

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 12:03 p.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

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10/23/2013	Trial Exhibit H	23	JA003639- JA003640
10/23/2013	Trial Exhibit I	23	JA003641- JA003643
10/23/2013	Trial Exhibit J – filed under seal	24	JA003644- JA003669
10/23/2013	Trial Exhibit K	24	JA003670- JA003674
10/23/2013	Trial Exhibit L	24	JA003675- JA003678
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10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
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Dated this 28th day of February, 2018.

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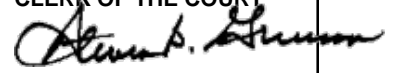
Attorneys for Appellant

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,)
)
 PLAINTIFF,)
)
 vs.) CASE NO. A-10-632338-C
)
 PARDEE HOMES OF NEVADA,)
)
) **ORIGINAL**
)
 DEFENDANT.)
 _____)

TRANSCRIPT
OF
PROCEEDINGS

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE
HELD ON WEDNESDAY, OCTOBER 30, 2013
AT 8:30 A.M.

APPEARANCES:

For the Plaintiff: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.
For the Defendant: PATRICIA K. LUNDVALL, ESQ.
AARON D. SHIPLEY, ESQ.

Reported by: Loree Murray, CCR No. 426

Loree Murray, CCR #426
District Court IV

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1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 30, 2013

2 8:30 A.M.

3 * * * * *

4 THE COURT: Good morning, counsel.

5 MR. J.M. JIMMERSON: Good morning.

6 MS. LUNDVALL: Good morning.

7 THE COURT: Mr. Jimmerson, do you have -- we
8 have a new witness.

9 MR. J.M. JIMMERSON: Yes. We're just waiting
10 for Mr. Wilkes.

11 THE COURT: I don't know his limitations.

12 MR. J.J. JIMMERSON: He's gonna have to roll
13 over there and take that chair with him.

14 THE COURT: Good morning. I just want to
15 make sure I can accommodate you over here Mr. Wilkes.
16 We're gonna try.

17 Good morning.

18 THE CLERK: Please raise your right hand.

19 THE WITNESS: Yes, ma'am.

20 WALTER WILKES,
21 having been duly sworn to tell the truth, the whole
22 truth, and nothing but the truth, was examined and
23 testified as follows:

24 THE CLERK: Please state and spell your first
25 and last name for the record.

1 THE WITNESS: First name is Walt, W-a-l-t,
2 put an e-r on it if you want, last names Wilkes,
3 W-i-l-k-e-s.

4 DIRECT EXAMINATION

5 BY MR. J.M. JIMMERSON:

6 Q. Mr. Wilkes, how old are you?

7 A. Older than you. 72.

8 Q. And how are you feeling today?

9 A. I feel okay, but I had a breathing attack at
10 the hotel that almost made me think I couldn't make it,
11 but I'm okay.

12 THE COURT: If you need a break or anything,
13 please let us know.

14 THE WITNESS: I will.

15 THE COURT: We'll be dependent on to you let
16 us know, okay?

17 THE WITNESS: Okay. We'll see if we can move
18 this thing around a little faster.

19 THE COURT: Whatever you can do.

20 BY MR. J.M. JIMMERSON:

21 Q. Mr. Wilkes, do you still work?

22 A. I'm retired.

23 Q. And before you were retired, what did you do
24 for a living?

25 A. I sold real estate for over 35 years.

1 Q. And where did you sell real estate?

2 A. Well, Award Realty during the time of the
3 transaction, and I worked over at General Realty after
4 that.

5 Q. Were you involved in the transaction between
6 Pardee and Coyote Springs Investment, LLC?

7 A. Absolutely.

8 Q. And what did you do?

9 A. Well, Jim was, Jim was on vacation, okay?
10 Jim had called. I called Jim. I called Jim when he
11 was on vacation, and so --

12 MS. LUNDVALL: Your Honor, there is a lot of
13 Jims in courtroom.

14 THE WITNESS: Jim Wolfram. Sorry about that.

15 THE COURT: That's okay. Even if we
16 understand it, it helps your record.

17 THE WITNESS: All right. Anyway I called
18 Jim Wolfram. He had already talked to Harvey several
19 times over the years about the property, okay?
20 Harvey Whittemore.

21 THE COURT: Okay.

22 THE WITNESS: Okay. And there was an article
23 in the paper, and Jim and I had discussed it before he
24 left about Harvey getting the water finally, and I
25 thought to myself, Jeez, I'm gonna call Jim and see if

1 we can't submit it right away, even though Jim knew
2 Harvey better.

3 BY MR. J.M. JIMMERSON:

4 Q. Are you talking about Jim Wolfram again?

5 A. Yeah, Jim Wolfram. I'm gonna call my partner
6 right away and see if we cannot get this property
7 submitted, because in our business, somebody comes out
8 of the woodwork and they got a deal already, you know?

9 So I called. So I called Jim, and I said,
10 Jim, is it okay if I call Jon Lash and see if he'll get
11 on board with us and call Harvey to see -- I wanted to
12 see if they were interested in the property.

13 So I called Jon Lash, and I says -- which we
14 were great, we were great friends. We were friendly
15 then. And I said, Jon, I said, We've got this property
16 we want to tell you about, but I want to make sure
17 you're gonna give us a 4 percent commission. He says,
18 No problem, Walt.

19 And I told him, he says, Well, I'm very
20 interested in that property. He knew nothing about the
21 property.

22 And so I called up Harvey Whittemore, and I
23 said, Mr. Whittemore, sir, I represent -- Jon Lash told
24 me that I could represent them, because I knew Harvey
25 doesn't pay commissions. I heard that. I said, Jon,

1 I'll have to represent you. He says, You tell them
2 you're representing Pardee Homes in this transaction,
3 Walt, I'll take care of you, I promise you.

4 I called up Harvey and said, I'm representing
5 Pardee Homes on this transaction, and I said, They
6 would like to talk to you about the property. And I
7 said, Can we set up a meeting? We can go to, go to
8 their offices and sit down and discuss it and see if
9 they want to take down this property. He said,
10 Absolutely, I trust them, okay. He says --

11 MS. LUNDVALL: If we're getting into
12 conversations he may have had with Mr. Whittemore,
13 those conversations would be hearsay, your Honor.

14 THE COURT: Just give us your recollection of
15 your understanding of what occurred, without giving
16 word for word what your conversation was.

17 THE WITNESS: We set up a meeting. We agreed
18 to a meeting.

19 THE COURT: Perfect.

20 THE WITNESS: We meet, went down there to the
21 meeting.

22 THE COURT: Now, this is the meeting?

23 THE WITNESS: This is the meeting, the very
24 first meeting that we had.

25 THE COURT: Okay.

1 THE WITNESS: The only meeting we had.

2 Well, on that one Klif Andrews tried to
3 escort us out of the meeting, because apparently he
4 didn't want us there, but anyway, Jon Lash showed up at
5 that time, and he says, No, you come into the meeting.

6 We went into the meeting, and we didn't say a
7 word in the meeting, except watching, just watched them
8 talk about the property, okay?

9 After the meeting, they told us that -- after
10 the meeting they told us they weren't gonna need us for
11 any more meetings, they would give us documentation and
12 everything, which never happened.

13 BY MR. J.M. JIMMERSON:

14 Q. Mr. Wilkes, did you enter into a commission
15 agreement with Pardee?

16 A. Yes.

17 Q. Okay. If you could, could you please flip to
18 Exhibit Number 1?

19 A. This, in this book?

20 THE COURT: The plaintiffs' book, if you'll
21 look at Plaintiffs' Trial Exhibits 1 through 5.

22 THE WITNESS: I got it. I got it.

23 That's A, okay, I'm there.

24 THE COURT: You've got Defendant's.

25 BY MR. J.M. JIMMERSON:

1 Q. You may need a new binder.

2 Can I approach?

3 THE COURT: Absolutely. There's a lot of
4 binders. You need the defendant's, although it is in
5 the defendant's we'll stick with the Plaintiffs',
6 because it's probably what you reviewed.

7 THE WITNESS: I see it there.

8 THE COURT: It's okay. It is there too.
9 It's okay.

10 THE WITNESS: Okay, Commission Letter,
11 Number 1.

12 THE COURT: Got it.

13 THE WITNESS: I'm here.

14 BY MR. J.M. JIMMERSON:

15 Q. Mr. Wilkes, is this the Commission Letter
16 Agreement that you entered into that you spoke about
17 just earlier?

18 A. Yes, sir.

19 Q. Is that your signature on PH 137, Page 3?

20 A. Yes.

21 Q. Did you sign it on September 4, 2004?

22 A. To the best of my knowledge, yes.

23 Q. Mr. Wilkes, what did this commission letter
24 do, in your understanding?

25 A. Well, it was a commission letter that was

1 done to give us 4 percent of the first \$50 million, and
2 one and a half percent thereafter, and that was
3 supposed to be all the Purchase Property, and then it
4 went on and gave us one and a half percent thereafter
5 for the balance of the property, which is a very
6 significant commission.

7 Q. Does this letter contain any provision about
8 information?

9 A. Yes, it does.

10 Q. And where does it provide for information?

11 A. On Page 2, Pardee shall provide to each of
12 you a copy of each written option exercise notice given
13 pursuant to Paragraph 2 of the Option Agreement,
14 together with information as to the number of acres
15 involved and the scheduled closing date.

16 In addition, Pardee shall keep each of you
17 reasonably informed as to all matters relating to the
18 amount and dates of your commission payments.

19 Q. When you said "dates," it's "due dates"; is
20 that right?

21 A. And due dates, yes, sorry.

22 Q. That last sentence there, starting with, In
23 addition, what does that mean to you?

24 A. Well, it means they were supposed to keep us
25 reasonably informed as to what was going on. They --

1 it means a lot to me, because they're not keeping their
2 promise.

3 Q. What, in order to keep their promise, what is
4 your understanding as to what Pardee needed to do?

5 A. They needed to give us, they needed to give
6 us documents, documentation, they needed to give us
7 maps, they needed to give us designations so we could
8 calculate our commission. They gave us nothing.

9 Q. If you did not receive maps or documents or
10 designation information, would you be able to calculate
11 your commission payments or the accuracy thereof?

12 A. No.

13 Q. Why not?

14 A. Well, because, you need -- I need to know how
15 the property is designated, I need to know whether it's
16 residential, so that we could calculate our commissions
17 on that thing. I need to know what part is
18 residential.

19 Q. And if you don't know what part is
20 residential, are you able to calculate your commission
21 payments?

22 A. No.

23 Q. Okay. Do you believe that Pardee kept its
24 promise to you as stated in this paragraph?

25 A. Absolutely not.

1 Q. Why do you say that?

2 A. Well, number one, they haven't given us
3 anything. They didn't give us any documents, they
4 didn't give us any designation of property, they didn't
5 give us any acreage, the size of the acreage, they
6 didn't even tell us what the designation was, so how
7 are we gonna figure our commissions? I'm angry about
8 this. I really am. They haven't kept their word there
9 at all.

10 Q. Mr. Wilkes, it says, Pardee shall keep each
11 of you reasonably informed.

12 When it says, "each of you," do you have any
13 understanding what that means?

14 A. Yeah.

15 Q. What does that mean?

16 A. They're gonna notify Jim of what's going on,
17 they're gonna notify me of what's going on, and they
18 didn't notify me.

19 Q. Did you ever execute an amendment to this
20 September 1, 2004 Commission Agreement?

21 A. Did I?

22 Q. Uh-huh.

23 A. No.

24 Q. Did you ever state in writing anywhere that
25 you didn't want --

1 A. To the best of my knowledge, I didn't do
2 anything like that.

3 Q. Okay. Did you ever state in writing ever to
4 anyone at Pardee that you didn't want to receive the
5 information?

6 A. No.

7 Q. Did you ever call Jon Lash and tell him that
8 sort of information?

9 A. Tell him what?

10 Q. Tell him that, that you didn't want to
11 receive the information?

12 A. No. No.

13 Q. Did you ever tell anyone at Pardee that you
14 didn't want to receive the information?

15 A. No, absolutely not.

16 Q. Did you expect to receive the information?

17 A. Absolutely.

18 Q. Why did you expect to receive?

19 A. I'm part of the transaction. I'm part of the
20 deal. He promised he would notify me. He didn't.

21 Q. Okay. Let's talk about the information you
22 did receive. Please flip to Number 2.

23 A. I'm there.

24 Q. Did you receive a copy of this Option
25 Agreement for the Purchase of Real Property and Joint

1 Escrow Instructions?

2 A. This is the Option Agreement itself, yes.

3 Q. Okay. Did you receive, if you flip to
4 Exhibit 3, an Amendment to Option Agreement?

5 A. Yes.

6 Q. Okay. And if you flip to Exhibit 4, did you
7 receive a copy of Amendment Number 2 to Option
8 Agreement dated August 31, 2004?

9 A. Yes.

10 Q. And if you flip to Exhibit 5, did you receive
11 a copy of the Amended and Restated Option Agreement?

12 A. Yes.

13 Q. Okay. Now, if we could flip to the next
14 binder, Mr. Wilkes?

15 A. Yes, sir.

16 MR. J.M. JIMMERSON: Permission to approach,
17 your Honor?

18 THE COURT: Yes, please.

19 BY MR. J.M. JIMMERSON:

20 Q. Mr. Wilkes, Exhibits 6 through 13 are
21 Amendments 1 through 8 to the Amended and Restated
22 Option Agreement.

23 Did you receive any of these amendments?

24 A. No.

25 Q. Did you receive any of the maps contained in

1 any of these amendments?

2 A. Absolutely not.

3 Q. Did you receive any of the designation
4 information contained in these amendments from Pardee?

5 A. No.

6 Q. Did Pardee send to you any information
7 summarizing what is contained in these amendments?

8 A. No.

9 Q. Excuse me.
10 Mr. Wilkes, can you please flip to
11 Exhibit 16.

12 A. I can and I will.

13 Q. This is the letter dated August 23, 2007?

14 A. This is the letter dated -- yes.

15 Q. Okay. Do you see on Page 2 who signed this
16 letter?

17 A. Jon Lash.

18 Q. Okay. Do you see who it is addressed to on
19 the first page?

20 A. Mr. Walt Wilkes, Mr. Jim Wolfram.

21 Q. Does this letter contain any maps?

22 A. No.

23 Q. Does this letter contain any designation
24 information or the location of where the land is
25 designated --

1 A. No.

2 Q. -- at Coyote Springs?

3 What does this letter tell you?

4 A. Well, it tells me they think we're overpaid,
5 which I don't agree with on the commission, and that
6 comes to 50 grand.

7 Q. At the time, did you dispute that you had
8 been overpaid?

9 A. Yes.

10 Q. Okay.

11 A. The reason being, the reason being is because
12 at this point, I didn't trust Pardee, because they had
13 been lying to us.

14 Q. Okay.

15 A. Okay, so I didn't trust this letter.

16 Q. Did you ever write a letter saying you didn't
17 agree that you had been overpaid?

18 A. No.

19 Q. Okay.

20 A. Oh, wait a minute, I think Jim did. Yes, I
21 think Jim did.

22 Q. I'm sorry, did he write a letter saying you
23 had been overpaid?

24 A. I guess the true answer to that is no.

25 Q. Okay. Did he ever communicate to Pardee that

1 you believed you had been overpaid?

2 A. What Jim did is he called Pardee long before
3 this letter, and he says, Jon, --

4 MS. LUNDVALL: Your Honor, at this point in
5 time, as much as Mr. Wilkes may want to testify, he
6 cannot testify to what Mr. Wolfram did, he can testify
7 to what he knows and what --

8 THE WITNESS: Okay.

9 THE COURT: What was your understanding prior
10 to this letter, was there any mention of overpayment?

11 THE WITNESS: Yeah.

12 THE COURT: What was your understanding prior
13 to the letter?

14 THE WITNESS: My partner and I discussed it,
15 okay, and Jim was -- before the letter ever came out,
16 your Honor. Jim was the first one that told him he
17 thought we'd been overpaid, and we wanted to be fair
18 with him, okay?

19 THE COURT: When you say, "him," you mean
20 somebody at Pardee?

21 THE WITNESS: Jon Lash.

22 THE COURT: That's okay, I want to be clear.

23 BY MR. J.M. JIMMERSON:

24 Q. So when you received this letter confirming
25 that you had been overpaid to the tune of \$50,000, did

1 you ever communicate to Pardee saying, No, no, we
2 haven't been overpaid?

3 A. No.

4 Q. Okay. I just want to understand exactly what
5 that situation was?

6 A. No.

7 Q. Did you ever respond to this letter with a
8 letter of your own?

9 A. No.

10 Q. If we could please flip to exhibit -- I
11 believe I believe, sorry, 22.

12 Mr. Wolfram, look at Exhibit 22.

13 Does this refresh your recollection?

14 A. I'm Wilkes, he's Wolfram.

15 Q. I'm sorry.

16 Mr. Wilkes, did you ever -- does this refresh
17 your recollection as to whether or not you sent a
18 letter in response to the 2007 letter?

19 A. Second page is blank.

20 Q. Do you not have a second page, PH 140?

21 A. No. I got PH -- maybe I'm looking wrong. I
22 got PH 000132. The other pages were blank.

23 MR. J.J. JIMMERSON: He may be at the wrong
24 exhibit.

25 Mr. Wilkes, please look at Exhibit 22.

1 MR. J.M. JIMMERSON: Your Honor, may I
2 approach?

3 THE COURT: Absolutely. I'm having a hard
4 time finding it

5 BY MR. J.M. JIMMERSON:

6 Q. Does this refresh your recollection as to
7 whether or not --

8 A. Oh, yeah, we did send a letter to them, I
9 apologize.

10 Q. Okay. In this letter, did you make any
11 request for information?

12 A. Yeah. Based on your letter dated
13 August 23rd, 2007, okay, we asked for, we asked for any
14 survey plat maps of the development. We were unable to
15 track which options had been exercised and what option
16 is now being purchased.

17 I'm sorry, your Honor, it was a long time
18 ago.

19 THE COURT: That's fine. That's why your
20 counsel is directing you, to kind of refresh your
21 recollection.

22 THE WITNESS: February 1st, 2008.

23 BY MR. J.M. JIMMERSON:

24 Q. Were you involved in that land that had been
25 purchased from Coyote Springs on February 1, 2008 by

1 Pardee?

2 A. No.

3 Q. Had Pardee, during that time, provided you
4 with any maps concerning the location of the land?

5 A. No.

6 Q. Did Pardee provide you any information as to
7 how much each acre cost?

8 A. Well, no.

9 Q. Okay. Did Pardee, at this time, provide you
10 with any information concerning the designation of the
11 land that was being transacted at Coyote Springs?

12 A. No.

13 Q. Okay. Mr. Wolfram -- Mr. Wilkes, did you
14 receive a letter in response from Mr. Lash, to this
15 February 1, 2008 letter?

16 A. No.

17 Q. Mr. Wilkes, can you please flip --

18 A. Maybe.

19 Q. I'm sorry, can you please flip to Exhibit 17,
20 Mr. Wilkes?

21 A. Yes.

22 Q. Do you see this is a letter dated
23 March 14, 2008?

24 A. Yes.

25 Q. Okay. Does this refresh your recollection

1 whether or not you received a letter from Jon Lash in
2 response to the February 1, 2008 letter?

3 A. Yeah.

4 Q. Okay. Who's this letter addressed to?

5 A. Jim Wolf from and Walt Wilkes.

6 Q. Did you receive this letter?

7 A. I didn't receive this letter, no.

8 Q. Are you sure?

9 A. I don't think I have.

10 Your Honor, I flatlined out three times, you
11 know, on the operating table, and it's affected my
12 memory so much, so please bear with me. I'll try to
13 get it.

14 THE COURT: I'm not inferring anything at all
15 that you don't have a memory of what happened in 2008.
16 I haven't flatlined, and I don't remember what happened
17 in 2008, so I certainly understand.

18 THE WITNESS: I want to be as accurate as I
19 can.

20 THE COURT: That's why your counsel is
21 helping you. If you don't have an independent
22 recollection, that's perfectly fine. He's just asking
23 you, since it was addressed to you, do you recall
24 receiving it back in that time frame?

25 THE WITNESS: I saw it. I think I saw it in

1 the lawyer's office.

2 THE COURT: At like a later date or
3 something?

4 THE WITNESS: Yeah, later date.

5 THE COURT: Does that say, does yours have
6 handwriting on it like mine does that I can't read?

7 MR. J.M. JIMMERSON: Yes.

8 THE COURT: Does that say, Walt?

9 MR. J.M. JIMMERSON: Yes, I believe.

10 THE COURT: I don't know if that is
11 significant or not, but I've been trying to figure it
12 out since it has your name on it.

13 MS. LUNDVALL: Maybe Mr. Wilkes can tell you
14 whose notation that is.

15 THE COURT: Yeah.

16 BY MR. J.M. JIMMERSON:

17 Q. Do you know whose notation that is?

18 A. Oh, that's from Jim.

19 Q. I'm sorry.

20 THE COURT: It's hard to read. It looks like
21 this was sent, and then --

22 THE WITNESS: To me -- anyway, he must have
23 forwarded it to me.

24 / / / /

25 BY MR. J.M. JIMMERSON:

1 Q. Okay.

2 A. I think he forwarded it to me, the more I
3 think about.

4 THE COURT: I don't know if that would
5 refresh -- I'm just trying to help you.

6 THE WITNESS: I know that. Thank you for
7 your help.

8 BY MR. J.M. JIMMERSON:

9 Q. Mr. Wilkes, does this letter contain a map of
10 the development at Coyote Springs?

11 A. No.

12 Q. Okay. Does this letter contain any
13 information concerning how the land is designated at
14 Coyote Springs?

15 A. No.

16 Q. Does this letter contain any information
17 summarizing how Pardee and where Pardee is purchasing
18 the land at Coyote Springs?

19 A. There should be no confusion over to what
20 property has been purchased. All commissions and
21 purchase monies have been paid through the same escrow
22 account simultaneously. Thus, production of the
23 documentation you request serves no purpose of mutual
24 benefit.

25 So no, they didn't give us -- I mean in his

1 own words here, they didn't give us the information
2 that we wanted, no documentation, no designation.

3 Q. Okay. Mr. Wilkes, were you sent, after
4 March 14th, 2008, any maps of the development at Coyote
5 Springs as it concerned your commission?

6 A. No.

7 Q. Did you receive any designation information
8 of Coyote Springs from Pardee?

9 A. Absolutely not.

10 Q. After March 14th, 2008?

11 A. No, it's like pulling teeth.

12 Q. Mr. Wilkes, can you please flip to
13 Exhibit 15?

14 A. Yes. Every time he makes me flip, it means I
15 got something --

16 THE COURT: He's not inferring. You forgot
17 something, he's trying to help you refresh your
18 recollection.

19 THE WITNESS: Letter to Jim Wolfram.

20 BY MR. J.M. JIMMERSON:

21 Q. Is this letter addressed to you?

22 A. No.

23 Q. Do you see on Page 2 who this letter is sent
24 by?

25 A. Jon E. Lash.

1 Q. Okay. Can you look to the next page for the
2 map?

3 A. Yes.

4 Q. Okay. Did Pardee ever send you a map like
5 this?

6 A. No.

7 Q. Did Pardee ever send you any map whatsoever?

8 A. No.

9 Q. Did Pardee ever send you any information
10 about how the land was being designated at Coyote
11 Springs?

12 A. No. I finally got a map. I finally got a
13 map from Jim. Jim made a map up that he found other
14 properties for.

15 Q. Let's look to -- before we look to that map,
16 do you believe you were entitled to a copy of this map
17 to be sent from Pardee?

18 A. Absolutely.

19 Q. Why do you believe you're entitled to it?

20 A. It could show the designation of the
21 properties. We could figure our commission.

22 Q. Does this map show the designation of the
23 properties?

24 A. Does it show the designation of properties?
25 Yes.

1 Q. Where? Where do you see the designation?

2 A. It don't show the designation, I'm sorry.

3 Q. Do you know if this is a complete map?

4 A. It looks like -- Jim had found some other
5 properties besides, besides what's on this map that
6 they took down, and that's why we were concerned.

7 Q. Okay. Did you ever tell Pardee or did you
8 ever communicate to anyone at Pardee that you didn't
9 want to receive this type of information included in
10 Exhibit 15, this map?

11 A. No.

12 Q. Okay. Mr. Wilkes, can you please go to
13 Exhibit 23, the letter dated April 21, 2010 from
14 Jim Wolfram to Jon Lash.

15 A. I'm there.

16 Q. Can you flip to Page 2.

17 A. I'm there.

18 Q. You spoke earlier about a map made by
19 Mr. Wolfram.

20 Is this that map?

21 A. I haven't looked at it for a while, but I
22 think it is.

23 Q. Okay. Does it appear to be Mr. Wolfram's
24 handwriting on this map?

25 A. I don't know for sure. I think so.

1 Possibly.

2 Q. Okay. Excuse me.

3 A. Yeah, the more I look at it, I think it is.

4 Q. Thank you, Mr. Wilkes.

5 Were you able to, prior to this litigation,
6 with the information that was provided by Pardee, were
7 you able to verify the amount of the commissions you
8 had received more accurately?

9 A. No.

10 Q. Okay. Why do you say that?

11 A. Well, I don't -- all this property -- he's
12 taking down this one. It doesn't, it doesn't have a
13 designation on that that I can see. I mean it doesn't
14 say this is R1, it doesn't say this is R3.

15 Q. Are you referring to designations that you
16 saw on maps on Amendments 1 through 8 to the Amended
17 and Restated Option Agreement?

18 Here I'll withdraw the question.

19 We'll flip now to Exhibit 12, your Honor.

20 THE COURT: Okay.

21 THE WITNESS: Okay, I'm there

22 BY MR. J.M. JIMMERSON:

23 Q. Can you look to CSI Wolfram 1156.

24 Your Honor, permission to approach?

25 THE COURT: Absolutely.

1 THE WITNESS: 1156?

2 BY MR. J.M. JIMMERSON:

3 Q. Yes.

4 When you say R1, R2, are you referring to the
5 Res 1, Res 2, Res 3 designated on these sorts of maps
6 here?

7 A. Yes.

8 Q. Okay. Did you receive the maps located on
9 Exhibits B1 through B-6 from Pardee?

10 A. B1 no way, absolutely not.

11 Q. Okay.

12 A. I would have liked to have had them.

13 Q. Were you owed this information under the
14 Commission Letter Agreement?

15 A. Sure, absolutely.

16 Q. Without this information, were you able to
17 calculate the accuracy of the commissions you received?

18 A. No.

19 Q. Mr. Wolfram -- Mr. Wilkes.

20 MR. J.J. JIMMERSON: Getting old is a sign
21 of --

22 THE COURT: I do the same thing, I get the
23 wrong name.

24 BY MR. J.M. JIMMERSON:

25 Q. Mr. Wilkes, why are you filing this lawsuit?

1 A. Why am I filing this lawsuit?

2 Q. Yes, why did you file this lawsuit?

3 A. Again, I want, you know, we've got kids, Jim
4 and I, okay, and I'm worried about them. If we can't
5 get this information from Pardee, and we can't get it,
6 and the Court doesn't give us this information and help
7 us, how are they gonna get it? How are they gonna know
8 what's going on, okay?

9 I'm filing this lawsuit for my kids, okay,
10 because, Hey, I'm 72. I have everything in the world
11 wrong with me. I want to protect my kids. I mean
12 you've got a copy of the letter the doctor sent in your
13 file. I'm, I'm in trouble, okay? That's fine, but I
14 want -- that's fine, but my kids and my wife need this
15 information.

16 Q. Why would you sue for information?

17 A. Because they will not give it to us. They
18 agreed to give it to us right there in the letter, and
19 all they've done is lied to us. All they've done is --
20 I, I need the information so I can calculate
21 commissions, and my kids need information so they can
22 calculate the commissions after I'm gone.

23 Q. Have you incurred a substantial amount of
24 attorney's fees and costs in this case?

25 A. Well, a quarter million.

1 Q. Why would you have incurred such cost just to
2 get information?

3 A. Why would I incur it? Because I want it
4 straightened out for my children. I want them to -- I
5 want the Court to have Pardee open up their files and
6 give us this stuff.

7 I don't believe all this stuff, these
8 confidentiality things and everything. I do not
9 believe all of them, okay? Some of them I do, yes, but
10 everybody can say, Oh, that's under a confidentiality
11 agreement, we don't have to answer it. I need my kids
12 to be protected.

13 Q. If Pardee were to execute purchases of
14 production residential property in the future, what
15 sort of commissions could you expect to receive?

16 A. Well, thanks to, thanks to my attorney,
17 Jim Jimmerson over here, over here, the commissions
18 could go from 7-, \$8 million. It's a standing amount,
19 okay, and that's what we're fighting for, just what
20 they agreed give to us, okay?

21 But it would be like 7- to \$8 million, and
22 that's lot of money, and I, I could -- that's a lot of
23 money. It's a lot of money I want my kids to have. I
24 don't care about me. My kids.

25 MR. J.M. JIMMERSON: Thank you very much,

1 Mr. Wilkes.

2 I'll tender the witness.

3 THE WITNESS: Did I pass this examination?

4 THE COURT: No. You know what, fortunately
5 you can't.

6 THE WITNESS: Can I get out of here? This
7 thing's fast.

8 THE COURT: She's just gonna follow up on
9 questions that were asked earlier.

10 THE WITNESS: I don't know, she looks pretty
11 mean to me.

12 MS. LUNDVALL: You told me in the deposition
13 that you liked me.

14 THE WITNESS: I did. I do like you.

15 MS. LUNDVALL: Thank you.

16 THE WITNESS: I think you're a very nice
17 lady, okay? Ask me after this what I think though. If
18 you want to keep that reputation, you better be a good
19 lady.

20 THE COURT: It's a developing opinion, is
21 that what you were saying?

22 MR. J.J. JIMMERSON: Yes, it is.

23 THE COURT: Is that right?

24 THE WITNESS: Just no objections, okay?

25 THE COURT: Well, she's not gonna object.

1 THE WITNESS: I know. I know.

2 THE COURT: Okay.

3 THE WITNESS: She did enough of that in the
4 last few days.

5 CROSS-EXAMINATION

6 BY MS. LUNDVALL:

7 Q. Mr. Wilkes, you spent 35 years in the real
8 estate industry; is that right?

9 A. Yes, ma'am.

10 Q. A lot of that was a matter of selling and
11 brokering real estate deals for parties; is that
12 correct?

13 A. Well, for parties, yeah, not just Pardee,
14 other builders.

15 Q. And what I'm talking about is like third
16 parties, let's put it that way.

17 A. Yes.

18 Q. All right. And as part of that profession,
19 you developed some charm and some humor and some
20 graciousness?

21 A. Yes, ma'am. I tried. I'm still trying.

22 Q. I'm gonna say notwithstanding you're retired,
23 you're still practicing; is that right?

24 A. Yes, ma'am.

25 You kind of get in the habit, I like to make

1 people feel good. I see, I did stuff the other day. I
2 saw an old lady that was in a wheelchair, and she was
3 so sad. I went up to a customer, said, Sweetheart,
4 you're beautiful, can we go take a dance, go dancing
5 sometime? I did. That's what I like to do.

6 Q. Did you make her smile?

7 A. Yes, I did.

8 Q. Good for you.

9 A. I did.

10 Q. Now, you know the gentleman, Jim Wolfram,
11 that's sitting here in the courtroom? Do you?

12 A. No. I never saw him before in my life --
13 yes, I know him. He was my partner.

14 Q. You refer to him as your partner, do you not?

15 A. Absolutely.

16 Q. Do you think he's good guy?

17 A. Absolutely.

18 Q. Do you think he's an honorable guy?

19 A. Oh, yeah.

20 Q. How long did you work with him in putting
21 together real estate deals?

22 A. You're gonna make me estimate here. I would
23 say, probably, well, I knew Jim before, okay, when we
24 were -- and we started a partnership about, I'm gonna
25 guess seven or eight years that we worked as partners.

1 Q. Seven or eight years that you actually worked
2 as partners, and then you continued in your partnership
3 once you retired; is that right?

4 A. No, not necessarily, because I was getting
5 things wrong with me and everything, you know, and I --
6 and Jim went to work for, to a different brokerage,
7 okay, and I just sort of retired. I just couldn't do
8 it.

9 Q. Let me ask you this: During the time the two
10 of you did work as partners in the real estate
11 industry, did you trust him?

12 A. Oh, absolutely.

13 Q. Did you share information with Mr. Wolfram?

14 A. Oh, absolutely.

15 Q. And did Mr. Wolfram share information with
16 you?

17 A. Sometimes.

18 Q. Did you trust him to share information with
19 you?

20 A. Yes.

21 Q. Once you retired and the two of you were
22 still involved in this transaction with Pardee, did you
23 trust him to share information with you concerning the
24 transaction?

25 A. I trusted him, but Jim was getting a little

1 older, and he was very forgetful, and, you know, and he
2 was doing things, so I never got everything.

3 Q. Is there something that you can point to,
4 Mr. Wilkes, that you've seen in this courtroom that he
5 received but that you did not?

6 A. No, not off the top of my head anyway.

7 Q. Particularly, there's a letter that --

8 A. The letter that we just talked about, yeah.

9 Q. The letter, Exhibit 15, which was the letter
10 from Mr. Lash from Mr. Wolfram --

11 A. Yeah.

12 Q. -- which contained some maps, he shared that
13 letter with you, did he not?

14 A. He said it contains a map?

15 Q. Yes, sir.

16 A. Oh, the one we just talked about?

17 Q. Yes, sir.

18 A. Yeah.

19 Q. He shared that --

20 A. Yes, he did.

21 Q. -- letter with you, did he not; is that
22 correct?

23 A. He shared the letter with me, yes.

24 Q. All right. What I want to do then is to turn
25 your attention and talk about the information that you

1 have received concerning the amount and the due dates
2 of your commission payments, okay?

3 A. The first part of the letter?

4 Q. No. What I'd like you to do now is to turn
5 to -- there is a binder in front of you, and if the
6 Court will allow me to assist?

7 THE COURT: Sure, that would be great.

8 MS. LUNDVALL: I'm gonna start marching
9 through the documents contained in different binders.

10 THE COURT: It starts with defendants,
11 correct?

12 MS. LUNDVALL: That's correct.

13 MR. J.J. JIMMERSON: Walt, just be aware that
14 you've been shown documents, letters, plaintiffs'
15 exhibits, which is Numbers 1 through 22. You might be
16 shown some of the very same letters, but they're called
17 letters like A, B, C, D, okay? There's many
18 duplicates.

19 THE COURT: I appreciate that, because there
20 are many duplicates, like the Commission Letter is a
21 plaintiffs' exhibit and also a defendant's exhibit. We
22 don't want to confuse you.

23 BY MS. LUNDVALL:

24 Q. Now, let me tell you what I'm gonna do so
25 that you've got a heads up as to where my questions are

1 going, okay?

2 A. Okay.

3 Q. At Exhibit A, there's a lot of pages, and at
4 those pages are gathered information that came from the
5 escrow company, and so therefore, I'm gonna ask you
6 about some questions concerning some those pages, okay?

7 A. Okay.

8 Q. What I'd like you to do is to look at that
9 very first page.

10 A. Yes, I'm looking at it.

11 Q. All right. This very first page on Exhibit A
12 is a fax that went from Stewart Title Company to
13 yourself?

14 A. Right.

15 Q. You knew Stewart Title Company was the
16 original escrow company handling the transaction --

17 A. Yes.

18 Q. -- between Pardee and CSI, did you not?

19 A. Yes.

20 Q. And that's the title company that sent you a
21 lot of commission orders, correct?

22 A. Yes.

23 Q. And you were aware that they also sent you a
24 lot of commission checks?

25 A. Yes.

1 Q. You know that there was a point in time
2 though that Stewart Title Company was replaced by
3 Chicago Title Company, do you not?

4 A. Yes.

5 Q. And Chicago Title Company then began sending
6 you commission order, correct?

7 A. Yes, ma'am.

8 Q. And they also began sending you checks?

9 A. Yes, ma'am.

10 Q. Now, this very first message that went from
11 Stewart to yourself, it's got a copy of a commission
12 order.

13 Can you tell the Court what a commission
14 order was, please.

15 A. Well, a commission order is one where the
16 title company sends out the information, and I don't
17 see an amount on it, but they generally send out
18 information, and they send you out a check with it,
19 Attached is the commission as we discussed.

20 THE COURT: Pull the microphone a little
21 closer to you, Mr. Wilkes. It moves.

22 THE WITNESS: Okay. To Walt Wilkes from
23 Linda Jones, March 16th, 2005, Fax Number, for review.

24 / / / /

25 BY MS. LUNDVALL:

1 Q. All right.

2 A. Attached is a commission order as we
3 discussed. Could I prevail upon you to ask Jim where
4 he would like me to fax the order so that he can have
5 it executed. I know this is confidential, and I
6 hesitate to just fax it to the office.

7 Thank you for your assistance.

8 Q. Now, you knew Stewart Title Company was
9 trying to protect the confidentiality of this
10 transaction, correct?

11 A. I knew Stewart Title Company was, yeah.

12 Q. All right. And --

13 A. Well --

14 Q. -- can you briefly --

15 A. When you say, when you say that, I'm sure Jim
16 didn't want his commission order, commission thing,
17 being where everyone could see that. He got 50 grand,
18 you know.

19 Q. Exactly. So what I want to do is to ask you
20 to explain to the Court then what a commission order
21 is?

22 A. A commission order is where it's sent out for
23 signature by all the parties and with a commission
24 amount on it, like on Page 2 here.

25 Q. Now, what I'd like you to do is take a look

1 then at the next page.

2 A. Page 3.

3 Q. It's actually Page 2, sir.

4 A. Okay, I'm on two.

5 Q. All right. On Page 2, you've got an Order to
6 Pay Commission to Broker Document.

7 Do you see that at very top of it?

8 A. Yes.

9 Q. Now, this was prepared by Stewart Title
10 Company, correct?

11 A. Correct.

12 Q. And you knew that Stewart Title Company
13 prepared these based upon escrow instructions?

14 A. Yes.

15 Q. And we've seen that you Received a copy of
16 the Option Agreement and escrow instructions, correct?

17 A. The Option Agreement and the -- yes.

18 Q. All right. So the escrow company would have
19 contained those escrow instructions, and they would
20 have used that in preparing this order to pay
21 commission to broker?

22 A. Right.

23 Q. All right. What I want to do is to focus
24 your attention to some of the information on here.

25 A. Okay.

1 Q. There is a date on here.

2 Do you see what where I'm at?

3 A. March 15th, 2005.

4 Q. All right. Now, March 15th, 2005, that
5 coordinated with the very first commission that you
6 were going to receive from Pardee?

7 A. Okay.

8 Q. Is that right?

9 A. Yes.

10 Q. Okay. And the next line has an escrow number
11 on it, correct?

12 A. Yes.

13 Q. And that escrow number is 04-09-0209?

14 A. Yes.

15 Q. Now, do you recall there was no change in the
16 escrow number at Stewart Title Company each and every
17 time you received one of these Commission orders?

18 A. I can't remember.

19 Q. You don't remember?

20 A. Sorry.

21 Q. So I'll see if I can't refresh your
22 recollection as we go through these page by page, okay?

23 A. Thank you.

24 Q. You've got the identification number or
25 identification of who the title company is.

1 Do you see that?

2 A. Right.

3 Q. And then there's a sentence that says, You
4 are hereby instructed and directed to pay real estate
5 broker commission from the funds deposited by me at the
6 close of this escrow as follows.

7 Do you see that line?

8 A. Uh-huh.

9 Q. And then there's a reference that says, A
10 total of 4 percent of the initial purchase price, said
11 initial purchase being \$10 million.

12 Did I read that correctly?

13 A. Yes.

14 Q. And then this 4 percent was gonna be divided
15 between General and Award?

16 A. Right.

17 Q. Okay. And you were Award?

18 A. Yes.

19 Q. And --

20 A. No. I was, I was General.

21 Q. You were General and Mr. Wolfram was at
22 Award, correct?

23 A. Yes. Yes, ma'am.

24 Q. All right. And this first commission check
25 then that you were gonna receive \$200,000?

1 A. Yes, ma'am.

2 Q. That was a pretty good-sized commission
3 check?

4 A. Well, it goes to the office.

5 Q. I understand, but it was a pretty good-sized
6 commission check for you, was it not?

7 A. We've had better.

8 Q. But it was still --

9 A. Yes.

10 Q. It was still a pretty decent commission check
11 for you, wasn't it?

12 A. No. Sure.

13 Q. You see there's a signature line there for
14 Pardee Homes of Nevada?

15 A. I do.

16 Q. And you see that there's an order where it's
17 hereby approved, and then there is a line then for both
18 General and Award realty.

19 Do you see where I'm at?

20 A. Yes.

21 Q. All right. Now, you knew the escrow company
22 had put together this Order to Pay Commission, correct?

23 A. Correct.

24 Q. And it did it based upon the escrow
25 instructions?

1 A. Yes.

2 Q. And you were also aware that they'd been
3 given a copy of your Commission Agreement with Pardee?

4 A. Say that again.

5 Q. You were also aware that they had been given
6 a copy of your Commission Agreement with Pardee, in
7 other words, for them to be able to get the 4 percent?

8 A. Yeah, right. They had to give it to the
9 escrow company.

10 Q. Okay. So the escrow company had your
11 Commission Agreement with Pardee?

12 A. Yes, ma'am.

13 Q. And they were able then to determine then the
14 amount of the commission, based upon what, this initial
15 purchase price that was being paid, correct?

16 A. Yes, ma'am.

17 Q. All right. Now, turn to Page 3. I've got
18 one question for you on 3.

19 A. Okay.

20 Q. Do you see where there's a fax transmission,
21 and it has a fax number of 233-9873?

22 A. I'm sorry, I'm a having hard time finding
23 that.

24 Q. And if you take a look --

25 A. Page 3. Can you show me?

1 Q. Yes. At the very top here, there is a fax
2 number here.

3 A. Oh, yeah, I see it.

4 Q. And I'm trying to point out something
5 directly to you. What Mr. Grubb is gonna do is put a
6 little highlight for you to try to help you.

7 A. Who's gonna do that.

8 Q. The gentleman in the purple shirt over there.

9 A. Got it.

10 Q. All right.

11 A. Now you tell me.

12 Q. All right. Was that your fax number, sir?

13 A. I think so, yes.

14 Q. Okay. What I want you to do then is to turn
15 to Page 4.

16 A. I'm there.

17 Q. On Page 4, do you see the same sentence,
18 Order to Pay Commission to Broker, but it has
19 Jon Lash's signature on there?

20 A. Yes.

21 Q. Okay.

22 A. Now, do you see that there are two checks
23 that have been cut, and there's photocopies of the face
24 page on those checks?

25 A. Yes.

1 Q. One is directed to General Realty Group.

2 A. Right.

3 Q. The other one is directed to Award Realty
4 Group?

5 A. Right.

6 Q. Do you see where I'm at?

7 A. Yes.

8 Q. Now, also, there is a number here that says,
9 Escrow Number?

10 A. Yes.

11 Q. And that escrow number is the same number
12 that was on the order to pay the broker commission?

13 A. Excuse me, you see where it says Escrow
14 Number? You're not doing your job, ma'am. You see --
15 there it goes. Yeah, okay.

16 I didn't know, because it was up top and to
17 the left, you know.

18 Q. But you also do know that this is the same
19 number that was on the Order to Pay Commission?

20 A. Okay.

21 Q. All right.

22 A. Yes.

23 Q. You don't disagree with me on that, do you?

24 A. No.

25 Q. And then the amount here is 200,000?

1 A. Yes.

2 Q. And the amount then for the Award check was
3 200,000?

4 A. Yes.

5 Q. And each one of the checks then that you had
6 received, whether it be from Stewart or from Chicago
7 Title, had the escrow number on the check that you were
8 receiving, correct?

9 A. Yes.

10 Q. Now, in the order that falls in this book,
11 turn your attention then to Page 6.

12 A. Yes, ma'am, I am there.

13 Q. All right. Now, on Page 6, what you're going
14 to see then is a copy, not only of the check, but also
15 the memo that came with the check.

16 Do you see where I'm at?

17 A. I do now.

18 Q. All right. Right below the check, it says,
19 Stewart Title Company of Nevada?

20 A. Right.

21 Q. I'm gonna use this as an example, and it's
22 got an escrow number?

23 A. Right.

24 Q. That identifies the name of the seller?

25 A. Right.

1 Q. It identifies the name of the buyer?

2 A. Right.

3 Q. The property address, it says, NV?

4 A. Okay.

5 Q. And then the escrow officer was Linda Jones?

6 A. Right.

7 Q. All right. In each one of the checks that
8 you received from, whether it be Stewart or Chicago, it
9 came with a memo like this that you detached your check
10 from and then you deposited, correct?

11 A. Yes.

12 Q. All right. And this one appears to be
13 Jim Wolfram's. Does that look like his signature at
14 the bottom?

15 A. It does.

16 Q. All right. Now, what I want you to do then
17 for the next page, Exhibit A-7 --

18 A. A-007, I've got it.

19 Q. You see it at the very bottom there?

20 A. Right.

21 Q. All right. Now, this Order to Pay Commission
22 to Broker, this is a copy of the same one we've been
23 looking at, but now it has signatures on there, does it
24 not?

25 A. Yes, the broker's signature is on there.

1 Q. All right. So what you're seeing here is a
2 signature from Jim Wolfram?

3 A. Yes.

4 Q. And can you see at the top where there is
5 initials next to Award Realty Group?

6 A. Up at the top?

7 Q. Yes.

8 A. Oh, yes. Yes, yes, yes.

9 Q. All right. Does that appear to be
10 Mr. Wolfram's initials there as well?

11 A. Well, maybe, yes.

12 Q. But you're not 100 percent certain of that?

13 A. It looks like it is, but I am not a hundred
14 percent certain that you're right.

15 Q. All right. Let's see if we can find then the
16 one that was signed by the broke broker in your office?

17 A. Okay.

18 Q. Let me get you to Exhibit A-10.

19 A. Got it.

20 Q. All right. This letter, was J. Katz the
21 broker with whom you were dealing with?

22 A. J. Dana? I'm having a hard time with that
23 name. I'm having a hard time reading the whole thing.

24 Q. I'll tell you what, what I will do is simply
25 take you back to the Order to Pay Commission to Broker

1 which was A-7. Go back to Page 7, if you can, please,
2 since you don't recognize?

3 A. I can't see the amounts here. I don't
4 understand.

5 Q. All right.

6 A. Can you read it?

7 Q. My question to you is this, Mr. Wilkes: At
8 some point in time though, you signed one of these
9 Orders to Pay Commission similar to Mr. Wolfram
10 signing, correct?

11 A. Yes.

12 Q. And that's how you were able to receive your
13 next check?

14 A. Right. Well --

15 Q. In that --

16 A. I had to, I gave the check to Jay Dana, and
17 he cut me another check.

18 Q. So Jay Dana would receive the check then from
19 Pardee, correct? Well, from --

20 A. (Witness nods head.)

21 Q. From a technical standpoint --

22 MR. J.M. JIMMERSON: Your Honor, I object.
23 The witness appeared to have given a nod of the head
24 and not answered the "yes."

25 THE COURT: Let's just back up.

1 THE WITNESS: I'm nodding my head.

2 THE COURT: You're absolutely doing
3 excellent. We're almost there. Just go back.

4 MS. LUNDVALL: Thank you, your Honor.

5 THE WITNESS: Thank you for being so nice.

6 BY MS. LUNDVALL:

7 Q. Your counsel makes a good point here. It's
8 hard for this court reporter to take down when you're
9 shaking your head, and so if I ask you if that means
10 yes or if that means no, I'm intending no disrespect to
11 you, sir.

12 A. What was the question?

13 Q. On the Order to Pay Commission to Broker, you
14 signed each one of these before there was a check cut
15 then --

16 A. Right.

17 Q. -- to your brokerage company?

18 A. Yes.

19 Q. And that check came from the title company,
20 and it went to your brokerage company, correct?

21 A. Yes.

22 Q. And then the brokerage company cut a personal
23 check to you?

24 A. Correct.

25 Q. And that process, that process was followed

1 each and every time that you received a commission
2 check from Stewart Title or from Chicago Title, was it
3 not?

4 A. Yes.

5 Q. Now, turning your attention, Mr. Wilkes, to
6 A-9, if I could, please.

7 A. You could, and I will.

8 All right, I'm there.

9 Q. Okay. At Exhibit A-9, you're gonna see a new
10 Order to Pay Commission to Broker.

11 Do you see where I'm at?

12 A. Yes. I can read that one.

13 Q. Yep. And it has a date at the top?

14 A. Right.

15 Q. Has the same escrow number?

16 A. Yes, ma'am.

17 Q. Same title company?

18 A. Yes.

19 Q. It talks about 4 four percent of the monthly
20 payment price, said monthly payment being \$1.5 million.

21 Do you see where I'm at?

22 A. Yes. Yes.

23 Q. And this was then your 4 percent commission
24 as divide between General and Award?

25 A. Right.

1 Q. And that was \$30,000?

2 A. Right.

3 Q. And this was signed by Jon Lash?

4 A. Okay.

5 Q. And on this particular one, we see a
6 signature there from Jim Wolfram; is that correct?

7 A. That's correct.

8 Q. All right. Now, you received this check
9 that's reflected for this payment then, monthly payment
10 then, at the end of April in the amount of 30,000,
11 correct?

12 A. Yeah.

13 Q. And if you turn to A-11, you're gonna see a
14 copy of the check?

15 A. Okay.

16 A. 30,000 to Award, 30,000 to General.

17 Q. Okay. And as another example, I turn your
18 attention then to A-12.

19 A. Yes, ma'am.

20 Q. Do you see the full check that's got a memo
21 on the bottom of it?

22 A. Yes, ma'am.

23 Q. All right. On these -- and then you
24 received, I believe, 44 additional payments to this,
25 similar to this, did you not?

1 A. I'll take, I will take your word for that. I
2 don't remember exactly how many.

3 Q. You received great number of these, correct?

4 A. Yes.

5 Q. Now, at any point in time with these, was
6 there an identification of the location of the
7 property?

8 A. No.

9 Q. Was there an identification that there had
10 been a closing?

11 A. Yeah.

12 Q. On the commission check that's in front of
13 you, is there an identification that there had been a
14 closing?

15 A. Well, it's a closing, because it's a check.
16 We got paid a check. We only got paid checks on
17 closings.

18 Q. Well, let me ask you a question, and let me
19 see if I can help you out a little bit here.

20 A. Thanks for the help.

21 Q. Because I'm not trying to trick you.

22 A. I know you're not, and I appreciate it.

23 Listen, I couldn't breathe this morning when
24 I got up. I went straight back to the breathing
25 machine. I didn't think I was gonna make it.

1 Q. All right. That is a copy, that is a portion
2 of your Commission Agreement?

3 A. Okay.

4 Q. And this is a portion found on Page 2 of your
5 Commission Agreement?

6 A. Okay.

7 Q. And it talks about how Pardee shall make each
8 additional commission, commission payment pursuant to
9 Clauses 1 and 2 concurrently with the applicable
10 Purchase Property price payment to Coyote, and there's
11 a period there.

12 Do you see where I'm at?

13 A. Yes.

14 Q. So each time that Pardee made payments to
15 Coyote, you got a piece of the action, did you not?

16 A. Yes.

17 Q. And that was part of your Commission
18 Agreement?

19 A. Yes.

20 Q. And that was in accord with your Commission
21 Agreement? In other words, it was required by?

22 A. Well, if it was in accord, they didn't tell
23 us what the designation of what the property was. They
24 didn't tell us what the location was. They didn't give
25 us any maps. They didn't give us anything.

1 Q. I understand that's what your theory is, sir.

2 A. My theory?

3 Q. I understand that that's what you contend.

4 What I want to know though is: Did you believe that
5 each and every time they made one of these monthly
6 commission checks to you, that it was because Pardee
7 was making a payment to Coyote?

8 A. That's what the understanding was supposed to
9 be. I don't know that we got paid every time they made
10 a payment to Pardee -- I mean to Coyote.

11 Can you hear me okay over there now?

12 THE COURT REPORTER: Yes.

13 BY MS. LUNDVALL:

14 Q. All right. Let's continue as far as going
15 through Exhibit A.

16 A. Yes, ma'am. Exhibit A.

17 Q. Exhibit A, sir.

18 A. Going back, uh-huh.

19 Q. We're still on Exhibit A.

20 THE COURT: Where we've been, where we
21 were, same place.

22 THE WITNESS: Okay. So which page?

23 BY MS. LUNDVALL:

24 Q. Now I want you to turn to A-14, sir.

25 A. Yes, ma'am.

1 Now, please, excuse me, I'm not all the way
2 here. I'm here, but I am not here.

3 Q. I think you're doing great, sir.

4 A. Okay.

5 Q. all right.

6 On A-14, what you're gonna see is a copy of
7 that very first check with the memo, and my question to
8 you is: Is it that your signature there at the very
9 bottom of the page?

10 A. Yes, that's me.

11 Q. Okay. So that we don't have to go through
12 each and every one of these, I just want to point out,
13 let's get to A-76, Sub A, if I could, please.

14 A. A-76? Wow, that's a long one.

15 There's 79.

16 Okay, you want A-76?

17 Q. Well, what I want to do is to take a look at
18 A-79, if I could, please?

19 A. A-79.

20 Q. A-76, Sub A?

21 A. A-76, Sub A.

22 Wait a minute, I got A-76c, so it would have
23 to be back a couple pages, huh?

24 Q. Yes, sir.

25 A. Page A-76b.

1 MR. J.J. JIMMERSON: Do you have a Bates to
2 help him?

3 MS. LUNDVALL: 2043.

4 MR. J.J. JIMMERSON: Thank you.

5 THE WITNESS: Okay. I'm at 76a.

6 BY MS. LUNDVALL:

7 Q. All right. What I want to do is take a look
8 at an example of the Order to Pay Commission that has
9 been prepared by Chicago Title Company?

10 A. Okay.

11 Q. Now, you were in --

12 A. Excuse me.

13 Q. You were informed by Pardee that, in fact,
14 there had been a change from Stewart Title Company to
15 Chicago Title Company, correct?

16 A. I don't remember being informed of that.
17 Chicago Title informed us that it was coming in, but we
18 weren't informed one way or the other.

19 Q. You weren't informed, at least by either
20 Chicago or by Pardee, correct?

21 A. Yes.

22 Q. All right. I think I might be able to help
23 you out quickly there. Let's see if we can get there.

24 A. Your Honor, I would like to say, including
25 yourself, of course, you've got the most beautiful

1 assistants.

2 THE COURT: That's very nice. Thank you.

3 THE WITNESS: And they've got smiles and
4 personality. You really chose good.

5 And while she's doing that, I want to thank
6 you for allowing my attorney, I mean when that property
7 yesterday took a right, took a right-hand turn and went
8 clear over here, okay, for him to figure out those
9 facts and for us to figure out that we had --

10 MS. LUNDVALL: Your Honor, at this point in
11 time --

12 THE WITNESS: -- the commission coming.

13 THE COURT: You know what, we're all trying
14 very hard to do the best we can.

15 THE WITNESS: I'm ready.

16 THE COURT: I appreciate that you're trying.
17 I appreciate everybody. It's not an easy process, and
18 I think we all understand that, and I think maybe
19 people will appreciate more what we all do here. It's
20 a tough process.

21 THE WITNESS: You know a lot more about
22 commissions because of that.

23 BY MS. LUNDVALL:

24 Q. Mr. Wilkes, particularly what I want to do is
25 take you to Exhibit U very quickly.

1 A. U?

2 Q. Yeah. And I will take you back to where we
3 were. Just keep your finger at that 76a.

4 A. 76a? Wait a minute, you got me confused.

5 Q. Why don't you take a look at your screen.
6 Just look at your screen. Don't go back there.

7 A. There's nothing there, oh, okay.

8 Q. This is the exhibit that's found at U.
9 Lisa Lawson is with Pardee.

10 A. Right.

11 Q. And she's sending a message to you, and she's
12 informing you that they're in the process of
13 transferring the escrow from Stewart to Chicago Title.

14 A. Okay.

15 Q. All right.

16 A. No. We already agreed that was --

17 Q. All right. And you're still at 76a; is that
18 right?

19 A. I'm at 76a.

20 Q. This is an example of the Order to Pay
21 Commission that have been prepared by Chicago Title
22 Company?

23 A. Yes, sir -- yes, ma'am. I'm sorry.

24 Q. This is signed by Jon Lash?

25 A. Yes.

1 Q. And this is the amount of commission then
2 that was being made payable to you and then to D&W,
3 which is Jim Wolfram, correct?

4 A. Yes.

5 Q. And at this point in time, you had left your
6 company, and the checks were going to you directly,
7 were they not?

8 A. Yes.

9 Q. Okay. Turn to the next page on 76b. You
10 will see your signature on this Order to Pay
11 Commission?

12 A. Your Honor, could we have a break? I'm
13 feeling weak. Just few minutes?

14 THE COURT: That's fine.

15 THE WITNESS: I'm sorry.

16 MS. LUNDVALL: That's fine.

17 THE COURT: Why don't we take a 10 minute
18 break?

19 THE WITNESS: 10 minutes is fine.

20 THE COURT: 10 to 15 minutes.

21 Let me know when the witness is ready to go,
22 and we'll start.

23 MS. LUNDVALL: Thank you, your Honor.

24 THE COURT: No problem.

25 (Brief recess.)

1 BY MS. LUNDVALL:

2 Q. Hi, Mr. Wilkes. Do you continue to have
3 Exhibit A in front of you?

4 A. I do.

5 Q. And are you open at 76a? 76a.

6 A. No, 76b. I'm sorry.

7 Q. Take a look at 76a.

8 A. Right.

9 Q. This was -- Brian?

10 There you go.

11 Thank you.

12 76a is an example of the Order to Pay
13 Commissions that have been prepared by Chicago title,
14 correct?

15 A. Yes.

16 Q. And do you see this one --

17 A. Yes.

18 Q. -- is signed by Jon Lash?

19 A. Yes, but I don't see any --

20 Q. And do you see that where it's indicated that
21 it's to you as well as to D&W Real Estate?

22 A. Yes.

23 Q. And at the time, the checks then from Chicago
24 were being sent to you individually, correct?

25 A. Yes.

1 Q. Because you had left the realty company?

2 A. Yes.

3 Q. And once again, do you see description of
4 what this represent?

5 A. Again, the monthly figure.

6 Q. And the asterisk reads, Representing
7 4 percent of the monthly purchase price payment of
8 \$1.5 million, do you see that?

9 A. Yes.

10 Q. And it says, Upon receipt of said sum,
11 meaning the 1.5 million, then the escrow company was
12 authorized to disburse the funds to both yourself as
13 well as to Mr. Wolfram?

14 A. Yes.

15 Q. All right. This one is signed by Jon Lash?

16 A. Yes.

17 Q. All right. As an example then, you can turn
18 to 76b. This one was signed by yourself?

19 A. You know, I don't see. I don't see anywhere
20 where it shows the property documentation, maps,
21 anything on these commissions.

22 Q. Do you --

23 A. Over here I saw it said Nevada, NV, on one of
24 these. NV, Nevada. Well, whoopee, what does that
25 mean? We still got nothing.

1 Q. Directing your attention, Mr. Wilkes, this is
2 your signature on 76b; is that right?

3 A. Yes, ma'am.

4 Q. And then if you turn to 76c, do you
5 recognize, Mr. -- well, at least someone on behalf of
6 D&W Real Estate was signing this Order to Pay
7 Commission, correct?

8 A. D&W was Jim's.

9 Q. Is that correct?

10 A. I'm assuming someone there signed this
11 commission, yeah.

12 Q. All right. Now, do you recall under the
13 Commission Agreement that once a \$50 million mark had
14 been reached, the amount of your commission was
15 supposed to go from 4 percent to 1.5 percent?

16 MR. J.J. JIMMERSON: Objection, your Honor,
17 only if we're talking Purchase Property, not if we're
18 talking about Option Property.

19 THE WITNESS: That's correct.

20 BY MS. LUNDVALL:

21 Q. Mr. Wilkes, I want to turn your attention to
22 the language then of your Commission Agreement, so I
23 have to make a turn back and forth. Look at ii.

24 A. Right.

25 Q. You have ended up with 4 percent of the

1 Purchase Property price?

2 A. Right.

3 Q. And that was a defined term in the Option
4 Agreement, correct?

5 A. yes.

6 Q. And you new the Purchase Property price went
7 up through one of the amendments?

8 A. I'm not -- I'm a little confused on that.
9 Why did the purchase price go up in the other
10 amendment?

11 Q. Were you aware that it did go up?

12 A. I guess, yes.

13 Q. Okay. And you thought that you should be
14 entitled to a higher Purchase Property price, correct?

15 A. Yeah.

16 Q. You were gonna get more commissions --

17 A. Right.

18 Q. -- if that Purchase Property price --

19 A. Went up to 84 million.

20 Q. All right. After you reached the 50,000
21 mark, then I'm sure --

22 MR. J.J. JIMMERSON: You mean --

23 THE COURT: She meant \$50 million.

24 MR. J.J. JIMMERSON: No problem.

25 BY MS. LUNDVALL:

1 Q. After it reached the 50 million mark, then
2 your commission went from one and a half percent of the
3 Purchase Property price -- do you see where I'm at?

4 A. Yes.

5 Q. All right. So you knew there was gonna come
6 a point in time that your monthly checks then were
7 gonna go down?

8 A. Yes.

9 Q. There was a point in time that you received a
10 letter that indicated that you had been overpaid on
11 your commissions; is that correct?

12 A. Well, I received the letter.

13 Q. All right. And you disagreed with that; is
14 that right?

15 A. Yes. I, I disagree with anything that
16 they've told us. They're not the fair-haired boys that
17 you, that they came up here to be. I don't trust them.
18 I think they lied to me, I think they lied to Jim, my
19 partner, and at this point, I don't trust them.

20 And they never gave us any documentation.

21 Q. Now, as part of that same letter that they
22 advised you of the overpayment, they also proposed a
23 schedule so as to take care of that overpayment, did
24 they not?

25 A. Yes.

1 Q. And as part of that same letter, they also
2 informed you that there were other transactions that
3 Pardee was entering into with CSI.

4 Do you recall that?

5 A. No. I could look at the letter, if you want.

6 Q. All right. I'll take you back to the letter
7 on this particular point.

8 A. Okay.

9 Q. But I want to stick with this issue.

10 Now, did you and Mr. Wolfram have a
11 disagreement among yourself as to whether or not that
12 you'd been overpaid?

13 A. At that time, at that time I think I told Jim
14 that I didn't agree with it at all.

15 Q. Okay.

16 A. I don't remember what Jim, I don't remember
17 what Jim thought. I'm sorry.

18 Q. Did you and Jim, Jim Wolfram, not contact
19 Pardee, advising them that you guys had been overpaid?

20 A. No, not to the best of my knowledge anyway.

21 Q. All right. What I want you to do, going back
22 then to the letter that you got from Mr. Lash that set
23 forth a schedule how that was going to be taken into
24 account and how overpayment was going to be dealt with,
25 did you later receive then an Amended Order to Pay

1 Commission that tracked on that schedule?

2 A. You know, we may have. I don't remember.

3 Sorry.

4 Q. All right. What I want you to do then is to
5 turn to 95, A95 please.

6 A. 895?

7 Q. A95.

8 A. A95.

9 Q. All right.

10 A. Hey, it works.

11 92a, 93a, 94a, 94a. I had it.

12 Q. You're getting close.

13 A. A 95a, is that what you want?

14 Q. Yes.

15 A. Okay.

16 Q. All right. Do you see this Amended order to
17 Pay Commission?

18 A. Amended Order to Pay Commission, yes.

19 Q. Okay. Right underneath the heading it
20 states, This Order to Pay Commission amends and
21 supersedes that certain Order to Pay Commission that
22 was dated November 15th of 2006.

23 Did I read at that accurately?

24 A. Yes, ma'am.

25 Q. And once again, we've got the Chicago Title,

1 the fax number, date, escrow numbers, property address,
2 and the property address here makes reference to Coyote
3 Springs Option Agreement.

4 Do you see where I'm at?

5 A. Yes.

6 Q. And then it sets forth the real estate firm,
7 the amounts that were going to be paid, and then it
8 also sets forth, Their shall be no commission
9 disbursement payable on September 1 of 2007 and
10 October 1 of 2007.

11 Did I read that accurately?

12 A. Yes, ma'am.

13 Q. And this was the Amended Order to Pay
14 Commission that tracked then the schedule that had been
15 proposed by Jon Lash, correct?

16 A. Probably, yes.

17 Q. So I want you to turn your attention to 95a.

18 A. Okay.

19 Q. Jon Lash signed that order?

20 A. 95b.

21 I'm sorry?

22 Q. Jon Lash signed that Order to Pay Commission,
23 correct?

24 A. Wait minute, we were on 95a.

25 Q. We were on 95a. It's identical, but

1 Mr. Lash's signature is on it.

2 A. Okay.

3 Q. Did you see any difference between those two?
4 I'll represent -- if you're there, I'll represent that,
5 but if your counsel can find one, he'll certainly bring
6 it to my attention.

7 A. All right.

8 Q. Turn to 95b.

9 A. Okay.

10 Q. All right. Now, there is a signature that
11 has been affixed here for D&W Real Estate, which was
12 Mr. Wolfram's real estate company, correct?

13 A. Right.

14 Q. And he's agreeing then to this Amended Order
15 to Pay Commission correct?

16 A. Yes.

17 Q. Turning your attention then to 95c, you, you
18 two were agreeing to this Amended Order to Pay
19 Commission?

20 A. Yes, I guess so.

21 Q. That's your signature then on 95c?

22 A. I don't remember. It's my signature.

23 Q. Now, in continuing thereafter, you continued
24 with the same process and the procedure, there was an
25 Order to Pay Commission, you received a check, and the

1 same information that we discussed then was on all of
2 those subsequent payments to you, correct?

3 A. Yes.

4 Q. All right. I want to continue then to
5 confirm on the information that you had received at
6 Exhibit B.

7 A. You're still on 95c?

8 Q. No. I'm gonna now move to a different topic,
9 Mr. Wilkes.

10 A. Okay.

11 Q. All right. I'm just gonna try to confirm on
12 the information that you had received.

13 A. Okay.

14 Q. We'll continue marching through the book that
15 I have in front of you, and I'm gonna try to do so
16 quickly so we can get out of here before lunch.

17 You've acknowledged that you've received the
18 Option Agreement, correct?

19 A. Yes.

20 Q. And you also received then the First
21 Amendment to the Option Agreement?

22 A. Correct.

23 Q. Correct.

24 A. And the second.

25 Q. And the second?

1 A. And the restated.

2 Q. And the Amended and Restated Option
3 Agreement, correct?

4 A. Yes.

5 Q. And during the period of time between the
6 Option Agreement and the Second Amendment, you were
7 negotiating with Jon Lash concerning your Commission
8 Agreement, were you not?

9 A. During the time of the Option Agreement and
10 the First Amendment?

11 Q. Yes.

12 A. We were negotiating it. I thought we were
13 negotiating it.

14 Q. Let's put this then in time sequence, if I
15 could, please.

16 At Exhibit B, the Option Agreement, and we
17 know that this has a date of May of 2004.

18 A. You want me to look at that?

19 Q. Yep. I want you to feel comfortable with the
20 dates I'm giving to you, Mr. Wilkes.

21 A. B what?

22 Q. B, and at the very top of the page, you're
23 gonna see this is the Option Agreement and the Joint
24 Escrow Instructions?

25 A. Right.

1 Q. And if you look at that first line, you're
2 gonna see this as May of 2004?

3 A. Where in the heck do you see that?
4 May 2004, yes.

5 Q. All right. And I want to direct your
6 attention then to Exhibit C?

7 A. Exhibit C, okay. Exhibit -- oh, you want
8 Exhibit C? I'm sorry. I'm sorry. I'm losing here.

9 Q. No problem. I'm gonna help you out here,
10 okay?

11 A. Okay. Okay.

12 Q. Exhibit B, just Exhibit B.

13 Q. Why don't you go here. See these tabs here?

14 A. Yes.

15 Q. I want you to go to C.

16 A. I thought you wanted B.

17 Q. All right.

18 A. I'm sorry.

19 Q. Okay. This was a draft of a Commission
20 Agreement that was sent to you after the Option
21 Agreement?

22 A. Right.

23 Q. This was sent to you, correct?

24 A. Right.

25 Q. And you guys didn't want this, you rejected

1 this, correct?

2 A. I believe so.

3 Q. And you began some fairly heated
4 negotiations, correct, with Mr. Lash?

5 A. Yeah. We weren't, we weren't agreeing with
6 everything.

7 Q. And at that point in time, you hired an
8 attorney, did you not?

9 A. We most certainly did.

10 Q. All right.

11 A. It's a good one too.

12 Q. And you expected that attorney to act on your
13 best interest, did you not?

14 A. I did.

15 Q. And you understood that what he negotiated on
16 your behalf, that you were bound by?

17 A. Yes.

18 Q. What I want you to do is to continue with
19 this time sequence and turn to Exhibit B.

20 A. To the best of my knowledge, I agree to that.

21 Q. Okay. But ultimately you did sign the
22 Commission Agreement, correct?

23 A. Yes.

24 Q. And you understood in that Commission
25 Agreement that you were bound by those contractual

1 obligations, correct?

2 A. Yeah.

3 Q. And you also understood that Pardee was bound
4 by those contractual obligations?

5 A. Yes.

6 Q. And that they had obligations to you as set
7 forth in the Commission Agreement?

8 A. Yes.

9 Q. But they didn't have any more obligations to
10 you other than that was set out in the Commission
11 Agreement?

12 A. Yeah. We never got anything on the property.

13 Jim -- yesterday we found a fourth property
14 they didn't advise us on, and that map that you showed,
15 there's, there are four parcels on that map where they
16 took the right turn, okay? There were four parcels on
17 that map that are not, were not included on that map
18 okay? That's number one.

19 Number 2, they're obligated to give us
20 documents, maps, designations of property. They never
21 did. They absolutely never did. It just makes me so
22 damn mad that they never did. Why couldn't they?

23 They could have avoided this whole trial,
24 your Honor, just by stating, just by giving us some
25 information. They could avoid this whole trial, okay?

1 Q. Mr. Wilkes, I'm gonna continue to go through
2 the information that was sent, okay?

3 A. Yes, ma'am.

4 Q. And we're gonna continue to focus upon what
5 the obligations of Pardee were in your Commission
6 Agreement.

7 A. Okay. Go ahead.

8 Q. All right. And you knew Pardee was supposed
9 to live up to those obligations?

10 A. In the Commission --

11 Q. Yep.

12 A. Right.

13 Q. And they were to live up to the obligations
14 that were set forth in the Commission Agreement?

15 A. In the Commission Agreement, yes.

16 Q. No less?

17 A. I don't understand.

18 Q. Their obligations were not less than what was
19 set forth in the Commission Agreement?

20 A. My obligation?

21 Q. I'm talking about Pardee's obligations.

22 A. Right.

23 Q. And they were no more than what was in the
24 Commission Agreement?

25 A. That's -- well, they were, they were supposed

1 to give us, like I said, documents, designations of
2 property, and they said that they were gonna advise us
3 and give us all this stuff in this Commission
4 agreement, and they never did.

5 Q. The Commission Agreement obligated them to
6 give you, keep you reasonably informed as to all
7 matters dealing with the due dates and amounts of your
8 commission payments, correct?

9 A. Yeah.

10 Q. And they were also supposed to give you a
11 written notice or written exercise -- what's the
12 language?

13 MR. J.J. JIMMERSON: Due notice.

14 BY MS. LUNDVALL:

15 Q. Written option exercise notice, correct?

16 A. Yes, ma'am.

17 Q. And if, in fact, that a written option
18 exercise notice pursuant to Paragraph 2 existed, they
19 were obligated to give it to you?

20 A. If it existed, they're obligated to give it
21 to me?

22 Q. Yeah.

23 A. They're obligated to give a whole bunch more
24 than that.

25 Q. And if, in fact, there was not a written

1 option exercise notice, there would be nothing for them
2 to give to you, correct?

3 A. A written option exercise notice?

4 Q. Yeah, if that didn't exist.

5 A. But it did.

6 Q. Have you seen a copy of it anywhere in this
7 courtroom?

8 A. We got, we found four maps that they didn't
9 produce in Coyote Springs, okay?

10 MR. J.M. JIMMERSON: Your Honor, can we --

11 MS. LUNDVALL: Hold on, please do not
12 interrupt your own witness.

13 THE WITNESS: We found four maps outside of
14 the thing, other things that they, that they took down.
15 They're already at title with this.

16 MR. J.M. JIMMERSON: Your Honor?

17 THE COURT: I think we need to answer the
18 question.

19 MR. J.M. JIMMERSON: Can we lay some
20 foundation, please?

21 THE COURT: I'm just concerned that maybe
22 he's gonna say some of your confidential information
23 from the attorney.

24 MS. LUNDVALL: Point well made, your Honor.

25 THE COURT: That's how I feel. I don't know

1 whether he is or not.

2 THE WITNESS: I don't know any confidential
3 information.

4 THE COURT: Every time you talk to your
5 attorneys, that's confidential, and --

6 THE WITNESS: I see what you're saying.

7 THE COURT: And I don't want that to come
8 out, because that would not be fair to your counsel or
9 you, and Ms. Lundvall doesn't want that either.

10 THE WITNESS: I thought you were trying to
11 say it was from Pardee.

12 THE COURT: No, it has nothing to do with the
13 facts of this case, it's your relationship with your
14 counsel. Maybe "confidential" is a bad word, but it
15 does apply to attorney-client.

16 What was the question?

17 MR. J.M. JIMMERSON: Can I make my objection?

18 MS. LUNDVALL: Let's establish --

19 MR. J.M. JIMMERSON: Can I make my objection
20 without interruption?

21 I object that there's no foundation laid as
22 to what his understanding of written option notices
23 are, so when he answers these questions, can we lay the
24 foundation how he's answering?

25 THE COURT: I think the foundation is he

1 signed the Commission Agreement, and it states that, so
2 if you want to say -- I thought you had laid the
3 foundation. I thought you said you signed the
4 Commission Agreement. Let's do the next step.

5 When you signed the Commission Agreement, did
6 you realize, it's iii, the small little i's, that there
7 was going to be -- let me make sure I say it for you.

8 MR. J.M. JIMMERSON: It was on Page 2, your
9 Honor.

10 MR. J.J. JIMMERSON: Second paragraph, your
11 Honor.

12 THE COURT: There, there would be -- you have
13 so much highlighted. I apologize.

14 MR. J.J. JIMMERSON: Provides, it provides to
15 each of you --

16 MS. LUNDVALL: Written option exercise notice
17 given pursuant to Paragraph 2 of the Option Agreement.

18 MR. J.J. JIMMERSON: Together with
19 information as to the number of acres involved and the
20 scheduled closing date, and in addition, Pardee shall
21 keep each of you reasonably informed as to all matters
22 relating to the amount and due dates of your commission
23 payments, period.

24 THE COURT: Why don't we -- did you -- what
25 was your -- can we just ask what was your understanding

1 of that section, or do you want to do it? It's a lot,
2 so do you want to take it apart?

3 THE WITNESS: No. What's the question?

4 THE COURT: We're working on it.

5 BY MS. LUNDVALL:

6 Q. I'm gonna try to make this question.

7 THE COURT: I'm gonna sustain it, so let's
8 break it up.

9 BY MS. LUNDVALL:

10 Q. When you signed the Commission Agreement, you
11 understood what you were signing, correct?

12 A. Yeah.

13 Q. You understand the plain language of the
14 Commission Agreement?

15 A. Basically.

16 Q. And you understood that Pardee had a duty to
17 live up to the language of that Commission Agreement;
18 is that right?

19 A. Yeah.

20 Q. And you understood that you, too, had an
21 obligation to live up to the Commission Agreement?

22 A. Right.

23 Q. And you understood that Mr. Wolfram had an
24 obligation to live up to the Commission Agreement?

25 A. Yeah, but --

1 Q. Okay. Now, what I'm gonna do is ask you to
2 go back to Exhibit D, because I'm gonna try --

3 A. But this isn't about the Commission
4 Agreement, it's about, it's about them notifying us,
5 giving us the documentation. We're not suing for the
6 money, we're suing for, to get the documentation, the
7 maps.

8 Q. Turning your attention to Exhibit D,
9 Mr. Wilkes.

10 THE COURT: Exhibit D?

11 MS. LUNDVALL: D. Sorry, your Honor.

12 THE COURT: That's okay.

13 BY MS. LUNDVALL:

14 Q. Exhibit D is a letter sent to you by Mr. Lash
15 to you, also to Mr. Wolfram?

16 A. Right.

17 Q. All right. And this letter, in sum, says
18 that Mr. Lash wants to work to move forward to try to
19 reach a Commission Agreement that is gonna be
20 acceptable to both of you.

21 Would you agree with that?

22 A. I can see what he says in the letter, but I
23 don't remember getting this letter, I'm sorry.

24 Q. All right. Let me see if I can't direct your
25 attention then to your response to this letter.

1 A. Okay.

2 Q. But before I get there, you began fighting
3 over the language of the Commission Agreement almost
4 from the get-go; is that right?

5 A. Yes.

6 Q. And at that point in time, you didn't trust
7 Pardee, did you?

8 A. No.

9 Q. You were not gonna rely upon Pardee, were
10 you?

11 A. No. Because, you know, we went down,
12 originally we were supposed to get a 4 percent
13 commission, okay, for everything, not for just
14 50 million, okay? It sounds like a huge commission, I
15 know, but these are big projects.

16 Anyway, we -- Jon called us down and had us
17 fly down, show up so we could argue out the commission,
18 okay, and we did. We did. We didn't agree with it.
19 That's why we went and got Mr. Jimmerson.

20 Q. Okay. Now, let's turn to your response then.
21 It is found in Exhibit H, please, to Mr. Lash's letter.

22 A. Okay.

23 Q. That Exhibit H is a letter that is signed by
24 both yourself as well as Mr. Wolfram, correct?

25 A. Let me read it.

1 MR. J.J. JIMMERSON: I'm sorry, what exhibit,
2 please?

3 MS. LUNDVALL: H.

4 THE WITNESS: We --

5 BY MS. LUNDVALL:

6 Q. All right. And at that point in time, you,
7 you decided to move forward then with your negotiations
8 with Mr. Lash?

9 A. Absolutely. We wanted a commission.

10 Q. Okay.

11 A. We had no choice.

12 Q. So turn your attention then to Exhibit I.
13 This is another draft then of the Commission Agreement,
14 is it not?

15 A. It is.

16 Q. Mr. Wilkes, now, do you see the fax tag line,
17 the very top of this page?

18 A. The what?

19 Q. The fax tag line.

20 A. Tag line, To be retyped on Pardee letterhead?

21 Q. No. I want you to look at the very top. Do
22 you see at the very, very top?

23 A. Yes. Friday, 13th, August, 2004.

24 Q. And this is a fax that was being sent to you,
25 was it not?

1 MR. J.M. JIMMERSON: Objection, your Honor.
2 It's actually faxed to the Jimmerson Hansen fax number.

3 MS. LUNDVALL: 233-8873?

4 MR. J.M. JIMMERSON: 387-1167.

5 BY MS. LUNDVALL:

6 Q. That's from, that went --

7 MR. J.M. JIMMERSON: Okay.

8 BY MS. LUNDVALL:

9 Q. So that went from Jimmerson Hansen to
10 Mr. Wilkes; is that right?

11 A. Yes.

12 Q. And that was a draft that your attorney had
13 prepared, correct?

14 A. This is a draft that Pardee --

15 Q. Okay. But it was being sent to you, was it
16 not, Mr. Wilkes?

17 A. Well, it was being sent to my attorney.

18 Q. All right.

19 A. They wouldn't give us anything. They didn't
20 give my attorneys anything.

21 Q. All right. So turning your attention then to
22 Exhibit J.

23 A. Exhibit J?

24 Q. J.

25 A. All right.

1 Q. Now, this Second Amendment has a date of
2 August 31st of 2004. This is still before your
3 Commission Agreement, correct?

4 A. Yes. Yes.

5 Q. And you've indicated that you received this
6 Second Amendment to the Option Agreement and Joint
7 Escrow Instructions; is that right?

8 A. Yes.

9 Q. All right. What I want to do then is direct
10 your attention to Exhibit K, please.

11 A. Attention, Jim Wolfram.

12 Q. You were sending this to Mr. Wolfram, were
13 you not?

14 A. Yes.

15 Q. Your name and fax number are at the very top
16 of the page; is that right, Mr. Wilkes?

17 A. Correct.

18 Q. All right. And there are what attorneys
19 refer to as black lines contained in this draft.

20 Do you see where I'm at?

21 A. I see a commission letter markup, 9/1/04.

22 Q. As an example, if you turn to Page 2 of that
23 letter?

24 A. Yes, ma'am.

25 Q. So there are additions that are being placed

1 into this letter. Attorneys refer to them as black
2 lines.

3 Do you know what I'm talking about,
4 Mr. Wilkes?

5 A. You mean where the changes are down here?

6 Q. Yep.

7 A. Okay. The only one I see, The commission
8 shall be paid into escrow concurrently with Pardee's
9 deposit of the Option Property price into escrow, and
10 the commission shall be paid directly from the proceeds
11 of said escrow.

12 Q. All right. So you were adding, Into escrow,
13 and adding, And the commission shall be directly, paid
14 directly from the proceeds of said escrow, correct?

15 A. Yes.

16 Q. You wanted those changes in this document?

17 A. We wanted to be paid by the escrow company.

18 Q. And you were trusting the escrow company,
19 correct?

20 A. The escrow company, yes.

21 Q. And you were trusting the escrow company, not
22 Pardee; is that correct?

23 A. Yes.

24 Q. Okay. Let's see if we can't continue as far
25 as moving through fairly quickly then.

1 Exhibit L is my copy of your Commission
2 Agreement; is that right?

3 A. Exhibit L is your copy of the Commission
4 Agreement.

5 Q. Yep. We've already established that you
6 signed this?

7 A. Yeah.

8 Q. Okay. Turn your attention then to Exhibit M.

9 A. I'm there.

10 Q. The escrow company then is sending you for
11 your files then the Second Amendment to the Option
12 Agreement, correct?

13 A. Okay. The escrow company sent us the files
14 for what are --

15 Q. It sent you a copy of the second option to --
16 the Second Amendment to the Option Agreement?

17 A. I don't see where it says that.

18 Q. See where it says, See attached Amendment
19 Number 2 to Option Agreement.

20 A. That part I see, yes.

21 Q. All right. And there is a handwritten
22 notation that this went to Walt as well?

23 A. I don't see that.

24 Q. See the handwritten notation?

25 A. It says, For Jones.

1 Q. And then it says, Walt?

2 A. Walt, right.

3 Q. And that was your fax number, correct?

4 A. I believe so.

5 Q. Okay.

6 A. Seven years ago, I changed faxes.

7 Q. All right. At Exhibit N --

8 A. N, as in Nancy?

9 Q. Yes.

10 A. Okay, I'm there.

11 Q. This is a letter that you and Mr. Wolfram
12 sent to Jon Lash; is that right?

13 A. Correct.

14 Q. Now, I want you to focus your attention in
15 particular to Paragraph Number 2.

16 A. Okay.

17 Q. And it says, It's not fair to think
18 amendments with Pardee Homes and the seller affect our
19 Commission Agreement.

20 Do you still believe that today, Mr. Wilkes?

21 A. It's not fair to think amendments with Pardee
22 Homes and the seller affect our Commission Agreement,
23 yeah.

24 Q. Do you still believe that today?

25 A. Yes.

1 Q. All right. Do you think that you should be
2 entitled then under that belief to an increase in your
3 commissions that went from 66 million to 84 million?

4 MR. J.M. JIMMERSON: Objection, your Honor.
5 The Amendment Number 2 was executed August 31, 2004,
6 prior to this Commission Letter Agreement. The
7 purchase price was increased then.

8 MS. LUNDVALL: Correct. We thought it was
9 fair that they were entitled to the amendment, but
10 Mr. Wolfram and Mr. Wilkes immediately said they didn't
11 think so, even though they'd already received a copy of
12 it, so I asked him if it's his belief today --

13 THE COURT: Let's just phrase it that way.
14 Let's not refer to the document, let's just refer to --
15 why don't you say, When you executed the Commission
16 Agreement, did you think it was -- however you want to
17 do it, because I see where you're going.

18 BY MS. LUNDVALL:

19 Q. Mr. Wilkes?

20 A. Yes, ma'am.

21 Q. Do you still believe today that it's not fair
22 that the amendments would affect your Commission
23 Agreement?

24 And these gentleman over here are sitting
25 there nodding their heads. Are they trying to give you

1 a signal? Yeah, they're like bobbleheads in the back
2 of my car.

3 A. They're --

4 Q. I'm gonna strike that question and ask you
5 another one, okay?

6 A. They're agreeing to what you had said between
7 the two of them.

8 Q. I'm gonna strike that question and ask you
9 another one, okay?

10 What I want to do is to turn your attention
11 then to Exhibit P, please.

12 A. P?

13 Q. P.

14 A. For Pat?

15 Q. For Pat.

16 A. Okay, I'm at P.

17 Q. All right. You got copies then of exhibit,
18 of this letter, along with the documents that are
19 contained in there from the title company, correct?

20 A. Yes.

21 Q. Did you share those with Mr. Wolfram as to
22 what you had received?

23 A. I'm sorry, I don't remember.

24 Q. Okay. What I want you to do then is to now
25 move to Exhibit U, please.

1 A. U?

2 Q. U.

3 A. Okay, I'm there.

4 Q. All right. The time frame there is November
5 of 2006. By this point in time, you received a lot of
6 Orders to Pay Commission, you've received a lot of
7 checks from Stewart Title, and now you're being
8 informed that Pardee is changing the title companies to
9 Chicago Title, correct?

10 A. Correct.

11 Q. And then after the change, it then went from
12 Chicago Title, you also received Orders to Pay
13 Commission, and you received checks then from Chicago
14 Title, did you not?

15 A. Yes, ma'am.

16 Q. Okay. I direct your attention then to
17 Exhibit V.

18 A. As in Victor?

19 Q. V, as in Victor.

20 A. Okay.

21 Q. Frances Butler, who's at Chicago Title, this
22 is an example of her sending a commission order to you
23 for signature, correct?

24 A. Yes, ma'am.

25 Q. And as you've indicated, those were sent then

1 in accord then with the payments that Pardee was making
2 to CSI, and you were signing the commission check, a
3 commission order based upon those payments?

4 A. Every time they made a payment to CSI, we
5 were supposed to get a commission on it.

6 Q. All right. Now, turning your attention then
7 to Exhibit W, the --

8 A. For Walt?

9 Q. For Walt, handsome guy that he is.

10 A. Yeah. Those days are all gone.

11 Q. Some people might beg to differ.

12 A. Okay.

13 Q. As you look at Exhibit W, this is the letter
14 then that you made reference to earlier, and it
15 identifies how you've been overpaid, that Pardee
16 believes that you've been overpaid?

17 A. Right.

18 Q. Correct? And also, turning your attention
19 then to the second page, Mr. Wilkes.

20 A. Well, this one shows you're overpaid, but the
21 maps and everything showed that we were underpaid, you
22 know. They owe us money is how we look at it.

23 Q. All right. Turning your attention to Page 2,
24 Mr. Wilkes.

25 A. Page 2.

1 Q. Yes. This is the letter that was sent to
2 you.

3 A. Okay.

4 Q. Pardee is also informing you that, in fact,
5 that it's, that it has entered into other transactions
6 then with CSI, correct?

7 A. Correct.

8 Q. He's being up front with you, telling you
9 there's other deals out there, correct?

10 A. Okay.

11 Q. And he's also being up front with you,
12 telling you that you're not entitled to commissions on
13 those other deals?

14 A. Yeah. Well, we did not agree with that. We
15 felt we were entitled to a commission on the whole
16 52,000 acres.

17 Q. Now, what I want to do then is to -- we've
18 already taken a look then at Exhibit 17, which is
19 another letter that was sent to you by Pardee.

20 See if you can pull that up for me, Brian.

21 Mr. Wilkes, do you recall receiving this
22 letter that's at Exhibit 17?

23 A. Thank you for making that bigger. My eyes
24 are going too.

25 Yeah, because I can't read what Jim says. It

1 says here -- can you put it back up?

2 Q. I think I want highlighted the notation
3 there.

4 A. I don't know what it says.

5 Q. All right. What I'm just interested in,
6 Mr. Wilkes, you do have a recollection though of
7 receiving this letter, correct?

8 A. At certain -- can you move it up a little
9 bit, the gentleman here? Now make it bigger.

10 Okay. That's good.

11 Yes, I do remember getting this letter.

12 Q. All right. Let me start then with the first
13 paragraph, Mr. Wilkes.

14 A. Okay.

15 Q. This letter is coming from Mr. Stringer, and
16 he indicates that --

17 MR. J.M. JIMMERSON: Objection, your Honor, I
18 believe this comes from Dr. Lash.

19 MS. LUNDVALL: Good point well made. My
20 apologies.

21 BY MS. LUNDVALL:

22 Q. This letter from Mr. Lash is acknowledging
23 that there was a letter that was sent to him, and he's
24 responding to your letter; is that right?

25 A. Yes.

1 Q. In which you asserted that your Commission
2 Agreement was applicable to all transactions at Coyote
3 Springs?

4 A. Yes, we assumed that.

5 Q. You made that assumption, okay.

6 A. That's what we took him, 52,000 acres, and
7 now he comes back and said, Oh, no, we can't do that,
8 but he was all for it in the beginning.

9 Q. Now, Mr. Wilkes, Mr. Wolfram, from the
10 witness stand, said that you're not entitled to any
11 commission under the multifamily agreement.

12 MR. J.M. JIMMERSON: Objection, your Honor.

13 THE WITNESS: I don't agree with that.

14 MR. J.M. JIMMERSON: Objection, your Honor,
15 we've already dealt with this through other witness'
16 testimony. It's part of the questioning of another
17 witness.

18 THE COURT: So the objection is?

19 MR. J.M. JIMMERSON: If, if, if we're not
20 allowed to ask questions of witnesses about other
21 witness' testimony, it's not fair for --

22 THE COURT: I'm just trying to figure out the
23 objection.

24 MR. J.M. JIMMERSON: Yes.

25 THE COURT: Let me think it through, you're

1 saying, Ms. Lundvall said -- I know we had an
2 objection. I'm trying to remember, about the
3 commenting on other people's testimony.

4 MR. J.M. JIMMERSON: Exactly the reference.

5 THE COURT: Honestly, the testimony speaks
6 for itself, so if he -- I remember what Mr. Wolfram
7 said. Just ask if he disagrees, because I do remember
8 we did have an objection, and then we get into are they
9 actually saying it properly and all that, so I'd rather
10 not, so I'll go ahead and sustain it.

11 Just ask him: Do you think you're entitled
12 to a commission at this time? At least we would know
13 what his position is.

14 BY MS. LUNDVALL:

15 Q. Mr. Wilkes, do you acknowledge that you're
16 not entitled to commissions under the multifamily
17 agreement?

18 A. Absolutely not.

19 MR. J.J. JIMMERSON: Excuse me, we've never
20 been provided the agreement, so we couldn't possibly
21 comment on it. It's one of the issues in this case
22 with regards to the accounting.

23 I object to the form of the question. She
24 asked: Do you agree with the multifamily agreement?
25 We've never been provided it, despite multiple requests

1 in this litigation, and how can he comment about what
2 she knows we've never seen?

3 THE WITNESS: The answer is no.

4 THE COURT: Hold on, let's address the
5 objection.

6 Can't we just say, Under this Commission
7 Agreement, do you feel you are entitled to a commission
8 for multifamily property?

9 MR. J.J. JIMMERSON: That is a different
10 question, your Honor. That sounds very appropriate.

11 THE COURT: Can we ask that question? That's
12 what this whole case is about, is this Commission
13 Agreement. That's all I can deal with, because that's
14 what's in front of me.

15 THE WITNESS: I think I know what the
16 question is.

17 THE COURT: I hope so. Don't ask me to
18 rephrase.

19 THE WITNESS: I do think we're entitled to
20 other, more commission.

21 MS. LUNDVALL: No, hold on.

22 THE COURT: Based on -- I'm sorry.

23 BY MS. LUNDVALL:

24 Q. What I'm trying to ask is --

25 THE COURT: Not taking it over. I apologize.

1 BY MS. LUNDVALL:

2 Q. This case alleges a breach of contract; is
3 that right?

4 A. Yes.

5 Q. And this case, to you, is principally about a
6 breach of contract?

7 A. Yes.

8 Q. All right. And you acknowledge the contract
9 that is at issue is the Commission Agreement; is that
10 correct?

11 A. Well, that's -- we're not suing over the
12 Commission Agreement. It's not the money, it's the
13 information.

14 Q. The contract that is at issue is the
15 Commission Agreement; is that correct?

16 A. Okay, yes.

17 Q. All right. Is there someplace in the
18 Commission Agreement that says that you are entitled to
19 commissions on multifamily property?

20 A. Not in the Commission Agreement, no.

21 Q. Is there someplace in the Commission
22 Agreement that says that you're entitled to commissions
23 on commercial property?

24 A. Not in the agreement, no.

25 Q. Is there someplace in the Commission

1 Agreement that says you're entitled to commissions on
2 golf course property?

3 A. No, but it was our understanding we were
4 gonna get the whole commission.

5 Q. And is there anyplace in the Commission
6 Agreement that says that you're entitled to commissions
7 on the custom lots?

8 A. No, but that's single-family, and we should
9 get those.

10 Q. What I want to do is turn your attention then
11 back to Exhibit 17, Mr. Wilkes.

12 A. Sure.

13 17?

14 Q. Yes, sir.

15 A. So we're still in the same place.

16 I guess I'm confused here. I don't see a 17.

17 Q. And your point is well made, sir. I don't
18 want to confuse you. Let's see if I can --

19 THE COURT: 17 is -- I thought it was what's
20 on the screen.

21 THE WITNESS: I have arthritis on my whole
22 body, I can't turn my neck.

23 MR. J.J. JIMMERSON: Judge, 17 is the same as
24 AA.

25 BY MS. LUNDVALL:

1 Q. Here it is.

2 A. Exhibit 17?

3 Q. Yes. I will ask you a few questions about
4 that. It's the letter that Mr. Lash sent to you.

5 A. Okay. To Jim Wolfram and to Walt Wilkes,
6 That certain broker agreement dated September 1st,
7 2004, the agreement by and between Pardee Homes of
8 Nevada, it's taking about that certain -- I'm sorry,
9 your Honor.

10 THE COURT: No, we're just trying to get
11 logistics.

12 THE WITNESS: He's talking about that certain
13 broker agreement dated September 1st, 2004. That was
14 before the original agreement by and between Pardee
15 Homes and us.

16 BY MS. LUNDVALL:

17 Q. Okay. You received this letter?

18 A. My attorneys received this letter, I didn't.

19 Q. All right.

20 A. I mean I probably saw it from my attorneys.

21 Q. Okay. From your perspective, I'm not gonna
22 ask, but generally Pardee sets forth its understanding
23 of the Commission Agreement, does it not?

24 A. Generally, yes.

25 Q. All right. Please turn your attention to

1 Page 2, Mr. Wilkes.

2 A. Yes, ma'am.

3 Q. Now, at Page 2, you're gonna see a sentence
4 in that first full paragraph, and I will read it aloud.

5 As of this date, Pardee has not exercised any
6 option to purchase the Option Property.

7 Did I read that correctly?

8 A. You did.

9 Q. All right. Did you believe that?

10 A. No.

11 Q. Did you trust him?

12 A. No.

13 Q. So you didn't trust him at the beginning, and
14 you didn't trust him at this point in time either,
15 correct?

16 A. I didn't trust them from the point where they
17 tried to take the extra money from us. I thought we
18 might have money coming.

19 Q. I'm gonna go on. The second sentence reads:
20 As required by the agreement, we'll provide you with
21 copies of each written option exercise notice in a
22 timely fashion.

23 Did I read that correctly?

24 A. You read it correctly.

25 Q. Mr. Lash is making that statement to you,

1 correct?

2 A. Yes.

3 Q. Were you here during Mr. Lash's testimony?

4 A. Yes.

5 Q. Did you hear him testify from the witness
6 stand that he understood and acknowledged that Pardee
7 had that duty to do so if, in the future, it exercised
8 any options to purchase Option Property?

9 A. That's what he said, yes. And then, and
10 then --

11 Q. Hold on, I've got another question.

12 A. Can I follow-up on that one before you go to
13 the next one?

14 Q. Yes. Feel free.

15 A. And then we found out yesterday, and before
16 that we had three properties they didn't tell us about
17 that we found, and number four, the fourth property,
18 when they took that turn to the right, it went
19 completely off the property that we agreed with him on.
20 Even though he didn't show us anything on that, we
21 found out that there were properties, so how can I
22 believe what he said?

23 Q. Now, turning your attention then to
24 Exhibit Y, Mr. Wilkes.

25 A. Exhibit 5?

1 Q. Exhibit Y.

2 A. Oh.

3 THE COURT: You need a different book.
4 She'll help you.

5 THE WITNESS: Yeah, give me the book.

6 BY MS. LUNDVALL:

7 Q. I will do so.

8 A. Right, trying to make a fool out of me.

9 Q. There you go, sir.

10 A. Okay, I'm there.

11 Q. Okay. At Exhibit Y, there's a note to the
12 file by Frances Butler. It has a date of January 6th
13 of 2008, and at this point in time, you knew the escrow
14 company had a copy of your Commission Agreement in its
15 file, correct?

16 A. Let me read this a second.

17 Q. Before you read this, I'm asking you, you've
18 already told me you knew the escrow company had a copy
19 of your Commission Agreement in its files, correct?

20 A. Copies of it, yeah.

21 Q. And that's how they were preparing your Order
22 to Pay Commission?

23 A. Right.

24 Q. Now, turn your attention then back to the
25 language that's on Exhibit Y.

1 Can you please read that, please, out loud?

2 A. Exhibit Y?

3 Q. Yes.

4 A. Jim Wolfram called. He wanted a breakdown of
5 commission per takedowns. I told him the commission we
6 are disbursing is based on the original agreement for
7 monthly option payments.

8 Is this what went to Pardee? She sent this
9 to Jon Lash?

10 Q. Keep reading out loud, please.

11 A. Okay. We are disbursing based on the
12 original agreement for monthly option payments, not on
13 individual takedowns. Referred him to Pardee. He will
14 contact Walt and Jon Lash. He also asked that I
15 forward to him copies of the previous commission
16 orders, which I did.

17 Frances Butler, FB.

18 Q. Now, did Mr. Wolfram share that conversation
19 with you?

20 A. I don't remember. I was out of town a lot
21 during that time.

22 Q. All right. And Mr. Wolfram, did he also
23 share with you the previous commission orders that had
24 been sent to him by Frances Butler?

25 A. I don't recall that either, I'm sorry.

1 Q. All right. Did he also share with you what
2 Frances Butler had told him, that her opinion was that
3 the commissions were being disbursed based on the
4 original agreement for monthly option payments, not
5 individual takedowns?

6 Did Mr. Wolfram tell you that?

7 A. Is this during the time when, when, when
8 Pardee sent her a letter stating not to give us any
9 information?

10 Q. Nope.

11 A. I don't remember. I'm sorry.

12 Q. All right. Were you aware that the escrow
13 company had the same interpretation of your Commission
14 Agreement that Pardee did?

15 A. Yes.

16 Q. Now, there came a point in time then that you
17 received another letter from Mr. Lash. I want to
18 direct your attention then to Exhibit AA, please.

19 A. We're still with Y?

20 Q. Yes.

21 A. Your Honor, I can't find it.

22 THE COURT: There's an AA. Look behind Y.
23 Keep going, she'll help you. It's an AA tab.

24 THE WITNESS: Oh, I thought it was still in
25 Y.

1 BY MS. LUNDVALL:

2 Q. Now, I just want to put this in time
3 sequence, if I could, Mr. Wilkes.

4 This letter, March 14th of 2008, came after
5 the time frame in which Mr. Wolfram began asking
6 questions of the title company; is that correct?

7 A. I'm not sure when he asked the questions to
8 the title company, so I can't answer it.

9 Q. All right. At Exhibit Y, we've got the
10 notation that he had called Frances Butler, and that's
11 in January of 2008?

12 A. I lost my Y.

13 MR. J.M. JIMMERSON: Your Honor, we'll
14 stipulate that January 2008 comes before March 2008,
15 but if he doesn't know when Jim was asking the
16 questions, he can't testify.

17 THE COURT: She's just trying to refresh his
18 recollection on what we did before.

19 When I looked at Y, it was 1/6/08. This
20 letter is March of '08.

21 THE WITNESS: I'm in Y here.

22 THE COURT: Yes.

23 Sorry, yes. We had gone through that,
24 Mr. Wilkes, remember before we went to AA?

25 THE WITNESS: Yeah. I'm sorry, your Honor.

1 THE COURT: No.

2 THE WITNESS: I'll try, honestly.

3 THE COURT: It's not easy. We understand.

4 THE WITNESS: I have no YY here. I go to VV.

5 THE COURT: No, Y, she said "Y."

6 THE WITNESS: One Y. I don't have a Y. VV
7 is the last I have.

8 MR. J.M. JIMMERSON: Single Y, X, Y, Z.

9 MR. J.J. JIMMERSON: The Y comes after X,
10 before Z.

11 THE WITNESS: I'm sorry.

12 THE COURT: Oh, my goodness.

13 THE WITNESS: I'm never gonna hear the end of
14 this from my partner.

15 THE COURT: Does that mean -- January '08
16 comes before March of '08.

17 MS. LUNDVALL: We're getting there.

18 THE COURT: We're getting there.

19 THE WITNESS: Okay.

20 THE COURT: Mr. Jimmerson, don't say it.

21 THE WITNESS: Why can't Walt be more sharp?
22 I go to V.

23 THE COURT: We are not making -- please don't
24 think that.

25 THE WITNESS: That's okay, I don't mind. I

1 can take it, your Honor.

2 THE COURT: We're laughing with everybody
3 here.

4 THE WITNESS: You still want Y?

5 THE COURT: She still wants Y.

6 THE WITNESS: I have got U, okay, X, Y -- I'm
7 confused, X, Y, Z, right? I don't have a Y here. No
8 Y.

9 THE COURT: What happened to your Y? You had
10 it for the questions previous.

11 MR. J.J. JIMMERSON: She had it, he didn't
12 have it. She was asking questions without it in front
13 of him.

14 MR. J.M. JIMMERSON: I think he was looking
15 at the monitor.

16 THE COURT: Oh.

17 THE WITNESS: This is it here.

18 THE COURT: Terrific.

19 THE WITNESS: I can look and see. I told
20 you.

21 BY MS. LUNDVALL:

22 Q. I'm not trying to confuse you, sir.

23 A. Well, you're doing a good job.

24 Q. I'm not trying.

25 A. You've been very nice.

1 Q. Do you have Exhibit Y in front of you?

2 A. I have Exhibit Y in front of me.

3 Q. Exhibit Y was a note that Frances Butler made
4 to the file?

5 A. Yes.

6 Q. Beginning --

7 A. We had that awhile ago.

8 Q. It was beginning at the time Mr. Wolfram
9 began asking questions of the title company, correct?

10 A. It was a time when Mr. Wolfram was then
11 asking questions of the title company, I assume so. I
12 don't know.

13 Q. All right. Let's make the assumption that
14 that is when it was.

15 A. I'm not sure though.

16 Q. Separate and independent of Mr. Wolfram's
17 inquiries to the title company, were you making
18 inquiries to the title company?

19 A. I think I might have made a couple.

20 Q. All right. Did you get responses to your
21 inquiries from the title company?

22 A. I think there were. I think there were, yes.

23 Q. All right. Did Mr. Wolfram share with you
24 the information that he got in response to his
25 questions to the title company?

1 A. He probably did, but I am not sure.

2 Q. Are you aware that the title company began
3 making responses to Mr. Wolfram in response to his
4 questions?

5 MR. J.M. JIMMERSON: Objection, your Honor.
6 Again, it assumes facts not in evidence.

7 MS. LUNDVALL: I'm asking if he's aware.

8 THE COURT: I think she was -- hold on, facts
9 not in evidence?

10 MS. LUNDVALL: How do I get it into evidence?

11 MR. J.M. JIMMERSON: No, your Honor, it
12 hasn't been established the title company gave
13 Mr. Wolfram -- Mr. Wolfram hasn't testified about this
14 particular document yet, so we're just assuming that --

15 THE COURT: They did a response?

16 MR. J.M. JIMMERSON: Exactly.

17 THE COURT: And you all know your exhibits,
18 so you know.

19 MS. LUNDVALL: And the exhibits have been
20 stipulated into evidence.

21 THE COURT: You all know your case so well,
22 and we're all learning it, so why don't we just --

23 THE WITNESS: I'm sorry, I can't remember.

24 / / / /

25 BY MS. LUNDVALL:

1 Q. All right. So Mr. Wilkes, let me see then if
2 I can't refresh your recollection a bit.

3 A. Okay.

4 Q. I want you to turn to Exhibit II.

5 A. II, I'm there.

6 Q. Okay.

7 A. That's JJ. No, it's I. J comes after I.

8 Q. And II --

9 A. Yes.

10 Q. It's Lisa Lawson from Pardee Homes and it's
11 sending a message from Frances Dunlap at Chicago Title,
12 and she says, Hi, Frances. You are authorized to give
13 Jim copies of only the single-family takedowns.

14 Do you see where I'm at?

15 A. Uh-huh.

16 Q. Please do not provide him with copies of
17 multifamily or the commercial transactions.

18 Did I read that accurately?

19 A. You did.

20 Q. All right. Did Mr. Wolfram tell you that he
21 began receiving information from the escrow company on
22 the single-family takedowns and --

23 MR. J.M. JIMMERSON: Objection, your Honor.
24 Again, this, we've not established --

25 MS. LUNDVALL: Did Mr. Wolfram tell you?

1 THE COURT: Whether it happened or not?

2 MS. LUNDVALL: Listen to the question, if we
3 could, because I'm trying to get Mr. Wilkes on and off
4 as quickly as I can.

5 THE COURT: You know what, I'm gonna sustain
6 it. Go ahead, do the question again, Ms. Lundvall.

7 BY MS. LUNDVALL:

8 Q. Mr. Wilkes, did Mr. Wolfram tell you he began
9 receiving information from the title company on the
10 single-family takedowns?

11 A. Probably.

12 Q. All right. Let me direct your attention then
13 to Exhibit KK, see if I can refresh your recollection.

14 At Exhibit KK, there is fax transmittal and
15 then a bunch of deeds and other information that is
16 behind this.

17 A. Okay.

18 Q. It bears a date of January 19th of 2010.

19 A. All right.

20 Q. This comes after the authorization that
21 Pardee gave to Frances Butler to give information on
22 the single-family takedowns.

23 A. Okay.

24 Q. And about halfway down the page, do you see
25 where it says, Hi, Jim. As we discussed earlier today,

1 attached are copies of the recorded deeds.

2 Did I read that accurately?

3 A. Yeah.

4 Q. Turn the page then.

5 Do you see there is a Grant, Bargain and Sale
6 Deed?

7 A. I do.

8 Q. And do you see on Page 2 this had been signed
9 by Mr. Whittemore on behalf of Coyote Springs
10 Investment?

11 A. Page 2?

12 Q. Yep.

13 A. Oh, okay, yes.

14 Q. And on Page 3, it's actually Page 4 of the
15 exhibit, but I'm gonna keep thumbing through this,
16 there's a legal description that was appended there, is
17 there not?

18 A. That's correct. I wouldn't exactly call that
19 a legal description. I'm sorry, I wouldn't call it
20 that.

21 And I'll tell you something else, the reason
22 I don't recall a lot of this stuff is I was out of
23 town, and Jim was the one negotiating with the
24 attorneys. Whatever Jim did and the attorneys did, I
25 was, I wasn't a party to, but I was with them all the

1 way, whatever they agreed to.

2 Q. So in other words, whatever they were doing,
3 you agreed with that; is that correct?

4 A. Most of the time.

5 Q. All right. But all I'm asking you is that
6 the title on this document says Exhibit A to Grant,
7 Bargain and Sale Deed, Legal Description of the Real
8 Property.

9 Did I read that accurately?

10 We're gonna go back to the page -- that's the
11 first page. There is a signature page, Exhibit A --

12 A. Okay.

13 Q. The legal description of the real property,
14 do you see that?

15 It says, Lot LP-4 of division into large
16 parcels Coyote Springs Villages 2, 3, 4, 7, 8, 9, 10,
17 and 11 as shown by map thereof on file in Book 138 of
18 Plats, Page 51, as recorded in the office of the County
19 Recorder, Clark County, Nevada.

20 A. We don't know what those lots were. We don't
21 know what, you know, it may be a legal description as
22 far as to make it happy for Whittemore and Pardee, but
23 it doesn't, it doesn't pin down where the property is.

24 If they would have put a map here, it would
25 have helped, or a designation. If they would have put

1 something here, it would have helped, so, no, I don't
2 agree with that.

3 Q. All I'm asking is: Does it say, Legal
4 Description of the Real Property?

5 A. It says, Legal Description of the Real
6 Property.

7 Q. All right.

8 A. And it says, Lot LP-4 of division into large
9 parcels Coyote Springs Villages 2, 3, 4, 7, 8, 9, 10
10 and 11 as shown by map thereof on file in Book 138 of
11 Plats, Page 51.

12 Q. Okay. What I want you to do then is turn to
13 the next page, which would be KK-5.

14 A. KK-12?

15 Q. KK-5.

16 A. I'm there.

17 Q. Okay. You see he was also given a State of
18 Nevada Declaration of Value form?

19 A. Yes.

20 Q. And there is a number of pieces of
21 information that are filled out on that form, is there
22 not?

23 A. Right.

24 Q. Okay. Turning your attention then to the
25 next page, this is another Grant, Bargain and Sale

1 Deed.

2 Now, the point I want to make concerning this
3 page, just while you're there, is: Do you see the
4 recorder's stamp that's in the upper right-hand corner?

5 A. Yes.

6 Q. Now, you're familiar with recorder stamps,
7 are you not?

8 A. Yeah.

9 Q. You know that when you file a document in the
10 recorder's office, it gets a stamp too, correct?

11 A. Yes.

12 Q. And that document then becomes a matter of
13 public record?

14 A. Yes.

15 Q. And you know that all documents that are
16 filed with a public agency become a matter of public
17 record, do you not?

18 A. Uh-huh.

19 Q. Is that correct?

20 A. Yes.

21 Q. All right. I intend no disrespect, I just
22 want to make sure the court reporter got your
23 testimony.

24 A. Okay.

25 Q. So that, in fact, if Mr. Whittemore filed

1 applications for approvals with Lincoln County or
2 Clark County, those would be a matter of public record?

3 A. Okay.

4 Q. You're aware of that, correct?

5 A. Yes.

6 Q. And if, in fact, that approval was given by
7 either Clark County or Lincoln County, you're aware
8 that that information would be a matter of public
9 record, correct?

10 A. Right, but it doesn't tell us about all the
11 other parcels they took down.

12 Q. KK is a whole series of Grant, Bargain and
13 Sales Deeds, along with the declaration of values; is
14 that right?

15 A. Okay.

16 Q. Now, what I want you to do then is turn to
17 the next tab, which will be LL.

18 A. Yes, ma'am, I'm there.

19 Q. You see there is a message at the bottom?

20 A. Yeah.

21 Q. That says, the subject is Jim Wolfram,
22 Pardee/Coyote real estate agent, and it says, He says
23 we're missing three deeds for these APN's.

24 A. Right.

25 Q. Okay. Turn to the next page, which would be

1 MM, Exhibit MM, and do you see then where Chicago Title
2 is sending him these additional three deeds that
3 Mr. Wolfram had asked for?

4 MR. J.M. JIMMERSON: Objection, your Honor.
5 As far as I'm concerned, I'm only seeing one deed
6 that's being attached.

7 THE COURT: As part of the Exhibit LL?

8 MR. J.M. JIMMERSON: Yes. It says there's
9 only --

10 THE COURT: I don't even have one attached.
11 I have the e-mail.

12 MR. J.M. JIMMERSON: It actually said there's
13 a deed attached.

14 THE COURT: Reading the substance --

15 MR. J.M. JIMMERSON: I'm not seeing where the
16 other 2 were attached.

17 BY MS. LUNDVALL:

18 Q. Would you take a look at MM, which is the
19 exhibit that I'm on?

20 THE COURT: I went ahead and looked at MM. I
21 apologize.

22 THE WITNESS: NN, N, as in Nancy?

23 BY MS. LUNDVALL:

24 Q. M, as in Mary.

25 A. Mary, Mary Margaret. M, as in Mary, okay.

1 Q. There you go.

2 A. M, as in Mary, okay. I'm there.

3 Q. Okay. Now, do you see where the fax
4 transmission presents from Chicago Title to
5 Mr. Wolfram? It says, The information you requested is
6 attached, and then it identifies three deeds, three
7 parcels that he had made request for.

8 Do you see that?

9 A. Uh-huh.

10 Q. It's the same information that we had noted
11 on the earlier e-mail, correct?

12 A. Okay.

13 Q. All right. And if you look in the upper
14 portion of this page, you'll see the number of pages
15 that were being sent to Mr. Wolfram.

16 A. The number of pages, Page 1? I don't see.

17 THE COURT: If you look at the screen,
18 Mr. Wilkes, if you look at the screen, you can see.

19 THE WITNESS: Okay.

20 THE COURT: It's highlighted to help you.

21 THE WITNESS: Okay, eight, eight pages.

22 BY MS. LUNDVALL:

23 Q. There you go, eight pages.

24 To go through this last piece of it quickly,
25 Mr. Wolfram then shared that information that he had

1 received with you too, did he not?

2 A. I'm not sure.

3 Q. Okay. A couple of incidental questions,
4 Mr. Wilkes, we'll see if we can't finish up with you
5 before lunch.

6 A. Lunch is already here.

7 Q. Do you want to take a break? Is it time to
8 take a break?

9 A. No. Finish it.

10 MS. LUNDVALL: What about for the court
11 staff?

12 THE COURT: I'm fine. We're okay.

13 BY MS. LUNDVALL:

14 Q. Now, Mr. Wilkes, you've had other
15 transactions with Pardee, have you not?

16 A. Yes.

17 Q. And Pardee paid you in full on those other
18 transactions?

19 A. Yes.

20 Q. Earlier you had testified that you had went
21 to a meeting at which time that Pardee representatives
22 were in attendance and Mr. Whittemore was in
23 attendance.

24 Do you recall that?

25 A. Right.

1 Q. And you had indicated that you pretty much
2 sat there silently, correct?

3 A. Yes.

4 Q. And therefore, you were asked not to attend
5 any further meetings between Pardee and CSI, correct?

6 A. And plus Klif Andrews kicked us out the front
7 door, said, You're not allowed in here, and then
8 Jon Lash came in and said, Yes, they are.

9 Q. But you were also requested not to attend any
10 of the subsequent negotiations; is that right?

11 A. Jon Lash came up to me and said that, you
12 know, We're gonna have to do a lot of meetings here,
13 there's no sense in your, in you guys coming down here
14 and everything, I will keep you informed of everything
15 that's going on, I promise.

16 Q. Now, it didn't surprise you that you were
17 asked to stay out of subsequent negotiations, did it?

18 A. Did it surprise me?

19 Q. Yes.

20 A. I don't think that Pardee or Whittemore
21 needed anything that we had to say in that meeting,
22 they just needed to know that we were the procuring
23 cause of that whole land transaction, 52,000 acres.

24 Q. And typically, builders and property owners,
25 they don't have much use for brokers when you bring

1 them to the property, do they?

2 A. You're absolutely right.

3 Q. That's pretty typical; isn't that correct?

4 A. Yes.

5 Q. In other words, once you put them into the
6 deal, they don't need you anymore; is that right?

7 A. That's right.

8 Q. And there's no need for you to attend any of
9 the subsequent negotiations?

10 A. Well, we were very excited about trying to
11 get that deal on, and we wanted to come to the other
12 meetings, and I asked Jon, I said, We want to come so
13 we can see what's going on.

14 Q. But in your industry --

15 A. You're right.

16 Q. It's custom and practice --

17 A. Yes.

18 Q. -- for the brokers not to be involved in the
19 subsequent negotiations, correct?

20 A. Uh-huh.

21 Q. Is that a "yes"?

22 A. That's a "yes," ma'am.

23 Q. Now, I'm gonna ask you to turn back to
24 Exhibit L?

25 A. There are some times we work with --

1 Q. Hold on, there's no question pending for you,
2 sir.

3 A. You've been telling me you were getting --

4 Q. I know.

5 THE COURT: She's trying to get through it.
6 If you can't make --

7 THE WITNESS: Ill make it. Just finish it.
8 BY MS. LUNDVALL:

9 Q. Now, I'm gonna try to jump around a little
10 bit to be able to finish up, sir, so if you don't
11 follow me, let me know and I will try to give you
12 additional foundation.

13 A. You've been very nice.

14 Q. What I'm gonna do is try to take you back to
15 the time you were negotiating with Pardee for your
16 Commission Agreement.

17 A. Okay. I remember a time when we were in
18 Los Angeles at Jon Lash's request. We flew down there,
19 we sat down and talked to him.

20 Q. Now, after that point in time, you hired an
21 attorney, correct?

22 A. Yes, because he wasn't doing what he agreed
23 to do.

24 Q. And so therefore, you expected Mr. Jimmerson
25 to act on your behalf?

1 A. Absolutely.

2 Q. And you expected him to get you the best deal
3 he could?

4 A. Absolutely.

5 Q. And ultimately, you accepted the deal that he
6 negotiated, correct?

7 A. Well, I'm not sure if that was before or
8 after.

9 Q. Somewhere along the line you had hired an
10 attorney?

11 A. Yes.

12 Q. And you expected him to negotiate you a good
13 deal?

14 A. Absolutely.

15 Q. And, in fact, you believe he negotiated a
16 good deal for you?

17 A. Absolutely.

18 Q. And that negotiation was an arm's length
19 transaction between the two of you, between Pardee and
20 you and Mr. Wolfram on the other hand?

21 A. Correct.

22 Q. This wasn't anything like an insurance
23 company where they just send you a document and say,
24 Here, take or leave it, right?

25 A. No. We, we had -- Jim Jimmerson had a

1 wonderful reputation, and we got the best attorney in
2 town.

3 Q. All right. And under the agreement that you
4 negotiated with Pardee, you acknowledged that you
5 weren't an employee?

6 A. That's right.

7 Q. Is that right?

8 A. Correct.

9 Q. You weren't a partner of Pardee?

10 A. Correct.

11 Q. You weren't entering into a joint venture
12 with Pardee?

13 A. Correct.

14 Q. You had no special reliance on Pardee,
15 correct?

16 A. What do you mean by, "no special reliance"?

17 Q. You made an arm's length transaction,
18 correct?

19 A. Yes.

20 Q. Yes?

21 A. Yes.

22 Q. I've got one more place to look. I have a
23 couple more questions, and I will be done with you,
24 sir.

25 A. You said that 45 minutes ago.

1 MR. J.J. JIMMERSON: That's what lawyers do.

2 THE COURT: Once again, it's attorney
3 minutes.

4 BY MS. LUNDVALL:

5 Q. Mr. Wilkes, you still have the Commission
6 Agreement in front of you, correct?

7 A. I do.

8 Q. And I have a couple of follow-up questions
9 for you.

10 A. You want me to get to that one?

11 Go ahead.

12 Q. Can you read that?

13 A. Sure.

14 Q. What I have up here is i, ii, and iii.

15 A. Correct.

16 Q. At i and ii, there's reference to the
17 Purchase Property price, correct?

18 A. Yes.

19 Q. And you understood that these payments
20 then --

21 A. Both of those are purchase property price,
22 right.

23 Q. Okay. And were these two payments separate
24 from the payments that you were gonna receive under
25 iii?

1 A. Of course. That's the purchase price
2 property 1 and 2, i and ii, and anything after -- by
3 then we were supposed to be paid off, but in iii -- not
4 paid off, I'm sorry, we were supposed to be paid.
5 That's Option Property.

6 Q. That's correct. The Option Property was
7 something separate than i and ii, correct?

8 A. Yes, but I don't understand how they paid us
9 the commission on, you know, when they went from the,
10 when they went from the 16 million to 18 million more,
11 which made it a total of 84 million, I don't understand
12 the formula in which they paid us on, because I, you
13 know, one, there is a difference, you know, if you're
14 gonna give it to me in Option Property as opposed to
15 what you're gonna give to me in Purchase Property.

16 Q. Let me see if I can keep your focus for just
17 a little more time.

18 A. I'm okay.

19 Q. So you understood then i and ii to be
20 separate then than the Option Property?

21 A. Yes.

22 Q. From ii, you were not entitled to double dip,
23 were you?

24 A. No.

25 Q. You weren't entitled to get paid a commission

1 under i and ii on the same property that is the subject
2 of iii, were you?

3 A. I was not. The first -- we got, we got on
4 the first i, we were paid. The second i, we were paid.
5 Now, that aggregate amount was 66 million, okay?
6 That's what this is, that is, but it's, it's other
7 18 million that we're, that we were paid on, and then
8 we go to the Option Property.

9 Q. Let me see if I can help you a little bit to
10 answer your questions.

11 Do you see this Purchase Property price
12 component?

13 A. Yes.

14 Q. You knew the Purchase Property price went up
15 from 66 million to 84 million in that Second Amendment,
16 did you not?

17 A. Right.

18 Q. Okay. You were aware of that?

19 A. Right, yes.

20 Q. Okay. So let's see if we can take that
21 understanding -- but then you also understood that the
22 Option Property was something separate from i and ii?

23 A. Yes.

24 MS. LUNDVALL: I have no further questions,
25 your Honor.

1 THE COURT: I think we need take a break.

2 MR. J.M. JIMMERSON: Let's take a lunch
3 break, your Honor.

4 THE WITNESS: I'm done, right?

5 THE COURT: You can talk to your counsel at
6 the --

7 MS. LUNDVALL: I hope so.

8 THE WITNESS: Will you give me that in
9 writing?

10 MR. J.J. JIMMERSON: I'm not gonna give it to
11 him in writing.

12 THE COURT: So let's take a break. What time
13 is it? It's a little bit, ten until 1:00.

14 Do you want to do an hour?

15 MS. LUNDVALL: An hour would be great, your
16 Honor.

17 THE COURT: Because I'm working on my
18 calendar for tomorrow. I could use the time. How
19 about we come back, let's just come back at 2:00.

20 MR. J.M. JIMMERSON: Sounds like a plan, your
21 Honor.

22 THE COURT: Okay.

23 (A lunch break was taken.)

24 THE COURT: Okay, counsel gets to ask you
25 questions.

1 Do you understand that?

2 THE WITNESS: Yes.

3 REDIRECT EXAMINATION

4 BY MR. J.M. JIMMERSON:

5 Q. Good morning, Mr. Wilkes.

6 A. Good morning.

7 Q. I want to review some of the topics that were
8 discussed in cross-examination.

9 The first is the terms of the Commission
10 Letter Agreement, which is enlarged here.

11 Do you understand there is a difference
12 between how you're paid based on whether it's Purchase
13 Property or Option Property?

14 A. Yeah.

15 Q. And can you explain that difference for us?

16 A. Well, we're paid, the property, we got
17 4 percent of the Purchase Property of the first
18 \$50 million, okay? Then we got one and a half percent
19 after that.

20 Q. And what about Option Property?

21 A. Option Property was one and a half percent,
22 anything outside of Parcel 1.

23 Q. What is it based on, acreage or price?

24 A. Based on acreage, \$40,000 per acre per --

25 Q. Okay. Were your commissions under the

1 Purchase Property formula based on acreage or price?

2 A. Say that again.

3 Q. Were the, were your commissions for Purchase
4 Property based on acreage or price?

5 A. For the Purchase Property, it was based on
6 price, because we got 4 percent of the first
7 50 million.

8 Q. So understanding this Commission Agreement,
9 why is it so important to know the location of the land
10 that's being purchased?

11 A. Well, how am I gonna -- your Honor, I'm
12 sorry, how am I going to know which property takedown
13 was gonna be in Purchase Property or it's gonna be in
14 the Option Property?

15 Q. Now --

16 A. I need that to calculate my commission
17 correctly.

18 Q. Okay. Why do you, referring to -- why do you
19 say you need to know whether it's in Purchase Property
20 or Option Property? Are you referring to --

21 A. Parcel 1?

22 Q. Is that the Parcel 1 of Map 9857?

23 A. Yes.

24 Q. That the same Parcel 1 that's defined in
25 Exhibit 2, the Option Agreement dated May 2004?

1 A. Do I have the right book here?

2 MR. J.M. JIMMERSON: May I approach, your
3 Honor?

4 THE COURT: Yes.

5 MS. LUNDVALL: Your Honor, there is no
6 contest as far as over the question, but I would say
7 that counsel has now ventured into leading questions.

8 THE COURT: That's okay, it's foundation.
9 I'm gonna object -- I'm gonna overrule, just to help
10 him out.

11 He's asking him to clarify what he meant by
12 Parcel 1.

13 BY MR. J.M. JIMMERSON:

14 Q. Is this the same Parcel 1 we see,
15 Paragraph B, Option Agreement?

16 A. Yes.

17 Q. Okay. So looking at the Purchase Property
18 price here, what is the Purchase Property price?

19 A. It's whatever, it's whatever property they
20 takedown in the Purchase Property.

21 Q. Okay. I'm sorry. What is the Purchase
22 Property price?

23 A. Purchase Property price is going to be 50
24 million.

25 You mean their Purchase Property?

1 Q. I just want to understand what your
2 understanding is of the definition of "Purchase
3 Property price" that's being --

4 A. Oh, Purchase Property price would be
5 everything in i and ii. That would be considered
6 Purchase Property.

7 Q. Okay. I'll refer you to page -- I'm sorry,
8 Page 3 of Exhibit 2, which is specifically Paragraph B.

9 A. Page 3 of Exhibit 2, Paragraph B.

10 Q. So flip two pages.

11 A. Those darn allergies, man.

12 Q. You need to flip two pages, Mr. Wilkes.

13 A. This is Page 3 -- oh, it's Page 1.

14 You want me to go to Page 2, Page 3, all
15 right.

16 Q. It says here, The purchase price of the
17 Purchase Property, quote, open parens, the, quote,
18 Purchase Property Price, close quote, close parens.

19 Do you see that?

20 A. Yeah. 66 million.

21 Q. Okay.

22 A. That's the 50 million and the 16 million that
23 was on the original one.

24 Q. I understand that, but the definition of
25 Purchase Property price, is it defined as 66 million,

1 or is it defined the purchase price of the Purchase
2 Property?

3 A. It's the purchase price of the Purchase
4 Property.

5 Q. Okay. So is another way of saying the
6 Purchase Property price, the price they pay for
7 Purchase Property?

8 A. Yes.

9 Q. Okay. And what is Purchase Property, just to
10 remind us?

11 A. The Purchase Property is all that property in
12 Parcel 1.

13 Q. Okay. So it would be -- the Purchase
14 Property price would be the price they paid for all the
15 property in Parcel 1?

16 A. Right.

17 Q. Okay. Mr. Wilkes, why is --

18 A. Under i and ii?

19 Q. Yes. Why is it so important how the land is
20 designated?

21 A. Well, how, how are my partner and I ever
22 gonna calculate our commissions if we don't know what
23 the zoning is?

24 Q. Are you entitled to a commission if it is not
25 designated for production residential property?

1 A. I think we are, personally, okay? They've
2 gone outside of this. They've gone around, they've
3 done this, taken that right turn on the property. I
4 think that even though they've got -- I think we're
5 entitled to commission on the single lots, the
6 single-family lots, and I think we're entitled, I think
7 we should be entitled to commission on the multifamily
8 too, because we sold them the whole property.

9 Q. I understand that, and I understand kind of
10 the basis for the agreement, but under the agreement,
11 just talking about the terms of the agreement, are you
12 eligible for commissions on property that isn't
13 designated for production residential property?

14 A. Yeah, or anything else, that Option Property.

15 Q. Yes, but within Option Property, are you
16 eligible for commissions for property that is not
17 production residential?

18 A. In my opinion, yes.

19 Q. Okay. Mr. Wilkes, please flip to the
20 different, different binder, Defendant's binder for
21 Exhibit A.

22 A. This?

23 Q. Yeah.

24 A. Okay.

25 Q. Yeah.

1 A. Linda Jones.

2 Q. I'd like you to flip to, I believe it's A-7,
3 so Page 7 in that binder, or is it 6? It's got the
4 photos of the check.

5 THE COURT: It's 6.

6 MR. J.M. JIMMERSON: Okay.

7 THE WITNESS: I'm there.

8 BY MR. J.M. JIMMERSON:

9 Q. When you look at the memo portion in the
10 middle of the page there, do you see that?

11 A. Yeah.

12 Q. Okay. What's the property address for the
13 property that's being purchased?

14 A. Nevada. Nevada. They've got Nevada here. I
15 can't believe it. They've got -- they can't give us
16 anything in Coyote Springs, they put down Nevada.

17 Q. Do you know, based upon this, where the
18 location is of the land they're purchasing?

19 A. Of course not.

20 Q. Okay.

21 A. It's in Nevada.

22 Q. When you look at the escrow number, in your
23 experience, do you receive multiple escrow numbers for
24 multiple takedowns or one escrow number for multiple
25 takedowns?

1 How does that work for us?

2 A. Do I receive multiple takedowns when --

3 Q. When you look at an escrow number, how many
4 takedowns, in your experience, would there be
5 associated with one escrow number?

6 MS. LUNDVALL: How many escrows numbers are
7 associated with --

8 BY MR. J.M. JIMMERSON:

9 Q. How many takedowns are associated with an
10 escrow number, in your experience?

11 A. You know, I don't know exactly what you mean.
12 Can you give it to me in a different way?

13 Q. Okay. When you look at an escrow number, do
14 you know if there are gonna be multiple takedowns by
15 looking at it?

16 A. Probably.

17 Q. You'll probably know, or there are probably
18 multiple takedowns?

19 A. Probably, probably, yes. I would probably
20 know.

21 Q. Okay. And would you probably know, based
22 upon looking at an escrow number, how many takedowns
23 there were?

24 A. Well, look at the same escrow number. I
25 don't know how many. I can't remember how many

1 takedowns.

2 Q. Okay. But I am not talking about
3 specifically in this transaction, generally, prior to
4 this transaction?

5 A. Oh.

6 Q. Have you ever dealt with an escrow number
7 where there were more than one takedown of property
8 associated with an escrow?

9 A. No.

10 Q. Okay. So in your experience, did you ever
11 have a time, did you ever come across a transaction
12 where there was one escrow number for multiple
13 takedowns?

14 A. No.

15 Q. Okay. Does -- looking at this memo line,
16 does it tell you how the property is designated?

17 A. It says it's in Coyote Springs.

18 Q. Does it say how it's designated?

19 A. No.

20 Q. Okay. Now, you looked at a number of these
21 pages in Exhibit A. Were there any maps in these
22 pages?

23 A. No.

24 Q. Okay. Were there any specific descriptions
25 of property that was being purchased for which you were

1 receiving a commission?

2 A. Well, they're trying to show it, but they
3 didn't give us any maps or anything else that would
4 show what it was, so no.

5 Q. Okay. Did they give you, in this, in these
6 series of documents, did you receive confirmation of
7 how many takedowns were being executed as part of the
8 transaction where you'd receive a commission?

9 A. Well, we're keeping track of our commissions.
10 By that, we can figure it out, how many takedowns there
11 were on this.

12 Q. How?

13 A. Well, oh, you know the answer to that
14 question is no.

15 Q. Okay. I guess the reason I'm asking is
16 because I'm looking at this --

17 MS. LUNDVALL: Your Honor, how he interprets
18 this is irrelevant.

19 THE COURT: How he interprets his --

20 MS. LUNDVALL: How counsel interprets this to
21 be able to pose a leading question --

22 MR. J.M. JIMMERSON: I wasn't finished with
23 the question. I would like to at least finish the
24 question.

25 THE COURT: Finish the question.

1 BY MR. J.M. JIMMERSON:

2 Q. I'm looking at this, if you could point me to
3 anything so I would know how many takedowns there were,
4 I would appreciate it, if you could let me know if
5 there was any information that indicated how many
6 takedowns there were.

7 A. No.

8 Q. Okay.

9 A. Nothing.

10 Q. Okay. Looking at these commissions, is there
11 anything to indicate that they were purchasing other
12 property at Coyote Springs?

13 A. No.

14 Q. Okay. Other than knowing the commission that
15 you were receiving, could you confirm by looking at
16 these documents if those commissions were accurately
17 calculated?

18 A. No, absolutely not.

19 Q. Okay. Mr. Wilkes, I would like you now to
20 flip to Exhibit 16 in a different binder.

21 A. In a different book?

22 Q. Yes.

23 A. Which book?

24 Q. This book. You were shown -- are you at
25 Exhibit 16?

1 THE COURT: He's getting it.

2 THE WITNESS: I got it.

3 I'm not moving real fast, your Honor. I'm
4 sorry.

5 THE COURT: That's okay. It's taking me
6 awhile too.

7 Got it?

8 THE WITNESS: Got it.

9 THE COURT: Okay.

10 BY MR. J.M. JIMMERSON:

11 Q. Mr. Wilkes, looking at this August 23, 2007
12 letter, who was this signed by?

13 A. Jon Lash.

14 Q. Please flip to Page 2, if you would.

15 A. Yes, sir.

16 Q. The first line of the first paragraph after
17 the chart --

18 A. Yes.

19 Q. -- says, the Commission Agreement applies to
20 the original Option Agreement covering single-family
21 land at Coyote Springs, which included both of your
22 involvement.

23 Do you see that?

24 A. Yes.

25 Q. How do you understand the phrase, "the

1 original Option Agreement covering single-family land
2 at Coyote Springs" to mean?

3 A. Excuse me.

4 That was original agreement that we had,
5 okay, on Coyote Springs with Pardee, okay? This is
6 different. They want to change everything.

7 Q. Okay. When you, you, when you call it the
8 "original agreement," are you referring to Exhibit 2,
9 the Option Agreement?

10 A. Yes.

11 Q. Do you have any reason to believe that you
12 executed a document binding you to the terms of the
13 Amended and Restated Agreement?

14 A. No. We received the Restated Agreement,
15 okay, but we didn't have, nothing there binded us to
16 it. It was something that they did between Coyote
17 Springs and Pardee, and without our permission, without
18 anything.

19 MR. J.M. JIMMERSON: Thank you very much,
20 Mr. Wilkes.

21 I'll tender the witness.

22 THE COURT: Thank you.

23 Any recross?

24 MS. LUNDVALL: Your Honor, I have just one.

25 THE WITNESS: You heard her, just one.

1 MS. LUNDVALL: I have one topic, your Honor,
2 and I'm gonna ask for the Court's indulgence. I will
3 acknowledge that it goes beyond the scope of redirect.

4 THE COURT: Okay.

5 MS. LUNDVALL: But it was a topic area for
6 which I forgot to ask Mr. Wilkes questions, and so I
7 would ask for the Court's permission to explore this
8 topic.

9 THE COURT: Okay. Are you gonna object?

10 MR. J.M. JIMMERSON: I would make an
11 objection, but ultimately, if the Court wants to hear
12 the facts, the Court's gonna listen to facts.

13 THE COURT: I would like to hear the facts,
14 because I don't want to bring him back, and she can
15 bring him back in their case.

16 MR. J.M. JIMMERSON: Yeah.

17 THE COURT: So I assume, Mr. Wilkes, you
18 would rather be done too?

19 THE WITNESS: Absolutely.

20 THE COURT: So I will go ahead and let you.

21 MS. LUNDVALL: Thank you, your Honor.

22 THE COURT: You're welcome.

23 / / / /

24 / / / /

25 RE CROSS-EXAMINATION

1 BY MS. LUNDVALL:

2 Q. Mr. Wilkes, during the first time that
3 Mr. Jimmerson, younger Jimmerson, got up and asked you
4 some questions, he asked you some questions regarding
5 attorney's fees.

6 Do you recall that?

7 A. Yes.

8 Q. Can you tell me what the terms of your fee
9 arrangement are with your attorney?

10 A. Our fee arrangement is --

11 Q. Yes.

12 A. -- he calculates the time they got in it, and
13 we know we're up to 250,000.

14 Q. Have you paid Mr. --

15 A. And that's just, that doesn't count the
16 court.

17 Q. Have you paid the law firm of Jimmerson
18 Hansen 250,000?

19 A. Have I personally?

20 Q. Yes.

21 A. Or Jim and I?

22 Q. I want to know how much you have paid.

23 A. I don't know what those calculations are, but
24 not all of it.

25 Q. How much of it?

1 A. I'm guessing, but I would say 50 percent.

2 Q. All right. Do you have some type of an
3 arrangement with the Jimmerson Hansen firm that certain
4 of these fees are gonna be written off?

5 A. No, not at all.

6 Q. And so you understand you have an obligation
7 to pay those fees?

8 A. Oh, absolutely.

9 Q. No further questions.

10 A. I will not let him down.

11 Q. And to the extent that there's an arrangement
12 to pay his firm costs, in other words, the
13 out-of-pocket costs, are you referring to those as
14 well?

15 A. The out-of-pocket costs?

16 Q. Yes, sir.

17 A. Exactly what does that mean?

18 Q. For like deposition costs, court reporter
19 fees, filing fees?

20 A. Yeah. I think we have to pay those too.

21 Q. Have you paid any of those, sir?

22 A. I'm not sure if we paid any of those, but
23 probably up to a point I have.

24 Q. So if I understand your testimony, the total
25 amount of fees are up to about 250,000; is that

1 correct?

2 A. Before court costs.

3 Q. And that you're responsible for 50 percent of
4 that?

5 A. Yes, ma'am.

6 Q. So if I do some quick math, that's about
7 \$125,000?

8 A. Yes, ma'am, and you paid them, the firm,
9 half, 125-?

10 A. Estimating.

11 Q. All right. And across what period of time
12 have you paid those fees, sir?

13 A. Ever since the beginning to up until, I guess
14 up until, up until last year.

15 Q. Thank you, Mr. --

16 A. Until last year.

17 Q. Thank you, Mr. Wilkes.

18 A. It's not Walt?

19 Q. Isn't that what I said?

20 A. I was just teasing.

21 MS. LUNDVALL: Thank you, sir.

22 THE WITNESS: Thank you.

23 MR. J.M. JIMMERSON: For the first time, we
24 are now able to say we're finished with one witness,
25 your Honor.

1 THE COURT: All right.

2 THE WITNESS: Hallelujah.

3 THE COURT: Thank you, Mr. Wilkes, very much,
4 we appreciate your honesty. Thank you.

5 You're a milestone, Mr. Wilkes.

6 THE WITNESS: Yes. Do I get some type of
7 reward or something?

8 THE COURT: No -- yes. You don't have to get
9 back on the stand. That's your reward. You won't have
10 to get back on there.

11 THE WITNESS: That is reward in itself.

12 THE COURT: Many people think of it that way.

13 MR. J.M. JIMMERSON: Your Honor, just a
14 matter of housekeeping, I don't think it's gonna be
15 relevant today, there were a couple of alterations,
16 just because there was omissions of highlighted
17 documents, and I want to give the Court today what
18 would be just a supplement to Exhibit 31. It's some of
19 the same pages.

20 THE COURT: 31.

21 This one?

22 MR. J.M. JIMMERSON: Yes.

23 THE COURT: You want to replace it?

24 MR. J.M. JIMMERSON: If you would like to, I
25 would ask that, because you already have 31, that we

1 just add to it and you put it in the front.

2 THE COURT: I will put it in the front.

3 All of these, or are those three copies?

4 MR. J.M. JIMMERSON: Those are three copies
5 of the same thing. It's everything you received
6 yesterday or Monday was the balance.

7 MS. LUNDVALL: Why don't you give us a copy
8 of what you've given to the clerk.

9 THE COURT: Here's an extra one right here,
10 because I will put one --

11 MS. LUNDVALL: Thank you, your Honor.

12 THE COURT: And if there's -- I'm gonna keep
13 it clipped here, or if there's a question later,
14 Ms. Lundvall, we can address it, all right?

15 MS. LUNDVALL: Thank you, your Honor.

16 THE COURT: But I will put it at 31.

17 THE CLERK: Do you want to mark it 31A?

18 THE COURT: Do you want to mark it separately
19 as 31A?

20 MR. J.M. JIMMERSON: Let's call it 31A. That
21 works.

22 THE COURT: Then if there's an issue, we'll
23 know what we're speaking of.

24 MR. J.M. JIMMERSON: Exactly your, Honor.

25 THE COURT: Good job, let's do it that way.

1 Are you asking for it to be admitted? Has 31
2 been admitted?

3 MR. J.M. JIMMERSON: It has not. There needs
4 to be some foundation to it before we admit it, unless
5 there is a stipulation to it.

6 THE COURT: That's fine.

7 Just so the clerk is straight, since we have
8 people helping us, because my clerk got sick, I don't
9 know what happened.

10 I can't imagine why she got sick.

11 Okay, there we go.

12 MR. J.M. JIMMERSON: We are back with
13 Mr. Jim Wolfram.

14 THE COURT: Okay, I brought his notes, okay.

15 My notes left off with Exhibit 17. I don't
16 know if we're going back there or not.

17 I'm ready, okay.

18 Welcome back, Mr. Wolfram.

19 THE WITNESS: Thank you.

20 THE COURT: Does he need to be sworn in,
21 since it's been a few days.

22 THE CLERK: It's your call, your Honor.

23 THE COURT: Just remember you were sworn in.
24 You're still under the same oath to tell the truth.

25 THE WITNESS: Yes.

1 THE COURT: You know what, we have a new
2 clerk. Why don't we do it from the beginning.

3 THE CLERK: Please raise your right hand.

4 JAMES F. WOLFRAM,
5 having been duly sworn to tell the truth, the whole
6 truth, and nothing but the truth, was examined and
7 testified as follows:

8 THE CLERK: Please state and spell your first
9 and last name for the record?

10 THE WITNESS: James F. Wolfram, J-a-m-e-s, F,
11 W-o-l-f-r-a-m.

12 THE COURT: Thank you, Mr. Wolfram.

13 THE WITNESS: You're welcome.

14 MR. J.M. JIMMERSON: Actually, your Honor, my
15 notes suggested we ended at Exhibit 14, the letter of
16 April 6, 2009.

17 THE COURT: You're right. I had 17 -- I have
18 14 down the page, you're right.

19 MR. J.M. JIMMERSON: I just wanted to make
20 sure.

21 THE COURT: You're right. I looked at the
22 top. I didn't see I had another exhibit.

23 And Defendant'S GG, same as Exhibit 14,
24 you're right. Thank you for the correction. If I
25 would have looked down, I would have seen it.

1 DIRECT EXAMINATION (RESUMED)

2 BY MR. J.M. JIMMERSON:

3 Q. Moving right along.

4 A. Yes, all right.

5 Q. Did there come a point in time where you
6 requested the assistance of an attorney to receive the
7 information from or the documents you were Pardee?

8 MS. LUNDVALL: Your Honor, that's a leading
9 question.

10 THE COURT: It's foundation. We know that's
11 an issue in the case. I'm gonna overrule it.

12 Did there come a time -- you could say no,
13 but I think the answer is yes.

14 Go ahead.

15 BY MR. J.M. JIMMERSON:

16 Q. Did there come a time that you sought an
17 attorney's services to request the documents from
18 Pardee that you had been seeking earlier?

19 A. Yes, there was.

20 Q. Okay. Did you ever instruct that attorney to
21 request those documents through formal letters?

22 A. Yes, I did.

23 MS. LUNDVALL: Your Honor, at this point in
24 time --

25 THE COURT: That is leading.

1 MS. LUNDVALL: But if this question is being
2 asked, then that opens up the door to a waiver of
3 attorney-client privilege and I --

4 THE COURT: Let's talk about that, because I
5 don't want to --

6 MS. LUNDVALL: And I will take the position
7 that if, in fact, this witness gives an answer to that
8 question, that that's a waiver of the attorney-client
9 privilege.

10 MR. J.M. JIMMERSON: Your Honor?

11 THE COURT: The question was: Did there come
12 a time when you, Mr. Wolfram, instructed your attorneys
13 to get the documents?

14 MR. J.M. JIMMERSON: Exactly.

15 THE COURT: Okay. And you're saying that was
16 a discussion between them, and you're saying that you
17 feel if he answers, that he's waiving the entire
18 privilege?

19 MS. LUNDVALL: Yep. This is a communication
20 from a client to an attorney for the provision of legal
21 services.

22 MR. J.M. JIMMERSON: That's not the test, by
23 the way. The test requires confidentiality. If you
24 read the statute, NRS 49, and the rules of evidence, it
25 has to be a confidential communication. That's why,

1 for example, you've ruled on other cases subject
2 matters and times and dates between lawyers and clients
3 can be reviewed, but the subject matter --

4 THE COURT: But the substance --

5 MR. J.J. JIMMERSON: That's right.

6 THE COURT: I do agree, because I have ruled
7 in other cases, he is right, because as an old person,
8 I felt like everything was confidential. It is not, as
9 far as time, the test is the substance.

10 MR. J.J. JIMMERSON: Jim, just avoid it.

11 THE COURT: I was gonna say can't we just
12 avoid it, because we know it all happened, and she
13 could have an argument that might be substance, because
14 what he told them to do, so I would like to stay out of
15 there.

16 MR. J.M. JIMMERSON: I will withdraw the
17 question.

18 MS. LUNDVALL: And I had waited until -- I
19 could have waited until after the answer had been given
20 and made my objection, but I tried to highlight what
21 the reason was that I had articulated.

22 MR. J.M. JIMMERSON: I'm gonna avoid topic
23 entirely and move straight to an exhibit which has been
24 admitted into evidence concerning the communication
25 between Mr. Jimmerson and Mr. Wolfram.

1 THE COURT: Perfect. I like it.

2 BY MR. J.M. JIMMERSON:

3 Q. Mr. Wolfram, can you please flip to
4 Exhibit 24, please in the Plaintiffs' binder. I think
5 it's Binder Number 2.

6 This has been admitted into evidence, your
7 Honor, just for the purpose of the affect it had on the
8 listener.

9 THE COURT: Right. I wrote it down, okay.

10 BY MR. J.M. JIMMERSON:

11 Q. Did Mr. Jimmerson, your attorney, looking at
12 Exhibit 24, ever request similar documents or the same
13 documents that you'd been requesting from Pardee?

14 A. Yes.

15 Q. Okay.

16 A. If I could, I would like to elaborate on
17 that.

18 MS. LUNDVALL: There's no question pending.

19 THE COURT: So I understand, what's the
20 information asked for in Exhibit 24? The question was
21 the same type of information was later asked by
22 Mr. Jimmerson. That's how I understood it. I want to
23 make sure, and you want to elaborate your answer.

24 THE WITNESS: I would like to elaborate a
25 little what was on my mind since we started this trial.

1 BY MR. J.M. JIMMERSON:

2 Q. What would you like to say?

3 THE COURT: Is it something to do with this
4 topic?

5 THE WITNESS: Yes, it does. I feel it does.

6 THE COURT: Okay.

7 THE WITNESS: Your Honor, I've been sitting
8 in this trial listening to attorneys throw things back
9 and forth, you know, all of that. This trial has never
10 been about money.

11 THE COURT: Okay. I am, I am really
12 concerned. I understand your frustration.

13 BY MR. J.M. JIMMERSON:

14 Q. Jim, I'm gonna ask you a question and give
15 you the opportunity to answer that question.

16 A. I have to say it.

17 THE COURT: It just concerns me. I am not
18 trying to cut you off, I just want to make sure, you've
19 heard a lot and talked to your attorneys, as you
20 should, but I want to make sure we don't do any kind of
21 crossing confidentiality.

22 MR. J.J. JIMMERSON: We agree.

23 THE COURT: And, you know, it's very hard for
24 a client and lay witness, when you recall stuff, you
25 don't remember where you heard it and so --

1 THE WITNESS: Okay.

2 THE COURT: -- there may be an issue from the
3 substance where Ms. Lundvall and the Judge won't know
4 where it came from. I understand your frustration, I
5 understand everybody's frustration, okay?

6 THE WITNESS: Okay.

7 THE COURT: If that's what you want to tell
8 me, I certainly noticed both sides' frustration, and as
9 Mr. Whittemore said, this is very complicated.

10 THE WITNESS: Right.

11 THE COURT: I would tell you I appreciate
12 that too, and I'm working very hard --

13 THE WITNESS: I know you are.

14 THE COURT: -- to get all the facts, so
15 please don't be frustrated. It's more the process,
16 okay?

17 THE WITNESS: I'm good.

18 THE COURT: And your attorneys are doing a
19 very good job of getting your facts out, which is what
20 they're here to do.

21 THE WITNESS: All right.

22 THE COURT: Does that help?

23 THE WITNESS: That does help.

24 THE COURT: Let's ask a question
25 Mr. Jimmerson.

1 BY MR. J.M. JIMMERSON:

2 Q. Mr. Wolfram, were you cc'd on this letter
3 dated April 23, 2009?

4 A. Yes.

5 Q. Okay. Did you receive a copy of this letter
6 contemporaneous with April 23, 2009?

7 A. Yes.

8 Q. Did you read it contemporaneous with
9 April 23, 2009?

10 A. Yes, I did.

11 Q. I would like to talk to you about a couple
12 specific points here.

13 Looking at the first page, the third full
14 paragraph, it says, I also would like to ask for you to
15 provide all information that you have to demonstrate,
16 as your client alleges, that there's no entitlement by
17 Award Realty or Mr. Wolfram to any commission and there
18 simply was a true-up, as you use the term, to have
19 property transferred from Seller Coyote Springs, Inc.
20 to Pardee Homes, Inc., as a result of Pardee having
21 prepaid monies to CSI for which they have not received
22 acreage at which was trued-up through these two sales
23 that went through escrow. You can appreciate
24 Mr. Wolfram's and Mr. Wilkes' skepticism.

25 Do you see that?

1 A. I do.

2 Q. Did you receive a response to this request?

3 A. Yes.

4 Q. Okay. Please look at Page 2, the first full
5 paragraph beginning with, Information needed.

6 Do you see that?

7 A. Yes.

8 Q. The information needed by Mr. Wolfram and to
9 Mr. Wilkes to track the land purchases by Pardee Homes
10 to CSI includes, but is not limited to the following:
11 The name of the seller, the buyer, the parcel numbers,
12 amount of acres, purchase price, the commission payment
13 schedule and amount, title company contact information,
14 escrow numbers, copy of the close of escrow documents
15 to see the terms and document date, document number and
16 page number in order to pay commission.

17 Would you please forward all of this
18 information for every purchase by Pardee Homes of
19 property from CSI from the time that Pardee purchased
20 its initial real estate from Coyote Spring, Inc. As
21 parts of this request, respectfully, is the request
22 that this information provided relative to Pardee,
23 Inc., Pardee Homes, Inc.'s operations include the
24 91 acres in approximately January 2008 and the
25 776 acres that Pardee Homes, Inc. purchased from CSI in

1 August of 2008 --

2 MR. J.J. JIMMERSON: Slow down, please.

3 BY MR. J.M. JIMMERSON:

4 Q. -- about which we spoke during our telephone
5 conversation.

6 Did you expect a response to this request?

7 A. Most certainly to that request. That's my
8 whole case.

9 Q. When it refers here to 91 acres in
10 approximately January 2008, do you know what that's a
11 reference to?

12 A. Yes. That's a reference to both properties
13 or just the 91?

14 Q. We'll get to the 776.

15 A. Okay. I didn't know they purchased that
16 91 acres, and Walt had a friend by the name of
17 Phil Zobrist, and Phil Zobrist called Walt and said, Do
18 you know that Pardee is buying more land from Coyote
19 Springs? He said, No. He said, You better check.
20 They are out there moving around, and they're buying
21 some land. That's what he told us.

22 That's when we got going trying to figure out
23 what land was being bought, but we don't have any
24 information. If you called on it, you couldn't get any
25 information. It's easy to say we bought 91 acres of

1 land, and, and we got nothing. I tried to find out
2 through the documents, and the truth of the matter is,
3 there was some more acreage.

4 Maybe I shouldn't go there. You need to ask
5 me a question on that. I was talking about the land
6 outside of Parcel 1.

7 Q. Okay.

8 A. Is it okay to talk?

9 Q. I'll ask you another question.

10 Did there ever come a time that you went to
11 see what land was being purchased by Pardee?

12 A. Absolutely.

13 Q. And how did you do that?

14 A. Well, I didn't go there first. First I
15 called. I called over several times to Jon, and Jon
16 would be not give me any information at all. And I
17 told him that I knew that they were buying land, I'd
18 like to know where it was. I needed the parcel
19 numbers. I wanted to see what it was, because an extra
20 purchase, well, you can understand what an extra
21 purchase would be to me.

22 Since they didn't give me any information, I
23 started trying to seek it myself. And this is not
24 easy. I asked for a map, Just show me a map, locate
25 it, where it is. I didn't get the map. So what I did

1 was I was try to formulate a map of my own. I -- and
2 this was not an easy process, because Coyote Springs is
3 all brand new, all new parcel numbers, the big
4 sections, so I figured it would be easy.

5 I went down to planning and zoning, and I
6 asked them to pull up the land that Pardee owns. We
7 stayed down there until I got embarrassed and had to
8 get out of line. They tried to pull up information on
9 what Pardee owned, but there were no corresponding
10 maps, they just didn't have it.

11 So the planner tells me, he says, Okay, I
12 don't have it at the front desk here, but I have a
13 master planner in the back, so I thought, Oh,
14 wonderful. So I go back to the master planner, the
15 master planner goes through his computer and all that
16 stuff. He has no maps, he's got nothing, and I said, I
17 know they are purchasing land, I know it's been
18 purchased and has been recorded by now, and he said,
19 No, we have nothing, so now I'm really frustrated.

20 I go home. I go back down. I will shorten
21 the story. I go back down to the Planning Commission
22 the next day go back to the master planner. And I'm
23 trying to figure out a way to come up with a map.

24 So finally, when they said, No, they said, We
25 have a development office around the corner right here

1 where Coyote Springs puts a bunch of information, so
2 they took me around to the development office. I went
3 in the development office. They brought out a
4 gentleman. We sat down at a desk in there, and I tried
5 get what they had bought from this gentleman. This
6 gentleman said, You know what, Coyote Springs is so new
7 and things are happening so fast up there, and they
8 bring so much stuff to us, he said, We just accept it.
9 We don't know what's going on up there. He said, We
10 can't help you at all, so I left there.

11 MS. LUNDVALL: Your Honor, at this point in
12 time, I'm assuming that the Court is not accepting this
13 hearsay information for the truth of the matter being
14 asserted?

15 THE COURT: I'm just looking at it for what
16 efforts he made. I'm very aware of the issues.

17 MS. LUNDVALL: Thank you, your Honor.

18 THE COURT: I'm looking at it that way.

19 MS. LUNDVALL: I'm trying be as open as I
20 can to give him latitude, but there are evidentiary
21 parameters.

22 THE WITNESS: I'm just telling the story.
23 This is the way it happened.

24 So then I go up to the recorder's office.

25 THE COURT: Can you gave me a time frame of

1 this? Did we ever establish a time frame?

2 BY MR. J.M. JIMMERSON:

3 Q. When did you proceed to go to the planning
4 and zoning and development office that you just, you
5 just discussed?

6 A. I wish I had Phil Zobrist's letter here. I
7 don't know exactly when it was.

8 THE COURT: Do you have an approximate, a
9 year?

10 THE WITNESS: It was somewhere -- let me see.
11 I think the 91 acres, if I remember right, don't quote
12 me completely on it, but it will be close to August of
13 2009.

14 BY MR. J.M. JIMMERSON:

15 Q. I believe the letter is dated April 23, 2009.

16 A. April?

17 THE COURT: Yes, this letter that he got.

18 BY MR. J.M. JIMMERSON:

19 Q. That references the 91 acres. Is it possible
20 it was August 2008?

21 A. Yeah. You know, I need to take a look at
22 some of the letters, all those dates back there.

23 THE COURT: But it does help if I know the
24 time frame a little bit.

25 We know the 91 acres was before that, because

1 it says, In approximately January.

2 THE WITNESS: Well, it wasn't too far, I
3 think, along from when we went to Mr. Jimmerson,
4 because that would be a general time frame, because
5 that was when Phil Zobrist told us that they were
6 buying land.

7 THE COURT: That was after?

8 THE WITNESS: I think it was in August, but
9 maybe I'm wrong. They took down more than one parcel
10 very close to each other right there.

11 THE COURT: And what year did you go to -- I
12 know he worked with you on the negotiations, and then
13 you went back to him.

14 MR. J.J. JIMMERSON: A year ago.

15 THE COURT: I figured that out.

16 Do you know when you went back to the
17 Jimmerson Hansen firm when you thought, We need some
18 help on this? Can you give me an approximate of that?

19 THE WITNESS: You mean like a specific date?

20 THE COURT: Even a month, a year, just to
21 give us -- it just helps if I have some time frames.

22 THE WITNESS: It was, it was several months.
23 If I have a time frame, before the November letter
24 where Jon Lash finally sent me a map.

25 THE COURT: And that was November 2009?

1 THE WITNESS: Yes

2 BY MR. J.M. JIMMERSON:

3 Q. Would it have been before April 23, 2009?

4 A. Yes.

5 Q. How many months or weeks or how much time
6 before April 23, 2009, did you discover the 91 acres
7 referenced in here?

8 THE WITNESS: Not very long before that.

9 I don't know the exact date, your Honor.

10 THE COURT: I am not pinning you.

11 THE WITNESS: I knew there was 91 acres
12 there, that's what I'm telling you, and I actually knew
13 about the other piece also.

14 THE COURT: If you give me prior to
15 April 23rd, 2009, that helps. I'm not trying to pin
16 you down on a date.

17 THE WITNESS: It's been a long time.

18 THE COURT: I understand.

19 THE WITNESS: But at any rate, I went up to
20 the recorder's office. God love that lady up there,
21 she finally helped me. She went back and spent a whole
22 morning with me. She couldn't pull up all the
23 information. I was trying to formulate a map to see
24 what they'd bought. She had a lot of information. I
25 could get very close, but her maps weren't complete.

1 So I even went to her to find out how much
2 acreage was down in -- they tried to add acreage all
3 the way up and going east. They gave me all the
4 information of all those individual parcels down in the
5 gold area, down in the 512 area. It took her a whole
6 morning to do that. She said to come back the next
7 day, and God love her, she worked with me the next day.

8 I got a part of a map that looked like --
9 now, I knew there was property, but I didn't know what
10 it was, and I couldn't put it on a map, because she
11 didn't really have maps. She said it was too early,
12 they didn't have maps.

13 So then she said, You know what, if I could
14 get the guy who draws the maps back there to come out
15 and talk to you, or I could set you up and you could
16 talk to him, he may have what you need. This guy came
17 out, and he said, I probably have what you need back
18 there, but I don't know, it's gonna take some time.

19 I went back there with him. He was really
20 nice. He had what I needed. He had a map that I could
21 formulate. The only problem was they were in gigantic
22 size. And that guy really worked with me, he kept
23 reducing sizes down, reducing sizes down, until I had a
24 picture of a map, which I'm sure they will show you.

25 And then I finally had what Pardee was buying

1 over and above, you know, when they turned east. I
2 finally had the 91 acres, and I also had the land that
3 was outside Parcel 1.

4 BY MR. J.M. JIMMERSON:

5 Q. Mr. Wolfram, I want to stay on this document,
6 but I do want to make one reference, your Honor, to
7 Exhibit 23, so if you could please flip quickly to
8 Exhibit 23, and if you look at Page 2 of this exhibit?

9 A. Yes.

10 Q. Is this the map you are referring to when
11 you --

12 A. Yeah, that's correct. That's the map I was
13 working on. And I, I worked long before the recorder's
14 office. I mean it sounds like what I'm doing right
15 here, it sounds like it's just taken a few days.

16 And the only reason, and the only reason is
17 because I asked for maps to refer to, just to show me,
18 you know, what was going on, and nobody would give me
19 the maps.

20 That's where I've been breached. This
21 information, I have never ever been able to get
22 information. I went for years before -- a map will
23 come up here in a little bit, without them sending me,
24 to myself, any information I asked for, none.

25 Q. Mr. Wolfram, I would like you to flip to the

1 next page of this, what I will call the legend,
2 explaining --

3 A. Well, mine is a little bit blurry. I got a
4 better one if the Judge can't read this.

5 THE COURT: Are we going back?

6 MR. J.M. JIMMERSON: No, no. Flip the page
7 from the map to the legend behind the map.

8 THE COURT: Which one though?

9 MR. J.M. JIMMERSON: 23.

10 THE COURT: I'm missing, you know, what is
11 this?

12 MR. J.M. JIMMERSON: PLTF 0515 and 516.
13 That's the color version that we produced.

14 THE COURT: I have nothing behind 23.

15 THE WITNESS: Your Honor, I have my copy.

16 THE COURT: It might be because I was pulling
17 maps out.

18 MR. J.M. JIMMERSON: It's the same Bates I
19 gave you in opening of the May deposition, so we
20 produced it twice.

21 MS. LUNDVALL: What you produced to us was a
22 trial exhibit that has PH 144, is that what you're on?

23 THE COURT: It's attached to the letter of
24 Exhibit 23? Oh, I thought it was this one. That's it.
25 Now I remember it. It's this one. I have it as 24.

1 what do you have it as?

2 THE WITNESS: I have it as 23.

3 THE COURT: What did I do? I've got the
4 April 23rd, 2009 letter. That's exhibit --

5 MR. J.M. JIMMERSON: That's 24, your Honor.
6 The letter of April 23 2009.

7 THE COURT: But did I put a map back in the
8 wrong place?

9 MR. J.M. JIMMERSON: Probably.

10 THE COURT: I probably did. I pulled it out,
11 okay.

12 THE WITNESS: Don't wrinkle that map.

13 THE COURT: I have it.

14 THE WITNESS: That map took a lot of work.

15 THE COURT: No, I -- that's why I keep taking
16 it in and out. At least I straightened my stuff out.

17 THE WITNESS: See if it's readable on yours.

18 THE COURT: It is difficult to read.

19 MR. J.M. JIMMERSON: Your Honor, we have
20 copies of the original original that we could
21 substitute if the Court would allow such a
22 substitution.

23 THE COURT: Okay.

24 THE WITNESS: It would -- because she can't
25 read that one.

1 MR. J.M. JIMMERSON: But it's the same
2 document with the same legend behind it?

3 THE COURT: It's this legend.

4 MR. J.M. JIMMERSON: Yes, it's really tough
5 to see, I know.

6 THE COURT: Okay, perfect.

7 Oh, this is even better too.

8 THE CLERK: Do you want that substituted in?

9 THE COURT: Can we, the Court, substitute
10 that in?

11 MR. J.M. JIMMERSON: Absolutely, if you need
12 a third copy.

13 THE COURT: Well, she should put it in the
14 original exhibit book, the clerk.

15 That goes behind the letter.

16 23, correct?

17 MR. J.M. JIMMERSON: Yes.

18 THE COURT: I took it out too fast.

19 THE WITNESS: If you want to read mine, I
20 have a clearer one too.

21 MR. J.M. JIMMERSON: I have an extra copy.

22 There you go.

23 THE COURT: I'm just gonna say that one so I
24 don't mess it up.

25 MR. J.J. JIMMERSON: Madam Clerk, if you want

1 to know, we're substituting for Bates Number 10515 and
2 10516, for purposes of the record.

3 THE COURT: Yes, because we don't have Bates
4 stamp numbers on here. Hold on, if you don't mind.
5 I'm gonna put the Bates stamp.

6 MR. J.M. JIMMERSON: Okay.

7 THE COURT: Hold on.

8 10515. Thank you, Mr. Jimmerson. That will
9 be helpful.

10 MR. J.J. JIMMERSON: That's attached to the
11 letter of April 21, 2010, which is Plaintiffs' 221.

12 MS. LUNDVALL: And this is now where I've got
13 some questions, but I'm gonna try to work these out at
14 the break with counsel.

15 THE COURT: Okay.

16 MS. LUNDVALL: Because the Bates numbers that
17 they gave us were PH 142, 143, and 144, Judge. It's
18 been copied so many times. I'm gonna try to discern if
19 there's any difference, but I'm not going to agree this
20 can be substituted until --

21 THE COURT: I'll keep it here. I will put it
22 in here. If it turns out of it's not identical, you
23 can give me the right one.

24 Right now we're gonna go with this, at least,
25 unless Mr. Wolfram testified --

1 THE CLERK: Judge, do you want to do this as
2 23A?

3 THE COURT: Do you want to do it as 23A?

4 MR. J.M. JIMMERSON: We can do it as 23A.
5 That works.

6 THE COURT: And if, for whatever purpose you
7 want to change, you know what, I'm gonna leave this one
8 in here. If there's an issue, let's just do that.

9 THE CLERK: And at this time, it's not
10 admitted, correct, your Honor?

11 THE COURT: Is 23 admitted?

12 MR. J.M. JIMMERSON: 23 is admitted.

13 THE CLERK: This one we're gonna hold off?

14 THE COURT: Could we admit it? If it turns
15 out it's not the same, Ms. Lundvall, we'll take it out.

16 MS. LUNDVALL: Thank you, your Honor.

17 THE COURT: Just for purposes of now, if it
18 becomes an issue, and it's not what it's purported to
19 be, then we'll take it out of evidence, okay?

20 MS. LUNDVALL: Thank you.

21 THE COURT: Let's do it that way, okay, and I
22 understand. Okay, perfect.

23 THE WITNESS: I would like to finish my
24 answer, if that's all right?

25 THE COURT: What was the question?

1 MS. LUNDVALL: I don't believe there was a
2 question.

3 THE COURT: We were talking about the nice
4 people that helped you, all right.

5 THE WITNESS: I was wanting to say before
6 they got that, I was unable to formulate a map.

7 THE COURT: Got ya.

8 THE WITNESS: And this is, to me, the basis
9 for my whole court case here. I don't, I don't care
10 about money and all that stuff. My basis is I've been
11 breached on information. I should not have had to go
12 do this particular map. There are other things too,
13 but my family could never, ever have tried to find out
14 what's going on and do a map like this, I mean there's
15 not a chance.

16 THE COURT: So you were looking for a
17 baseline basically?

18 THE WITNESS: On all information. Judge,
19 nobody gave me any information, and then on -- what
20 really surprised me, we'll get to it here, in November,
21 after I got an attorney and they knew that I was
22 working on this map and that I, I thought I had a map,
23 Mr. Lash sent over a map of his own, and you know what?
24 It's very, very similar --

25 MS. LUNDVALL: Your Honor?

1 THE WITNESS: -- to this map.

2 You know what, it could have been avoided if
3 he would have just sent that map over to me. You'll
4 see when you see the other map.

5 THE COURT: Mr. Lash actually testified about
6 it.

7 THE WITNESS: Yeah, I mean it would have been
8 simple if someone would have just sent that over. I
9 just a wanted to get that in there. I think I've been
10 breached on not just this, not getting any information.

11 BY MR. J.M. JIMMERSON:

12 Q. Mr. Wolfram, looking at the second page of
13 this 23A with the sales?

14 A. Yes.

15 Q. Okay. Does it make any reference here to a
16 parcel that is 91 acres?

17 A. Yes, it does.

18 Q. Okay. And can you tell us which parcel that
19 is?

20 A. That would be Number 8, orange.

21 Q. It's orange?

22 A. Orange. I have a color code, and it's Number
23 8, orange.

24 Q. Is it the one, looking back to the map, the
25 one kind of in the middle below the green, northeast of

1 the pink?

2 A. Yes. It says, 91 acres, on my map

3 Q. Okay.

4 A. And gives the parcel number.

5 Q. Would it be fair to assume, based upon this,
6 that you had calculated the 91 acres and created the
7 map prior to the April 23, 2009 letter sent by
8 Mr. Jimmerson?

9 A. Yes.

10 MS. LUNDVALL: Anytime an attorney starts
11 with, Is it fair to assume, it's a leading question
12 trying to suggest an answer to a witness.

13 THE COURT: Just rephrase it, if you don't
14 mind.

15 BY MR. J.M. JIMMERSON:

16 Q. Look at this map. Do you know whether you
17 had discovered the 91 acre takedown before or after the
18 April 23, 2009 letter?

19 A. I was working on all of this stuff before I
20 got to Mr. Jimmerson.

21 Q. Okay.

22 A. I needed Mr. Jimmerson's help. I couldn't
23 get anything.

24 Q. Okay. Now, looking back -- I actually want
25 to make one more reference before I move back to the

1 letter.

2 Looking at Number 2, do you see a reference
3 to 776 acres?

4 A. Yes, I do.

5 Q. And what is that property?

6 A. That's, it's in the red on ours, that's
7 Purchase Property within the boundaries of Parcel 1.

8 Q. Okay.

9 A. It doesn't show the Parcel 1 boundaries on
10 here, your Honor, it just shows the road, but actually,
11 it could -- well, to be honest with you, it could well
12 be that the top portion, top right-hand corner of that,
13 might be out of Parcel 1.

14 Q. You would need to refer to one of the parcel
15 maps to determine whether that's true?

16 A. I, I would. I've always thought that it was
17 probably out, and if it's not, I apologize, your Honor,
18 but, you know, it just looked like that whenever I was
19 working on it, but the majority of it is all within
20 Parcel 1.

21 Q. Okay. Mr. Wolfram, now, looking back to the
22 Exhibit 24, the letter referencing the 91 acres and the
23 776 acres.

24 Are you there?

25 A. Yes. Let me see, you're talking about the

1 bottom of the paragraph?

2 Q. Yes.

3 A. Okay. Now, I'm like, I'm like a little bit
4 like Mr. Whittemore here, I didn't exactly know what
5 was going on down there on that letter, and I was
6 searching for something, and I, at that particular
7 time, I wasn't exactly certain where the land was. I
8 was thinking maybe I had been paid or I hadn't been
9 paid for property, and that was when I was working with
10 Mr. Jimmerson, because I was uncertain about the 776
11 acres and the land, also the land that was outside of
12 Parcel 1.

13 Q. Okay. I'd like to now refer you to
14 Exhibit 19.

15 Are you at Exhibit 19, Mr. Wolfram?

16 A. I'm sorry?

17 MR. J.M. JIMMERSON: Again, this has been
18 entered into evidence. It's just for the purposes of
19 the affect it had on the listener, your Honor.

20 THE COURT: Right.

21 BY MR. J.M. JIMMERSON:

22 Q. This is the letter of May 19, 2009, from
23 Mr. Jimmerson, your attorney, to Mr. Stringer of
24 Pardee.

25 Do you see that?

1 A. Yes, I do.

2 Q. Okay. Do you know if Mr. Stringer had
3 responded to Mr. Jimmerson's letter of April 23, 2009,
4 prior to May 19?

5 A. No, he did not.

6 Q. Okay. When reading this letter, did you
7 expect Pardee to respond with maps or additional
8 information beyond what you had received to date?

9 A. Would you give me just a second to read over
10 this?

11 Q. Please take your time.

12 A. I need to make sure I have the right letter.

13 Q. Sure.

14 A. Okay. Would you please ask the question
15 again?

16 BY MR. J.M. JIMMERSON:

17 Q. Yes, Mr. Wolfram. After reading the letter
18 of April 23, 2009, and now this letter of May 19, 2009,
19 were you expecting Pardee to produce maps or other
20 information, designation information perhaps, as you
21 had requested and as Mr. Jimmerson requested?

22 A. Yes, I would expect that.

23 And this is what, your Honor, this is what
24 the frustration is.

25 MS. LUNDVALL: Your Honor, now we're going

1 beyond the scope of the question.

2 MR. J.J. JIMMERSON: Just ask him why.

3 BY MR. J.M. JIMMERSON:

4 Q. Why?

5 A. Why? This is, this is what the frustration
6 is. Walt and I have worked with developers and home
7 builders the whole time we've been in real estate. I
8 know that they have those maps over there, I know they
9 have the information over there. They can't do a
10 project like this without having maps with designations
11 on it, without having general maps like the one I had
12 to work up here. They have bits of information over
13 there that I had asked Mr. Jimmerson to get. It
14 wouldn't take a title company ten minutes to come up
15 with that information. And when I know they have it
16 and they won't send it to me, and they make me dig
17 through tons and tons of stuff, it's frustrating.
18 That's a breach.

19 It's supposed to be provided to me. I mean
20 if I sold you a piece of land, I would give you a
21 parcel number, a map. I wouldn't say to go straight
22 and just walk 200 feet west and then another 15 and
23 your property is right around there somewhere. You've
24 got to have some kind of a designation on where it is.
25 It's frustrating. I know they've got it, and they

1 won't give to me.

2 Q. Mr. Wolfram, have you seen the maps attached
3 to Amendments 1 through 8 to the Amended and Restated
4 Option Agreement?

5 A. Amendment what?

6 Q. Amendments 1 through 8 to the Amended and
7 Restated Option Agreement, have you seen those maps?

8 A. I have seen the maps. Well, to be honest, in
9 some of my maps, it says something, and there is no
10 exhibit in there.

11 Q. I've referred to the Amendments 1 through 8
12 that's been stipulated you didn't receive?

13 A. Yes.

14 Q. Have you seen the maps attached to those
15 amendments?

16 A. Yes. Whatever maps are back there, I have
17 seen.

18 Q. Are those the types of maps you are telling
19 the Court are easy to get?

20 A. Absolutely, especially the designated maps.
21 It tells us exactly on the ground, it shows you, you
22 can take an overall map and put something together with
23 the properties that are being taken down and the
24 designations, you can see.

25 I'm not looking for money from multifamily,

1 not looking for money for commercial, all I want is
2 something that I can see for production residential,
3 however you say that big, long word.

4 THE COURT: Single-family production
5 residential.

6 THE WITNESS: That's all I want.

7 BY MR. J.M. JIMMERSON:

8 Q. Mr. Wolfram, will you please flip to
9 Exhibit 21?

10 A. Yes.

11 Am I speaking loud enough for you?

12 THE COURT REPORTER: Yes, you're good.

13 BY MR. J.M. JIMMERSON:

14 Q. Mr. Wolfram, this is a letter from
15 Charles Curtis to Mr. Jimmerson dated July 10, 2009.

16 Do you see that?

17 A. Yes.

18 Q. Do you see that it references the letters of
19 April 23, 2009, and May 19, 2009, that we just
20 discussed?

21 A. Yes.

22 Q. Okay. In this letter, do you see any
23 information referencing the location of the property at
24 Coyote Springs?

25 A. No, I do not, but I would like to just, I'd

1 like to read the letter, if it's okay?

2 Q. Please take your time.

3 THE COURT: You certainly want to be, if he
4 focuses you on it, you want to know what's in there so
5 you can give a correct answer to the best of your
6 ability.

7 MR. J.J. JIMMERSON: For the Court's notes,
8 this exhibit is also Defendant's Exhibit HH.

9 THE COURT: Okay. Thank you. I have been
10 trying to keep track of that so I don't duplicate my
11 own efforts.

12 THE WITNESS: Yeah, I would like to speak to
13 that.

14 MS. LUNDVALL: The question was whether or
15 not there's any information regarding the location of
16 the property.

17 THE WITNESS: No, it doesn't locate the
18 property.

19 BY MR. J.M. JIMMERSON:

20 Q. Okay. Does it give you initial information
21 concerning the designation of the property?

22 A. Absolutely not. That's the problem.

23 Q. Does it explain to you the location of the
24 property relative to Parcel 1 on Map 9857?

25 A. No.

1 Q. Okay. What is this letter explaining or
2 stating to Mr. Jimmerson?

3 A. Basically, I'm not gonna give anything you
4 asked for in your letter, and down at the bottom, it
5 says, As Pardee finds that all commissions payable
6 under the 2004 Letter Agreement have already been paid,
7 we believe this matter has been fully resolved. If,
8 however, your clients have a specific claim, we invite
9 you to make it on their behalf.

10 Now, I need to -- am I allowed to elaborate
11 on that?

12 THE COURT: He'll ask you the questions,
13 believe me.

14 THE WITNESS: Okay.

15 BY MR. J.M. JIMMERSON:

16 Q. Mr. Wolfram?

17 A. I'm sorry, your Honor.

18 THE COURT: No, please, I understand your
19 frustration. Every litigant has it.

20 THE WITNESS: Okay.

21 THE COURT: But your counsel knows how to
22 elicit the information.

23 THE WITNESS: All right.

24 THE COURT: Please just trust him. It will
25 make the process so much easier.

1 BY MR. J.M. JIMMERSON:

2 Q. Mr. Wolfram, does this letter reference the
3 information you're requesting, the maps, the parcel
4 numbers, the information that we just discussed?

5 A. No, it does not.

6 And let me explain something. This letter
7 goes just a little bit further. I had a, I had a
8 conversation --

9 MS. LUNDVALL: Your Honor, at this point in
10 time, this is now beyond the scope of the question.

11 THE COURT: Yes.

12 THE WITNESS: It is?

13 THE COURT: Yes, it is.

14 THE WITNESS: I don't know how to answer it.

15 THE COURT: You answered it very well.

16 BY MR. J.M. JIMMERSON:

17 Q. What conversation are you referring to? Did
18 you have a conversation with Mr. Curtis?

19 A. I can't tell you how to ask the question, but
20 I have had a conversation with Mr. Curtis.

21 Q. What did Mr. Curtis tell you?

22 A. I had a conversation with Mr. Jimmerson, I
23 had a conversation with Mr. Lash, I had several
24 conversations, and what I'm trying to say is one of the
25 reasons I had my attorneys, when I talked to Jon and

1 asked for all of this stuff, and he said basically,
2 Just trust us, you know, just will you just trust us,
3 and I said, I need to have information.

4 So finally Jon wouldn't give me anything. He
5 said, you know, he called, at that time he called
6 Mr. Stinger, an attorney, I think he is an attorney,
7 but I know now he's a land acquisition -- at any rate,
8 he says, I can't give you anything, you know, I really
9 don't know that much about it anymore. He said, It's
10 in the hands of my attorneys, and he said, You call
11 Mr. Stringer.

12 So I called Mr. Stringer, and you'll see my
13 letters, I asked him a few questions, the same -- this
14 is not rocket science on information. I'm, I'm asking
15 for a few parcel numbers and everything. I asked him
16 for them, and he said he'd get back to me. Long story
17 short, he did get back, but I didn't get anything.

18 So then I called Jon and I said, Jon, I said,
19 Jon, I don't have any information, you told me to go to
20 your attorney, Mr. Stringer, and I need it. And Jon
21 says, Well, it's out of Mr. Stringer's hands now, it's
22 in the hands of our other attorney, Mr. Curtis.

23 So Mr. Curtis got me on the telephone. He
24 was very emphatic. He just told me straight out, You
25 just need -- you aren't getting anything, we lived up

1 to all of our documents, and he really let me know,
2 Don't be bothering to call me, because we've lived up
3 to everything and you can't get anything.

4 That was when I went to Mr. Jimmerson. I'd
5 tried all of my options to get the money out or get the
6 information out to me that I could do, and I knew right
7 then that I needed, I needed legal help.

8 Q. Okay. Were you entitled to these documents
9 under the Commission letter Agreement?

10 A. Yes. The second paragraph on Page 2, they're
11 to keep me informed.

12 Q. Mr. Lash had referred you to Mr. Stringer and
13 Mr. Curtis, you just testified. Beyond referring you
14 to these two individuals, did Mr. Lash refer you to
15 anyone else to contact within Pardee concerning this
16 issue?

17 A. Not that I remember.

18 Q. Okay. Can you please flip to Exhibit 18.

19 Do you see this is a letter dated
20 August 26, 2009 from Mr. Jimmerson to Mr. Curtis?

21 A. I do.

22 Q. Okay. If you want to, take a moment to
23 refresh your recollection concerning this letter.

24 A. Yes, please. It's a long letter, and I
25 realized some of the letter is part of another letter,

1 but I need to skim that.

2 THE COURT: Please do.

3 THE WITNESS: Without going through the whole
4 thing on here, if I need to read more on it -- let me
5 see what your question is, because a lot of that had
6 been already --

7 THE COURT: Talked about?

8 THE WITNESS: -- talked about in another
9 letter.

10 BY MR. J.M. JIMMERSON:

11 Q. Let's just look to the first paragraph. It
12 says here, Respectfully, your letter ignores my
13 clients' request for written documentation that was
14 promised to be delivered to us by Mr. Stringer,
15 Esquire, as a result of our conversation and our letter
16 of April 23, 2009, delivered to him. To date, we have
17 yet to receive the promised documentation.

18 As contained in our correspondence of
19 April 23, 2009, we specifically request that Pardee
20 Homes deliver to my clients the documents requested
21 within the next 15 days. Specifically, the requested
22 documents are restated herein as set forth in our
23 April 23, 2009 correspondence.

24 Reading that, did you expect Pardee to
25 produce the information that was requested?

1 A. Absolutely.

2 Q. Why did you expect such production of --

3 A. Because it says we're to be informed. You
4 have the negotiations in our Commission Agreement. The
5 second paragraph of Page 2 says that they are to keep
6 us informed. I went for years and didn't get anything,
7 not days or months, I went for years and didn't receive
8 anything.

9 Q. Okay. Mr. Wolfram?

10 A. I mean let me clarify that. Everybody always
11 wants to take a, take it back to the money. You know,
12 it's not the money to me, your Honor, it's, it's the --
13 my whole claim here is I've been breached on
14 information. I know Pardee was paying me. I know that
15 the money was coming in. I'm not, I wasn't here to go
16 after them on money, and that's all I hear out here is
17 money, money, money, money, money. I'm not after the
18 money, I'm after the information.

19 They didn't give me the information that
20 would even tell me what I needed to know, whether some
21 land was, that was in the Purchase Property. I just
22 can't operate like that. Nobody could. Nobody.

23 BY MR. J.M. JIMMERSON:

24 Q. Mr. Wolfram, talking about the knowledge that
25 you, the information that you were requesting, did you

1 have information concerning the location of the
2 property that they were purchasing beyond what you
3 could get from the recorder's office?

4 A. I am not certain exactly. I knew that the
5 first takedown, I mean the first property was in, in
6 the Purchase Property on the left-hand bottom corner of
7 the property. I knew that.

8 I knew the second one, I know what they were
9 doing, going up to the 84 million. I knew those
10 things.

11 Q. But did you know the location of precisely
12 where they were buying land?

13 A. No.

14 Q. Did you know the designation?

15 At some point, you said you developed that
16 map from the recorder's office; is that right?

17 A. Yes.

18 Q. Did you know how that land was designated?

19 A. No. This is just like a footprint.

20 Q. Who had that information?

21 A. Jon had the information. In the letter, his
22 map is almost like my map. If I would have had that
23 map to start with, you think I would have been going to
24 planning and zoning and master planners and a
25 developer, and around a corner and the recorder's

1 office? I could have taken one look at that map and
2 immediately, after all the times we've seen maps and
3 got most of it, but, but there's more there than what
4 -- I'm sure you're gonna get into that.

5 Q. Mr. Wolfram, do you have access to the
6 records at Pardee where they reflected, as we saw on
7 Exhibits B1 through B-6 of Amendment Number 7 to the
8 Amended and Restated Option Agreement, did you have
9 that information?

10 A. No, I don't. Look here, I don't know how to
11 explain it. Here's a good way to explain that. Who
12 has all the information? I don't, Pardee does. They
13 got all the information. Who doesn't have any
14 information? I don't have any information. They have
15 the information, I don't have any information.

16 I'm trying to get information that belongs to
17 me, and, and this is important, because I don't know
18 how this case got blown out into a quarter of million
19 or half million or what dollars. This was simple, Jon
20 and I and Walt could have sat down in a half an hour
21 and come up with some kind of a format for what we were
22 looking for. You saw the letter, it's just we're
23 talking parcel numbers, maps, you know, simple things,
24 title company, acreage. If that, if a designation, if
25 they had put that over to us, we wouldn't be here

1 today.

2 I wouldn't be getting, you know, my
3 retirement, what have you, but now we're into a
4 full-blown court action when we didn't have to be here.
5 It was just simple information that everybody gets.

6 I'm sorry.

7 THE COURT: It's okay.

8 THE WITNESS: I know you say they all get
9 frustrated, but I'm going back over my frustrations
10 whenever I was trying to get the information. That's
11 what it boils down to. I'm frustrated.

12 BY MR. J.M. JIMMERSON:

13 Q. Well, let's talk about this map at Exhibit 15
14 from Mr. Lash and the accompanying letter.

15 THE COURT: Okay. Exhibit 15?

16 MR. J.M. JIMMERSON: 15, yes, your Honor.

17 THE COURT: Okay. I can't even find my
18 Exhibit A.

19 There it is.

20 MR. J.M. JIMMERSON:

21 Q. Mr. Wolfram, do you want to take a brief
22 moment and review the map and I guess the chart behind
23 the map?

24 A. Yeah. Let me, let me just take a quick look
25 here.

1 I read the letter. Now I'm getting to the
2 chart. If I don't understand something, I'll go back
3 and read.

4 Q. Okay. Mr. Wolfram, did you receive this
5 letter from Mr. Lash on November 24, 2009?

6 A. I did.

7 Q. Okay. Was this letter addressed to
8 Mr. Wilkes as well?

9 A. No, it was not.

10 Q. Okay. Do you have any knowledge as to
11 whether or not Mr. Lash sent this letter and the
12 accompanying map chart to Mr. Wilkes?

13 A. Well, I did then, because I called, I talked
14 to Walt. The problem with talking to Walt was and the
15 reason, the brunt of it came down on me is I'd call
16 Walt. Walt, how do you explain it, Walt has every
17 disease there is, neuropathy, heart problems, high
18 blood pressure, heart, everything, and I'd call Walt,
19 and Walt would be so high on pain pills I couldn't even
20 talk to him. I mean he just, he just wouldn't remember
21 everything.

22 I'm not saying he didn't remember this, I'm
23 not trying to imply that, but there were so many times
24 he had so many operations, and I mean a ton of them,
25 and then his doctor told him over there, they said he'd

1 had twice on his heart pacemakers, the wires they
2 attach, and a doctor told him that he could not have
3 stress. He says, You can't have any stress. And I'd
4 call over there and say, Walt, can you talk? He says,
5 Jim, I can't. He was saying, I can't talk to you.

6 Q. Mr. Wolfram?

7 A. But everything I got, I sent over to Walt.
8 There's nothing I, I received that I didn't send over
9 there.

10 Q. Mr. Wolfram, do you know if Pardee sent this
11 letter to Walt?

12 A. No, they did not.

13 Q. Okay. The letter states in the third full
14 paragraph Pardee has been purchasing acreage for
15 supporting land uses such as parks, utilities, rights
16 of way, and open space at a price per acre
17 significantly below the price per acre that Pardee had
18 been paying for residential land.

19 Do you see that?

20 A. Yes, I do.

21 Q. The Purchase Property aspect of your
22 commission, was it based on acre or based on price?

23 A. Based on price.

24 Q. Did they tell you how much money they spent
25 on parks, utilities, rights of way within Parcel 1 of

1 Map 9857?

2 A. No. No.

3 Q. Okay. Look at the map. Does this map tell
4 you how much land is outside of parcel, of Parcel 1 of
5 Map 9857?

6 A. It doesn't tell me how much. I know there's
7 land outside, but it doesn't give me the acreage or
8 anything.

9 Q. Okay. And for Option Property, is your
10 commission based on price or acreage?

11 A. On Option Property, my commission is based on
12 price -- I mean, I'm sorry, acreage, one and a half
13 percent of 40,000 an acre.

14 Q. I want to make sure we get this for the
15 record.

16 A. Yeah.

17 Q. Mr. Wolfram, does it tell you how much money
18 they spent for the property inside Parcel Number 1,
19 Map 9857?

20 A. It did not, and I should have that.

21 Okay, go ahead.

22 Q. Mr. Wolfram, does this map accurately reflect
23 all the purchases by Pardee at Coyote Springs?

24 A. It does not.

25 Q. How do you know that?

1 A. Because on my map, if you want to compare
2 them, there are three parcels down below. I am not
3 saying those parcels -- I don't even know what they --
4 I've asked, but nobody would ever tell me. I may not
5 be entitled to any of that property, and that's okay,
6 if I'm not entitled to it, I don't want it, but there
7 are three parcels, if you go back and look at my map
8 and compare it to Jon's map right here, that Pardee
9 owns that are not on his map.

10 Q. Mr. Wolfram?

11 A. Plus the fact I learned something yesterday
12 too, that multifamily property at the bottom was not on
13 his map either.

14 Do you remember the land that I'm talking
15 about?

16 THE COURT: I remember the testimony by
17 Mr. Whittemore.

18 THE WITNESS: It wasn't on the map he sent me
19 either.

20 BY MR. J.M. JIMMERSON:

21 Q. Mr. Wolfram, does this map indicate how the
22 land is designated that Pardee has purchased?

23 A. No. And then again, like my partner says,
24 without that, we don't have very much.

25 Q. Are you able to calculate the accuracy of

1 your commissions if you do not have the designations of
2 the land they purchased?

3 A. No.

4 Q. Okay. Why not?

5 A. I don't have enough information.

6 Q. Are you eligible for commissions for land
7 that is not designated for production residential
8 property?

9 A. Say that again.

10 Q. Are you eligible to receive a commission for
11 land that is not designated production residential
12 property?

13 A. I don't know exactly how you mean that. I
14 mean I know that if it's Purchase Property, I'm
15 eligible for a commission. It goes across the whole
16 property, and I get paid on the, you know, on the money
17 being spent.

18 Q. But if it was designated commercial property,
19 are you entitled to a commission?

20 A. Oh, no, no, I'm not.

21 Q. I'm sorry.

22 A. I am sorry.

23 THE COURT: That's okay. That's okay

24 / / / /

25 BY MR. J.M. JIMMERSON:

1 Q. I will go back to my question. Are you
2 eligible to receive a commission for land that is not
3 designated production residential property?

4 A. No, I don't get a commission on any of that.

5 Q. Okay. Mr. Wolfram, looking at this map and
6 the accompanying letter, would you be able to calculate
7 the accuracy of your commissions from this letter and
8 the accompanying map?

9 A. No.

10 Q. Okay. Mr. Wolfram, I would like to flip now
11 to the next binder.

12 A. Okay.

13 Q. Not the next binder, it's Defendant's binder.

14 A. Defendant's trial exhibits.

15 Q. We're gonna start with II. I have it in a
16 big fat binder, which is probably my problem when it
17 explodes.

18 A. You want this one, I think.

19 I've got it.

20 THE COURT: II.

21 THE WITNESS: II.

22 THE COURT: I know, I laughed too.

23 We're getting tired too. We're both laughing
24 at II. Aye, aye, captain.

25 MR. J.M. JIMMERSON: When we start making

1 pirate jokes, that's bad.

2 THE COURT: I'm sorry.

3 MR. J.M. JIMMERSON: No, ma'am, it is
4 Halloween.

5 BY MR. J.M. JIMMERSON:

6 Q. Look at the top email where it says, Hi,
7 Frances. You are authorized to give Jim copies.

8 THE COURT: He's got to get his glasses, hold
9 on.

10 THE WITNESS: All right, I'm ready.

11 THE COURT: Okay.

12 BY MR. J.M. JIMMERSON:

13 Q. Jim, looking at the top email, it says, Hi,
14 Frances. You are authorized to give Jim copies of only
15 the single-family takedowns. Please do not provide him
16 with copies of the multifamily or commercial
17 transactions.

18 What did you receive from Frances Dunlap or
19 Frances Butler after this January 7, 2010 email?

20 A. I received some deeds.

21 Q. Did you receive the Amendments 1 through 8 of
22 the Amended and Restated Option Agreement?

23 A. No, I received none of that.

24 Q. Did you receive the maps attached to these
25 amendments?

1 A. I did not receive any of that either.

2 Q. Did you receive a designation of information
3 contained in these amendments?

4 A. No, I did not.

5 Q. We'll skip past JJ. We spoke about that
6 earlier, but I do want to focus on now KK.

7 Are these the deeds that were sent to you?

8 A. Let me look here, your Honor.

9 Yes.

10 Q. Okay. I would like to refer you, just to
11 begin with, Page 2.

12 A. Okay.

13 Q. Are you on Page 2?

14 A. Yes, Grant, Bargain and Sale Deed.

15 Q. Look to the very bottom just above the Bates
16 stamp, it says. EKC, Deed LP-4 to Pardee, in
17 parenthesis, Fifth purchase closing, close parenthesis.

18 A. Yes.

19 Q. Can you tell us what the fifth purchase
20 closing is?

21 A. No.

22 Q. Okay. Do you know what it's referring to?

23 A. No.

24 Q. Do you know if this deed, how it's
25 designated, if it's production residential property or

1 if it's commercial or multifamily?

2 A. I do not.

3 Q. Okay. Looking at, flipping the page now,
4 three pages later, to the Declaration of Value Form.

5 A. Wait a minute, I'm lost here now.

6 Q. It's Page 4 of this exhibit.

7 A. Page 4?

8 THE COURT: 005 on the bottom.

9 THE WITNESS: 005 on the bottom.

10 THE COURT: Look on the bottom. You got it,
11 005.

12 THE WITNESS: 005. Thank you.

13 THE COURT: You're welcome.

14 BY MR. J.M. JIMMERSON:

15 Q. Is the acreage information contained here?

16 A. No, and that, that's the problem. That's the
17 problem. I asked for something -- you know, all this
18 stuff with Frances Butler over there, I heard again it
19 goes straight to money. I was not in there looking for
20 the money, I would have liked to have had a pay
21 schedule. It might have helped out a little bit.
22 Instead of going into the office, like people normally
23 get from a bank or something, I would have liked to
24 have that, but this isn't the money.

25 The whole time, people have to understand

1 like Harvey Whittemore said yesterday, you got
2 understand the frame of mind when you're sitting in
3 this spot what the person was thinking whenever they
4 were trying to do all this stuff or when they were
5 asking the questions.

6 I can guarantee you when I was in with
7 Frances Butler, I was trying to find out information,
8 just like I asked Mr. Jimmerson to send over and get
9 information from Mr. Stringer or Mr. Curtis, that was
10 my, that was my whole mind intent, can I get anything,
11 takedowns, anything, and I didn't get it.

12 Q. Without the information, would you be able to
13 have check or have caught a miscalculation of your
14 commission payment?

15 A. Tell me again. I was thinking.

16 Q. If you didn't have the appropriate
17 information, would you have been able to check or
18 confirm or have caught a miscalculation of your
19 commission payments?

20 A. No.

21 Q. Okay. The deed here, does it contain any
22 designation information?

23 A. No, it doesn't. It doesn't even contain the
24 acres. That's what you already said.

25 Q. Okay.

1 A. So I tried to run the -- I thought when I,
2 when they sent the deeds, that I could look at it, get
3 the acres, and then start finding out where the
4 property was, but when I got the deeds, they were
5 useless to me.

6 Q. Can you please flip to the previous page
7 where it says, Legal Description of the Real Property.

8 A. Yes.

9 Q. All right.

10 Your Honor, I would like the witness to refer
11 now to what has been entered into evidence as
12 Exhibit 26.

13 THE COURT: Okay.

14 MR. J.M. JIMMERSON: It's a parcel map.

15 THE COURT: Okay.

16 MR. J.M. JIMMERSON: Actually it's a plat map
17 technically.

18 THE WITNESS: Mine is not a map.

19 BY MR. J.M. JIMMERSON:

20 Q. No, no, I'm gonna refer you to a map. I
21 believe it's here.

22 Yes.

23 A. I have to get my other glasses now.

24 Q. Mr. Wolfram, look at this legal description,
25 when it says, Lot LP-4 of division into large parcels

1 Coyote Springs Villages 2, 3, 4, 7, 8, 9, 10 and 11 as
2 shown by map thereof on file in Book 138 Plats,
3 Page 51, is this a demonstrative of what has been
4 entered into evidence as Book 138 Plats, Page 51?

5 A. I think so.

6 Q. Okay. Is this LP-4?

7 A. The best I can see it from here, it looks
8 like LP-4.

9 Q. Let me get it closer.

10 A. Yeah.

11 Q. Real close.

12 A. It's LP-4.

13 Q. Okay. Look at this map. Would you be able
14 to tell --

15 MS. LUNDVALL: Do you think that maybe the
16 rest of the --

17 MR. J.M. JIMMERSON: LP-4 is right here.

18 MS. LUNDVALL: For the Judge too.

19 THE COURT: I have it. I was in the top
20 left-hand corner.

21 MS. LUNDVALL: On the smaller sheet you have.

22 MR. J.M. JIMMERSON: Would, it would be Sheet
23 5? Yeah, Sheet 5, Exhibit 26.

24 MS. LUNDVALL: Thank you.

25 THE COURT: I got it

1 BY MR. J.M. JIMMERSON:

2 Q. Okay. Mr. Wolfram, looking at this, do you
3 know how LP-4 is designated?

4 A. No.

5 Q. Can you tell if it's production residential
6 property?

7 A. No.

8 Q. How about commercial?

9 A. No.

10 Q. Multifamily?

11 A. No.

12 Q. Golf course?

13 A. No.

14 Q. Mr. Wolfram, does this deed concerning lot
15 LP-4 allow you to confirm the accuracy of your
16 commission payments?

17 A. No, it doesn't.

18 Q. Okay. I would like you to now flip to the
19 next page, two pages later.

20 Your Honor, page 6, I believe. Is it 6?

21 THE COURT: Which exhibit are we on?

22 MR. J.M. JIMMERSON: Back to KK, back to the
23 deeds.

24 THE WITNESS: Back to KK.

25 THE COURT: Back to KK, I got it.

1 THE WITNESS: Excuse me, your Honor?

2 THE COURT: No, I'm following too, okay.

3 THE WITNESS: Okay.

4 BY MR. J.M. JIMMERSON:

5 Q. Do you see at the bottom, it says, Deed CSI
6 to Pardee, in parenthesis, WWTP, close parens, open
7 parens B-1, close.

8 A. I'm looking at the one with the --

9 Q. PLTF 2348.

10 A. Okay. You're talking about the Grant,
11 Bargain and Sale Deed?

12 Q. Yes.

13 THE COURT: Just, you got it?

14 THE WITNESS: Yes.

15 BY MR. J.M. JIMMERSON:

16 Q. Do you see the deed, CSI to Pardee, open
17 parens, WWTP, close parens, open parens, V1,close
18 parens? Do you see it at the bottom of the page?

19 A. I'm still in the wrong --

20 Q. I'm sorry.

21 Can I flip him to the right page?

22 THE COURT: Absolutely.

23 THE WITNESS: Okay, thank you.

24 / / / /

25 BY MR. J.M. JIMMERSON:

1 Q. Do you see that there?

2 A. I do.

3 Q. Prior to this litigation, do you know what
4 that referred to?

5 A. No.

6 Q. Okay. WWTP, do you recall that was an
7 acronym used for the wastewater treatment parcel in
8 Amendment Number 8 to the Amended and Restated Option
9 Agreement?

10 A. Well, I don't know if I remember the WWTP. I
11 know what you're talking about when you're talking
12 about the wastewater treatment plant.

13 Q. Okay. Well, let's, let's flip over two pages
14 later, PLTF 2350.

15 A. Okay. Okay.

16 MR. J.M. JIMMERSON: Your Honor, I would
17 refer the Court to --

18 THE COURT: Okay.

19 MR. J.M. JIMMERSON: To Exhibit 27.

20 THE COURT: Okay, do you know which sheet?

21 MR. J.M. JIMMERSON: It would be Sheet 2. It
22 would be what I would be looking at.

23 THE COURT: Okay, which is this one.

24 MR. J.M. JIMMERSON: There it is, your Honor.
25 permission to approach?

1 THE COURT: Absolutely.

2 MR. J.M. JIMMERSON: Okay.

3 THE COURT: Whatever he can see, because I
4 can see the small one.

5 BY MR. J.M. JIMMERSON:

6 Q. Okay. Referring to the legal description,
7 can you tell me the map that they referred to for
8 Lot 3?

9 A. It says, Lot 3 as shown in -

10 Q. I'm sorry, where are you reading from? Not
11 on the map on PLTF 2350.

12 THE COURT: He's looking at the deed.

13 BY MR. J.M. JIMMERSON:

14 Q. Yeah, looking at the deed, can you tell me
15 what map they're referring to on Lot 3?

16 A. I'm still not with you. I don't know.

17 Q. I'm gonna take the map.

18 A. I mean I'm not trying to be dumb here.

19 Q. I'm referring you to here.

20 A. No, I can't read off of that.

21 Q. No, no, no, can you read right--

22 A. I'm just not following you.

23 Q. Okay. The second paragraph, it says, Lot 3
24 as shown on that certain parcel map, recorded in
25 File 116, Page 35 of Parcel Maps. Maps?

1 A. Oh, okay.

2 THE COURT: Just like we did before.

3 THE WITNESS: I understand you now.

4 MR. J.M. JIMMERSON: Permission to approach
5 the witness with what's already been entered into
6 evidence, 27.

7 THE CLERK: 27 is not admitted.

8 THE COURT: Is 27 the one that didn't get
9 admitted?

10 MR. J.J. JIMMERSON: It hasn't been offered?

11 THE COURT: It hasn't been offered.

12 MR. J.M. JIMMERSON: Okay. I would ask this
13 be entered into evidence.

14 THE COURT: Okay.

15 Any objection?

16 MS. LUNDVALL: No objection, your Honor.

17 THE CLERK: Thank you.

18 THE COURT: It's admitted.

19 Thanks for keeping us straight.

20 MR. J.M. JIMMERSON: Thank you very much. I
21 thought it was already in. We referred to it earlier.
22 I apologize.

23 THE COURT: I'm with you. That's why she
24 does her job.

25 THE WITNESS: You're asking me if I can find

1 something on a map. I know what, I know what -- and
2 Lot 3 is, when I see it on the overall, I thought you
3 wanted me to go off --

4 BY MR. J.M. JIMMERSON:

5 Q. No, no, no. Look at the page, I'm not gonna
6 make you be clairvoyant.

7 A. You put it in front of me. I thought that
8 was what you wanted me to look at.

9 Q. Okay. Looking at Lot 3, can you tell me how
10 that's designated?

11 A. No.

12 Q. Does it say anything about production
13 residential property?

14 A. No.

15 Q. How about commercial?

16 A. No.

17 Q. Multifamily?

18 A. No.

19 Q. Golf course?

20 A. No.

21 Q. Thank you, Mr. Wolfram.

22 A. Sorry.

23 Q. No, that's my fault.

24 Mr. Wolfram, looking at the State of Nevada
25 Declaration of Value Form, the next page, PLTF 2351,

1 does this indicate to you how this land is designated?

2 A. No.

3 Q. Does it say anything about production
4 residential property?

5 A. No.

6 Q. How about multifamily?

7 A. No.

8 Q. Commercial?

9 A. No.

10 Q. Golf course?

11 A. No.

12 Q. Okay.

13 A. Is it getting boring?

14 THE COURT: No. I'm following. I think it's
15 probably gonna be true for all the rest of the deeds,
16 but maybe I'm a clairvoyant.

17 They're making legitimate points.

18 THE WITNESS: I know they are, because, you
19 know, because --

20 THE COURT: I'm not commenting. I know where
21 he's going.

22 MR. J.M. JIMMERSON: Your Honor?

23 THE COURT: Don't think I'm bored.

24 MR. J.M. JIMMERSON: I would walk through
25 each of the rest of these deeds, but in an effort to

1 save time, if we could stipulate that the deeds
2 referring to the recorded matches here do not contain
3 any reference to any designation?

4 THE COURT: Ms. Lundvall has to do that. I
5 know you agree.

6 THE WITNESS: I'll go through it.

7 MS. LUNDVALL: Your Honor, parcel maps never
8 contain land use designations.

9 THE COURT: So you would be willing to
10 stipulate?.

11 MS. LUNDVALL: Other public records do, so
12 therefore, we'll stipulate to that.

13 THE COURT: Perfect.

14 MR. J.M. JIMMERSON: Outstanding.

15 So for the clarity of the record, the deeds
16 referring to the parcel maps or the plat maps recorded
17 here do not refer and contain no information concerning
18 the designation as defined in the Option Agreement of
19 the property described?

20 MS. LUNDVALL: Now he's changed the issue.

21 Parcel maps, we're willing to stipulate that
22 parcel maps do not contain land use designations.

23 THE COURT: Correct.

24 MS. LUNDVALL: The parcel maps that have been
25 offered into evidence by the plaintiffs, I believe that

1 they're found at exhibit, I think they're starting at
2 26.

3 MR. J.M. JIMMERSON: Your Honor, the
4 distinction is some of them are plat maps and some of
5 them are parcel, so when I say parcel and plat, it's
6 referring to both.

7 THE COURT: Let's get it straight.

8 MS. LUNDVALL: What I will stipulate is
9 Exhibits 25, 26, 27, 28, 29, 30, 30 are the maps.

10 THE COURT: 30 and 31 or --

11 MR. J.M. JIMMERSON: 31 is a different issue.

12 THE COURT: Okay. So through --

13 MS. LUNDVALL: Those ones that I have
14 identified, those public records do not contain land
15 use designations. Other public records do.

16 THE COURT: Right.

17 MR. J.M. JIMMERSON: Okay. And I want to
18 then apply to these deeds as described herein that the
19 parcel maps or the plat map referred to herein,
20 likewise, do not contain designations.

21 MS. LUNDVALL: And your Honor, I would like
22 to be able to give that, but I have not looked at the
23 deeds with that kind of detail, so I cannot give that
24 stipulation at this point in time.

25 What I'm willing to do is take a look at the

1 break and try to speed things along.

2 THE COURT: Could we do that?

3 MR. J.M. JIMMERSON: Perfect.

4 THE COURT: And then you can go on to another
5 line of questioning. If you can't, we can come back
6 and revisit it. Mr. Wolfram is not going anywhere.

7 MS. LUNDVALL: Thank you, your Honor.

8 THE COURT: You're welcome.

9 BY MR. J.M. JIMMERSON:

10 Q. Mr. Wolfram, that's not a death sentence.

11 A. That's what?

12 Q. It's not a death sentence. You've been very
13 helpful to me and to this Court, I can assure you.

14 THE COURT: Yes.

15 BY MR. J.M. JIMMERSON:

16 Q. Mr. Wolfram, okay, I know this is tough for
17 you, you described it earlier. I want to talk to you
18 specifically about trying to get the information that
19 you described earlier.

20 How much time do you believe you spent trying
21 to get the information?

22 A. You now, I know I put down 80 hours, that
23 isn't anywhere near. By the time I drove up, I mean
24 things like driving clear up to Coyote Springs to look
25 at the map they had, you know, the schematic they have

1 out there, things like that, I drove up there. The
2 time that I've spent driving back and forth, I know
3 it's more than 80 hours, you know. It's not the money
4 for me. I'm not -- it's, I just I don't know, I've
5 spent twice that amount of time on it easy.

6 Q. Mr. Wolfram, when you had entered into the
7 Commission Letter Agreement on September 1, 2004, did
8 you understand that Pardee's obligation to provide
9 information to you required you to go to the recorder's
10 office?

11 A. No.

12 MS. LUNDVALL: I'm going to object. That's a
13 leading question.

14 THE WITNESS: Not at all.

15 MR. J.M. JIMMERSON: It's not leading, your
16 Honor. It doesn't suggest the answer.

17 THE COURT: I'm gonna go ahead and let him,
18 I'm gonna overrule, because that has been your defense,
19 so I think that's appropriate.

20 THE WITNESS: Okay.

21 THE COURT: What was -- rephrase it.

22 BY MR. J.M. JIMMERSON:

23 Q. Was it your understanding when you entered
24 into this September 1, 2004 Commission Letter
25 Agreement, that Pardee's obligation was to keep you

1 reasonably informed as to all matters relating to the
2 amounts and due dates of your commission payments, and
3 that obligated you to go to the County recorder's
4 office or zoning and planning or development office you
5 described to get the information?

6 A. No, I didn't need to go to any of those.
7 They should have provided the information to me, and
8 that's what I'm here for.

9 I love my family, and I'm not saying this to
10 be sentimental or anything, but I know that probably
11 ten years from now, I'm not gonna be here. I'm gonna
12 be 86. It would be pretty good if I got that far, but
13 the fact is my wife and my children and grandchildren
14 can't do what I've done to try to find out information
15 here, and they should not have to go looking for it, it
16 should be provided. We're going almost 35 more years.

17 Q. Why did you go searching for it if it was
18 supposed to be provided by Pardee?

19 A. No one gave it to me. I had to try to find
20 it.

21 Q. When you entered into the agreement, did you
22 think that Pardee wasn't going to honor this?

23 A. Not really.

24 And John and us have talked before. We have
25 talked about other things, but we've always been on a

1 good relationship, Jon Lash and Walt and I, we were --
2 and then I didn't understand why all this went down
3 where he wasn't giving me any information, and, you
4 know, what would anybody think? What would you think
5 if every time I called and asked for it, they say,
6 You've got to trust us, we're doing the right thing?
7 Wouldn't you get a little suspicious that something was
8 being withheld from you if you couldn't get any
9 information?

10 THE COURT: But you don't get to ask me
11 questions, but I certainly appreciate it.

12 THE WITNESS: Okay. Okay. I'm gonna ask
13 Jim.

14 MS. LUNDVALL: From my perspective, I'm
15 trying to give this witness as much the latitude as
16 possible.

17 THE COURT: You've done very well.

18 MS. LUNDVALL: But this is about the fourth,
19 maybe fifth time that we've heard the pitch that he's
20 trying to make to the Court.

21 THE WITNESS: It's not a pitch.

22 MS. LUNDVALL: And my thought process is at
23 this point in time, we've heard and we have an
24 understanding of what his theory is.

25 THE WITNESS: Your Honor, if he asks me the

1 question, I'm gonna answer the question.

2 THE COURT: That's fine.

3 THE WITNESS: But it's not a pitch, I mean
4 it's a fact.

5 BY MR. J.M. JIMMERSON:

6 Q. Mr. Wolfram, and I know that this is somewhat
7 out of your experience, have you ever been paid hourly
8 for, to be a land salesman?

9 A. Not hourly. I've had jobs where I've been
10 paid hourly.

11 Q. As a land broker or land salesman, have you
12 ever been paid hourly?

13 A. No.

14 Q. If I asked you to, how much would you say
15 your time was worth trying to get the information that
16 was supposed to be given to you by Pardee?

17 A. I'm gonna reduce it a little. I know what
18 these attorneys get paid an hour, and I know what
19 accountants get paid an hour. I mean I know what a
20 plumber gets paid on hour, but if I probably got in it,
21 I've got to say again, it's not for the money, if I got
22 60, 70, 80, 90, somewhere in there for my time, I would
23 feel that's probably fair. I'm not looking to run the
24 price up on anything.

25 Q. Okay. Mr. Wolfram, you've stated before in

1 your testimony that you were looking for information.

2 Why did you have file a lawsuit looking for
3 information?

4 A. Okay. It's the same as I've said before, I
5 think I have, I have been breached on my information,
6 that is one thing.

7 The other thing I think I would have to say
8 would be when I spent all that time, I thought, I
9 thought the land was supposed to go north in the, in
10 the purchase property, and it turned and went east, and
11 I think I was breached right there, because in my
12 opinion, that's not the way it was supposed to go.

13 And then yesterday, I did hear on that map,
14 the map Jon had there, when I saw that this land was
15 outside of the Purchase Property, I've never been told
16 about it. I kind of felt that was a breach also. I
17 should have been given that information on that
18 property.

19 Q. Besides Coyote Springs and Pardee, are you
20 aware of any other parties to land development or land
21 purchases between Coyote Springs in Coyote Springs?

22 A. I don't think so.

23 Q. Okay.

24 A. You mean like another buyer?

25 Q. Uh-huh.

1 A. No.

2 Q. Okay. Do you know how much property Pardee
3 purchased outside of Parcel 1, Map 9857?

4 A. Well, I have the, I have the map. I don't
5 really know exactly anything from it, but I have a
6 footprint.

7 Q. Who has that information?

8 A. Well, Pardee has the information. I don't
9 have that information, Pardee has the information. I
10 mean I've never been sent anything like a designated
11 map or anything to tell me what is outside.

12 Q. Okay.

13 A. But I can see it with my, just by looking.

14 Q. Are you asking this Court to require Pardee
15 to give you that information?

16 A. Yes.

17 Q. Is that part of your claim for accounting?

18 A. Yes.

19 Q. To date, has Pardee given you the information
20 necessary to confirm the accuracy of your commissions?

21 A. Say it again.

22 Q. To date, has Pardee given you the information
23 necessary to confirm the accuracy of your commissions?

24 A. No.

25 MR. J.M. JIMMERSON: That's all I have, your

1 Honor.

2 THE COURT: Okay. Maybe we should, before we
3 do the cross, it's now ten until 4:00. My staff
4 probably needs a quick break.

5 THE WITNESS: Me too.

6 THE COURT: The witness needs one to, so why
7 don't we take a break until 4:00

8 Just for purposes, how late do you -- if we
9 come back around 4:00, Ms. Lundvall?

10 MS. LUNDVALL: I don't think my cross will be
11 finished with him today.

12 THE COURT: Okay. If we leave at 5:00?

13 MS. LUNDVALL: Yeah.

14 THE COURT: If we stayed later, you still
15 wouldn't?

16 MS. LUNDVALL: I will do my level best.

17 THE COURT: I'm just trying to get a time
18 constraint, and for the witness too, so, okay.

19 Mr. and Mr. Jimmerson, what about you, is it
20 okay if he comes back tomorrow -- well, no, we're not
21 coming back tomorrow.

22 MR. J.M. JIMMERSON: No.

23 MS. LUNDVALL: Yesterday, your Honor, you
24 asked us to confirm witness availability from Pardee's
25 perspective for the December 9th.

1 THE COURT: Yeah.

2 MS. LUNDVALL: And we were able to confirm
3 availability for December 9th, and so once we finish
4 today, we are able to reconvene on December 9th?

5 THE WITNESS: I would rather go today, if
6 it's up to me.

7 MR. J.J. JIMMERSON: Jim, first of all, she's
8 not obliged to cut off in an hour, that's number one.
9 Number two, she's not going to, even if she were
10 inclined, and that's her right, so you have to come
11 back.

12 THE WITNESS: Okay.

13 THE COURT: But you're gonna be here.

14 MR. J.J. JIMMERSON: I have to weigh in on
15 Ms. Lundvall's point.

16 Judge, I need you to make a phone call to
17 continue a two day trial that is split up on Tuesday
18 and Thursday, and I cannot be here on Wednesday most of
19 the day.

20 THE COURT: The week of December 9th?

21 MR. J.J. JIMMERSON: The 11th, but I will be
22 here the 9th, the 10th, the 12th, the 13th, it's just
23 the middle of the day the 11th I have to be in Pahrump,
24 Nevada.

25 THE COURT: Okay. Well, I guess we'll do --

1 I mean hopefully we can get it done by the 9th. Do you
2 think that would be enough full days?

3 MS. LUNDVALL: I hope so.

4 THE COURT: If I have to, I will take
5 everything off calendar for those weeks, and I won't
6 have any 8:30 calendar. I will do what I need to do to
7 give you the time. I'm this far ahead, I can get rid
8 of my motion practice for that week.

9 MR. J.J. JIMMERSON: I don't want to say
10 anything by name, but my client in December won't be
11 happy about this, but opposing counsel and I need to
12 complete this case, so with your help, we'll be here
13 four out of five days, and we probably can get two
14 hours on the 9th.

15 MR. J.M. JIMMERSON: The 11th.

16 THE COURT: The 11th.

17 Whatever you can do to give yourself the most
18 trial days, I certainly will make sure my calendar is
19 appropriate too. Like I said, once again, I'll just go
20 ahead and I will tell my clerks we'll take off any
21 motion practice, because starting at 8:30, to me, it
22 seems like when we can do that, things move faster. By
23 the time you started at 10:00, you get a few witnesses
24 on, and then, you know, you have a lunch break.

25 MR. J.M. JIMMERSON: We're at 4:00 o'clock.

1 THE COURT: I know, and it's incredible how
2 the times goes at trial, so I will do that for you too.
3 I will make that commitment. I will take everything
4 off other than this trial.

5 THE WITNESS: Now, your Honor, tell me when
6 I'm coming back.

7 MR. J.J. JIMMERSON: December 9, 8:30.

8 THE COURT: So do you want to do another hour
9 today?

10 MS. LUNDVALL: Yes, your Honor.

11 THE COURT: Okay, because I would like to.

12 MR. J.M. JIMMERSON: Let's move on.

13 THE COURT: Yeah, okay.

14 All right. Let's do that. Let's take break.
15 (Brief recess.)

16 THE COURT: Okay, cross-examination?

17 CROSS-EXAMINATION

18 BY MS. LUNDVALL:

19 Q. Mr. Wolfram, you were here to listen to
20 Mr. Wilkes' testimony, were you not?

21 A. Yes, I was.

22 Q. He described you as an honorable man.

23 A. Yes, I remember.

24 Q. And would you agree with his assessment?

25 A. Yes, I do. Basically I would completely

1 agree with his assessment.

2 Q. All right. There was a point in time that
3 you, according to your testimony contacted Pardee to
4 let them know they were overpaying you?

5 A. Yes.

6 Q. You were trying to be honorable by contacting
7 them?

8 A. Yes, I was.

9 Q. You had discerned from the information you
10 had available that you had received too much money,
11 right?

12 Q. I, and this sounds like there might have been
13 a little bit of a dispute between you and Mr. Wilkes as
14 to whether you should contact Pardee; is that right?

15 A. Yeah. I can explain that if you want me to
16 go forward.

17 Q. I'm not interested in the dispute, I want to
18 know, it sounds like there was a little dispute?

19 A. It wasn't a dispute. That's what I was going
20 to explain to you.

21 Q. He indicated that he did not want you to
22 contact them?

23 A. Yes. He, he had mentioned that, but there
24 was a reason for that.

25 Q. And, but you wanted to contact Pardee,

1 correct?

2 A. I did, and that's what we ended up doing, but
3 there was a reason for him to say that, and I can tell
4 you what that reason was.

5 Q. And you wanted to be honorable then in
6 contacting Pardee to inform them that, in fact, that
7 you had been overpaid, correct?

8 A. Absolutely, yes.

9 Q. And what was the reason that Mr. Wilkes
10 didn't want you to?

11 A. The reason was at that time, we weren't, they
12 were sending money into the real estate office or
13 anything. The deposits were being deposited in the
14 bank, and, you know, and we had wanted, like under
15 normal payments, a chart, you know, maybe something
16 better than just a deposit in the bank to show how the
17 payments were going.

18 We were trying to work out a schedule on our
19 own to try to figure out what was going on right when
20 this happened. That's some of the reason why we saw
21 it. We were trying to figure it out, and when we saw
22 it, you know, we knew we were overpaid, but we didn't
23 have our chart that we were working on worked out. And
24 Walt was saying, No, no, no, maybe we better do this
25 first before we go saying anything, and it would have

1 been done probably before the next payment came in
2 anyway.

3 Q. All right. But in other words, you were able
4 to discern that you were being overpaid, correct?

5 A. Yes.

6 Q. And you contacted Jon Lash?

7 A. I did.

8 Q. And you told him that you believed that you
9 were being overpaid?

10 A. I did.

11 Q. And the information that was available to you
12 at that point in time, let me see if I can try to
13 approximate, you had the Option Agreement available to
14 you; is that right?

15 A. Yes.

16 Q. And we now know from your testimony that you
17 received both of the amendments to the Option
18 Agreement, correct?

19 A. What amendments? What amendments are you
20 speaking of?

21 Q. I'm talking about the first two amendments to
22 the Option Agreement.

23 A. Yes.

24 Q. You had both of those, right?

25 A. Are you talking back to the original Option

1 Agreement, not the -- okay, yes, I have.

2 Q. And so you had the original Option Agreement
3 with escrow instructions, and then there were two
4 amendments to that, right?

5 A. Yes.

6 Q. And then you also received the Amended and
7 Restated Option Agreement with escrow instructions,
8 correct?

9 A. Amendment Number 5.

10 Q. Okay. And then you had been receiving on a
11 regular basis all of the Orders to Pay Commission?

12 A. The way it worked out is -- I wish I had my
13 wife here now, because she was the one that was taking
14 care of that portion of it, but the way that worked
15 out, the money was being deposited directly from the
16 title company into my account at the bank.

17 Q. Yes.

18 A. And, you know, you might have a pay stub and
19 that was it, but what we were wanting was not having
20 to keep the accounting ourself, we were wanting to see
21 a sheet as the accounting went on.

22 Q. Now, but you also had the Orders to Pay
23 Commission to Broker, correct, from the title company?

24 A. Yeah. The title company got one in the
25 beginning. They didn't get one every time. They got

1 one in the beginning, as I understood it, and it said,
2 Order to Pay Commission, and you can pay them their
3 commission as the checks come in.

4 Q. All right. And so from that information
5 then, you were able to discern that you were being
6 overpaid, correct?

7 A. Yeah. I, I saw that I was being overpaid
8 when Walt and I started working on that, that document
9 we were trying to produce.

10 Q. And at that point in time, you didn't have a
11 map?

12 A. What kind of map?

13 Q. Any map?

14 A. No.

15 Q. You didn't have any information concerning
16 the takedowns that Pardee was doing?

17 A. November 19th is when I got the map from
18 Jon Lash.

19 Q. You didn't have any idea of the locations of
20 the property that Pardee was acquiring?

21 A. I had a basic idea of where it was. I didn't
22 have the maps to tell me the exact location and the
23 designations, any of that stuff. I just, you know, the
24 map, you saw the map I drew and the map Jon drew.
25 That's just kind of a footprint.

1 Q. And at that point in time, you didn't have
2 the designations either; is that correct?

3 A. At that time, I don't think I did have a
4 designation.

5 Q. Okay. What I want to do is to talk to you
6 and see if I can't understand the testimony that you
7 gave the first time that you took the witness stand,
8 okay?

9 What I'm gonna do is to use your counsel's
10 map to make sure that I understand your testimony and
11 what your theory was, okay?

12 A. Okay.

13 Q. As I understand it, this map, to you, depicts
14 Parcel 1, and you believe that this Parcel 1 is the
15 Purchase Property?

16 A. Yes.

17 Q. As defined under the Option Agreement; is
18 that right?

19 A. Yes.

20 Q. And you're able to discern what the widths of
21 that purchase property was, correct?

22 A. Correct.

23 Q. And it's your contention that everything
24 outside of the Purchase Property was Option Property?

25 A. I still believe that.

1 Q. And if, in fact, there was property outside
2 those boundaries, then you believed that this was
3 Option Property?

4 A. I do.

5 Q. All right. Now, during the examination the
6 first time you took the witness stand, we looked at
7 Exhibit Number 26, which was a map, and feel free to
8 take a look at that, Mr. Wolfram.

9 MR. J.M. JIMMERSON: Counsel, would it be
10 easier for him to use the big roll-out map? I don't
11 know what questions you have.

12 THE WITNESS: If you have the big map over
13 there, I appreciate if I can have it up there.

14 BY MS. LUNDVALL:

15 Q. You just take a look at Page 1 of Exhibit 26.
16 That's all I'm interested in at this point in time.

17 THE COURT: Just the first page?

18 MS. LUNDVALL: Yes, your Honor.

19 THE COURT: Okay.

20 MS. LUNDVALL: Brian, can you blow up that
21 lower right-hand corner for me, please.

22 BY MS. LUNDVALL:

23 Q. Now, do you see in the very lower right-hand
24 corner, Mr. Wolfram, where it says, Book 138, Page 51?

25 A. Oh, the map up in the corner?

1 Q. The lower right-hand corner.

2 A. I can't read those numbers.

3 Q. All right. Then take out the big map then.

4 Maybe it's easier for you on the big map, all right?

5 A. Okay.

6 THE COURT: They should be over here on the
7 top, the designation.

8 If you look at mine, it's on the top.

9 THE WITNESS: I know.

10 THE COURT: 26?

11 MS. LUNDVALL: 26, your Honor.

12 THE COURT: Look for 26.

13 THE WITNESS: These things aren't rolled up
14 the same, which they don't have it.

15 I know it's in here, but they don't have
16 the --

17 THE COURT: Here's 26. Go ahead and use
18 mine.

19 THE WITNESS: Okay.

20 THE COURT: It's identical.

21 THE WITNESS: Okay.

22 BY MS. LUNDVALL:

23 Q. I want you to look in the lower right-hand
24 corner.

25 A. Yes.

1 Q. What I'm interested in is the book and the
2 page number.

3 A. State Route -- oh, the book and the page
4 number of the map?

5 Q. Yes.

6 A. Book 138, Page 51.

7 Q. All right. Now, you had the description for
8 this particular parcel number before litigation was
9 filed in this case, did you not?

10 A. I did.

11 Q. You'd received the deed from the title
12 company?

13 A. You mean for this map?

14 Q. Yes.

15 A. I don't recall that.

16 Q. What I want you to do is turn to Exhibit KK.

17 A. Okay.

18 Q. Okay. Go to Page 4 for me, please.

19 A. All right.

20 Q. Okay.

21 Can you blow that up for me, Brian?

22 A. You're talking about lot LP-4?

23 Q. Yep, of Book 138, Page 51.

24 Do you see where I'm at?

25 A. I'm on KK, 004, and it has an exhibit. It

1 says Lot LP-4 of division into large parcel Coyote
2 Springs Villages 2, 3, 4, 7, 8, 9, 10, and 11 --

3 Q. As shown by map thereof on file in Book 138
4 of Plats, Page 151.

5 A. 51, yes, I see that.

6 Q. Page 51 as recorded in the office of
7 recorder, Clark County, Nevada.

8 Do you see that?

9 A. I do.

10 Q. That's a legal description of a deed that had
11 been recorded, correct?

12 A. Correct.

13 Q. And that deed had been given to you before
14 this litigation was filed?

15 A. But that deed doesn't -- it does, but it
16 doesn't tell me anything. I mean what I was working
17 on, we need to stay on a fact for me. When you're
18 giving me information here, I was looking for
19 information to try to find out what was going on. We
20 made a right turn, I knew the property was going down.
21 This deed did nothing to help me, nothing at all.

22 Q. Mr. Wolfram, during your original testimony,
23 at four different places in your testimony, in
24 responding to questions from your counsel, you told
25 this Court what you needed was that you needed parcels

1 and you needed maps; is that correct?

2 A. Yes.

3 Q. All right. So this is my question to you:
4 This deed that was given to you before trial is the
5 same, it identifies the same location that is found on
6 the parcel map which was Exhibit 26, correct?

7 A. Yes. And why do you think I got that deed?

8 Q. What I want to do --

9 A. I want to explain to you why I got that deed.

10 THE COURT: This is cross-exam, Mr. Wolfram.
11 Your counsel will clean it up, but she gets to ask you
12 the questions, okay?

13 THE WITNESS: Okay. Okay. You keep getting
14 on me.

15 THE COURT: I don't want to get on you, I
16 just -- then you'll think I'm the boogie man up here,
17 and I'm not trying to be that.

18 THE WITNESS: I just want to say why.

19 THE COURT: I know, but she gets to control
20 cross-exam, and your counsel will clean it up if he
21 needs to.

22 So right now --

23 THE WITNESS: All right.

24 / / / /

25 BY MS. LUNDVALL:

1 Q. All right. Mr. Wolfram, do you recall when,
2 in fact, Mr. Jimmerson was asking you questions, and
3 you went up to that map and you did the widths?

4 A. I did.

5 Q. And you were able to make the widths, and you
6 were of able to say, I know they purchased Option
7 Property because it's wider than this parcel.

8 Do you recall that?

9 A. I remember that.

10 Q. And you were able to discern then how much of
11 it was outside of that parcel, correct?

12 A. Yes.

13 Q. Now, another question then for you, is that
14 -- what I want you to do is turn to Exhibit 27, please.

15 A. Okay. Let me get it. I've got the book.

16 THE COURT: You do, okay.

17 BY MS. LUNDVALL:

18 Q. And once again, we'll go with the little one.
19 If we can't do it with the little one, we'll go to the
20 big one, okay?

21 A. All right. Let me see if you got it.

22 Q. Once again, what I'm interested in you
23 looking for is the lower right-hand corner.

24 Do you see the file and the page number?

25 A. Yeah, I do. File 116, Page 35.

1 Q. Okay. Now, what I'd like for you to do is
2 to, while you're still there at, I've got this, that
3 file and that page number on the board, so go ahead and
4 turn to Exhibit KK for me, please.

5 A. Okay. Okay.

6 Q. All right. Now, as you're there, do you
7 recall on Exhibit 27 being able to do measurement along
8 with Mr. Jimmerson to know that this was located
9 outside of Parcel 1?

10 A. I do.

11 Q. And you're able to discern how much of it was
12 outside of Parcel 1, correct?

13 A. Basically.

14 Q. All right. And turn to Page 8 of Exhibit KK,
15 please.

16 A. Page 8?

17 Q. Yes, sir.

18 A. Okay.

19 Q. You have another legal description to you,
20 could you not?

21 A. I do.

22 Q. And does that legal description give you a
23 page, a file and a page number?

24 A. Yes, it does.

25 Q. Is it Page 116 or File 116, Page 35?

1 A. Yes.

2 Q. Same thing that's on the parcel map, correct?

3 A. Yes.

4 Q. And this is another deed that you had before
5 the litigation was filed; is that correct?

6 A. Mine is a little fuzzy on that. Let me ask
7 you a question: Are these the deeds that were sent
8 over by Frances Butler?

9 Q. Yes, it was, sir.

10 A Yeah, I had those deeds.

11 Q All right.

12 A. Yeah.

13 Q. And you had all those deeds before the
14 litigation was filed?

15 A. I did.

16 Q. And you knew that those deeds were a matter
17 of public information?

18 A. Yes.

19 Q. And you knew that the file and the page
20 numbers that were reflected on the legal description,
21 those too were a matter of public record?

22 A. Yes.

23 Q. You know how to obtain deeds from public
24 records; isn't that right?

25 A. Yes.

1 Q. And you've been able to create maps then from
2 those public records, have you not?

3 A. I have, but usually that would be rare, the
4 way we prepared a map like that. When you're inside
5 Las Vegas -- up in Coyote Springs, it's a whole
6 different element. When you're in Las Vegas, you just
7 go down and get the parcel map, and it gives you the
8 acreage, and you can get what you need right from the
9 County.

10 Q. All right.

11 A. Or the City.

12 Q. But the point I wanted to make though is
13 this: You were able to discern through the public
14 records that you gathered what deeds have been
15 transferred from CSI to Pardee, correct?

16 A. Uh-huh.

17 Q. Is that right?

18 A. Yes.

19 Q. And you were able to discern the location of
20 those properties?

21 A. Yeah. Okay.

22 Q. And you were able to discern that those
23 properties then were outside of parcel, some of those
24 properties were outside of Parcel 1?

25 A. Yes.

1 Q. And you could determine how much of it was
2 outside of --

3 MR. J.M. JIMMERSON: Objection, your Honor.

4 THE COURT: What's the objection?

5 MS. LUNDVALL: He's already answered this
6 once. I'm doing the foundation.

7 MR. J.M. JIMMERSON: I understand that, but I
8 would request there be a little bit of specificity,
9 because there is difference between how much in terms
10 of the length and how much in terms of sheer acreage,
11 so we don't get any arguments later, He said acres,
12 which meant length, 2,100 feet out of Parcel 1.

13 MS. LUNDVALL: I think this attorney is
14 trying to coach this witness.

15 THE COURT: No.

16 THE WITNESS: He's not coaching me.

17 MR. J.M. JIMMERSON: No, no, your Honor,
18 there is a very precise --

19 THE COURT: It's okay, I think he's saying
20 what you're able to determine in the question is not
21 specific enough, and I don't know how you interpreted
22 it when you answered it. I guess that would be more
23 important to this.

24 What did you mean when you answered that?

25 BY MS. LUNDVALL:

1 Q. Then let me rephrase my question.

2 THE COURT: Let's do that.

3 BY MS. LUNDVALL:

4 Q. Mr. Wolfram, you knew what the size of the
5 parcels were, correct, what Parcel 1 was?

6 A. Yes.

7 Q. And you created a, map and you knew what the
8 size of the deeds were that were reflected on your map;
9 in other words, the amount of acreage, right?

10 A. Yes.

11 Q. And at one point in time, you already created
12 an overlay that allowed you to see how much of the land
13 was outside of Parcel 1?

14 A. All right.

15 Q. Do you remember that?

16 A. Yeah. Vaguely, yes.

17 Q. Okay. And so you were able and could be able
18 to determine what the amount of acreage that there was
19 outside of Parcel 1, correct?

20 A. Correct.

21 Q. Now, what I want to do, Mr. Wolfram, is I
22 want to give you the opportunity, so we don't have to
23 go back and forth in the exhibit books, under iii --

24 A. Yep.

25 Q. Under iii, whatever commissions you got, they

1 were determined by the number of acres, by \$40,000, and
2 you got 1.5 percent commission on that, correct?

3 A. Yes.

4 Q. And so we knew what the price was for any
5 Option Property to which you may have been entitled to
6 commission, correct?

7 A. That option property would be determined by
8 \$40,000 times one and a half.

9 Q. All right. And we also knew well the price
10 per acre was gonna be \$40,000, correct?

11 A. Correct.

12 Q. And we knew your percentage was 1.5 percent?

13 A. Yes.

14 Q. And on every deed that's filed, there are
15 dates on the deed, correct?

16 A. Yes.

17 Q. And so you knew when Pardee then would have
18 purchased that property?

19 A. Yes. If it was dated on the thing, but I
20 have to, I'm not allowed to ask -- can I ask?

21 THE COURT: You can fully answer a question,
22 but you can't ask.

23 THE WITNESS: It appears to me --

24 MS. LUNDVALL: Your Honor, at this point in
25 time, I don't have a question pending.

1 THE COURT: I think the question was: From
2 the deed, would you know when Pardee purchased the
3 property?

4 Was that the question?

5 MS. LUNDVALL: Yes.

6 THE COURT: Did we answer?

7 BY MS. LUNDVALL:

8 Q. You know from the deed that there's a date on
9 the property, on the deed that was filed, correct?

10 A. I do, but why do I have to go searching for
11 it instead of them giving it to me? I mean that
12 doesn't seem, that doesn't seem right I have to go
13 searching for it when I didn't have deeds to, to any of
14 the Purchase Property the first time around or anything
15 like that, and all of a sudden when I get an attorney,
16 I got some deeds, but I had to search the answers out
17 when it would have been very easy for Pardee to give me
18 some maps and deeds and show me where the property was.

19 Q. Now, Mr. Wolfram, what I want to do is see if
20 I can't figure out what started the present dispute.

21 A. What?

22 Q. What started the present dispute between you
23 and Pardee.

24 A. Okay.

25 Q. Let me back up just a touch though. You guys

1 didn't get off on the right foot, did you? The
2 negotiations over the Commission Agreement were pretty
3 extensive, were they not?

4 A. They were extensive, mostly after my attorney
5 started working this out for us, but I wouldn't exactly
6 say we got off on the wrong foot.

7 When we started out, we went to Los Angeles.
8 We had worked on White Hills, and Pardee had promised
9 to pay us 4 percent of all of White Hills. We even had
10 the escrow instructions drawn up and what have you.

11 Then we went up to Sandy Valley. Walt and I
12 made complete aerial photos of all of Sandy Valley,
13 complete parcels in the whole Sandy Valley to find
14 something big enough for Mr. Lash to take. We found
15 it, and he said, Yes, I'll give you 4 percent
16 commission on this, don't worry, you got 4 percent
17 commission on this. That's what he said on White
18 Hills.

19 The owner, who didn't want to pay us, said he
20 would pay a 4 percent commission, but he preferred that
21 Jon would pay it, and Jon said, Yeah, he'd pay it, they
22 could work it out.

23 Q. Now, the Commission Agreement that you ended
24 up with is a different commission agreement than you've
25 ever dealt with before; isn't that right?

1 A. Absolutely.

2 Q. You had indicated in response to questions by
3 Mr. Jimmerson that typically, the commission agreements
4 that you were familiar with were when property closed,
5 then you received your commission, correct?

6 A. Yes.

7 Q. And this Commission Agreement was something
8 different than you'd ever dealt with before?

9 A. Not difficult to read, but different,
10 absolutely.

11 Q. All right.

12 A. But not hard to understand.

13 Q. And you trusted Mr. Jimmerson when you went
14 to him to ask him to negotiate this Commission
15 Agreement on your behalf?

16 A. Yes. You know why I did that, by what you
17 said.

18 Q. Did you trust Mr. Jimmerson, yes or no?

19 A. I said, "yes." And the reason --

20 Q. Thank you.

21 And now, my next question to you,
22 Mr. Wolfram, is this --

23 MR. J.M. JIMMERSON: Your Honor, if he's
24 actually gonna have the rest of the questions, he need
25 to give the rest of an answer.

1 THE COURT: I think that was a yes or no
2 answer, and this is cross-exam, so I'm gonna overrule
3 the objection.

4 MR. J.M. JIMMERSON: Okay.

5 THE COURT: It may be frustrating, but this
6 is cross-exam.

7 THE WITNESS: Okay. It's all right.

8 THE COURT: If your counsel needs to clarify
9 anything or supplement it, they'll certainly do that,
10 but this is Ms. Lundvall's cross-exam, all right?

11 THE WITNESS: I got it.

12 BY MS. LUNDVALL:

13 Q. You trusted Mr. Jimmerson to act on your
14 behalf, did you not?

15 A. I certainly did.

16 Q. You trusted him to act in your best interest,
17 did you not?

18 A. I certainly did.

19 Q. You authorized him to negotiate the best deal
20 for you that he could with Pardee, correct?

21 A. Yes.

22 Q. And then it was your choice by which to
23 determine if, in fact, the deal was acceptable to you
24 before you executed it, correct?

25 A. Yes.

1 Q. And it was an arm's length transaction in
2 your estimation, correct?

3 A. Yes. Yes.

4 Q. Now, what I want to do then is to move
5 forward a little bit in time, Mr. Wolfram, if I could,
6 please.

7 I want you to turn to Exhibit W in the
8 binder.

9 A. W?

10 There must be two books here.

11 THE COURT: There's one defendant's book.

12 THE WITNESS: I got it. There's V and
13 there's U.

14 Oh, that's W. All right.

15 BY MS. LUNDVALL:

16 Q. Let's see if we can place one issue in time
17 sequence of the August 23 of 2007 letter that was sent
18 to you and Mr. Wilkes, was sent from Mr. Lash, correct?

19 A. Yes.

20 Q. And this letter then identifies the
21 overpayment issue and how that overpayment issue is
22 going to be taken care of, correct?

23 A. It does.

24 Q. But in addition, this letter also informs you
25 that Pardee has entered into separate transactions with

1 CSI, correct?

2 A. It does.

3 Q. And it informs you that there have been
4 multifamily lands and custom lot parcel transactions
5 that have been entered into between Pardee and CSI?

6 A. Yes.

7 Q. And you wrote a letter back in response to
8 Mr. Lash, did you not?

9 A. I did.

10 Q. That letter is found at Exhibit Z?

11 A. Exhibit what?

12 Q. Z.

13 A. Okay. Can I take time and brief myself on
14 that again?

15 THE COURT: Sure. If you need to review it,
16 please refresh your recollection. Take your time.

17 MR. J.J. JIMMERSON: I believe it's
18 Plaintiffs' 22 also, your Honor. W is 16, and Z is 22.

19 THE COURT: Thank you.

20 MR. J.M. JIMMERSON: It's W, not double U.

21 THE WITNESS: Okay.

22 THE COURT: All right.

23 BY MS. LUNDVALL:

24 Q. The questions that I have for you,
25 Mr. Wolfram, concern the second full paragraph of

1 Exhibit Z, please.

2 A. All right.

3 Q. The very last two sentences, can I read aloud
4 then, The fact that the Coyote Springs seller has now
5 decided not to develop certain portions that he held
6 out and has allowed Pardee to purchase those portions
7 does not negate our initials efforts on your and his
8 behalf. We were the brokers for this deal and feel
9 that without our initial efforts, Pardee would not be
10 involved in any of this development.

11 Did I read that accurately?

12 A. You read that accurately.

13 Q. So Mr. Lash had told you that there had been
14 separate transactions that had been entered into with
15 CSI, correct?

16 A. Yes.

17 Q. And he was also telling you up front you were
18 not entitled to a commission on those separate
19 transactions?

20 A. That's what he said.

21 Q. And in this letter, you acknowledge or you
22 state that you don't think he's right?

23 A. I don't state -- I state that I don't think
24 he's right.

25 Q. And you state that you believe that you are

1 entitled to a commission on those separate
2 transactions?

3 A. Most certainly.

4 Q. And in this trial though, you've acknowledged
5 to the Court that you're not entitled to the commission
6 on the multifamily land, correct?

7 A. See, here's, this is --

8 Q. I want to ask did you or did you not
9 acknowledge that?

10 A. I did acknowledge that.

11 Q. My next question to you is going to be this:
12 Have you also acknowledged that you're not entitled to
13 commission on commercial lands?

14 A. Yes.

15 Q. And have you also acknowledged that you're
16 not entitled to golf course lands?

17 A. Within our agreement, our original agreement?

18 Q. I'm talking about the golf course acquisition
19 that Pardee made from CSI.

20 A. That's an outside agreement also.

21 Q. And you're not entitled to a commission on
22 that outside agreement?

23 A. I think I am entitled to commissions on that.
24 Anytime you're the procuring cause, there were 52,000
25 acres to start with. Harvey wants to keep 11,000 of