
9 discovery were true and accurate copies of the certified copies from the Clark County
10 recorder's office. I also followed up on the issue of James J. Jimmerson, Esq. testifying.

11 19. Later that day on July 17, 2013, Ms. Lundvall responded to my email stating
12 that EDCR 2.67 contemplates the parties agreeing on stipulations during the conference
13 and that she was prepared to present the proposed exhibits. Nothing was said on the
14 issue of James J. Jimmerson, Esq. testifying. Attached hereto as Declaration Exhibit 10 is
15 a true and correct copy of the email from Ms. Lundvall to me on July 17, 2013.

16 20. The next day, I responded to Ms. Lundvall's email, again asking for some
17 agreement on the admissibility of documents or on the issue of James J. Jimmerson Esq.
18 testifying so that motions in limine would not have to be filed. As of the filing of the Motion,
19 I have not received a response.

20 21. The foregoing conversations and correspondence confirm that I have in
21 good faith attempted to come to an agreement on the matters at issue, pursuant to EDCR
22 2.47, but I have not been given any substantive reason why the suggested documents
23 should not be admitted or why Mr. Jimmerson should not be able to testify about Plaintiffs'
24 attorney's fees and costs. I have only been told that no agreement on the admissibility of
25 exhibits will be made until the EDCR 2.67 takes place. Since the EDCR 2.67 takes place
26 after the motions in limine deadline, I have been left with no choice but to file the Motion.

27 ///


28 ///

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

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2013 at Las Vegas, Nevada.


JAMES M. JIMMERSON, ESQ.

(MIL #25) DECLARATION Exhibit 1

(MIL #25) DECLARATION Exhibit 1

James M. Jimmerson, Esq.

From: James M. Jimmerson, Esq.
Sent: Friday, March 29, 2013 8:41 AM
To: 'Aaron Shipley'
Cc: 'jjj@jimmersonhansen.com'; Kim Stewart; Stephanie Spilotro
Subject: RE: Wolfram

Hey Aaron,

I know you have been busy, but we definitely need to speak. I would like to come to an agreement on the admissibility of the Option Agreement and all amendments and exhibits thereto (including the amended and restated option agreement and all amendments and exhibits thereto) and the letters and other written communications between our clients and yours. Today is the last day for motions in limine, so I would like to talk about this if we can't agree via email.

Thank you very much.

From: Aaron Shipley [mailto:ashipley@mcdonaldcarano.com]
Sent: Tuesday, March 26, 2013 5:23 PM
To: James M. Jimmerson, Esq.
Subject: RE: Wolfram

I'm not putting you off. We are supposed to talk to our client tomorrow to discuss the issue of settlement.

Aaron

From: James M. Jimmerson, Esq. [mailto:jmj@jimmersonhansen.com]
Sent: Tuesday, March 26, 2013 4:40 PM
To: Aaron Shipley
Subject: Wolfram

Aaron,

I don't mean to bombard you with email, but we should find some time to talk this week when you're free. Please let me know what time works.

-Jim

(MIL #25) DECLARATION Exhibit 2

(MIL #25) DECLARATION Exhibit 2

James M. Jimmerson, Esq.

From: James M. Jimmerson, Esq.
Sent: Friday, March 29, 2013 3:50 PM
To: 'Aaron Shipley'
Cc: 'jjj@jimmersonhansen.com'; Kim Stewart; Lynn M. Hansen, Esq.; Stephanie Spilotro; Camille Garrett
Subject: Wolfram - List of exhibits re admissibility

Aaron,

Here is the list of documents (including exhibits and enclosures) that I would like to stipulate are admissible for the purposes of avoiding a motion in limine:

1. September 1, 2004 Commission Letter Agreement signed by Jon Lash, James Wolfram, and Walt Wilkes
2. Option Agreement For The Purchase Of Real Property And Joint Escrow Instructions – May, 2004
3. Amendment to Option Agreement For the Purchase of Real Property and Joint Escrow Instructions dated July 28, 2004.
4. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated August 31, 2004.
5. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005.
6. Amendment No. 1 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated July 28, 2006,
7. Amendment No. 2 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated September 30, 2006.
8. Amendment No. 3 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated November 22, 2006.
9. Amendment No. 4 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated December 20, 2007.
10. Amendment No. 5 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated May 12, 2008.
11. Amendment No. 6 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated January 30, 2009.
12. Amendment No. 7 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated April 24, 2009.
13. Amendment No. 8 to Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated June 18, 2009.
14. April 6, 2009 letter from Jim Stringer Jr. to Jim Wolfram.
15. November 24, 2009 letter from Jon Lash to Jim Wolfram.
16. August 23, 2007 letter from Mr. Lash to Walt Wilkes and Jim Wolfram.
17. March 14, 2008 letter from Jon Lash to Jim Wolfram and Walt Wilkes.
18. August 29, 2009 letter from Jim Jimmerson to Charles Curtis.
19. May 19, 2009 letter from Jim Jimmerson to Jim Stringer.
20. May 17, 2010 letter from Jim Jimmerson to Jon Lash
21. July 10, 2009 letter from Charles Curtis to Jim Jimmerson
22. February 1, 2008 letter from Jim Wolfram to Jon Lash.
23. April 21, 2010 letter from Jim Wolfram to Jon Lash.

Generally, I wanted to stipulate to the admissibility of all Option Agreement contracts (amendments, restatements, etc.) with all of their exhibits as well as all of the written communications between the parties with all enclosures. If I missed a contract or a communication please let me know.

Thank you

-Jim

James M. Jimmerson
Associate
(702) 388-7171
JIMMERSON
HANSEN P.C.

(MIL #25) DECLARATION

Exhibit 3

(MIL #25) DECLARATION

Exhibit 3

James M. Jimmerson, Esq.

From: Aaron Shipley [ashipley@mcdonaldcarano.com]
Sent: Friday, March 29, 2013 3:55 PM
To: James M. Jimmerson, Esq.
Subject: FW: admissibility of exhibits

Please confirm receipt.

From: Aaron Shipley
Sent: Friday, March 29, 2013 3:36 PM
To: 'James M. Jimmerson, Esq.'
Cc: Pat Lundvall; jjj@jimmersonhansen.com
Subject: admissibility of exhibits

Jim,

This email is in response to your inquiry regarding whether the parties can agree on the admissibility of a number of documents that have been produced in this litigation. Based on our conversation it seems that you are concerned that this issue needs to be dealt with immediately because of your position that the deadline to file pre-trial motions is today. First, our position is that the deadline to file pre-trial motions was March 1, 2013, and therefore, we would take issue with the filing of any additional pre-trial motions at this time. Second, it is our position that discussions regarding the admissibility of trial exhibits is not yet ripe. We intend to comply with our obligations under NRCP 16.1 (a)(3)(C) and would expect your office to do the same. Further, pursuant to the procedures set forth in EDCR 2.67 we fully expect to be able to have a cooperative discussion regarding all of the proposed trial exhibits and the potential agreement as to their admissibility. However, our position is that that does not need to be done today.

Aaron D. Shipley | Partner

MCDONALD CARANO WILSON LLP

2300 West Sahara Avenue, Suite 1200 | Las Vegas, NV 89102
phone (702) 873-4100 | facsimile (702) 873-9966

BIO | WEBSITE | V-CARD



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(MIL #25) DECLARATION
Exhibit 4

(MIL #25) DECLARATION
Exhibit 4

James M. Jimmerson, Esq.

From: James M. Jimmerson, Esq.
Sent: Wednesday, June 19, 2013 10:22 AM
To: 'Aaron Shipley'
Cc: 'jjj@jimmersonhansen.com'; Kim Stewart; Stephanie Spilotro
Subject: Wolfram - EDCR 2.67

Aaron,

As we discussed yesterday, I will wait until Monday before filing any motion concerning a motion for leave to supplement so you and Pat can discuss the matter more fully. Since we are getting near the end of June, I wanted to schedule our EDCR 2.67 conference. As you know, the three weeks leading up to the calendar call I am unavailable (Jones trial followed by vacation), however earlier in July I am good. The best week for me is the week of the 8th through the 12th. How does that look for you for the conference?

James M. Jimmerson

Associate

Jimmerson Hansen, P.C.
415 South Sixth Street, Suite 100
Las Vegas, NV 89101
P: (702) 388-7171
F: (702) 380-6417

JIMMERSONHANSEN
ONE OF THE FINEST FIRM NAMES IN

**(MIL #25) DECLARATION
Exhibit 5**

**(MIL #25) DECLARATION
Exhibit 5**

James M. Jimmerson, Esq.

From: James M. Jimmerson, Esq.
Sent: Tuesday, July 02, 2013 3:56 PM
To: 'Aaron Shipley'
Subject: RE: Wolfram - Motion for Leave to Supplement

Just wanted to check in with you about the things we talked about yesterday (e.g. dates for EDCR 2.67, opp./non-opp. for motion for leave to supplement, etc.) You said to give you a call later in the afternoon today, so I just called but you were about to get on a conference call. Let me know what's going on when you have a chance. If you try to call after 5, I will be on my cell and you can reach me there. Thanks a lot.

James M. Jimmerson

Associate

Jimmerson Hansen, P.C.
415 South Sixth Street, Suite 100
Las Vegas, NV 89101
P: (702) 388-7171
F: (702) 380-6417

JIMMERSONHANSEN
ATTORNEYS AT LAW

From: Aaron Shipley [mailto:ashipley@mcdonaldcarano.com]
Sent: Friday, June 28, 2013 3:28 PM
To: James M. Jimmerson, Esq.
Subject: RE: Wolfram - Motion for Leave to Supplement

Got it.

From: James M. Jimmerson, Esq. [mailto:jmj@jimmersonhansen.com]
Sent: Friday, June 28, 2013 11:44 AM
To: Aaron Shipley
Cc: Stephanie Spilotro
Subject: Wolfram - Motion for Leave to Supplement

Aaron,

Please find the attached Motion for Leave to Supplement filed with the Court. Your office will be served as well with this today. If you have any questions please let me know.

-Jim

James M. Jimmerson

Associate

Jimmerson Hansen, P.C.
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Las Vegas, NV 89101
P: (702) 388-7171
F: (702) 380-6417

JIMMERSONHANSEN
ATTORNEYS AT LAW

(MIL #25) DECLARATION
Exhibit 6

(MIL #25) DECLARATION
Exhibit 6

James M. Jimmerson, Esq.

From: James M. Jimmerson, Esq.
Sent: Friday, July 05, 2013 9:13 AM
To: 'Aaron Shipley'; Pat Lundvall
Cc: 'jjj@jimmersonhansen.com'; Lynn M. Hansen, Esq.; Kim Stewart; Stephanie Spilotro
Subject: Wolfram v. Pardee - Dates for Discovery

Aaron and Pat,

Thank you for the courtesy copy of the answer and counterclaim. I received it Wednesday afternoon. In light of the date, we will be filing and serving our response shortly.

Given the new counterclaim and the desire to maintain the trial date, it is imperative that all parties move with haste to complete pre-trial matters. First, we would like to take certain discovery of the new counterclaim. As we discussed Wednesday Aaron, we are unsure of exactly who we would like to depose in the action, but there is no doubt that we would like to take Jon Lash's deposition. At your earliest convenience, please suggest some dates that are available for such a deposition. As you know my father and I are scheduled to be in trial on the Jones matter between July 29 and August 2. We also leave for vacation the following two weeks. Anytime between now and July 26, or after August 18, we would be available for the deposition. Once we have a mutually agreeable date, we will notice the deposition. Also, as soon as we have a firm understanding of what, if any, other depositions we would like to take, we will alert you to the same.

Additionally, we will be serving written discovery (e.g. requests for production, interrogatories, etc.) on you concerning the new counterclaim. To the extent that the need for it would be obviated by the release of information contained in a supplement to your 16.1 disclosures, we would invite such an alternative. If you could get us a supplement by next Wednesday, we would take it into account when drafting the requests.

Also, Aaron, you said that next week does not work for an EDCR 2.67 conference. Would the following Monday or Tuesday work? With the Jones matter heating up, my availability is becoming more and more limited. Any availability you have next week or Monday or Tuesday of the following week would be greatly appreciated.

Lastly, as we discussed on Wednesday Aaron, both sides are about to begin preparing for trial in earnest. To the extent any chance for settlement is still available, we would be receptive to a meeting to discuss it to save the time and effort both parties will surely dedicate to trial preparation. If you would be amenable to such a meeting, please let us know.

As always, if you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

James M. Jimmerson

Associate

Jimmerson Hansen, P.C.
415 South Sixth Street, Suite 100
Las Vegas, NV 89101
P: (702) 388-7171
F: (702) 380-6417

JIMMERSONHANSEN
ATTORNEYS AT LAW

**(MIL #25) DECLARATION
Exhibit 7**

**(MIL #25) DECLARATION
Exhibit 7**

James M. Jimmerson, Esq.

From: Pat Lundvall [plundvall@mcdonaldcarano.com]
Sent: Monday, July 08, 2013 3:37 PM
To: James M. Jimmerson, Esq.; Aaron Shipley
Cc: James J. Jimmerson, Esq.; Lynn M. Hansen, Esq.; Kim Stewart; Stephanie Spilotro
Subject: RE: Wolfram v. Pardee - Dates for Discovery

See my responses in caps below.

From: James M. Jimmerson, Esq. [mailto:jmj@jimmersonhansen.com]
Sent: Friday, July 05, 2013 9:13 AM
To: Aaron Shipley; Pat Lundvall
Cc: James J. Jimmerson, Esq.; Lynn M. Hansen, Esq.; Kim Stewart; Stephanie Spilotro
Subject: Wolfram v. Pardee - Dates for Discovery

Aaron and Pat,

Thank you for the courtesy copy of the answer and counterclaim. I received it Wednesday afternoon. In light of the date, we will be filing and serving our response shortly.

Given the new counterclaim and the desire to maintain the trial date, it is imperative that all parties move with haste to complete pre-trial matters. First, we would like to take certain discovery of the new counterclaim. As we discussed Wednesday Aaron, we are unsure of exactly who we would like to depose in the action, but there is no doubt that we would like to take Jon Lash's deposition. At your earliest convenience, please suggest some dates that are available for such a deposition. As you know my father and I are scheduled to be in trial on the Jones matter between July 29 and August 2. We also leave for vacation the following two weeks. Anytime between now and July 26, or after August 18, we would be available for the deposition. Once we have a mutually agreeable date, we will notice the deposition. Also, as soon as we have a firm understanding of what, if any, other depositions we would like to take, we will alert you to the same. YOUR REQUEST TO TAKE JON LASH'S DEPOSITION ON OUR COUNTERCLAIM ASSUMES HE IS THE PERSON POSSESSING DISCOVERABLE INFORMATION ON THAT CLAIM. HE IS NOT. WE WILL BE SUPPLEMENTING OUR RULE 16.1 DISCLOSURES. A REVIEW OF THOSE DISCLOSURES WILL HELP YOU DECIDE WHICH DEPOSITIONS YOU MAY WISH TO TAKE.

Additionally, we will be serving written discovery (e.g. requests for production, interrogatories, etc.) on you concerning the new counterclaim. To the extent that the need for it would be obviated by the release of information contained in a supplement to your 16.1 disclosures, we would invite such an alternative. If you could get us a supplement by next Wednesday, we would take it into account when drafting the requests. OUR SUPPLEMENT WILL BE TIMELY, IN ACCORD WITH THE REQUIREMENTS OF THE RULE.

Also, Aaron, you said that next week does not work for an EDCR 2.67 conference. Would the following Monday or Tuesday work? With the Jones matter heating up, my availability is becoming more and more limited. Any availability you have next week or Monday or Tuesday of the following week would be greatly appreciated. I AM AVAILABLE FOR THE EDCR 2.67 CONFERENCE ON EITHER JULY 24, 25, OR 26. I UNDERSTAND THAT YOU MAY BE IN TRIAL DURING THE DAY THAT WEEK. I AM HAPPY TO WORK AFTER HOURS ON ANY OF THOSE DAYS BUT FRIDAY.

Lastly, as we discussed on Wednesday Aaron, both sides are about to begin preparing for trial in earnest. To the extent any chance for settlement is still available, we would be receptive to a meeting to discuss it to save the time and effort both parties will surely dedicate to trial preparation. If you would be amenable to such a meeting, please let us know. WE ARE HAPPY TO DISCUSS A REALISTIC FORM OF SETTLEMENT. PAYMENT OF ANY MONIES TO YOUR CLIENTS, FROM OUR PERSPECTIVE, IS NOT REALISTIC.

As always, if you have any questions or concerns, please do not hesitate to contact my office. SAME TO YOU. SEE YOU TOMORROW.

Sincerely,

James M. Jimmerson

Associate

Jimmerson Hansen, P.C.
415 South Sixth Street, Suite 100
Las Vegas, NV 89101
P: (702) 388-7171
F: (702) 380-6417

JIMMERSONHANSEN
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(MIL #25) DECLARATION
Exhibit 8

(MIL #25) DECLARATION
Exhibit 8