

1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA


CLERK OF THE COURT

4 JAMES WOLFRAM and
5 WALT WILKES,

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

6 Plaintiffs,

Trial Date: October 23, 2013

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

10 AND RELATED CLAIMS

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

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

24 **I. FINDINGS OF FACT**

25 **A. THE PARTIES**

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 II. CONCLUSIONS OF LAW

9 A. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF CONTRACT

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

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

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

22 4. The Commission Letter Agreement constitutes a valid and enforceable
23 contract between Plaintiffs and Defendant.

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

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

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

10 8. Pardee has never exercised any such option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 DECISION

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

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

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

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

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

10

11 DATED this 25 day of June, 2014.

12

13


KERRY L. EARLEY, DISTRICT COURT JUDGE

14

15

16

CERTIFICATE OF SERVICE

17

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


20

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

21

22

23


Kelly Tibbs
Judicial Executive Assistant

24

25

26

27

28

EXHIBIT “B”

Burak S. Ahmed

From: Burak S. Ahmed
Sent: Tuesday, June 17, 2014 11:25 AM
To: 'Pat Lundvall'
Cc: Jessica Dennis; Aaron Shipley; James J. Jimmerson, Esq.; Kim Stewart
Subject: RE: Wolfram v. Pardee Homes

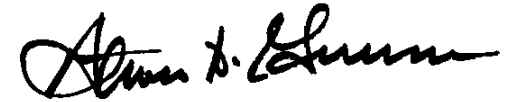
Dear Ms. Lundvall,

I am in receipt of your message regarding a Record Document in the above referenced matter. I will forward the message to Mr. Jimmerson to follow up. At this time, he is out of the office until Monday, June 23, 2014. Thank you.

Burak S. Ahmed, Esq.
Attorney at Law
Jimmerson Hansen, P. C.
415 South 6th Street, Suite 100
Las Vegas, NV 89101
(702) 388-7171 (main)
(702) 380-6417 (fax)
bsa@jimmersonhansen.com

PLEASE BE ADVISED that due to the volume of emails that I receive each day, I may be unable to review my emails immediately. Therefore, unless your email is of a personal/private nature to me, please copy my legal secretary Jessica Dennis at jd@jimmersonhansen.com on all emails. Thank you for the professional courtesy.

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Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**REPLY IN SUPPORT OF MOTION TO
EXPUNGE LIS PENDENS;**

and

**FOR SANCTIONS REGARDING
PLAINTIFFS' VIOLATION OF THE
COURT'S PROTECTIVE ORDER**

Hearing Date: July 17, 2014
Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

I. INTRODUCTION

There are the two unassailable facts necessary to grant Pardee's Motion: (1) Plaintiffs violated the Protective Order by recording the Confidential Document; and (2) Plaintiffs remained motionless for nearly a month after Pardee notified them of their now-admitted violation. Opposition at 12:12-14 ("[T]he recording of [the Confidential Document] was an error."); see also id. at Exhibit A. Plaintiffs' Opposition offers no justification for their sanctionable error, which has now exposed Pardee's sensitive and

1 highly-protected business information to the public. Additionally, Plaintiffs offer no
2 justification for why it was necessary to record the lis pendens (or any document) with
3 the Lincoln County Recorder, and the Plaintiffs' cited cases offer no support for their
4 error.

5 Instead, Plaintiffs ironically try to gloss over their egregious error by pointing the
6 finger at Pardee and accusing it of rushing to file the Motion without a meet-and-confer,
7 a characterization that is false. First, Plaintiffs brought Pardee into this needless motion
8 practice by haphazardly recording the Recorded Document and the Confidential
9 Document in Lincoln County, when even a perfunctory review of the recording would
10 have discovered the Confidential Document and prevented Plaintiffs' error. Without
11 Plaintiffs' error, Pardee would not need to protect itself by seeking relief from this Court.

12 Second, instead of the rush to judgment Plaintiffs' accuse Pardee of committing;
13 Pardee gave Plaintiffs ample time to correct their error. Plaintiffs recorded the lis
14 pendens on April 14, 2014. Plaintiffs never served or sent the recording to Pardee.
15 Pardee learned of the recordation on June 17, 2014, and immediately called counsel for
16 Plaintiffs. After no return call from Plaintiffs' counsel, even though well-aware of the
17 reason for the call, Pardee waited until June 23, 2014 to file the Motion and did so only
18 after giving the Plaintiffs a chance to cure their error. As Plaintiffs' counsel admits in
19 their Opposition, Plaintiffs' counsel did not make any offer to remove the Confidential
20 Document or lis pendens until July 9, 2014, almost a full month after Pardee offered
21 Plaintiffs the chance to cure their error and nearly three months after Plaintiffs
22 improperly recorded the Confidential Document. Amidst Plaintiffs' silence and realizing
23 the gravity of Plaintiffs' recording error, Pardee filed the Motion to protect its sensitive
24 information.

25 Plaintiffs also argue the meritless positions that Pardee is asking for a writ of
26 mandamus and that the Court lacks jurisdiction over the Lincoln County Recorder, both
27 of which mischaracterize Pardee's arguments. A writ of mandamus is unnecessary in
28 this matter because (1) Pardee is asking the Court to order Plaintiffs, and not the

Lincoln County Recorder, to perform the acts necessary for expungement and/or removal; and (2) Pardee has a plain, adequate and speedy legal remedy available, specifically a court order directing Plaintiffs to remove the Recorded Document, in particular the Confidential Document. Pardee is simply asking this Court to order Plaintiffs to right their wrong. The Court no doubt has jurisdiction to order Plaintiffs' compliance with its Protective Order.

Plaintiffs have presented this Court with no reason to deny Pardee's Motion. They recorded the improper lis pendens and admit attaching the Confidential Document to it, which violated the Court's Protective Order. The Plaintiffs provide no justification for that error or, more importantly, their three-month inaction in curing it. Such behavior is no doubt sanctionable under the Court's inherent powers.

II. LEGAL ARGUMENT

A. Plaintiffs Admit to Violating the Protective Order and Then Delaying for Over Three Months Before Attempting to Cure Their Violation.

Shockingly, Plaintiffs' Opposition admits all of the relevant facts necessary to decide Pardee's Motion. The Plaintiffs admit that they violated the Protective Order, that Pardee's counsel contacted them to cure the error, that Plaintiffs' counsel did not respond with any substantive cure until almost one month later, and that they did not file a petition for removal of the improperly filed documents until the eve of the hearing on Pardee's Motion, three months after violating the Protective Order. And to add insult to injury Plaintiffs filed an action in Lincoln County, which named Pardee as a party, but never served that action/petition for writ of mandamus upon Pardee. Such behavior is sanctionable, and it also compels expungement of the improperly recorded documents.

1. Plaintiffs do not dispute that they violated the Protective Order.

There is no doubt as to liability in this matter. The Plaintiffs twice admit in their Opposition that they violated the Protective Order by recording the Recorded Document and the Confidential Document with the Lincoln County Recorder. See Opposition at 5:1-3 and 12:12-14. Although the Plaintiffs characterize this error as "inadvertent," their

1 subsequent inaction once Pardee notified them of their error calls into question the
2 forthrightness of that characterization.

- 3
4 2. After Pardee contacted Plaintiffs about their violation, Plaintiffs'
5 counsel did not substantively respond for almost one month.

6 The Plaintiffs admit that Pardee's counsel, Pat Lundvall, telephoned Plaintiff's
7 counsel, Jim Jimmerson, on June 17, 2014, to speak about the Plaintiffs' recording
8 error. See Opposition at 11:24-27. Plaintiffs further admit that Burak Ahmed, Mr.
9 Jimmerson's associate, emailed Ms. Lundvall on the same day, notifying her that Mr.
10 Jimmerson was out of the country until June 23, and promised that Mr. Jimmerson
11 would "follow up" on the matter when he returned to the office. See id. at 12:1-9.
12 Although Ms. Lundvall's message notified Plaintiffs of the egregiousness of their error,
13 Mr. Ahmed promised no action to cure the error other than that he would forward the
14 message to Mr. Jimmerson. See id. Pardee's sensitive information was a matter of
15 public record for over two months by the time of Ms. Lundvall's voicemail. Upon Mr.
16 Jimmerson's return on June 23, 2014, he did not telephone Ms. Lundvall and therefore
17 the motion was filed.

18 When Mr. Jimmerson returned to the office, he also admits that, despite the
19 accruing prejudice to Pardee, he did nothing for over two weeks to cure his own
20 violation of the Protective Order. See id. at 12:15-18. It was not until July 9, 2014 that
21 Mr. Jimmerson bothered to "follow up" with Pardee's counsel about Plaintiffs' error.¹
22 Mr. Jimmerson's call came over three weeks after Pardee first notified Plaintiffs of the
23 error and over two weeks after Pardee filed the Motion. Although Plaintiffs' Opposition

24 ¹ Interestingly, Plaintiffs accuse Pardee of failing to respond, when in fact Ms.
25 Lundvall's partner, Aaron Shipley, notified Mr. Jimmerson on July 9 that Ms. Lundvall
26 was out of the office (and country) from July 7 to July 14. Plaintiffs apparently play by a
27 flexible set of rules, excusing Mr. Jimmerson's unavailability while out of the country
28 while expecting Ms. Lundvall to respond when she was out of the country.

Of course, had Mr. Jimmerson responded to Ms. Lundvall anytime in the two
weeks after he returned to the office, she would have been available to take his call or
email. Instead, his inaction made it impossible for Pardee to respond.

1 accuses Pardee of failing to meet and confer, Pardee had no one with whom to confer
2 for over three weeks, as Mr. Jimmerson ignored Ms. Lundvall's forwarded email and
3 Pardee's Motion. Given Mr. Jimmerson's silence and the continued broadcasting of
4 Pardee's sensitive commercial information, Pardee instead filed the Motion on June 23,
5 as it was entitled to do because of Plaintiffs' inaction. See Alboum v. Koe, M.D.,
6 Discovery Commissioner Opinion #10 (November, 2001) (noting parties need only
7 make a good faith attempt to meet and confer where the other party fails to respond).

8 Quite simply, given the gravity of Plaintiffs' error in violating the Protective Order,
9 their inaction is inexcusable and therefore sanctionable. Pardee's confidential
10 information has now been a matter of public record for over three months total, and
11 when Pardee notified Plaintiffs of their error, Plaintiffs did nothing for almost one month,
12 only then upon the eve of the hearing on Pardee's Motion.

- 13 3. Plaintiffs did not attempt to cure their violation until July 14, 2014,
14 over three months after they violated the Protective Order.

15 Plaintiffs admit that they violated the Protective Order on April 14, 2014 by
16 putting Pardee's highly sensitive information into the public record. See Opposition at
17 12:12-15. Plaintiffs admit that Pardee notified them of their egregious violation on June
18 17, 2014. See id. at 11:24-27. However, Plaintiffs did not immediately move to cure
19 their violation by voluntarily expunging or sealing the record in Lincoln County. Such an
20 action would have at least shown some remorse from the Plaintiffs.

21 Instead, Plaintiffs defiantly remained inactive until a mere two days before the
22 hearing on Pardee's Motion, at which time they finally filed a petition in Lincoln County
23 for the removal of the Recorded Document and the Confidential Document. See
24 Opposition at Exhibit A. By that date, the following periods of time had elapsed, during
25 which Pardee's confidential commercial information was a matter of public record
26 because of Plaintiffs' error:

- 27 • 91 Days from Plaintiffs' violation of the Protective Order
28 • 27 Days from Pardee's notice to Plaintiffs' of their violation

- 21 Days from Mr. Jimmerson's return to the office

Thus, from the time Plaintiffs violated the Protective Order, they waited over three months to make any attempt to cure their error. Even worse, from the time Pardee notified them of their error, Plaintiffs waited almost a month to do anything to protect Pardee, though they certainly had the power to do so. Even though the Plaintiffs finally took a step to cure their obvious violation, Pardee's sensitive confidential information still remains a matter of public record.

4. Plaintiffs' violation of the Protective Order and flagrant inaction merit monetary sanctions and expungement.

Plaintiffs audaciously claim that awarding monetary sanctions would be "unjust" because Pardee failed to meet and confer with them. See Opposition at 12:18-21. Not only does that argument contain the false premise, refuted above, that Pardee failed to meet and confer, it provides no support for Plaintiffs' contention that their error was inadvertent, and it completely ignores Plaintiffs' inaction once Pardee notified them of their error and the seriousness of displaying Pardee's confidential commercial information in the public record.

Perhaps Plaintiffs' recording error would be acceptable if they attempted to immediately cure the error once they discovered it. However, Plaintiffs did the exact opposite, waiting nearly a month to do anything after Pardee notified them of the error. This inexcusable inaction is compounded by the severity of the initial violation, as Plaintiffs' filing of the Confidential Document placed Pardee's highly sensitive commercial information in the public record. This commercial information goes to the heart of Pardee's business operations and exposes the company to future detrimental acts by its competitors. During trial the Court heard testimony from both CSI and Pardee about the importance of confidentiality of these documents. The Court itself recognized the confidentiality of the documents and took all reasonable efforts to maintain that confidentiality. Nothing less should be expected from the parties. Plaintiffs should have immediately moved to petition the Lincoln County court for

1 removal of the Confidential Document. That would have been the just thing to do, given
2 that Pardee is the completely innocent party here that had its confidential information
3 exposed.

4 Instead, Plaintiffs failed for nearly four weeks to take any action, and their claim
5 that it would be unjust to reward Pardee sanctions as the offended party turns the
6 notion of justice on its head.

7 B. The Plaintiffs Provide No Justification for Filing the Lis Pendens and
8 Confidential Document.

9 Initially, Plaintiffs' argument that the Recorded Document is not a lis pendens
10 collapses on itself even under their recitation of the facts. Plaintiffs admit that a lis
11 pendens notifies third parties having an interest in real property with notice of a lawsuit.
12 See Opposition at 5:16-18. Plaintiffs then admit that they filed this action to enforce a
13 commission agreement and that they recorded the documents at issue to "protect Mr.
14 Wilkes' interest in . . . future commissions" by "putting the world on notice" that upon
15 sale of real property, Mr. Wilkes would be owed these commissions. See id. at 3:14-
16 4:2. Plaintiffs' intent is the very definition of a lis pendens: they wished to notify third
17 parties having a possible interest in real property that there had been a lawsuit related
18 to the real property. The Recorded Document acts as cloud against lands owned by
19 CSI. Plaintiffs are only entitled to commissions if CSI sells certain lands to Pardee. If
20 Pardee does not purchase those lands, Plaintiffs receive no commission. In sum,
21 Plaintiffs now have clouded title to a third party's land, but admit they have no legal
22 interest in that land.

23 Moreover, even assuming Plaintiffs made a credible argument that this was not a
24 lis pendens, they have failed to show it was otherwise proper to record the documents
25 at issue. "Recording acts are intended to protect those who purchase lands from
26 becoming thereby subjected to burdens the existence of which they have no
27 reasonable opportunity of discovering." Restatement of Law (Second) at § 533,
28 Comment A. Thus, Chapter 247 of the Nevada Revised Statutes prescribes a narrow

1 set of documents that may be recorded to notify innocent purchasers of real property
2 about previous encumbrances, including, among others, notices of attachment upon
3 real estate, certificates of sale, notices of mining claims, declarations of homesteads,
4 etc. See, e.g., NRS 247.120. The very purpose of these documents is to clearly notify
5 future buyers that the real property has impediments that run with the land and which
6 may be detrimental to its alienability. As Plaintiffs' own citations make clear, recording
7 acts are not appropriate mechanisms to embarrass or hinder the owner of real property:

8 The case here presented is that the clerk . . . has recorded a contract
9 between two parties which was not entitled to record, and the recording of
10 which would only have the effect of hindering and embarrassing the
11 owner of the property described in the contract in and about the sale of
12 such property.

13 See Leatherman v. Schwab, 98 Fla. 885, 887, 124 So. 459, 460 (1929).

14 Plaintiffs' only purposes for recording the Recorded Document and Confidential
15 Document were to embarrass Pardee and attempt to hinder any future sale of its real
16 property. They have failed to show that filing the Recorded Document was necessary
17 to protect innocent purchasers from "becoming . . . subjected to burdens the existence
18 of which they have no reasonable opportunity of discovering." Plaintiffs' commission
19 agreement only runs between Plaintiffs and Pardee, and in no way hinders future
20 purchasers of real property. NRS 247.120 is only designed to protect innocent future
21 purchasers from land encumbrances, and there is simply no purpose for filing the
22 Recorded Document that is consistent with the policy of the statute.² Instead, Plaintiffs'

23 ² Plaintiffs implicitly argue that the recording is necessary to inform Pardee's
24 "successors and assigns" of the covenant to pay Plaintiffs "a commission upon the sale
25 of the land identified on the maps and deeds." See Opposition at 4:6-11. This is a
26 curious position because, by definition, a successor would acquire or merge with
27 Pardee and an assignee would receive Pardee's rights or powers in the commission
28 agreement.

 In either case, the successor or assign would receive a copy of the commission
agreement during the succession/assignment transaction, and the agreement speaks
for itself as to any duty to pay commissions to the Plaintiffs. Thus, recording the
document would be superfluous because the successor or assignee would already be
on notice. The same is true of Plaintiffs' successors and assigns.

only purpose is to embarrass Pardee by “putting the world on notice” that Pardee is involved in litigation against the Plaintiffs.

C. The Court Has Jurisdiction to Order Plaintiffs to Expunge the Lis Pendens and the Confidential Document, and Neither is a Writ of Mandamus.

In arguing that the Court does not have jurisdiction over the Lincoln County Recorder, Plaintiffs mischaracterize the relief that Pardee seeks in the Motion. Pardee is not asking the Court to directly order the Lincoln County Recorder to take any act. Rather, Pardee is asking the Court to order Plaintiffs to right their wrong by doing everything in their power to ensure the Confidential Document and lis pendens are expunged from the Lincoln County public records. Plaintiffs present no credible argument otherwise, and in fact do not challenge that the Court has inherent equitable power to sanction parties before it. See Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 26, 235 P.3d 592, 598 (2010) (quoting Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990)).

For similar reasons, Plaintiffs’ contention that Pardee’s Motion is a “mandamus-type proceeding” is misguided. See Opposition at 7:11-14. A writ of mandamus is “issued by a superior court to compel a lower court or government officer to perform mandatory or purely ministerial duties correctly.” Black’s Law Dictionary (8th ed. 2004). Pardee is not asking this Court to instruct a government officer to perform a duty. Rather Pardee is asking this Court to instruct Plaintiffs to cure their violation by having the Recorded Document and the Confidential Document removed from wherever they may have recorded it.

III. CONCLUSION

Plaintiffs, in tendering a defense, have actually admitted all of the facts necessary to rule for Pardee on the Motion. Plaintiffs violated the Protective Order by recording the Confidential Document. After Pardee notified them of the violation, Plaintiffs insouciantly waited nearly a month to begin remedying their error. Because of Plaintiffs’ error and subsequent inaction, Pardee’s highly confidential commercial

1 information has been a matter of public record for over three months now. Such
2 flagrant litigation abuses not only require Plaintiffs to right their wrong, but also call for
3 monetary sanctions to prevent future litigants from similarly abusing protective orders.

4 Accordingly, Pardee respectfully requests that this Court grant the relief
5 requested in its Motion.

6 RESPECTFULLY SUBMITTED this 15th day of July, 2014.

7
8 McDONALD CARANO WILSON LLP

9
10 /s/ Pat Lundvall


11 Pat Lundvall (#3761)

12 Rory T. Kay (#12416)

13 2300 West Sahara Avenue, Suite 1000

14 Las Vegas, Nevada 89102

15 *Attorneys for Defendant Pardee Homes of*
16 *Nevada*

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CERTIFICATE OF SERVICE

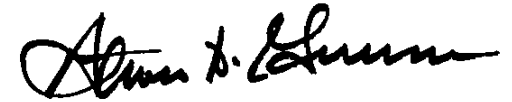
I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 15th day of July, 2014, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO EXPUNGE LIS PENDENS; AND FOR SANCTIONS REGARDING PLAINTIFFS' VIOLATION OF THE COURT'S PROTECTIVE ORDER;** via e-service via Wiznet as utilized by the Eighth Judicial District in Clark County, Nevada, on the following:

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

Attorney for Plaintiffs

/s/ Sally Wexler
An Employee of McDonald Carano Wilson
LLP

310557.5



CLERK OF THE COURT

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Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**ORDER GRANTING DEFENDANT'S
MOTION TO EXPUNGE LIS PENDENS**

AND RELATED CLAIMS

The Honorable Senior Judge Charles McGee, sitting in place of the Honorable Judge Kerry Earley, heard Defendant's Motion to Expunge Lis Pendens; and For Sanctions Regarding Plaintiffs' Violation of the Court's Protective Order (the "Motion") on July 17, 2014 at 8:30 a.m. James J. Jimmerson and Burak Ahmed, of the law firm JIMMERSON HANSEN P.C., appeared on behalf of Plaintiffs. Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP, appeared on behalf of Defendant Pardee Homes of Nevada ("Pardee"). The Court reviewed the papers and pleadings on file, and heard the arguments of counsel presented at the hearing.

For good cause appearing, the Court hereby finds as follows:

The Plaintiffs caused the Lincoln County Recorder to record document #0145289 (the "Recorded Document") in the Official Record of Lincoln County, Nevada

1 on April 14, 2014. Attached to the Recorded Document is a confidential agreement (the
2 "Confidential Document") between Pardee and Coyote Springs Investment, LLC
3 ("CSI"), which is protected by the Court's previous Protective Order entered on
4 December 12, 2011.

5 Because the Recorded Document and Confidential Document relate to, and
6 arise from, the above-captioned case, James Wolfram v. Pardee Homes of Nevada, A-
7 10-632338-C, the Court has jurisdiction to order expungement of the Recorded
8 Document and Confidential Document from the Official Record of Lincoln County,
9 Nevada, and to order removal of the Confidential Document from the public record.
10 Plaintiffs are not entitled to a lis pendens encumbering the land owned by either Coyote
11 Springs Investment, LLC or Pardee Homes of Nevada. Recording the Confidential
12 Document was a breach of the Protective Order, and that document must be removed
13 from the public record.

14 During the hearing, counsel for Pardee represented that if Pardee purchases
15 Option Property from CSI, as defined in the original Option Agreement and each
16 amendment thereafter, then Pardee shall send Plaintiffs' counsel courtesy copies of the
17 publicly recorded documents that memorialize the purchase of the Option Property.

18 Based on the foregoing findings, having considered the parties' briefing and
19 arguments of counsel presented at the hearing on this matter, and good cause
20 appearing therefor,

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pardee's Motion
22 to Expunge Lis Pendens is hereby GRANTED. The Lincoln County Recorder shall
23 immediately expunge the Recorded Document and any attachments thereto, including
24 the Confidential Document, and remove the Confidential Document from the public
25 records of Lincoln County, Nevada.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall
27 withdraw the Petition for Writ of Mandamus to Compel County Recorder to Seal and/or
28

1 Expunge Document from Recordation (the "Writ Petition"), which Plaintiffs filed on July
2 9, 2014.

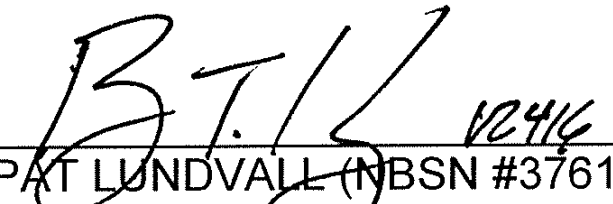
3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Pardee may file
4 a subsequent request for the attorney fees and costs it requested in the Motion.

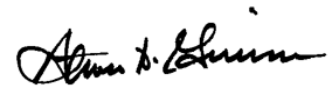
5 DATED this 18th day of July, 2014.

6
7 
8 SENIOR DISTRICT COURT JUDGE

9 Submitted by:

10 McDONALD CARANO WILSON LLP

11 
12 PAT LUNDVALL (NBSN #3761)
13 RORY T. KAY (NSB #12416)
14 2300 West Sahara Avenue, Suite 1200
15 Las Vegas, Nevada 89102
16 Attorneys for Pardee Homes of Nevada
17
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21
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25
26
27
28



CLERK OF THE COURT

1 **NEOJ**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**NOTICE OF ENTRY OF
ORDER GRANTING
DEFENDANT'S MOTION TO
EXPUNGE LIS PENDENS**

16 PLEASE TAKE NOTICE that an **ORDER GRANTING DEFENDANT'S**
17 **MOTION TO EXPUNGE LIS PENDENS** was entered in the above-referenced case
18 on the 18th day of July, 2014, a copy of which is attached hereto.

19 DATED this 25th day of July, 2014.

20 McDONALD CARANO WILSON LLP

21
22 /s/ Rory T. Kay
23 PAT LUNDVALL (#3761)
24 RORY T. KAY (#12416)
25 2300 West Sahara Avenue, Suite 1200
26 Las Vegas, Nevada 89102
27 *Attorneys for Defendant Pardee Homes of*
28 *Nevada*

 **McDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

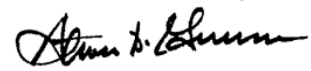
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 25th day of July, 2014, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT'S MOTION TO EXPUNGE LIS PENDENS** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

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

/s/ Sally Wexler
An Employee of McDonald Carano Wilson LLP

311484.1



CLERK OF THE COURT

ORDR
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Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

**ORDER GRANTING DEFENDANT'S
MOTION TO EXPUNGE LIS PENDENS**

AND RELATED CLAIMS

The Honorable Senior Judge Charles McGee, sitting in place of the Honorable Judge Kerry Earley, heard Defendant's Motion to Expunge Lis Pendens; and For Sanctions Regarding Plaintiffs' Violation of the Court's Protective Order (the "Motion") on July 17, 2014 at 8:30 a.m. James J. Jimmerson and Burak Ahmed, of the law firm JIMMERSON HANSEN P.C., appeared on behalf of Plaintiffs. Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP, appeared on behalf of Defendant Pardee Homes of Nevada ("Pardee"). The Court reviewed the papers and pleadings on file, and heard the arguments of counsel presented at the hearing.

For good cause appearing, the Court hereby finds as follows:

The Plaintiffs caused the Lincoln County Recorder to record document #0145289 (the "Recorded Document") in the Official Record of Lincoln County, Nevada

on April 14, 2014. Attached to the Recorded Document is a confidential agreement (the "Confidential Document") between Pardee and Coyote Springs Investment, LLC ("CSI"), which is protected by the Court's previous Protective Order entered on December 12, 2011.

Because the Recorded Document and Confidential Document relate to, and arise from, the above-captioned case, James Wolfram v. Pardee Homes of Nevada, A-10-632338-C, the Court has jurisdiction to order expungement of the Recorded Document and Confidential Document from the Official Record of Lincoln County, Nevada, and to order removal of the Confidential Document from the public record. Plaintiffs are not entitled to a lis pendens encumbering the land owned by either Coyote Springs Investment, LLC or Pardee Homes of Nevada. Recording the Confidential Document was a breach of the Protective Order, and that document must be removed from the public record.

During the hearing, counsel for Pardee represented that if Pardee purchases Option Property from CSI, as defined in the original Option Agreement and each amendment thereafter, then Pardee shall send Plaintiffs' counsel courtesy copies of the publicly recorded documents that memorialize the purchase of the Option Property.

Based on the foregoing findings, having considered the parties' briefing and arguments of counsel presented at the hearing on this matter, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pardee's Motion to Expunge Lis Pendens is hereby GRANTED. The Lincoln County Recorder shall immediately expunge the Recorded Document and any attachments thereto, including the Confidential Document, and remove the Confidential Document from the public records of Lincoln County, Nevada.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall withdraw the Petition for Writ of Mandamus to Compel County Recorder to Seal and/or

1 Expunge Document from Recordation (the "Writ Petition"), which Plaintiffs filed on July
2 9, 2014.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Pardee may file
4 a subsequent request for the attorney fees and costs it requested in the Motion.

5 DATED this 18th day of July, 2014.

6
7 Cheryl M. May
8 SENIOR DISTRICT COURT JUDGE

9 Submitted by:

10 McDONALD CARANO WILSON LLP

11 B.T.L. 102416
12 PAT LUNDVALL (NBSN #3761)
13 RORY T. KAY (NSB #12416)
14 2300 West Sahara Avenue, Suite 1200
15 Las Vegas, Nevada 89102
16 Attorneys for Pardee Homes of Nevada
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1 16). In *Leatherman v. Schwab*, a real-estate broker, like Plaintiffs here, recorded a contract
2 with a property owner that contained an exclusive listing agreement for the sale of property.
3 98 Fla. 885, 886 (1929). The Florida Supreme Court held that the recording of the
4 exclusive listing agreement did not create a cloud on title as "title to the property [was] not
5 affected by the record of the instrument," but granted mandamus relief against the county
6 recorder itself to remove the recording because an actual buyer made demand for its
7 removal:

8 The placing of the instrument on record did not vest in Wille
9 any rights whatever that did not accrue to him under the terms
10 of the instrument without record. The recording of the
11 instrument gave Wille no rights or advantages which he did not
12 have by holding the contract without record, and therefore Wille
13 remains a matter of record.

14 *Id.* at 886.

15 Title to the property is not affected by the record of the
16 instrument here sought to be expunged, and therefore a suit to
17 remove cloud from title will not lie; but the rights of the
18 petitioner are affected by the improper record of this
19 instrument, because, as it is alleged in the petition, the
20 petitioner has sold and conveyed the land by warranty deed,
21 and has taken a mortgage thereon for a large portion of the
22 unpaid purchase price, and the grantee of the petitioner
23 demands that the record be cleared of this contract. [...]. The
24 petition shows that demand has been made by the petitioner on
25 the clerk to expunge the instrument from the record and that
26 the clerk has refused to perform this duty. As stated
27 hereinbefore, it was the duty of the clerk to refuse to record the
28 instrument, the recording of which is the basis of this suit,
because the same shows clearly upon its face that it is not
entitled to record; but, the clerk having unlawfully recorded the
instrument, it became his duty to expunge or erase the same
from the record.

Id. at 887-89.

Here, Pardee's request is unripe because there is no evidence that an actual buyer,
like in *Leatherman*, demanded the Letter be removed from the public record. Further,
neither the Lincoln nor the Clark County Recorders were made parties to Pardee's Motion,

1 which seeks mandamus type-relief. Specifically, Pardee "seeks an order ... requiring the
2 Lincoln County Recorder [and the Clark County Recorder] to remove it from the public
3 record." (See Def.'s Mot. at 2. 12-14). Thus, the county recorders are necessary and
4 indispensable parties. Moreover, "expungement" of the public record merely creates a
5 subsequent public record that nullifies the former, and it does not remove the record in its
6 entirety. Since Pardee's Motion actually seeks a mandamus order to compel the Lincoln
7 and Clark county recorders to perform their alleged ministerial duty to seal and/or cancel the
8 Letter, the county recorders themselves are indispensable parties to this proceeding.
9 Accordingly, Pardee's Motion should be denied as being unripe and for failure to include
10 indispensable parties.

11 **C. Eighth Judicial District Courts Lack Jurisdiction to Order the Lincoln**
12 **County Recorder in the Seventh Judicial District to Seal and/or Cancel**
13 **the Public Record**

14 In Nevada, county lines "were established in order that certainty could be attained in
15 questions touching the **territorial extent of the jurisdiction of the courts** ..., and other
16 matters of public nature..." *County of Eureka v. County of Lander*, 26 P. 63 (1891)
17 (emphasis added). The Nevada Supreme Court in *Madison Nat'l Life Ins. v. Second*
18 *Judicial Dist. Ct.*, held that NRS 1.050 prohibits a district court from sitting as a court in
19 another county. *Id.* As such, "it is not possible for one court to reach out and draw to itself
20 jurisdiction of an action pending in another court, even when done with the consent of the
21 parties." *Id.* (citing *Ex parte Gardner*, 22 Nev. 280, 39 P. 570 (1895)).

22 Here, the Lincoln County property recorder is not located within the territorial
23 boundary and jurisdiction of the Eighth Judicial District Court. Instead, it is located in the
24 Seventh Judicial District. Pardee, therefore, was required to file a petition in the Seventh
25 Judicial District to seek relief regarding the recording that was filed within that county, which
26 is what the Plaintiffs have done. (See Petition in Lincoln Count, **Ex. "A"**). In *Reinhart v.*
27 *Matheson*, a the Illinois Appeals Court reversed an court order that required a party to
28

1 record an affidavit in a neighboring county to disclaim all interest in real property located in
2 that neighboring county. 253 Ill.App. 390 (1929). The appeals court held that the court
3 lacked jurisdiction because the property to be affected was outside the territorial boundary
4 of the court's jurisdiction:

5 In the first place we do not think that the court had jurisdiction
6 to grant the relief as prayed in the cross-bill, because the
7 premises to be affected were outside of Cook county and in
8 DuPage county. The Trust Co. asked that the Kelley affidavit
9 "be declared null and void, expunged from the records, and
10 cause to be removed as a cloud" upon the Trust Co.'s title to
11 the premises. **The court**, upon the hearing on the demurrer,
12 evidently treated the affidavit as such a cloud, and, while the
13 court refused to order that it be "expunged from the records," it
14 **did order**, after overruling the demurrer, **that Reinhardt and**
15 **Jay file an instrument in writing in DuPage county**
16 **disclaiming all interest in the land**, and that, in case of their
17 failure so to do, a master in chancery there file an instrument
18 showing that a Cook county court had decreed that the Kelley
19 affidavit was a cloud upon the Trust Co.'s title and that
20 Reinhardt and Jay had no right, title, interest or claim to the
21 premises nor did anyone under them. **This order or decree**
22 **attempted to do by an indirect method what under the law,**
23 **as we understand it, could not be done directly by a Cook**
24 **county court.** It purported on its face to affect the Trust Co.'s
25 title to premises lying in DuPage county. [...]. "When it is
26 necessary, to accomplish justice between the parties, to act
27 directly upon the property itself, it is indispensable that the real
28 estate to be affected must be within the territorial jurisdiction of
the court."

Id. at 394-95.

20 Here, Pardee's Motion seeks the same and similar relief that the court in *Reinhart*
21 found to be outside the jurisdiction of the court; "Pardee seeks an order to expunge the ...
22 lis pendens and the confidential exhibit attached to it, and requiring the Lincoln County
23 Recorder to remove it from the public record." (See Def.'s Mot. at 2:13-15). Plaintiffs have
24 moved forward and filed a petition in Lincoln County to expunge and/or seal the Letter,
25 which should satisfy Pardee's jurisdictional defects. (See Petition in Lincoln County, **Ex.**
26 **"A"**). Since the Eighth Judicial District Court's jurisdiction to affect Pardee's alleged
27

1 property interests ends at its properly line, the Court should deny Pardee's Motion to the
2 extent it seeks an order compelling action in a neighboring county.

3 **D. Pardee's Request for Monetary Sanctions Should be Denied For Failure**
4 **to Meet and Confer**

5 Nev.R.Civ.P. 26 (governing protective orders), Nev.R.Civ.P. 37 (governing violations
6 of discovery orders), EDCR 2.34 (governing applications to the court regarding discovery
7 disputes), and paragraph 13 of the Protective Order itself, requires the parties to meet and
8 confer prior to an application for court intervention. A meet and confer requires an in person
9 or telephonic conference. *Id.* The purpose of the meet and confer requirement is to
10 encourage parties to resolve their disputes before resorting to judicial intervention. When
11 the court must resolve a dispute that the parties themselves could have resolved, it
12 needlessly expends resources that it could better utilize elsewhere.

13 Pardee argues that Rule 26 protective orders are subject to "inherent powers"
14 sanctions and not Rule 37 sanctions. (See Def.'s Mot. at 10:1-7). Not so. The majority rule
15 is that Rule 26 protective orders are discovery orders subject to Rule 37's sanctions. See
16 *Smith & Fuller v. Cooper Tire & Rubber*, 685 F.3d 486 (5th Cir. 2012); *Falstaff Brewing Corp.*
17 *v. Miller Brewing Co.*, 702 F.2d 770, 784 (9th Cir. 1983); *Valdez-Castillo v. Busch*
18 *Entertainment Corp.*, 2008 WL 4999175, *5-6 (S.D. Fla. 2008); *Whitehead v. Gateway*
19 *Chevrolet*, 2004 WL 1459478 *3 (N.D. Ill. 2004). The protective order in this case was an
20 order to provide, permit, and disclose discovery documents as the phrase used in Rule
21 37(b)(2). (See Protective Order, p.1-2). As such, alleged violations of the Protective Order
22 are governed by Rule 37.

23 Here, Pardee failed to include a certification that its counsel attempted to meet and
24 confer to resolve this dispute before their application for judicial intervention. PAT
25 LUNDVALL, ESQ. (hereinafter "Ms. Lundvall"), counsel for Pardee, initiated only one,
26 unscheduled telephone call to Plaintiffs on June 17, 2014, before filing this Motion.
27 Associate counsel for JIMMERSON HANSEN, P.C., even responded to Ms. Lundvall's
28

1 voicemail that same day, stating her message had been forwarded to JAMES J.
2 JIMMERSON, ESQ. (hereinafter "Mr. Jimmerson"), Plaintiffs' lead trial counsel, who was out
3 of the country until Monday, June 23, 2014:

4 Dear Ms. Lundvall,

5 I am in receipt of your message regarding a Recorded
6 Document in the above referenced matter. I will forward the
7 message to Mr. Jimmerson to follow up. At this time, he is out
8 of the office until Monday, June 23, 2014. Thank you.

8 Burak S. Ahmed, Esq.

9 (See Correspondence, Jun. 17, 2014, attached hereto as **Exhibit "B"**).

10 On Monday, June 23, 2014, however, Pardee rushed to file this Motion without a
11 Rule 37 meet and confer even though this matter could have been resolved by the parties
12 without court intervention. Counsel for Plaintiff recognizes that the recoding of limited
13 "confidential" documents was an error and counsel for Plaintiff has already filed a petition in
14 Lincoln County seal and/or expunge the same. (See Petition in Lincoln County, **Ex. "A"**).
15 Mr. Jimmerson further conducted a telephonic conference with counsel for Pardee on July
16 9, 2014, regarding Plaintiffs attached petition for Lincoln County and the other matters
17 raised in this Opposition. (See Jimmerson Decl. at ¶¶ 2-3). No response by Pardee was
18 ever made. (*Id.* at ¶4). Since Pardee failed to meet and confer and the matters raised in
19 Pardee's Motion could have been resolved with limited Court intervention, an imposition of
20 monetary sanction against Plaintiffs' would be unjust.

21 **III. CONCLUSION**

22 This case has always been about communication and Pardee's rush to file this
23 Motion exemplifies the lack of communication and good faith that has plagued the Plaintiffs'
24 relationship with Pardee for the past decade. Plaintiff filed a Petition in Lincoln County to
25 cure its inadvertent filing of confidential documents. As for Clark County, Plaintiffs
26 respectfully request the Court's order to expunge and/or seal the recorded Letter, Document
27 No. 20140328-0001285, without prejudice, and subject to the Court's further orders
28

1 regarding recording of the agreement, notice, identification of land, fair dealing, and all other
2 matters. Otherwise, Plaintiffs respectfully request the Court to deny Pardee's Motion in its
3 entirety.

4 Respectfully submitted,

5 DATED this 14 day of July, 2014.

JIMMERSON HANSEN, P.C.

6
7
8 BY: /s/ James J. Jimmerson
9 JAMES J. JIMMERSON, ESQ.
10 Nevada Bar No.: 264
11 LYNN M. HANSEN, ESQ.
12 Nevada Bar No.: 244
13 415 South 6th Street, Suite 100
14 Las Vegas, Nevada 89101
15 Tel No.: (702) 388-7171;
16 Fax No.: (702) 380-6406
17 Attorneys for Plaintiffs
18
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DECLARATION OF JAMES J. JIMMERSON, ESQ., IN SUPPORT OF OPPOSITION TO
DEFENDANT'S MOTION TO EXPUNGE LIS PENDENS AND FOR SANCTIONS
REGARDARDING PLAINTIFFS' VIOLATION OF THE COURT'S PROTECTIVE ORDER

State of Nevada)
) ss:
County of Clark)

JAMES J. JIMMERSON, ESQ., declares and says:

1. I am one of the attorneys for the Plaintiffs in the above referenced matter. I have personal knowledge of all matters contained herein unless specifically stated upon information and belief. I am competent to testify hereto.


2. On July 9, 2014, I conducted a telephonic conference with AARON SHIPLEY, ESQ., counsel for Pardee, regarding Plaintiffs proposed Petition to seal and/or expunge the Letter that was recorded in Lincoln County.

3. During that telephonic conference, I offered to consider the costs and fees associated with sealing and/or expunging of the Letter from the public records in Lincoln and Clark Counties, but reserved Plaintiffs right to record and serve notice of the contract with a proper, agreed-to, legal description of the subject property in order to protect the rights of Plaintiffs, Pardee, and their successors and assigns.

4. Counsel for Pardee agreed to consider my offer, but to date, no response has been made.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 14 day of July, 2014.


JAMES J. JIMMERSON, ESQ.

DECLARATION OF BURAK S. AHMED, ESQ., IN SUPPORT OF OPPOSITION TO
DEFENDANT'S MOTION TO EXPUNGE LIS PENDENS AND FOR SANCTIONS
REGARDARDING PLAINTIFFS' VIOLATION OF THE COURT'S PROTECTIVE ORDER

State of Nevada)
) ss:
County of Clark)

BURAK S. AHMED, ESQ., declares and says:

1. I am an associate attorney for the law firm of JIMMERSON HANSEN, P.C., who represents Plaintiffs in the above referenced matter. I have personal knowledge of all matters contained herein unless specifically stated upon information and belief. I am competent to testify hereto.

2. Attached hereto and marked as **Exhibit "B"** is a true and correct copy of correspondence I emailed to PAT LUNDVALL, ESQ., and AARON SHIPLEY, ESQ., counsels for Pardee, on June 17, 2014.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 14 day of July, 2014.


BURAK S. AHMED, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of JIMMERSON HANSEN, P.C., and that on the 14 day of July, 2014, I served a true and correct copy of **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO EXPUNGE LIS PENDENS AND OFR SANCTIONS REGARDING PLAINTIFFS' VIOLATION OF THE COURT'S PROTECTIVE ORDER** by the method indicated below, and addressed to the following:

Person(s) Served:

Pat Lundvall, Esq.

Aaron Shipley, Esq.

McDONALD CARANO WILSON, LLP

2300 W. Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

Attorney for Defendants

☒ Hand Deliver

☒ U.S. Mail

☐ Overnight Mail

☐ Facsimile

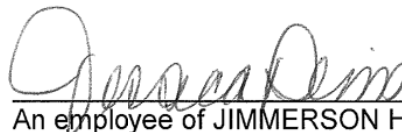
☐ Email

☒ Electronic Service

Thomas Lee Doyle Wilkes

Angela L. Limbocker-Wilkes

☒ Served pursuant to NRCP 4 and NRCP 25



An employee of JIMMERSON HANSEN, P.C.

EXHIBIT “A”

DISTRICT COURT CIVIL COVER SHEET

Lincoln County, Nevada
Case No. _____
(Assigned by Clerk's Office)

| | |
|---|--|
| I. Party Information (provide both home and mailing addresses if different) | |
| Plaintiff(s) (name/address/phone): James Wolfram; Angela L. Limbocker-Wilkes as trustee for the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust | Defendant(s) (name/address/phone): Leslie Boucher, in her official capacity as the Lincoln County Recorder |
| Attorney (name/address/phone): James J. Jimmerson, Esq., 415 S. 6th Street, Suite 100, Las Vegas, Nevada 89101 | Attorney (name/address/phone): |

| | | |
|--|--|---|
| II. Nature of Controversy (please select the one most applicable filing type below) | | |
| Civil Case Filing Types | | |
| Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property | Torts Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort | |
| Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500 | Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract | Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal |
| Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ | | Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters |

Business Court filings should be filed using the Business Court civil coversheet.

7/14/14 [Signature]
 Date Signature of initiating party or representative

See other side for family-related case filings.

PET

JAMES J. JIMMERSON, ESQ.
Nevada Bar No.: 00264
LYNN M. HANSEN, ESQ.
Nevada Bar No.: 00244
JIMMERSON HANSEN, P.C.
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Tel No.: (702) 388-7171;
Fax No.: (702) 388-6406
jjj@jimmersonhansen.com
lmh@jimmersonhansen.com
Attorneys for Petitioners

**SEVENTH JUDICIAL DISTRICT COURT
LINCOLN COUNTY, NEVADA**

JAMES WOLFRAM, an individual; ANGELA
L. LIMBOCKER-WILKES as trustee for the
WALTER D. WILKES AND ANGELA L.
LIMBOCKER-WILKES LIVING TRUST

Petitioners,

vs.

LESLIE BOUCHER, in her official capacity
as the LINCOLN COUNTY RECORDER,

Respondent,

COYOTE SPRINGS INVESTMENT, LLC,
and PARDEE HOMES OF NEVADA,

Real Parties in Interest.

Case No.:

Dept. No.:

**PETITION FOR WRIT OF MANDAMUS
TO COMPEL COUNTY RECORDER TO
SEAL AND/OR EXPUNGE DOCUMENT
FROM RECORDATION**

COME NOW, Petitioners JAMES WOLFRAM, and ANGELA L. LIMBOCKER-
WILKES as trustee for the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES
LIVING TRUST (hereinafter collectively "Petitioners"), by and through their counsels
JAMES J. JIMMERSON, ESQ., and LYNN M. HANSEN, ESQ., of the law firm
JIMMERSON HANSEN, P.C., and files their Petition for Writ of Mandamus to Compel
County Recorder to Seal and/or Expunge Document from Recordation.

///

1 This Petition is brought on the following grounds:

2 1. The District Courts of Nevada have original jurisdiction to issue writs of
3 mandamus. Nev. Const., art. 6, § 6. NRS 34.150 *et seq.*

4 2. The Recorder of Lincoln County, Nevada has exclusive jurisdiction over the
5 recordation of documents and materials in the Lincoln County Records Officer. NRS
6 247.110.

7 3. A writ of mandamus is available to compel the performance of an act that the
8 law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control
9 an arbitrary or capricious exercise of discretion. *See Round Hill Gen. Imp. Dist. v.*
10 *Newman*, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue if
11 petitioner has a plain, speedy and adequate remedy in the ordinary course of law. *See*
12 NRS 34.170; 34.330. Further, as an extraordinary remedy, and it is within the discretion
13 of the Court to determine if a petition will be considered. *See State ex rel. Dep't Transp.*
14 *v. Thompson*, 99 Nev. 358, 662 P.2d 1338 (1983).

15 4. On April 14, 2014, Petitioners, through counsel, submitted for recordation a
16 Letter (the "Recorded Document")—Document No. 0145289).

17 5. The Recorded Document relates to land located in the area known as
18 "Coyote Springs," located in the Counties of Lincoln and Clark in the State of Nevada.

19 6. As is relevant for the purposes of this Petition, the land in Lincoln County is
20 currently owned by Coyote Springs Investment, LLC or one of its affiliates ("CSI"). Pardee
21 Homes of Nevada ("Pardee") currently has certain rights, under certain agreements
22 between Pardee and CSI, to purchase the land at issue.

23 7. Pursuant to the Commission Letter Agreement dated September 1, 2004,
24 included in the Recorded Document, Pardee must make certain commission payments and
25 provide certain information to Petitioners if and when Pardee purchases certain land from
26 CSI.

1 8. James Wolfram and Walt Wilkes (collectively, the "Plaintiffs") filed suit in the
2 Eighth Judicial District County, in and for Clark County, alleging that Pardee failed to
3 satisfy its obligations under the Commission Letter Agreement. See Case No. A-10-
4 632338-C, before Judge Earley in Dept. IV (the "Lawsuit"). In the Lawsuit, Wolfram and
5 Wilkes alleged that Pardee failed to provide the information required to be provided to them
6 by Pardee under the Commission Letter Agreement.

7 9. As part of the Lawsuit, a Stipulated Confidentiality Agreement and Protective
8 Order was agreed upon and entered by the Court on December 15, 2011 (Protective
9 Order"). A true and correct copy of the Protective Order is attached hereto as **Exhibit "1"**.

10 10. The Protective Order concerned the treatment of certain confidential and
11 sensitive information produced during the Lawsuit. See Exhibit 1 at pp. 1-2. Among other
12 things, the Protective Order provided that documents marked "Confidential" were to be filed
13 under seal with the Court. *Id.* at § 8.

14 11. In accordance with the Protective Order, Wolfram and Wilkes filed the
15 documents marked confidential under seal with the Court. Pardee did the same. The
16 Court granted the parties' motions to file such documents under seal. See *e.g.* Exhibit 2, a
17 true and correct copy of Order Granting Parties' Motions to File Exhibits Under Seal
18 entered on January 25, 2013, attached hereto as **Exhibit "2"**.

19 12. The Lawsuit went to trial in 2013. A bench trial was conducted on the
20 following dates: 10/23/2013, 10/24/2013, 10/28/2013, 10/29/2013, 10/30/2013, 12/09/2013,
21 12/10/2013, 12/12/2013, 12/13/2013. The Court rendered its Findings of Fact,
22 Conclusions of Law and Order on June 25, 2014 (the "Order"), a true and correct copy of
23 which is attached hereto as **Exhibit "3"**.

24 13. As part of the Order, the Court found in favor of Plaintiffs, ordered
25 supplemental briefing concerning what is necessary from Pardee to properly account to
26 Plaintiffs, and awarded damages to Plaintiffs. See Exhibit 3 at pp. 17-18.

27
28

1 14. However, prior to the entry of the Order, but after the trial concluded, Plaintiff
2 Walt Wilkes unfortunately passed away on March 16, 2014.

3 15. Without knowing how the Court would rule in the Lawsuit, but in order to
4 protect Mr. Wilkes's successors, heirs, and assigns, counsel for Petitioners submitted for
5 recordation the Recorded Document.

6 16. As can be seen from the documents contained within the Recorded
7 Document, including the Commission Letter Agreement, the Recorded Document does not
8 grant to anyone any rights, mortgages, privileges, options or contracts as to the real
9 property owned by CSI (and upon which Pardee has certain options to purchase). The
10 Recorded Document simply puts the world on notice of the requirements by Pardee to
11 provide certain commissions and information to Petitioners. As such, the recordation of the
12 Recorded Document does not create a cloud on the title of the property at CSI.

13 17. Included in the Recorded Document is a copy of the Commission Letter
14 Agreement dated September 1, 2004, as well as a number of pages of maps labeled
15 "Confidential."

16 18. The submission of the pages labeled "Confidential" for recordation was
17 inadvertent.

18 19. There is no plain, adequate or speedy remedy in the ordinary course of law
19 to remedy the harm of the recordation of confidential materials in the Recorded Document.

20 THEREFORE, for the foregoing reasons, Petitioners respectfully request:

21 1. The Court issue an order that Leslie Boucher, in her official capacity as the
22 Lincoln County Recorder, seal from the public record the Recorded Document;

23 2. The Court issue and order that Leslie Boucher, in her official capacity as the
24 Lincoln County Recorder, expunge from the public record the Recorded Document, so that
25 it no longer has any force and effect; and

26 ///

27 ///

28


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

1 3. Directs such other and further relief as this Court determines is proper.

2 DATED this 14th day of July, 2014.

3 JIMMERSON HANSEN, P.C.

4
5 BY:

 JAMES J. JIMMERSON, ESQ.

Nevada Bar No.: 264

LYNN M. HANSEN, ESQ.

Nevada Bar No.: 244

415 South 6th Street, Suite 100

Las Vegas, Nevada 89101

Tel No.: (702) 388-7171;

Fax No.: (702) 380-6406

Attorneys for Petitioners

**DECLARATION OF JAMES J. JIMMERSON, ESQ. IN SUPPORT OF PETITION FOR
WRIT OF MANDAMUS TO COMPEL COUNTY RECORDER TO SEAL AND/OR
EXPUNGE DOCUMENT FROM RECORDATION**

Pursuant to NRS 53.045, I, James. J. Jimmerson, Esq., hereby declare under penalty of perjury:

1. I am over the age of eighteen (18), am of sound mind, and am competent to make this Declaration. This Declaration is made of my own personal knowledge except where stated on information and belief, I believe them to be true.

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

3. I am a principal of the law firm of Jimmerson Hansen, P.C., attorneys retained to represent Petitioners, JAMES WOLFRAM and the ANGELA L. LIMBOCKER-WILKES as trustee for the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST, in the above-captioned matter.

4. This Declaration is submitted in support of Petition for Writ of Mandamus to Compel County Recorder to Seal and/or Expunge Document from Recordation (the "Petition").

5. On April 14, 2014, on behalf of Petitioners, I submitted for recordation a Letter (the "Recorded Document")—Document No. 0145289).

6. The Recorded Document relates to land located in the area known as "Coyote Springs," located in the Counties of Lincoln and Clark in the State of Nevada.

7. As is relevant for the purposes of this Petition, the land in Lincoln County is currently owned by Coyote Springs Investment, LLC or one of its affiliates ("CSI"). Pardee Homes of Nevada ("Pardee") currently has certain rights, under certain agreements between Pardee and CSI, to purchase the land at issue.

8. Pursuant to the Commission Letter Agreement dated September 1, 2004, included in the Recorded Document, Pardee is obligated of when certain commission payments are due under certain conditions, and to provide certain information to

1 Petitioners if and when Pardee purchases certain land from CSI and meets the
2 requirements with other contracts ("Option Agreement"), between Pardee and CSI.

3 9. James Wolfram and Walt Wilkes filed suit in the Eighth Judicial District
4 County, in and for Clark County, alleging that Pardee failed to satisfy its obligations under
5 the Commission Letter Agreement. See Case No. A-10-632338-C, before Judge Earley in
6 Dept. IV (the "Lawsuit"). In the Lawsuit, Wolfram and Wilkes alleged that Pardee failed to
7 provide the information required to be provided to them by Pardee under the Commission
8 Letter Agreement.

9 10. As part of the Lawsuit, a Stipulated Confidentiality Agreement and Protective
10 Order was agreed upon and entered by the Court on December 15, 2011 (the "Protective
11 Order"). A true and correct copy of the Protective Order is attached to the Petition as
12 **Exhibit "1"**.

13 11. Wolfram and Wilkes filed the documents marked confidential under seal with
14 the Court. Pardee did the same. The Court granted the parties' motions to file such
15 documents under seal. See e.g. Exhibit 2, a true and correct copy of Order Granting
16 Parties' Motions to File Exhibits Under Seal entered on January 25, 2013, attached to the
17 Petition as **Exhibit "2"**.

18 12. The Lawsuit went to trial in 2013. A bench trial was conducted on the
19 following dates: 10/23/2013, 10/24/2013, 10/28/2013, 10/29/2013, 10/30/2013,
20 12/09/2013, 12/10/2013, 12/12/2013, 12/13/2013. The Court rendered its Findings of
21 Fact, Conclusions of Law and Order on June 25, 2014 (the "Order"), a true and correct
22 copy of which is attached to the Petition as **Exhibit "3"**.

23 13. Prior to the entry of the Order, but after the trial concluded, Plaintiff Walt
24 Wilkes unfortunately passed away on March 16, 2014.

25 14. Without knowing how the Court would rule in the Lawsuit, but in order to
26 protect Mr. Wilkes's successors, heirs, and assigns, and Mr. Wolfram's successors, heirs,
27
28

1 and assigns, I, as counsel for the Petitioners, submitted for recordation the Recorded
2 Document.

3 15. The Recorded Document does not grant to anyone any rights, mortgages,
4 privileges, options or contracts as to ownership of the real property owned by CSI (and
5 upon which Pardee has certain options to purchase). The Recorded Document puts the
6 world on constructive notice of the commission contract only. As such, the recordation of
7 the Recorded Document does not create a cloud on the title of the property at CSI.

8 16. Included in the Recorded Document is a copy of the Commission Letter
9 Agreement dated September 1, 2004, as well as a number of pages of maps labeled
10 "Confidential."

11 17. The submission of the pages labeled "Confidential" for recordation was
12 inadvertent.

13 I declare under penalty of perjury under the laws of the State of Nevada that the
14 foregoing is true and correct.

15
16 DATED this 14th day of July, 2014.

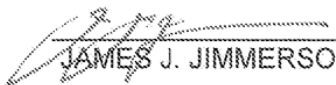
17
18 
19 JAMES J. JIMMERSON, ESQ.
20
21
22
23
24
25
26
27
28

EXHIBIT “1”

CSERV
PAT LUNDVALL
Nevada Bar No. 3761
AARON D. SHIPLEY
Nevada Bar No. 8258
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
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(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonalddcarano.com
ashipley@mcdonalddcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

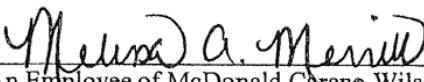
PARDEE HOMES OF NEVADA,
Defendant.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that
on the 16th day of December, 2011, I served a true and correct copy of the foregoing **NOTICE
OF ENTRY OF STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER** via US Mail on the following:

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


An Employee of McDonald Carano Wilson LLP

240137.1

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

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12/16/2011 11:23:40 AM


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

11 **JAMES WOLFRAM,**
12 **WALT WILKES**

13 Plaintiffs,

14 vs.

15 **PARDEE HOMES OF NEVADA,**

16 Defendant.


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

**NOTICE OF ENTRY OF
STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

17 PLEASE TAKE NOTICE that an **STIPULATED CONFIDENTIALITY**
18 **AGREEMENT AND PROTECTIVE ORDER** was entered on the 15th day of December,
19 2011, a copy of which is attached hereto.

20 Dated this 16th day of December, 2011.

21
22 MCDONALD CARANO WILSON LLP

23 
24 PAT LUNDVALL (#3761)
25 AARON D. SHIPLEY (#8258)
26 2300 West Sahara Avenue, Suite 1000
27 Las Vegas, Nevada 89102
28 *Attorneys for Defendant Pardee Homes of Nevada*

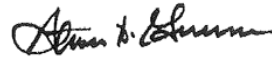
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that
on the ____ day of December, 2011, I served a true and correct copy of the foregoing **NOTICE
OF ENTRY OF STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER** via US Mail on the following:

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

An Employee of McDonald Carano Wilson LLP

240065.1



CLERK OF THE COURT

1 SAO
2 PAT LUNDVALL
3 NSBN 3761
4 AARON D. SHIPLEY
5 NSBN 8258
6 McDONALD CARANO WILSON LLP
7 2300 West Sahara Avenue, Suite 1000
8 Las Vegas, Nevada 89102
9 (702) 873-4100
10 (702) 873-9966 Facsimile
11 lundvall@mcdonaldcarano.com
12 ashipley@mcdonaldcarano.com
13 Attorneys for Defendant
14 Pardee Homes of Nevada
15

16 DISTRICT COURT
17 CLARK COUNTY, NEVADA

18 JAMES WOLFRAM,
19 WALT WILKES

20 Plaintiffs,

21 vs.

22 PARDEE HOMES OF NEVADA,

23 Defendant.

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

24 STIPULATED CONFIDENTIALITY
25 AGREEMENT AND PROTECTIVE
26 ORDER

27 Plaintiffs James Wolfram and Walt Wilkes (collectively "Plaintiffs"), , and Defendant
28 Pardee Homes of Nevada ("Pardee" or "Defendant"), hereby enter into this Stipulated
Confidentiality Agreement and Protective Order pursuant to NRCP 26(c) and NRCP 29.
Plaintiffs and Defendant are collectively referred to as the "Parties" in this Stipulation and
individually as "Party." The Parties have agreed and stipulated to the entry of this Order for the
protection of certain business records, information, financial records, trade secrets, confidential
records, commercial information and related information produced or otherwise disclosed by
the parties in this action.

Whereas, the Parties may produce certain documents or other materials which contain
proprietary and/or confidential information, specifically to include but may not be limited to

1 documents produced by Coyote Springs Investments, LLC ("CSI") in response to a subpoena
2 issued by Plaintiffs' counsel on or about November 9, 2011;

3 Whereas, the Parties stipulate and agree that all documents produced by CSI pertaining
4 to Pardee and/or the Coyote Springs development in Clark and Lincoln counties contain
5 confidential and sensitive information and are designated as Confidential Information as more
6 fully defined below;

7 It is hereby stipulated and agreed, by and between the Parties hereto, through their
8 respective counsel of record, that:

9 1. For the purposes of this Order, "Confidential Information" shall mean all
10 information or material which is or has been produced or disclosed by CSI, disclosed to a
11 receiving party during the course of this litigation, whether embodied in physical objects,
12 documents, or the factual knowledge of persons, which has been designated in writing as
13 "Confidential" by the disclosing Party. Any Party that produces documents or information
14 obtained from a disclosing party, including CSI, during discovery in this action shall designate
15 such information as "Confidential."

16 2. A Party's inadvertent or unintentional failure to designate information as
17 Confidential shall not be deemed a waiver in whole or in part of that Party's claim of
18 confidentiality if the disclosing Party takes immediate action after discovering such omission to
19 notify all Parties in writing that such information constitutes Confidential Information, in which
20 case such information will be subject to this Order from and after the date on which such
21 written notice is delivered to all Parties.

22 3. Confidential Information contained in physical objects or documents shall
23 include any documents, deposition transcripts, exhibits, discovery responses, etc., or copies
24 therefrom. Except as otherwise provided herein, the Parties shall not disclose Confidential
25 Information to a third party other than (1) to the persons specified in Paragraph 5 below; (2) to
26 the extent that such Confidential Information is or becomes generally available to the public
27 through no breach of this Order by the receiving Party by a person who is not under a duty of
28 confidentiality to the disclosing Party; or (3) to the extent that such disclosure is compelled by

1 legal process or procedure, including without limitation a subpoena, and the receiving Party
2 shall use commercially reasonable efforts to protect the Confidential Information from
3 inadvertent or accidental disclosure.

4 4. Confidential documents shall be so designated by stamping copies of the
5 document produced to a party with the legend "CONFIDENTIAL." Stamping the legend
6 "CONFIDENTIAL" on the cover of any multi-page document shall designate all pages of the
7 document as confidential, unless otherwise indicated by the producing Party.

8 5. The designation of information as Confidential pursuant to this Order shall not
9 be construed as a concession by a producing Party that such information is relevant or material
10 to any issue or is otherwise discoverable, or by a receiving Party that such information is, in
11 fact, a trade secret or confidential research, development or commercial information.

12 6. For the purposes of this Order, the following persons shall be authorized to
13 receive Confidential Information: (a) the Parties and their in-house counsel; (b) any directors,
14 officers or other management personnel of the Parties who have supervisory authority with
15 respect to the disposition of this case; (c) any attorney employed by the law firms selected by
16 each party as counsel of record in connection with this action, including paralegal, clerical and
17 secretarial staff employed by such law firms; (d) outside copy services employed by any of the
18 law firms or the Parties; (e) outside reporters retained to record and transcribe testimony in
19 connection with this action; (f) outside experts or consultants (testifying and non-testifying)
20 retained by a Party for the purposes of assisting in connection with this action, and the
21 employees of such experts and consultants who are assisting them; and (g) the Court and its
22 staff, and any other court, tribunal or dispute resolution officer duly appointed, chosen or
23 assigned in connection with this action. A Party who discloses Confidential Information to
24 outside experts or consultants (testifying and non-testifying) shall require that such expert or
25 consultant sign an acknowledgment and consent to this Stipulation in the form attached hereto
26 as Exhibit "A" prior to making such disclosure. A Party who has, prior to the execution of this
27 Order, disclosed Confidential Information to experts or consultants (testifying and non-
28 testifying), shall request that such person sign an acknowledgment and consent to this

1 Stipulation in the form attached hereto as Exhibit "A" following the acceptance of this Order by
 2 the Court. The Parties agree to exchange executed copies of Exhibit "A" for any disclosed
 3 expert witnesses at the close of the expert discovery.

4 7. The Parties agree that documents produced by non-parties in this action, such as
 5 CSI, should be afforded the same protection contemplated by the parties in the Stipulated
 6 Confidentiality Agreement and Protective Order. Prior to obtaining any information,
 7 documents, or items produced by a non-party voluntarily or in response to a subpoena or court
 8 order, the Party intending to receive the information from a non-party shall provide the non-
 9 party with a copy of the Stipulated Confidentiality Agreement and Protective Order and this
 10 amendment. By executing Exhibit "A" to the Stipulated Confidentiality Agreement and
 11 Protective Order entitled "Acknowledgment and Agreement to Be Bound," any non-party
 12 producing such information shall be entitled to designate documents as Confidential pursuant to
 13 its terms and afforded the same protections as the Parties as contemplated in the Stipulated
 14 Confidentiality Agreement and Protective Order.

15 8. In connection with any Party's filing in Court of any Confidential Information,
 16 such information shall be filed with the Clerk of the Court in sealed envelopes prominently
 17 marked with the caption of this case, the identity of the Party filing the envelope(s) and the
 18 notation:

19 **CONTAINS CONFIDENTIAL INFORMATION**
 20 **SUBJECT TO PROTECTIVE ORDER TO BE**
 21 **OPENED ONLY AS DIRECTED BY THE COURT.**

22
 23 9. The terms of this Order shall in no way affect a Party's right to withhold
 24 information on grounds of immunity from discovery.

25 10. Upon final termination of this action, including all appeals, and upon request by
 26 the producing Party, the receiving Party shall, at its option, either return to the producing Party
 27 or destroy all physical objects and documents which embody Confidential Information and
 28 which were received from the producing Party, and shall destroy, in whatever form stored or

1 reproduced, all other physical objects and documents produced by the producing Party to the
2 receiving Party during the litigation. However, counsel for a Party shall be entitled to retain a
3 copy of such Confidential Information, including, but not limited to, pleadings, correspondence,
4 memoranda, notes, and other work product materials which contain or refer to such
5 information, provided that all Confidential Information embodied in physical objects and
6 documents shall remain subject to this Order.

7 11. All matters arising under this Order may be heard and decided by the Clark
8 County District Court Judge or Discovery Commissioner designated to hear discovery matters
9 in this action.

10 12. If, at any time, counsel for the receiving Party believes that the producing Party
11 has unreasonably designated certain evidence as Confidential Information, the receiving Party
12 may object in writing to the designation within thirty (30) days of the disclosure and
13 designation of Confidential Information at issue. If the Parties are unable to confer and agree
14 on the designation, then the receiving Party may timely file a motion with the Court asserting
15 its challenge to the designation. The Party claiming Confidential Information shall have the
16 burden of establishing confidentiality.

17 13. This Order shall be without prejudice to the rights of the Parties to present a
18 motion to the Court under applicable Nevada Rules of Civil Procedure for a separate protective
19 order as to any particular document or information, including restrictions differing from those
20 as specified herein. This Order shall not be deemed to prejudice the Parties in any way in any
21

22 ///

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26 ///

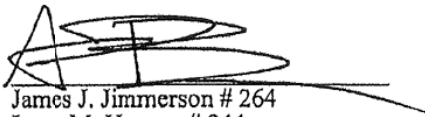
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28

future application for modification of this Order. Such motion, however, shall only be made after the Parties have engaged in a good faith effort to resolve the issue prior to any application to the Court. Nothing in this Stipulation shall restrict the use or disclosure by a Party of information that it alone has designated as confidential.

DATED this 9 day of Dec., 2011.

JIMMERSON HANSEN, P.C.

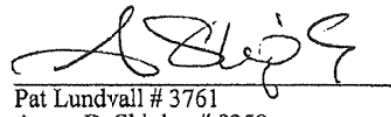


James J. Jimmerson # 264
Lynn M. Hansen # 244
Amanda J. Brookhyser # 11526
415 S. Sixth St., Ste. 100
Las Vegas, NV 89101
Telephone: (702) 380-7171

*Attorneys for Plaintiffs
James Wolfram and Walt Wilkes*

DATED this 9 day of Dec., 2011.

MCDONALD CARANO WILSON LLP




Pat Lundvall # 3761
Aaron D. Shipley # 8258
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone: (702) 873-4100

Attorneys for Defendant Pardee Homes of

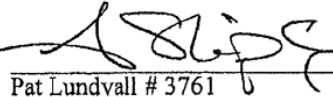
ORDER

IT IS SO ORDERED.


HONORABLE KATHY A. HARDCASTLE
DATED: December 13, 2011

Submitted by:

MCDONALD CARANO WILSON LLP



Pat Lundvall # 3761
Aaron D. Shipley # 8258
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone: (702) 873-4100

*Attorneys for Defendant Pardee Homes of
Nevada*

McDONALD-CARANO-WILSON

100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89501-2670
PHONE 775-788-2000 • FAX 775-788-2010

FORM ATTACHMENT "A"

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Confidentiality Agreement and
Protective Order that was issued by the Eighth Judicial District Court of Clark County, Nevada
on _____ [date] in the action entitled JAMES WOLFRAM and WALT WILKES v.
PARDEE HOMES OF NEVADA; Case No. A-10-632338-C. I agree to comply with and to be
bound by all of the terms of this Stipulated Confidentiality Agreement and Protective Order and
I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Confidentiality Agreement and
Protective Order to any person or entity except in strict compliance with the provisions of this
Stipulated Confidentiality Agreement and Protective Order.

I further agree to submit to the jurisdiction of the Eighth Judicial District Court of Clark
County, Nevada for the purpose of enforcing the terms of this Stipulated Confidentiality
Agreement and Protective Order, even if such enforcement proceedings occur after termination
of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

JA007531

EXHIBIT “2”

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

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

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 **JAMES WOLFRAM,**
12 **WALT WILKES**

13 Plaintiffs,

14 vs.

15 **PARDEE HOMES OF NEVADA,**

16 Defendant.

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

**NOTICE OF ENTRY OF
ORDER GRANTING PARTIES'
MOTIONS TO FILE EXHIBITS
UNDER SEAL**

17 PLEASE TAKE NOTICE that an **ORDER GRANTING PARTIES' MOTIONS**
18 **TO FILE EXHIBITS UNDER SEAL** was entered in the above-referenced case on
19 the 25th day of January, 2013, a copy of which is attached hereto.

20 DATED this 28th day of January, 2013.

21 **McDONALD CARANO WILSON LLP**

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

 **MCDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
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CERTIFICATE OF SERVICE

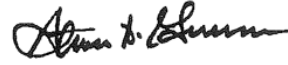
I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 28th day of January, 2013, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER GRANTING PARTIES' MOTIONS TO FILE EXHIBITS UNDER SEAL** via U.S. Mail, postage prepaid, to the following address:

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

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

270896.1

JA007534



CLERK OF THE COURT

1 OGM
2 PAT LUNDVALL
3 Nevada Bar No. 3761
4 AARON D. SHIPLEY
5 Nevada Bar No. 8258
6 McDONALD CARANO WILSON LLP
7 2300 West Sahara Avenue, Suite 1000
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9 (702) 873-4100
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11 lundvall@mcdonaldcarano.com
12 ashipley@mcdonaldcarano.com
13 Attorneys for Defendant
14 Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

15 JAMES WOLFRAM,
16 WALT WILKES

Plaintiffs,

vs.

17 PARDEE HOMES OF NEVADA,
18 Defendant.

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

ORDER GRANTING PARTIES'
MOTIONS TO FILE EXHIBITS UNDER
SEAL

19 Counsel for Plaintiffs James Wolfram and Walt Wilkes (collectively "Plaintiffs")
20 and counsel for Defendant Pardee Homes of Nevada ("Defendant" or "Pardee") came
21 before this Court for a Status Check at 8:30 a.m. on December 6, 2012.

22 On October 24, 2012 Pardee filed its Motion to File Exhibits to Defendant's
23 Motion for Summary Judgment Under Seal ("Pardee's Motion"). Pardee's Motion
24 relates to Pardee's Motion for Summary Judgment filed on the same day. Plaintiffs did
25 not file an Opposition to Pardee's Motion. Therefore, on November 8, 2012 Pardee
26 filed a Notice of Nonopposition with this Court.

27 On November 9, 2012 Plaintiffs filed their Motion to File Exhibit Under Seal
28 ("Plaintiffs' Motion"). Plaintiffs' Motion relates to their Opposition to Pardee's Motion for

01-22-13P03:42 RCVD

McDONALD-CARANO-WILSON

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JA007535

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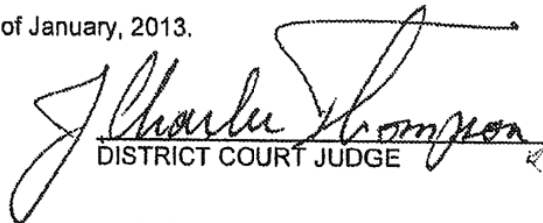
1 Summary Judgment and Counter Motion for Summary Judgment filed on November 9,
2 2012. Pardee did not oppose Plaintiffs' Motion.

3 The Court having considered both Pardee's Motion and Plaintiffs' Motion,
4 discussion of the issue during the status check, and GOOD CAUSE APPEARING
5 THEREFORE,

6 ORDER

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pardee's Motion
8 and Plaintiffs' Motion are both GRANTED. Any exhibits to Pardee's Motion for
9 Summary Judgment or Plaintiffs' Opposition and Counter Motion for Summary
10 Judgment that are confidential or fall within the scope of a confidentiality agreement
11 may be filed with the Court under seal.

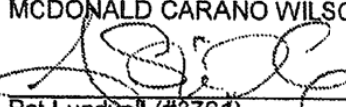
12 DATED this 24 day of January, 2013.

13
14 
15 DISTRICT COURT JUDGE

16 Submitted by:

17 DATED this 18th day of January, 2013

18 MCDONALD CARANO WILSON LLP

19 
20 Pat Lundvall (#3761)
21 Aaron D. Shipley (#8258)
22 2300 West Sahara Avenue, Suite 1000
23 Las Vegas, Nevada 89102
24 Attorneys for Defendant Pardee
25 Homes of Nevada

Submitted by:

DATED this 18th day of January, 2013

JIMMERSON HANSEN, P.C.

26 
27 James J. Jimmerson (#264)
28 Lynn M. Hansen (#244)
415 S. Sixth St., Ste. 100
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT “3”


CLERK OF THE COURT

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6 Nevada State Bar No.: 00244
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8 415 South 6th Street, Suite 100
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10 Attorney for Plaintiffs

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

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

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

25 Dated this 27 day of June, 2014.

26 JIMMERSON HANSEN, P.C.

27 
28 JAMES J. JIMMERSON, ESQ.
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CERTIFICATE OF SERVICE

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

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

By facsimile, pursuant to EDCR 7.26 (as amended)

X By receipt of copy as indicated below

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


An employee of JIMMERSON HANSEN, P.C.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 DECISION

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

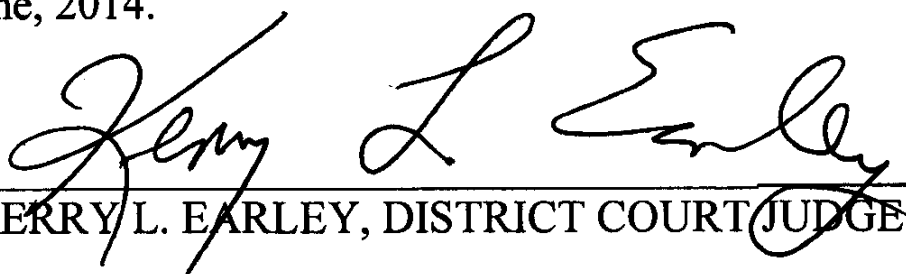
25 1. The Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for
26 breach of contract, breach of the covenant of good faith and fair dealing, and its failure to account to
27 Plaintiffs regarding the information concerning the development of Coyote Springs because it
28

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

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

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

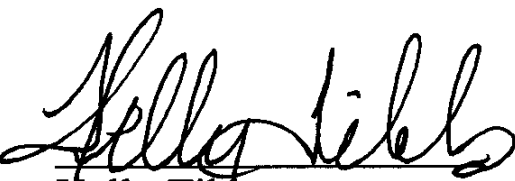
10
11 DATED this 25 day of June, 2014.

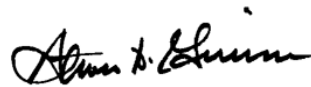
12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15
16 **CERTIFICATE OF SERVICE**

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

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

21
22 
23 Kelly Tibbs
24 Judicial Executive Assistant


CLERK OF THE COURT

1 NEOJ
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9 Las Vegas, Nevada 89101
10 Attorney for Plaintiffs

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 JAMES WOLFRAM and
14 WALT WILKES,
15
16 Plaintiffs,

17 vs.

18 PARDEE HOMES OF NEVADA,
19
20 Defendant.


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

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

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

25 Dated this 27 day of June, 2014.

26 JIMMERSON HANSEN, P.C.

27 
28 JAMES J. JIMMERSON, ESQ.
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CERTIFICATE OF SERVICE

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

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

By facsimile, pursuant to EDCR 7.26 (as amended)

X By receipt of copy as indicated below

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


An employee of JIMMERSON HANSEN, P.C.

1 ORDER

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA


CLERK OF THE COURT

4 JAMES WOLFRAM and
5 WALT WILKES,

6 Plaintiffs,

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

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

Trial Date: October 23, 2013

10 AND RELATED CLAIMS

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

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

24 **I. FINDINGS OF FACT**

25 **A. THE PARTIES**

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 II. CONCLUSIONS OF LAW

9 A. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF CONTRACT

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

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

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

22 4. The Commission Letter Agreement constitutes a valid and enforceable
23 contract between Plaintiffs and Defendant.
24
25
26
27
28

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

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

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

10 8. Pardee has never exercised any such option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **C. PLAINTIFFS' CLAIM FOR AN ACCOUNTING**
14

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

21 2012).
22 2. To prevail on a claim for accounting, a Plaintiff must establish the existence
23 of a special relationship whereby a duty to account may arise. See Teselle v. McLoughlin, 173 Cal.
24 App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009). The right to an accounting can arise from
25 Defendant's possession of money or property which, because of the Defendant's relationship with
26 the Plaintiff, the Defendant is obliged to surrender. Id.

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

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

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

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

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

21 **DECISION**

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

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

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

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

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

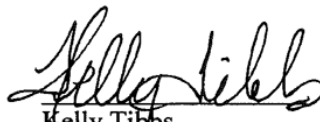
10
11 DATED this 25 day of June, 2014.

12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15
16 **CERTIFICATE OF SERVICE**

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

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

21
22 
23 Kelly Tibbs
24 Judicial Executive Assistant
25
26
27
28


CLERK OF THE COURT

OPPS

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and
WALT WILKES,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO EXPUNGE
LIS PENDENS AND FOR SANCTIONS
REGARDING PLAINTIFFS' VIOLATION
OF THE COURT'S PROTECTIVE
ORDER**

**Date of Hearing: July 17, 2014
Time of Hearing: 8:30 a.m.**

COMES NOW, Plaintiff JAMES WOLFRAM (hereinafter "Mr. Wolfram"), and WALT WILKES (hereinafter "Mr. Wilkes") (hereinafter collectively "Plaintiffs"), by and through their counsels of record JAMES J. JIMMERSON, ESQ., and LYNN M. HANSEN, ESQ., of the law firm JIMMERSON HANSEN, P.C., and files their Opposition to Defendants' Motion to Expunge Lis Pendens and for Sanctions Regarding Plaintiffs' Violation of the Court's Protective Order.

This Opposition is made and based upon the pleadings and papers on file, the memorandum of points and authorities and exhibits attached hereto, and any and all argument that may be adduced at the time of the hearing on the motion.

///

1 DATED this 14 day of July, 2014.

2 JIMMERSON HANSEN, P.C.

3
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Once again, this Court is reminded why Plaintiffs were left with no choice but to file suit against PARDEE HOMES OF NEVADA (hereinafter "Pardee"), requesting the Court to order Pardee to provide Plaintiffs with an accounting for commission payments owed under the 2004 Commission Letter Agreement. Instead of working with Plaintiffs (with whom Pardee has had a relationship going back decades), Pardee strung Plaintiffs along, never providing the information as required under the Commission Letter Agreement. Again, here the Court must decide an issue that should have required minimal Court involvement had Pardee picked up the telephone and attempted to resolve this issue before filing its Motion.¹

As the Court is aware, in 2004, Pardee confirmed an agreement with Mr. Wofram and Mr. Wilkes that Pardee, its successors, and assigns would pay to Plaintiffs, their successors, and assigns, a commission upon the sale of certain real estate in Lincoln and Clark Counties. Pardee's subsequent refusal to communicate and account to Plaintiffs regarding these commission payments forced Plaintiffs to file this Action in 2010 for an accounting, breach of contract, and breach of covenant of good faith and fair dealing. On March 16, 2014, Mr. Wilkes passed away. Due to Pardee's historical lack of communication, and to protect Mr. Wilkes interest in these future commissions, counsel for Plaintiff recorded a Letter with the county recorders of Lincoln and Clark Counties that included the 2004 Agreement, and maps and deeds of the subject land (hereinafter

¹ Besides the primary dispute in this action (the production of information), Plaintiffs remind the Court of the several disputes that could have been resolved with minimal Court action, but were not due to Pardee's conduct, including, without limitation: (1) Plaintiffs' Motion to Supplement its Opposition to the Motions in Limine with information from the then newly ordered deposition of James Wolfram; (2) Plaintiffs' eight Motions in Limine to Admit as Evidence the Amendments to the Amended and Restated Option Agreement for the Purchase of real Property and Joint Escrow Instructions; Plaintiffs' Motion in Limine to permit James J. Jimmerson, Esq. to testify about the attorney's fees incurred in this case pursuant to Nev. R. Prof. Con. 3.7, stating, " (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless... (2) The testimony relates to the nature and value of legal services rendered in the case..."

1 "Letter"), to put the world on notice that upon the sale of that land, Pardee's commission
2 payment would be due to Mr. Wilkes' successors and assigns. Pardee now files this Motion
3 to Expunge Lis Pendens and for Sanctions (hereinafter "Motion"), arguing that the Letter is
4 a lis pendens that forms a cloud on Pardee's title, and for sanctions for violating a discovery
5 protective order.

6 First, Plaintiffs' recorded Letter is not a lis pendens because the documents, on their
7 face, do not assert any interest in title or possession to Pardee's land. Instead, the Letter
8 merely shows a covenant on the part of Pardee, its successors, and assigns, to pay to
9 Plaintiffs, their successors, and assigns, a commission upon the sale of the land identified
10 on the maps and the deeds. The Letter, therefore, is not subject to expungement as a lis
11 pendens.

12 Second, if an actual buyer demanded the cancellation and/or sealing of the Letter,
13 then a writ of mandamus is the proper procedure to compel a public officer—like a county
14 recorder—to perform a ministerial duty such as Pardee's request to "require[e] the Lincoln
15 County [and Clark County] Recorder to remove it from the public record." Since an actual
16 buyer has not demanded the removal of the Letter and the county recorders of Lincoln and
17 Clark Counties are not parties to Pardee's mandamus-type request, the Motion should be
18 denied as being unripe and for failure to include indispensable parties.

19 Third, the county recorder of Lincoln County falls outside the territorial limits of the
20 Eighth Judicial District Court and therefore, the Court lacks jurisdiction to order the Lincoln
21 County recorder to perform an alleged duty.

22 Finally, Pardee's request for monetary sanctions should be denied because Rule 37,
23 Rule 26, EDCR 2.34 and paragraph 13 of the Protective Order requires the parties to meet
24 and confer before the filing of this Motion. Since Pardee rushed to file this Motion instead of
25 picking up the telephone for a meet and confer, the imposition of sanctions against Plaintiffs
26 would be unjust.
27

1 Plaintiffs recognize that the filing of limited "confidential" documents was an
2 inadvertent error and Plaintiffs have taken action by filing a Petition in Lincoln County to
3 remove the same. (See Petition in Lincoln County, attached hereto as **Exhibit "A"**). As for
4 the Clark County recording, Plaintiffs respectfully request this Court's Order to allow Plaintiff
5 to expunge and/or seal the Letter, without prejudice, and subject to the Court's further
6 orders pursuant to the Findings of Fact, Conclusions of Law, and Order entered on June 25,
7 2014, regarding recording, notice, identification of land, fair dealing, and all other matters.
8 Plaintiffs are entitled to record the 2004 contract with a proper legal description of the
9 property so that the world is on notice that Pardee, its successors, and assigns, must pay to
10 Plaintiffs, their successors, and assigns, a commission payment upon the sale of the
11 identified land.

12 **III. ARGUMENT**

13 **A. Plaintiffs' Recorded Letter is Not Subject to Expungement as a Lis** 14 **Pendens or a Cloud on Pardee's Title Because it Does Not Assert an** 15 **Interest in Pardee's Property**

16 The doctrine of lis pendens charges a subsequent purchaser of property and third
17 parties having an interest in property with notice of a lawsuit that affects that property. In
18 Nevada, a lis pendens must contain the names of the parties, the object of the action, a
19 description of the property in that county affected by the action, and the nature and extent of
20 the relief requested. See NRS 14.010. A cloud on title is something such as a lis pendens,
21 mortgage, lien, deed, judgment, claim, or encumbrance, which, if valid, would affect or
22 impair the title of the owner, and which appears on its face to have that effect. See *e.g.*
23 *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 183 P.3d 895 (2008); see also
24 *Roby v. South Park*, 215 Ill. 200, 74 N.E. 125 (1905); see also *Schenck v. Wicks*, 23 Utah
25 576, 65 Pac. 732 (1901).
26

27 Here, Plaintiffs recorded Letter identifies the parties' contracts, maps, and public
28 deeds, which simply shows a covenant on the part of Pardee, its successors, and assigns,

1 to pay to Plaintiffs, their successors, and assigns, a commission upon the sale of the
2 property identified on the maps and deeds. (See Def.'s Mot. at Ex. "1"). A plain reading of
3 the recorded Letter shows that Plaintiffs did not make any claims of ownership or
4 possession of any of Pardee's property. Pardee's Motion even concedes that fact. (See
5 Def.'s Mot. at 12:20-21). Thus, title to Pardee's property is not affected by the recording of
6 the Letter. Since the recorded Letter does not claim an interest in title or possession of
7 Pardee's land, it is neither a lis pendens nor a cloud on Pardee's title and therefore, the
8 Letter is not subject to expungement.

9 Pardee argues that the Letter is a cloud on its title because it contains the "indica of
10 a lis pendens." (See Def.'s Mot. at 12:7-16). Not true. In *Harts v. Kimball*, a broker, like
11 Plaintiffs here, recorded an output contract that required a gravel company, its grantees,
12 and successors, to pay a royalty payment on the gravel company's pits located on its lands.
13 149 Ill.App. 526, 527 (1909). The gravel company, like Pardee here, filed an action to
14 remove the contract from the public record arguing that the broker's recording of the output
15 contract created a cloud on its title. *Id.* The Illinois Appeals Court, Third District, affirmed a
16 trial court order rejecting the gravel company's suit to remove the contract from the public
17 record, holding the contract did not claim any legal or equitable interest in the land:

18
19 The bill does not aver that the contract created a cloud upon
20 the title to the land described in the bill, nor that any cloud
21 existed, nor is it averred nor does it appear that any lien was
22 declared or created by the contract. As we construe the
23 instrument, the same is **a mere personal covenant on the**
24 **part of the company to pay the royalty mentioned, and that**
25 **in case the land is sold, to bind its grantee and his or their**
26 **successors to assume and carry out the terms of the**
27 **contract so long as such grantee or successor shall**
28 **continue to excavate gravel.** A cloud is defined as a
semblance of a title, either legal or equitable, or a claim to an
interest in land appearing in some legal form, but which in fact
is unfounded, or which it would be inequitable to enforce. *Allott*
v. Am. Strawboard Co., 237 Ill. 55.

1 It seems manifest that the contract can in no way be construed
2 as creating a cloud within the purview of the foregoing
3 definition.

4 *Id.* at 529.

5 Pardee makes the same and similar arguments to expunge the recorded Letter that
6 the court rejected in *Harts*. Plaintiffs' recorded Letter simply shows a covenant on the part
7 of Pardee, its successors, and its assigns, to pay to Plaintiffs, its successors, and assigns, a
8 commission on the sale of the identified land. Nowhere in the recorded Letter do Plaintiffs
9 make any claims of ownership or possession of any of the property. Thus, title to the
10 property is not affected by the recording of the Letter. Since the recorded Letter does not
11 claim an interest in title or possession of any land, it is neither a *lis pendens* nor a cloud on
12 Pardee's title and therefore, the Letter not subject to expungement.

13 **B. Pardee's Motion to Order the County Recorders of to Perform an**
14 **Alleged Duty Should be Denied as Being Unripe and Because it Failed**
15 **to Include the County Recorders to this Mandamus-type Proceeding**

16 If an actual buyer of Pardee's land demanded the Letter be removed from the public
17 record, then a writ of mandamus is the proper procedure for Pardee to compel the county
18 recorder to perform the ministerial duty to cancel or discharge the record of the instrument.
19 See 55 C.J.S. Mandamus §§ 291-92; see also *Leatherman v. Schwab*, 98 Fla. at 888; see
20 also *Brusco v. Braun*, 84 N.Y.S.2d 291, 645 N.E.2d 724 (1994). An order in a mandamus
21 proceeding cannot properly be rendered against one who is not a party to the proceedings.
22 See e.g. *Sunshine v. Marsh*, 265 A.D. 927, 38 N.Y.S.2d 526 (1st Dept. 1942). A party is
23 indispensable if the performance of the act to be compelled by the writ depends on the will
24 of a third party that is not before the court. See *State ex. rel. Clark v. Johnson*, 120 N.M.
25 562, 904 P.2d 11 (1995).

26 Here, Pardee argues the Letter should be expunged and/or sealed by speculating
27 that the Letter will cause "prospective buyers" to "steer clear of any potential negotiations for
28 sale" without providing any evidence that it has actually occurred. (See Def.'s Mot. at 12:7-

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 12:22 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

JOINT APPENDIX – VOLUME 48 OF 88

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| 06/30/2015 | Supplement to Plaintiffs' Pending Motion for Attorney's Fees and Costs, Motion to Strike Judgment, Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment, and Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs | 59 | JA009110- JA009206 |
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Dated this 28th day of February, 2018.

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CERTIFICATE OF SERVICE

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

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Date: 07/19/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|-----------------------------------|------------|------------|-----|--------|---------------|--|--------------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 450.00 | 1.75 | 787.50 Meeting with Jim Wolfram | ARCH 31a-001 |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 350.00 | 1.00 | 350.00 Conference with client regarding: | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare for meeting. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Draft of 9th Supplement, redacted billing. | ARCH |
| 4886.01 | 05/22/2013 | 06/21/2013 | A | 300.00 | 0.50 | 150.00 Discussion with James M. Jimmerson, Esq. for the purposes of Supplement regarding | ARCH |
| 4886.01 | 05/22/2013 | 06/21/2013 | A | 350.00 | 1.00 | 350.00 Prepare 9th Supplement. | ARCH |
| 4886.01 | 05/22/2013 | 06/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare redacting bills. | ARCH |
| 4886.01 | 05/22/2013 | 06/21/2013 | A | 350.00 | 1.00 | 350.00 Prepare calculating dates. | ARCH |
| 4886.01 | 05/22/2013 | 06/21/2013 | A | 450.00 | 0.40 | 180.00 Review 9th supplement | ARCH |
| 4886.01 | 05/24/2013 | 06/21/2013 | A | 450.00 | 2.00 | 900.00 Deposition preparation with Jim Wolfram | ARCH |
| 4886.01 | 05/24/2013 | 06/21/2013 | A | 350.00 | 1.50 | 525.00 Attend depo prep with client. | ARCH |
| 4886.01 | 05/24/2013 | 06/21/2013 | A | 350.00 | 0.50 | 175.00 Conference with Lynn M. Hansen, Esq. regarding: | ARCH |
| 4886.01 | 05/25/2013 | 06/21/2013 | A | 450.00 | 0.50 | 225.00 Meet with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 05/28/2013 | 06/21/2013 | A | 350.00 | 1.20 | 420.00 Prepare Order, emailed opposing counsel for review and signature. | ARCH |
| 4886.01 | 05/29/2013 | 06/21/2013 | A | 450.00 | 2.00 | 900.00 Meet with Jim Wolfram regarding | ARCH |
| 4886.01 | 05/29/2013 | 06/21/2013 | A | 450.00 | 0.25 | 112.50 Review proposed Order. | ARCH |
| 4886.01 | 05/29/2013 | 06/21/2013 | A | 350.00 | 0.20 | 70.00 Prepare email to opposing counsel with scans of map. | ARCH |
| 4886.01 | 05/29/2013 | 06/21/2013 | A | 350.00 | 0.50 | 175.00 Telephone call to opposing counsel regarding: depo and order. | ARCH |
| 4886.01 | 05/29/2013 | 06/21/2013 | A | 350.00 | 0.30 | 105.00 Telephone conference with client. | ARCH |
| 4886.01 | 05/29/2013 | 06/21/2013 | A | 350.00 | 1.50 | 525.00 Attend depo prep with client. | ARCH |
| 4886.01 | 05/29/2013 | 06/21/2013 | A | 450.00 | 1.50 | 675.00 Attend depo prep w/client | ARCH |
| 4886.01 | 05/30/2013 | 06/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare redacted billing statements. | ARCH |
| 4886.01 | 05/31/2013 | 06/21/2013 | A | 450.00 | 1.50 | 675.00 Attend deposition of Jim Wolfram | ARCH |
| 4886.01 | 05/31/2013 | 06/21/2013 | A | 350.00 | 1.40 | 490.00 Deposition of client. | ARCH |
| 4886.01 | 05/31/2013 | 06/21/2013 | A | 350.00 | 0.10 | 35.00 Email to opposing counsel regarding Eleventh Supplement. | ARCH |
| 4886.01 | 05/31/2013 | 06/21/2013 | A | 350.00 | 1.50 | 525.00 Drafting Eleventh Supplement / identification of damages. | ARCH |
| 4886.01 | 05/31/2013 | 06/21/2013 | A | 450.00 | 1.40 | 630.00 Attend depo of client | ARCH |
| 4886.01 | 06/03/2013 | 06/21/2013 | A | 450.00 | 0.25 | 112.50 Review email to Opposing Counsel | ARCH |
| 4886.01 | 06/06/2013 | 06/21/2013 | A | 350.00 | 0.20 | 70.00 Prepare and filed Notice of Entry of Order. | ARCH |
| 4886.01 | 06/06/2013 | 06/21/2013 | A | 350.00 | 0.10 | 35.00 Filed Second Amended Complaint. | ARCH |
| 4886.01 | 06/11/2013 | 06/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare emails to opposing counsel regarding: supplements. | ARCH |
| 4886.01 | 06/12/2013 | 06/21/2013 | A | 350.00 | 1.00 | 350.00 Prepare emails to opposing counsel regarding: extension of time to respond. | ARCH |
| 4886.01 | 06/12/2013 | 06/21/2013 | A | 450.00 | 0.30 | 135.00 Conference with James M. Jimmerson, Esq. regarding | ARCH |

Friday 07/19/2013 11:01 am

PLTF10531

JA007385

Date: 07/19/2013

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|----------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 06/13/2013 | 06/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare 9th Supplement. | ARCH |
| 4886.01 | 06/19/2013 | 06/21/2013 | A | 350.00 | 0.30 | 105.00 Prepare email to opposing counsel regarding: EDCR 2.67. | ARCH |
| 4886.01 | 06/20/2013 | 06/21/2013 | A | 350.00 | 0.10 | 35.00 Telephone call to A. Shipley, left message. | ARCH |
| Total for Client ID 4886.01 | | | | Billable | 28.75 | 11,222.50 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA | |
| GRAND TOTALS | | | | | | | |
| | | | | Billable | 28.75 | 11,222.50 | |

31a-002

PI TF10537

Friday 07/19/2013 11:01 am

JA007386

Date: 07/1

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page: 1

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|-----------------------------------|------------|------------|-----|--------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 04/22/2013 | 05/21/2013 | A | 300.00 | 6.00 | 1,800.00 Review Opposition, prepare Reply in Support. | ARCH |
| 4886.01 | 04/22/2013 | 05/21/2013 | A | 450.00 | 0.50 | 225.00 Conference with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 04/23/2013 | 05/21/2013 | A | 300.00 | 10.50 | 3,150.00 Finalized Reply in Support of Motion for Leave to File Second Amended Complaint, e-filed, courtesy copy to chambers, faxed, emailed and mailed to opposing counsel. | ARCH |
| 4886.01 | 04/23/2013 | 05/21/2013 | A | 450.00 | 0.75 | 337.50 Review and revise Reply to Opposition to Motion to File Amended Complaint. | ARCH |
| 4886.01 | 04/25/2013 | 05/21/2013 | A | 300.00 | 2.00 | 600.00 Prepare for hearing on Motion to Leave to Amend Complaint. | ARCH |
| 4886.01 | 04/26/2013 | 05/21/2013 | A | 300.00 | 0.50 | 150.00 Prepare for Court Hearing. | ARCH |
| 4886.01 | 04/26/2013 | 05/21/2013 | A | 300.00 | 2.00 | 600.00 Court hearing regarding Motion for Leave to File Second Amended Complaint. | ARCH |
| 4886.01 | 04/26/2013 | 05/21/2013 | A | 300.00 | 0.20 | 60.00 Legal research on | ARCH |
| 4886.01 | 04/26/2013 | 05/21/2013 | A | 300.00 | 0.50 | 150.00 Legal research on | ARCH |
| 4886.01 | 04/26/2013 | 05/21/2013 | A | 300.00 | 0.40 | 120.00 Conference with Lynn M. Hansen, Esq. regarding. | ARCH |
| 4886.01 | 04/29/2013 | 05/21/2013 | A | 300.00 | 4.80 | 1,440.00 Legal research on | ARCH |
| 4886.01 | 04/29/2013 | 05/21/2013 | A | 300.00 | 0.20 | 60.00 Finalize Offer of Judgment. | ARCH |
| 4886.01 | 04/30/2013 | 05/21/2013 | A | 450.00 | 0.30 | 135.00 Review Offer of Judgment | ARCH |
| 4886.01 | 04/30/2013 | 05/21/2013 | A | 300.00 | 3.20 | 960.00 Legal research on | ARCH |
| 4886.01 | 05/01/2013 | 05/21/2013 | A | 300.00 | 0.50 | 150.00 Prepare Order on hearing. | ARCH |
| 4886.01 | 05/09/2013 | 05/21/2013 | A | 350.00 | 6.00 | 2,100.00 Prepare and draft supplement to Motion for Leave to file Second Amended Complaint. | ARCH |
| 4886.01 | 05/09/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Legal research on | ARCH |
| 4886.01 | 05/10/2013 | 05/21/2013 | A | 300.00 | 1.50 | 450.00 Review Supplement to Motion to File Second Amended Complaint for James M. Jimmerson, Esq.; Meeting with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 05/10/2013 | 05/21/2013 | A | 350.00 | 14.20 | 4,970.00 Drafting supplement to Motion for Leave to File Second Amended Complaint, call and emails to opposing counsel regarding". Order on 4/26/13 and review of opposing counsel's supplement. | ARCH |
| 4886.01 | 05/11/2013 | 05/21/2013 | A | 550.00 | 0.60 | 330.00 Review Supplemental points and authorities regarding | ARCH |
| 4886.01 | 05/13/2013 | 05/21/2013 | A | 350.00 | 0.20 | 70.00 Prepare emails to opposing counsel regarding | ARCH |
| 4886.01 | 05/13/2013 | 05/21/2013 | A | 450.00 | 0.75 | 337.50 Review Plaintiff's Supplement to Motion to Amend | ARCH |
| 4886.01 | 05/14/2013 | 05/21/2013 | A | 350.00 | 0.10 | 35.00 Telephone conference with opposing counsel regarding discovery. | ARCH |
| 4886.01 | 05/15/2013 | 05/21/2013 | A | 350.00 | 0.10 | 35.00 Telephone call to opposing counsel regarding discovery. | ARCH |
| 4886.01 | 05/15/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Telephone call to opposing counsel regarding trial date. | ARCH |

Friday 07/19/2013 1:59 pm

JA007387

Date: 07/19/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|----------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 05/16/2013 | 05/21/2013 | A | 350.00 | 0.30 | 105.00 Prepare email to opposing counsel regarding: deposition dates. | ARCH |
| 4886.01 | 05/16/2013 | 05/21/2013 | A | 350.00 | 0.30 | 105.00 Telephone conference with client regarding: deposition date. | ARCH |
| 4886.01 | 05/16/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare and draft Order. | ARCH |
| 4886.01 | 05/16/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare 9th Supplemental Disclosures. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 450.00 | 1.75 | 787.50 Meeting with Jim Wolfram | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 350.00 | 1.00 | 350.00 Conference with client regarding: depo prep. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Prepare for meeting. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 350.00 | 0.50 | 175.00 Draft of 9th Supplement, redacted billing. | ARCH |
| Total for Client ID 4886.01 | | | | Billable | 63.15 | 20,962.50 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA | |
| GRAND TOTALS | | | | | | | |
| | | | | Billable | 63.15 | 20,962.50 | |

31a-004

PLTF10529

Friday 07/19/2013 1:59 pm

JA007388

Date: 07/19/2013

Detail Cost Transaction File List JIMMERSON HANSEN, P.C.

Page: 1

| Client | Trans Date | Stmt Date | H P | Rate | Amount | Ref # |
|--|------------|------------|-----|----------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | |
| 4886.01 | 04/23/2013 | 05/21/2013 | A | 0.200 | 4.80 COPIES OF REPLY, 24 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 04/29/2013 | 05/21/2013 | A | 5.000 | 5.00 Hand Delivery | ARCH |
| | | | | | Item: Offer of Judgment Hand Delivered to McDonald Carano Wilson, LLP | |
| 4886.01 | 04/29/2013 | 05/21/2013 | A | 0.200 | 1.20 COPIES OF OFFER OF JUDGMENT, 6 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/03/2013 | 05/21/2013 | A | | 207.50 Copy of Transcript of Proceedings 4/26.13 - Jennifer Church, Court Reporter | ARCH |
| 4886.01 | 05/06/2013 | 05/21/2013 | A | 0.200 | 0.20 COPIES OF TRANSCRIPT REQ, 1 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/10/2013 | 05/21/2013 | A | | 3.50 Electronic Filing - Plaintiff's Supplement to Motion for Leave to File a Second Amended complaint Pursuant to the Courts Order on Hearing on April 26, 2013 | ARCH |
| 4886.01 | 05/10/2013 | 05/21/2013 | A | | 3.50 Electronic Filing - Plaintiff's Supplement to Motion for Leave to File a Second Amended Complaint Pursuant to the Courts Order on Hearing on April 26, 2013 | ARCH |
| 4886.01 | 05/10/2013 | 05/21/2013 | A | 0.200 | 2.40 COPIES OF ORDER, 12 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/10/2013 | 05/21/2013 | A | 0.200 | 13.80 COPIES OF SUPP BRf, 69 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/13/2013 | 05/21/2013 | A | 0.200 | 0.40 COPIES OF COPY, 2 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | | 753.07 Westlaw legal research charges, Usage Period: May 21, 2013 | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 0.200 | 39.60 COPIES OF COPY 3, 198 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 0.200 | 1.80 COPIES OF ORDER, 9 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 0.200 | 0.20 COPIES OF COPY 3, 1 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 0.200 | 7.20 COPIES OF COPY 3, 36 PP @ \$0.20 PER PAGE. | ARCH |
| 4886.01 | 05/20/2013 | 05/21/2013 | A | 0.200 | 0.60 COPIES OF COPY 3, 3 PP @ \$0.20 PER PAGE. | ARCH |
| Total for Client ID 4886.01 | | | | Billable | 1,044.77 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA | |
| GRAND TOTALS | | | | | | |
| | | | | Billable | 1,044.77 | |

31a-005

PLTF10530

Friday 07/19/2013 2:00 pm

JA007389

Date: 10/20/2012

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page:

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref |
|-----------------------------------|------------|------------|-----|--------|---------------|-----------|---|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 11/03/2010 | 11/21/2010 | A | 175.00 | 4.00 | 700.00 | Reviewed file for Complaint |
| 4886.01 | 11/04/2010 | 11/21/2010 | A | 175.00 | 6.50 | 1,137.50 | Wrote |
| 4886.01 | 11/05/2010 | 11/21/2010 | A | 175.00 | 1.50 | 262.50 | Finishing Complaint |
| 4886.01 | 11/05/2010 | 11/21/2010 | A | 550.00 | 2.00 | 1,100.00 | Revised Draft Complaint |
| 4886.01 | 12/20/2010 | 12/21/2010 | A | 550.00 | 2.00 | 1,100.00 | Revised Complaint for |
| 4886.01 | 12/20/2010 | 12/21/2010 | A | | | -1,000.00 | COURTESY DISCOUNT PER JAMES J. JIMMERSON, ESQ. |
| 4886.01 | 12/27/2010 | 01/21/2011 | A | 550.00 | 2.00 | 0.00 | Revised final draft of Complaint. Ready for filing. (NO CHARGE) |
| 4886.01 | 12/28/2010 | 01/21/2011 | A | 550.00 | 2.00 | 0.00 | Filed Complaint (NO CHARGE) |
| 4886.01 | 12/29/2010 | 01/21/2011 | A | 550.00 | 1.00 | 0.00 | Complaint filed today: Service is sent out for effectuation. (NO CHARGE) |
| 4886.01 | 01/03/2011 | 01/21/2011 | A | 550.00 | 0.50 | 275.00 | Received / |
| 4886.01 | 01/14/2011 | 01/21/2011 | A | 175.00 | 1.10 | 192.50 | Preparation of Amended Complaint and Amended Summons. E-file Amended Complaint. |
| 4886.01 | 01/20/2011 | 01/21/2011 | A | 175.00 | 0.40 | 70.00 | Preparation of Complaint and Summons for Service |
| 4886.01 | 04/01/2011 | 04/21/2011 | A | 550.00 | 1.00 | 550.00 | Reviewec |
| 4886.01 | 08/15/2011 | 08/21/2011 | A | 350.00 | 1.50 | 525.00 | Draft and send 16.1 Case Conference Notice and draft and send email |
| 4886.01 | 08/16/2011 | 08/21/2011 | A | 550.00 | 0.20 | 110.00 | Phone call with client: |
| 4886.01 | 08/16/2011 | 08/21/2011 | A | 350.00 | 1.20 | 420.00 | Review Receipt and review from ; Discussion with M. Gi |
| 4886.01 | 08/18/2011 | 08/21/2011 | A | 350.00 | 1.50 | 525.00 | Discussion with M & G concerning Receivs and review email correspondence from I ; Draft and send response I |
| 4886.01 | 08/19/2011 | 08/21/2011 | A | 100.00 | 1.50 | 150.00 | Draft and finalize 16.1 List: call to I regarding |
| 4886.01 | 08/19/2011 | 08/21/2011 | A | 550.00 | 2.50 | 1,375.00 | Prepare for Rule 16.1 Case Conference: attend Rule 16.1 Case Conference. prepare Request for Production of Documents; redrafting of Requests. |
| 4886.01 | 08/19/2011 | 08/21/2011 | A | 350.00 | 2.00 | 700.00 | Preparation for 16.1 Conference: Discussions with I ; Discussion and instruction with J. ; Editing of Witness List; Search of file and production of documents for 16.1: Attendance at/a 16.1 |
| 4886.01 | 08/22/2011 | 09/21/2011 | A | 100.00 | 0.50 | 50.00 | Telephone call from Mr Wolfram regarding |

31a-006

PLTF10469

Thursday 10/25/2012 4:11 pm

JA007390

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref. |
|--|------------|------------|-----|--------|---------------|---|------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 08/22/2011 | 09/21/2011 | A | 350.00 | 0.40 | 140.00 Receipt and review of l. email correspondence; Discussion with l. e concerning | ARCH |
| 4886.01 | 08/30/2011 | 09/21/2011 | A | 350.00 | 0.20 | 70.00 Draft and send correspondence concerning : | ARCH |
| 4886.01 | 09/06/2011 | 09/21/2011 | A | 450.00 | 1.00 | 450.00 Review Pleadings File and Nature of Act | ARCH |
| 4886.01 | 09/06/2011 | 09/21/2011 | A | 350.00 | 1.00 | 350.00 Discussion with wherein : told : Call and discussion with : Draft and send email to | ARCH |
| 4886.01 | 09/08/2011 | 09/21/2011 | A | 450.00 | 2.50 | 1,125.00 Review file | ARCH |
| 4886.01 | 09/12/2011 | 09/21/2011 | A | 100.00 | 2.50 | 250.00 Draft JCCR | ARCH |
| 4886.01 | 09/12/2011 | 09/21/2011 | A | 550.00 | 2.00 | 1,100.00 Conference with l. regarding | ARCH |
| 4886.01 | 09/13/2011 | 09/21/2011 | A | 300.00 | 0.50 | 150.00 Meeting with Lynn M. Hansen, Esq. and Phillip Odunze, Esq. | ARCH |
| 4886.01 | 09/13/2011 | 09/21/2011 | A | 450.00 | 0.50 | 225.00 Meeting with Phillip Odunze, Esq. to | ARCH |
| 4886.01 | 09/13/2011 | 09/21/2011 | A | 100.00 | 0.60 | 60.00 Continue draft of JCCR | ARCH |
| 4886.01 | 09/15/2011 | 09/21/2011 | A | 450.00 | 1.00 | 450.00 Review documents disclosed in 16.1: Draft Supplemental Disclosure. | ARCH |
| 4886.01 | 09/15/2011 | 09/21/2011 | A | 450.00 | 0.50 | 225.00 Revise Joint Case Conference Report | ARCH |
| 4886.01 | 09/19/2011 | 09/21/2011 | A | 450.00 | 0.50 | 225.00 Final draft of 1st Supplement to 16.1 Disclosure | ARCH |
| 4886.01 | 09/26/2011 | 10/21/2011 | A | 450.00 | 0.20 | 90.00 Conference with Amanda J. Brookhyser, Esq. regarding | ARCH |
| 4886.01 | 10/05/2011 | 10/21/2011 | A | 550.00 | 0.40 | 220.00 Schedule of depositions of our clients: Conference with client to be scheduled; | ARCH |
| 4886.01 | 10/13/2011 | 10/21/2011 | A | 350.00 | 1.50 | 525.00 Document review and conference with Lynn M. Hansen, Esq. and James J. Jimmerson, Esq. in preparation for | ARCH |
| 4886.01 | 10/13/2011 | 10/21/2011 | A | 350.00 | 1.50 | 525.00 Meeting with James J. Jimmerson, Esq., Lynn M. Hansen, Esq. and client to | ARCH |
| 4886.01 | 10/13/2011 | 10/21/2011 | A | 450.00 | 1.50 | 675.00 Review file for meeting | ARCH |
| 4886.01 | 10/13/2011 | 10/21/2011 | A | 450.00 | 1.00 | 450.00 Attend Meeting | ARCH |
| 4886.01 | 10/13/2011 | 10/21/2011 | A | 550.00 | 1.00 | 550.00 Conference with Jim Wolfram | ARCH |
| 4886.01 | 10/14/2011 | 10/21/2011 | A | 450.00 | 1.50 | 675.00 Meeting with James J. Jimmerson, Esq. and Amanda J. Brookhyser, Esq. regarding | ARCH |
| 4886.01 | 10/14/2011 | 10/21/2011 | A | 550.00 | 1.80 | 990.00 Outline of l | ARCH |
| 4886.01 | 10/24/2011 | 11/21/2011 | A | 175.00 | 0.30 | 52.50 Document review for Hearing in front of Discovery Commissioner. | ARCH |
| 4886.01 | 10/25/2011 | 11/21/2011 | A | 450.00 | 0.25 | 112.50 Conference with Amanda J. Brookhyser, Esq. | ARCH |

31a-007

PLTF10470

Thursday 10/25/2012 4:11 pm

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 10/25/2011 | 11/21/2011 | A | 175.00 | 1.30 | 227.50 Attend Hearing in front of Discovery Commissioner regarding | ARCH |
| 4886.01 | 10/25/2011 | 11/21/2011 | A | 175.00 | 4.50 | 787.50 Review file and documents in preparation for | ARCH |
| 4886.01 | 10/25/2011 | 11/21/2011 | A | 550.00 | 0.50 | 275.00 Discovery Conference Court Hearing | ARCH |
| 4886.01 | 10/26/2011 | 11/21/2011 | A | 450.00 | 0.50 | 225.00 Meeting with Amanda J. Brookhyser, Esq. | ARCH |
| 4886.01 | 10/26/2011 | 11/21/2011 | A | 450.00 | 1.25 | 562.50 Meeting with client | ARCH |
| 4886.01 | 10/26/2011 | 11/21/2011 | A | 175.00 | 3.00 | 525.00 Complete document review and draft Memo of | ARCH |
| 4886.01 | 10/26/2011 | 11/21/2011 | A | 175.00 | 0.50 | 87.50 Conference with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 10/26/2011 | 11/21/2011 | A | 175.00 | 1.00 | 175.00 Meet with client, Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 10/26/2011 | 11/21/2011 | A | 175.00 | 4.00 | 700.00 Draft Motion for Preferential Trial Setting. | ARCH |
| 4886.01 | 10/27/2011 | 11/21/2011 | A | 175.00 | 0.20 | 35.00 Phone call with opposing counsel regarding | ARCH |
| 4886.01 | 10/27/2011 | 11/21/2011 | A | 175.00 | 0.50 | 87.50 Edit Motion for Preferential Trial Setting. | ARCH |
| 4886.01 | 10/28/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Draft Notice of Taking Deposition of Walt Wilkes. | ARCH |
| 4886.01 | 10/28/2011 | 11/21/2011 | A | 100.00 | 0.50 | 50.00 Transcribe Motion for Preferential Trial Setting. | ARCH |
| 4886.01 | 10/28/2011 | 11/21/2011 | A | 450.00 | 0.50 | 225.00 Revise Motion for Preferential Trial Setting. | ARCH |
| 4886.01 | 10/31/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Made changes from Lynn M. Hansen, Esq. to Motion for Preferential Trial Setting. | ARCH |
| 4886.01 | 11/01/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Schedule videographer for deposition of Walt Wilkes. | ARCH |
| 4886.01 | 11/02/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Prepared Certificate of Service for Motion for Preferential Trial Setting set for 12/5/11 in Chambers. | ARCH |
| 4886.01 | 11/02/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Drafted Amended Notice of Taking Deposition. | ARCH |
| 4886.01 | 11/02/2011 | 11/21/2011 | A | 175.00 | 0.20 | 35.00 Review Supplement to Defendant's Disclosure with client's notes regarding | ARCH |
| 4886.01 | 11/02/2011 | 11/21/2011 | A | 175.00 | 0.30 | 52.50 Review draft of first set of Requests for Production of Documents to Pardee. | ARCH |
| 4886.01 | 11/02/2011 | 11/21/2011 | A | 175.00 | 0.20 | 35.00 Conference with JD re | ARCH |
| 4886.01 | 11/03/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Draft Subpoena for Custodian of Records of Coyote Springs. | ARCH |
| 4886.01 | 11/03/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Draft Subpoena for Custodian of Records of Chicago Title. | ARCH |
| 4886.01 | 11/03/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Draft Subpoena for Custodian of Records of Stewart Title. | ARCH |
| 4886.01 | 11/03/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Made changes from Lynn M. Hansen, Esq. on | ARCH |
| 4886.01 | 11/03/2011 | 11/21/2011 | A | 175.00 | 0.30 | 52.50 Draft letter to opposing counsel re | ARCH |
| 4886.01 | 11/03/2011 | 11/21/2011 | A | 175.00 | 0.30 | 52.50 Conference with MW re | ARCH |

PLTF10471

31a-008

Thursday 10/25/2012 4:11 pm

Date: 10/25/2012

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|-----------------------------------|------------|------------|-----|--------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 11/03/2011 | 11/21/2011 | A | 175.00 | 0.50 | 87.50 Edit Subpoena Duces tecum to Chicago Title, Stewart Title and Coyote Springs LLC | ARCH |
| 4886.01 | 11/04/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Made changes to Subpoenas (x3). | ARCH |
| 4886.01 | 11/04/2011 | 11/21/2011 | A | 450.00 | 1.75 | 787.50 Meeting with J. Wolfram and W. Wilkes | ARCH |
| 4886.01 | 11/06/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Made revisions from James J. Jimmerson, Esq. to Subpoena in Custodian of Records of Stewart Title. | ARCH |
| 4886.01 | 11/06/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Made revisions from James J. Jimmerson, Esq. to Subpoena for Custodian of Records of Chicago Title. | ARCH |
| 4886.01 | 11/06/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Made revisions from James J. Jimmerson, Esq. to Subpoena for Custodian of Records of Coyote Springs. | ARCH |
| 4886.01 | 11/06/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Drafted Notice of Taking Deposition - Custodian of Records of Stewart Title. | ARCH |
| 4886.01 | 11/06/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Drafted Notice of Taking Deposition - Custodian of Records of Chicago Title. | ARCH |
| 4886.01 | 11/06/2011 | 11/21/2011 | A | 100.00 | 0.10 | 10.00 Drafted Notice of Taking Deposition - Custodian of Records of Coyote Springs. | ARCH |
| 4886.01 | 11/07/2011 | 11/21/2011 | A | 450.00 | 3.00 | 1,350.00 Meeting with Amanda J. Brookhyser, Esq. and James J. Jimmerson, Esq.; analyse new | ARCH |
| 4886.01 | 11/07/2011 | 11/21/2011 | A | 100.00 | 1.75 | 175.00 Prepare documents for | ARCH |
| 4886.01 | 11/07/2011 | 11/21/2011 | A | 175.00 | 1.50 | 262.50 Review additional documents provided by client in | ARCH |
| 4886.01 | 11/07/2011 | 11/21/2011 | A | 175.00 | 2.20 | 385.00 Attend depo prep meeting with clients and LMH and WW | ARCH |
| 4886.01 | 11/07/2011 | 11/21/2011 | A | 175.00 | 0.30 | 52.50 Edit and finalize subpoenas to Chicago Title, Coyote Springs and Stewart Title | ARCH |
| 4886.01 | 11/07/2011 | 11/21/2011 | A | 175.00 | 3.30 | 577.50 Conference with LMH and JJJ regarding | ARCH |
| 4886.01 | 11/07/2011 | 11/21/2011 | A | 450.00 | 2.20 | 990.00 Meeting with Walter Wilkes for | ARCH |
| 4886.01 | 11/08/2011 | 11/21/2011 | A | 450.00 | 2.30 | 1,035.00 Attend deposition of Plaintiff Jim Wolfram | ARCH |
| 4886.01 | 11/08/2011 | 11/21/2011 | A | 450.00 | 1.00 | 450.00 Office Conference with client | ARCH |
| 4886.01 | 11/08/2011 | 11/21/2011 | A | 450.00 | 0.30 | 135.00 Review Subpoenas and Custodian of Records Notices. | ARCH |
| 4886.01 | 11/08/2011 | 11/21/2011 | A | 175.00 | 1.30 | 227.50 Meet with clients and JJJ before | ARCH |
| 4886.01 | 11/08/2011 | 11/21/2011 | A | 175.00 | 5.00 | 875.00 Attend and defend deposition of James Wolfram | ARCH |
| 4886.01 | 11/08/2011 | 11/21/2011 | A | 550.00 | 1.50 | 825.00 Prepared | ARCH |
| 4886.01 | 11/09/2011 | 11/21/2011 | A | 175.00 | 0.20 | 35.00 Draft email to Wilkes re f | ARCH |
| 4886.01 | 11/10/2011 | 11/21/2011 | A | 450.00 | 0.50 | 225.00 Revise subpoena to Title Company and ISI | ARCH |
| 4886.01 | 11/14/2011 | 11/21/2011 | A | 450.00 | 1.25 | 562.50 Prepare Requests for Production | ARCH |

31a-009

PLT10472

Thursday 10/25/2012 4:11 pm

JA007393

Date: 10/25/2012

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|----------------------------------|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/WOLFRAM | | | | | | | |
| 4886.01 | 11/14/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Drafted Amended Notice of Taking Deposition of the Custodian of Records of Chicago Title, sent to opposing counsel. | ARCH |
| 4886.01 | 11/14/2011 | 11/21/2011 | A | 100.00 | 0.20 | 20.00 Drafted Amended Subpoena to the Custodian of Records of Chicago Title, sent out for service. | ARCH |
| 4886.01 | 11/14/2011 | 11/21/2011 | A | 175.00 | 0.10 | 17.50 Draft email to client re | ARCH |
| 4886.01 | 11/15/2011 | 11/21/2011 | A | 450.00 | 0.75 | 337.50 Edit Request for Production | ARCH |
| 4886.01 | 11/18/2011 | 11/21/2011 | A | 450.00 | 2.50 | 1 125.00 Review changes of deposition of James Wolfram | ARCH |
| 4886.01 | 11/21/2011 | 12/21/2011 | A | 175.00 | 1.50 | 262.50 Telephone conference with Walt Wilkes to | ARCH |
| 4886.01 | 11/22/2011 | 12/21/2011 | A | 175.00 | 0.20 | 35.00 Phone call with Walt Wilkes. | ARCH |
| 4886.01 | 11/22/2011 | 12/21/2011 | A | 175.00 | 0.20 | 35.00 Phone conference with Wolfram regarding | ARCH |
| 4886.01 | 11/22/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Gather documents for meeting on Sunday with Walt Wilkes. | ARCH |
| 4886.01 | 11/23/2011 | 12/21/2011 | A | 175.00 | 1.50 | 262.50 Phone conference with client Wilkes regarding | ARCH |
| 4886.01 | 11/23/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Phone call with counsel of Coyote Springs Investments regarding | ARCH |
| 4886.01 | 11/25/2011 | 12/21/2011 | A | 175.00 | 1.00 | 175.00 Phone conference with client Wilkes regarding | ARCH |
| 4886.01 | 11/25/2011 | 12/21/2011 | A | 175.00 | 0.80 | 140.00 Review deposition transcript of James Wolfram and draft email to Wilkes | ARCH |
| 4886.01 | 11/27/2011 | 12/21/2011 | A | 450.00 | 2.20 | 990.00 Meeting with client regarding | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 450.00 | 3.50 | 1,575.00 To Deposition with client | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 450.00 | 0.50 | 225.00 Review Walt Wilkes' documents | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 450.00 | 0.25 | 112.50 Conference with James J. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 175.00 | 0.30 | 52.50 Research with JD regarding ; emails with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 175.00 | 0.30 | 52.50 Review documents sent by Wilkes; respond to several emails from Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Conference with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 175.00 | 0.20 | 35.00 Phone call with opposing counsel regarding | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 175.00 | 0.30 | 52.50 Review non-opposition to Motion for Preferential Trial | ARCH |

31a-010

PLTF10473

Thursday 10/25/2012 4:11 pm

JA007394

Detail Fee Transaction File List
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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref |
|--|------------|------------|-----|--------|---------------|--|------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 100.00 | 0.30 | 30.00 Setting. | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Print out several documents provided to us by clients. | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Draft Amended Notice of Taking Custodian of Records deposition of Stewart Title. | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Draft subpoena to Stewart Title c/o registered agent. | ARCH |
| 4886.01 | 11/28/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Telephone call to Chicago Title inquiring about | ARCH |
| 4886.01 | 11/29/2011 | 12/21/2011 | A | 450.00 | 0.20 | 90.00 Review Discovery Order | ARCH |
| 4886.01 | 11/29/2011 | 12/21/2011 | A | 450.00 | 0.40 | 180.00 Review Jim Wolfram's documents. | ARCH |
| 4886.01 | 11/30/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Conference with JD regarding | ARCH |
| 4886.01 | 11/30/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Copy client's copy exhibits to James' deposition; send runner to to | ARCH |
| 4886.01 | 11/30/2011 | 12/21/2011 | A | 450.00 | 1.50 | 675.00 Review Jim Wolfram's deposition for changes and and compare to his notes. | ARCH |
| 4886.01 | 11/30/2011 | 12/21/2011 | A | 450.00 | 0.25 | 112.50 Review 2nd Request for Production | ARCH |
| 4886.01 | 12/01/2011 | 12/21/2011 | A | 175.00 | 0.40 | 70.00 Send and respond to multiple emails regarding | ARCH |
| 4886.01 | 12/01/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Conference with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 12/01/2011 | 12/21/2011 | A | 175.00 | 0.50 | 87.50 Review draft Confidentiality Agreement from opposing counsel and make edits. | ARCH |
| 4886.01 | 12/02/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Edit Subpoena to Stewart Title of Nevada. | ARCH |
| 4886.01 | 12/02/2011 | 12/21/2011 | A | 100.00 | 0.30 | 30.00 Make revisions to Stipulated Confidentiality Agreement and Protective Order drafted by opposing counsel. | ARCH |
| 4886.01 | 12/05/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Make revisions from Amanda J. Brookhyser, Esq. to subpoena to Stewart Title. | ARCH |
| 4886.01 | 12/05/2011 | 12/21/2011 | A | 100.00 | 0.10 | 10.00 Make revisions from Amanda J. Brookhyser, Esq. to Amended Notice of Taking Deposition of Stewart Title. | ARCH |
| 4886.01 | 12/06/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Conference with JD regarding | ARCH |
| 4886.01 | 12/06/2011 | 12/21/2011 | A | 175.00 | 0.20 | 35.00 Phone call with client regarding | ARCH |
| 4886.01 | 12/06/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Conference with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 12/06/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Draft email to opposing counsel regarding | ARCH |
| 4886.01 | 12/06/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Make revisions to Amended Notice of Taking Deposition of | ARCH |

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JA007395

Date: 10/1/2012

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JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 12/07/2011 | 12/21/2011 | A | 450.00 | 0.20 | 90.00 Stewart Title; Subpoena to Stewart Title. | ARCH |
| 4886.01 | 12/07/2011 | 12/21/2011 | A | 175.00 | 0.40 | 70.00 Review trial setting | ARCH |
| 4886.01 | 12/07/2011 | 12/21/2011 | A | 100.00 | 0.50 | 50.00 Meet with Jim Wolfram to discuss | ARCH |
| 4886.01 | 12/08/2011 | 12/21/2011 | A | 450.00 | 1.00 | 50.00 Begin drafting memo to Lynn M. Hansen, Esq., Amanda J. Brookhyser, Esq. regarding | ARCH |
| 4886.01 | 12/08/2011 | 12/21/2011 | A | 175.00 | 0.30 | 450.00 Revise 2nd Request for Production | ARCH |
| 4886.01 | 12/08/2011 | 12/21/2011 | A | 100.00 | 0.20 | 52.50 Review edited version of confidentiality agreement from Opposing Counsel; draft several emails to opposing counsel. | ARCH |
| 4886.01 | 12/08/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Finish drafting memo to Lynn M. Hansen, Esq. and Amanda J. Brookhyser, Esq. regarding | ARCH |
| 4886.01 | 12/08/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Prepare Subpoena and Notice of Taking Deposition of Custodian of Records of Stewart Title for service. | ARCH |
| 4886.01 | 12/13/2011 | 12/21/2011 | A | 175.00 | 0.20 | 35.00 Conference with JD regarding | ARCH |
| 4886.01 | 12/13/2011 | 12/21/2011 | A | 175.00 | 0.30 | 52.50 Conduct research on Secretary of State website and conference with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 12/13/2011 | 12/21/2011 | A | 175.00 | 0.40 | 70.00 Conference with JD and Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 12/13/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Make from Lynn M. Hansen, Esq. and client to | ARCH |
| 4886.01 | 12/14/2011 | 12/21/2011 | A | 175.00 | 0.30 | 52.50 Review from Wolfram deposition conference with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 12/19/2011 | 12/21/2011 | A | 175.00 | 0.10 | 17.50 Draft email to client Wilkes regarding | ARCH |
| 4886.01 | 12/20/2011 | 12/21/2011 | A | 100.00 | 0.20 | 20.00 Draft letter to Linda Jones from Stewart Title regarding | ARCH |
| 4886.01 | 12/20/2011 | 12/21/2011 | A | 100.00 | 0.10 | 10.00 Email to Litigation Services attaching Certificate of Deponent. | ARCH |
| 4886.01 | 12/22/2011 | 01/21/2012 | A | 175.00 | 0.20 | 35.00 Phone call with Walt Wilkes regarding | ARCH |
| 4886.01 | 12/27/2011 | 01/21/2012 | A | 175.00 | 0.20 | 35.00 Conference with LH regarding | ARCH |
| 4886.01 | 12/27/2011 | 01/21/2012 | A | 175.00 | 0.50 | 87.50 Review Wilkes' deposition | ARCH |
| 4886.01 | 12/28/2011 | 01/21/2012 | A | 450.00 | 0.90 | 405.00 Review Walt Wilkes deposition. | ARCH |
| 4886.01 | 01/06/2012 | 01/21/2012 | A | 175.00 | 0.10 | 17.50 Draft email to opposing counsel regarding | ARCH |

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PLTF10475

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JA007396

Date: 10/25/2012

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 01/06/2012 | 01/21/2012 | A | 450.00 | 0.30 | 135.00 Reviewed revised changes to deposition transcript | ARCH |
| 4886.01 | 01/10/2012 | 01/21/2012 | A | 175.00 | 0.50 | 87.50 Review objections from Coyote Springs to Subpoena: begin draft of amended subpoena to address email to team regarding | ARCH |
| 4886.01 | 01/10/2012 | 01/21/2012 | A | 450.00 | 0.50 | 225.00 Review objections from Coyote Springs to subpoena | ARCH |
| 4886.01 | 01/11/2012 | 01/21/2012 | A | 175.00 | 0.30 | 52.50 Conference with Shahana Polselli regarding | ARCH |
| 4886.01 | 01/11/2012 | 01/21/2012 | A | 175.00 | 1.00 | 175.00 Conference with Lynn M. Hansen, Esq. regarding | ARCH |
| 4886.01 | 01/11/2012 | 01/21/2012 | A | 450.00 | 1.00 | 450.00 Conference with Amanda J. Brookhyser, Esq. regarding | ARCH |
| 4886.01 | 01/18/2012 | 01/21/2012 | A | 175.00 | 1.00 | 175.00 Begin drafting initial draft of deficiency letter to Pardee | ARCH |
| 4886.01 | 01/18/2012 | 01/21/2012 | A | 175.00 | 0.50 | 87.50 Review Plaintiff's responses to second set of Requests for Production. | ARCH |
| 4886.01 | 01/18/2012 | 01/21/2012 | A | 175.00 | 0.50 | 87.50 Conference with LH and JD regarding | ARCH |
| 4886.01 | 01/18/2012 | 01/21/2012 | A | 175.00 | 1.20 | 210.00 Conduct research for | ARCH |
| 4886.01 | 01/19/2012 | 01/21/2012 | A | 175.00 | 0.30 | 52.50 Phone call with Chicago Title's Counsel regarding | ARCH |
| 4886.01 | 01/19/2012 | 01/21/2012 | A | 175.00 | 0.40 | 70.00 Conduct additional research for | ARCH |
| 4886.01 | 01/19/2012 | 01/21/2012 | A | 175.00 | 3.30 | 577.50 Complete first draft of letter to opposing counsel addressing | ARCH |
| 4886.01 | 01/19/2012 | 01/21/2012 | A | 175.00 | 0.40 | 70.00 Phone call with opposing counsel regarding | ARCH |
| 4886.01 | 01/19/2012 | 01/21/2012 | A | 450.00 | 0.50 | 225.00 Review Plaintiff's responses to discovery | ARCH |
| 4886.01 | 01/20/2012 | 01/21/2012 | A | 450.00 | 0.50 | 225.00 Review letter to Plaintiff's counsel regarding | ARCH |
| 4886.01 | 01/23/2012 | 02/21/2012 | A | 450.00 | 1.00 | 450.00 Revise Discovery letter and Responses to Request for | ARCH |

31a-013

PLTF10476

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JA007397

Date: 10/25/2012

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 01/30/2012 | 02/21/2012 | A | 100.00 | 6.00 | 600.00 Production Prepare working binders for Lynn M. Hansen Esq. of documents from Stewart Title. | ARCH |
| 4886.01 | 02/06/2012 | 02/21/2012 | A | 450.00 | 0.20 | 90.00 Review 3rd Supplemental Disclosure. | ARCH |
| 4886.01 | 02/06/2012 | 02/21/2012 | A | 300.00 | 2.50 | 750.00 Begin review of documents produced by Chicago Title consists of 9 notebooks | ARCH |
| 4886.01 | 02/09/2012 | 02/21/2012 | A | 450.00 | 2.50 | 1,125.00 Review Stewart Title document | ARCH |
| 4886.01 | 02/28/2012 | 03/21/2012 | A | 450.00 | 0.30 | 135.00 Telephone call with Harvey Whittemore | ARCH |
| 4886.01 | 03/22/2012 | 04/21/2012 | A | 300.00 | 0.20 | 60.00 Review correspondence from Opposing Counsel regarding | ARCH |
| 4886.01 | 03/22/2012 | 04/21/2012 | A | 300.00 | 0.20 | 60.00 Conference with Jessica Dennis and Lori Harrison regarding | ARCH |
| 4886.01 | 03/22/2012 | 04/21/2012 | A | 450.00 | 0.20 | 90.00 Review correspondence regarding | ARCH |
| 4886.01 | 03/29/2012 | 04/21/2012 | A | 300.00 | 0.50 | 150.00 Go through Request for Productions with Jessica Dennis to designate | ARCH |
| 4886.01 | 04/16/2012 | 04/21/2012 | A | 300.00 | 2.00 | 600.00 Document review | ARCH |
| 4886.01 | 05/18/2012 | 05/21/2012 | A | 450.00 | 2.50 | 1,125.00 Review Stewart title documents. | ARCH |
| 4886.01 | 05/20/2012 | 05/21/2012 | A | 450.00 | 3.00 | 1,350.00 Review documents produced by Chicago Title | ARCH |
| 4886.01 | 05/24/2012 | 06/29/2012 | A | 450.00 | 1.00 | 450.00 Review Stewart Title Documents | ARCH |
| 4886.01 | 06/22/2012 | 07/21/2012 | A | 450.00 | 1.75 | 787.50 Review file for Motion to | ARCH |
| 4886.01 | 07/12/2012 | 07/21/2012 | A | 450.00 | 2.00 | 900.00 Review agreement with Stewart Title | ARCH |
| 4886.01 | 07/17/2012 | 07/21/2012 | A | 450.00 | 0.25 | 112.50 Meeting with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 07/17/2012 | 07/21/2012 | A | 300.00 | 5.70 | 1,710.00 Review of the documents produced by Stewart Title. | ARCH |
| 4886.01 | 07/19/2012 | 07/21/2012 | A | 300.00 | 2.00 | 600.00 Review of the document production by Stewart Title. | ARCH |
| 4886.01 | 07/20/2012 | 07/21/2012 | A | 300.00 | 2.00 | 600.00 Drafting Motion | ARCH |
| 4886.01 | 07/23/2012 | 08/27/2012 | A | 300.00 | 0.40 | 120.00 Call with Pisanelli & Bice regarding | ARCH |
| 4886.01 | 07/23/2012 | 08/27/2012 | A | 450.00 | 0.25 | 112.50 Telephone conference with clients and James M. Jimmerson, Esq. | ARCH |
| 4886.01 | 07/24/2012 | 08/27/2012 | A | 300.00 | 0.20 | 60.00 Phone call with Pisanelli & Bice regarding | ARCH |
| 4886.01 | 07/26/2012 | 08/27/2012 | A | 300.00 | 4.00 | 1,200.00 Draft Motion to Compel for third party discovery. | ARCH |
| 4886.01 | 07/27/2012 | 08/27/2012 | A | 300.00 | 0.20 | 60.00 Phone call with J. Pisanelli regarding | ARCH |
| 4886.01 | 07/27/2012 | 08/27/2012 | A | 300.00 | 0.20 | 60.00 Call with James Pisanelli regarding | ARCH |
| 4886.01 | 08/02/2012 | 08/27/2012 | A | 300.00 | 2.00 | 600.00 Call with Migali Wysong regarding | ARCH |

31a-014

PLTF10472

Thursday 10/25/2012 4:11 pm

JA007398

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

| Client | Trans Date | Stnt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 08/03/2012 | 08/27/2012 | A | 300.00 | 1.00 | 300.00 Resolving the Subpoena issues with Mikali Wysong and-- | ARCH |
| 4886.01 | 08/08/2012 | 08/27/2012 | A | 300.00 | 3.00 | 900.00 Drafting discovery extension Motion. | ARCH |
| 4886.01 | 08/09/2012 | 08/27/2012 | A | 300.00 | 1.00 | 300.00 Drafting Motion to Extend Discovery. | ARCH |
| 4886.01 | 08/10/2012 | 08/27/2012 | A | 450.00 | 1.00 | 450.00 Revise Motion to Extend Time. | ARCH |
| 4886.01 | 08/17/2012 | 08/27/2012 | A | 550.00 | 1.00 | 0.00 Telephone conference with J. Wolfram; Telephone conference with Lynn M. Hansen, Esq.. | ARCH |
| | | | | | | (NO CHARGE) | |
| 4886.01 | 08/21/2012 | 09/21/2012 | A | 300.00 | 0.50 | 150.00 Reviewing Stipulation and Order for Extension of Discovery. | ARCH |
| 4886.01 | 08/24/2012 | 09/21/2012 | A | 300.00 | 0.10 | 30.00 Call with client regarding | ARCH |
| 4886.01 | 08/27/2012 | 09/21/2012 | A | 450.00 | 0.50 | 225.00 Prepare Motion for Preferential Trial Setting | ARCH |
| 4886.01 | 08/27/2012 | 09/21/2012 | A | 300.00 | 0.30 | 90.00 Attending the discovery motion where the Judge ordered the Stipulation to Extend Discovery. | ARCH |
| 4886.01 | 09/04/2012 | 09/21/2012 | A | 300.00 | 5.70 | 1,710.00 Reviewing documents from Coyote Springs. Preparation for deposition. | ARCH |
| 4886.01 | 09/04/2012 | 09/21/2012 | A | 450.00 | 1.00 | 450.00 Review the privilege logs from Coyote Springs | ARCH |
| 4886.01 | 09/07/2012 | 09/21/2012 | A | 300.00 | 1.00 | 300.00 Meeting with James J. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 09/12/2012 | 09/21/2012 | A | 300.00 | 5.60 | 1,680.00 Reviewing Coyote Springs documents produced by Pisanelli Bice. | ARCH |
| 4886.01 | 09/14/2012 | 09/21/2012 | A | 450.00 | 0.50 | 225.00 Review Coyote Springs Documents with James M. Jimmerson Esq | ARCH |
| 4886.01 | 09/18/2012 | 09/21/2012 | A | 300.00 | 4.60 | 1,380.00 Review of the Coyote Springs documents | ARCH |
| 4886.01 | 09/19/2012 | 09/21/2012 | A | 450.00 | 1.50 | 675.00 Meeting with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 09/19/2012 | 09/21/2012 | A | 450.00 | 2.00 | 900.00 Meeting with Jim Wolfram regarding | ARCH |
| 4886.01 | 09/19/2012 | 09/21/2012 | A | 450.00 | 2.50 | 1,125.00 Review documents to | ARCH |
| 4886.01 | 09/19/2012 | 09/21/2012 | A | 450.00 | 0.40 | 180.00 Conference with James J. Jimmerson, Esq. | ARCH |
| 4886.01 | 09/19/2012 | 09/21/2012 | A | 300.00 | 2.80 | 840.00 Meeting with Lynn M. Hansen, Esq. and J. Wolfram for | ARCH |
| 4886.01 | 09/20/2012 | 09/21/2012 | A | 450.00 | 1.00 | 450.00 Conference with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 09/20/2012 | 09/21/2012 | A | 300.00 | 2.40 | 720.00 Preparation for deposition and review of documents regarding | ARCH |
| 4886.01 | 09/21/2012 | mm/dd/yyyy | P | 450.00 | 1.00 | 450.00 Review documents produced | 388 |
| 4886.01 | 09/24/2012 | mm/dd/yyyy | P | 450.00 | 0.50 | 225.00 Meeting with James M. Jimmerson, Esq. to discuss | 389 |

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PLTF10478

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JA007399

Date: 10/25/2012

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 08/24/2012 | mm/dd/yyyy | P | 450.00 | 5.00 | 2,250.00 Prepare for deposition of Jon Lash - Review | 390 |
| 4886.01 | 09/24/2012 | mm/dd/yyyy | P | 450.00 | 2.00 | 900.00 Meeting with James M. Jimmerson, Esq. to discuss | 391 |
| 4886.01 | 09/24/2012 | mm/dd/yyyy | P | 300.00 | 5.20 | 1,560.00 Preparation in anticipation of deposition of John Lash; meeting with client and Lynn M. Hansen, Esq. regarding | 393 |
| 4886.01 | 09/24/2012 | mm/dd/yyyy | P | 550.00 | 1.50 | 825.00 Telephone conference with client to | 405 |
| 4886.01 | 09/25/2012 | mm/dd/yyyy | P | 300.00 | 3.80 | 1,140.00 Deposition preparation for the deposition of John Lash | 394 |
| 4886.01 | 09/25/2012 | mm/dd/yyyy | P | 450.00 | 1.00 | 450.00 Review Stewart Title records regarding | 396 |
| 4886.01 | 09/25/2012 | mm/dd/yyyy | P | 450.00 | 5.00 | 2,250.00 Review prepare | 397 |
| 4886.01 | 09/26/2012 | mm/dd/yyyy | P | 300.00 | 6.10 | 1,830.00 Deposition of John Lash, before and after deposition. | 395 |
| 4886.01 | 09/26/2012 | mm/dd/yyyy | P | 450.00 | 2.00 | 900.00 Review | 398 |
| 4886.01 | 09/26/2012 | mm/dd/yyyy | P | 450.00 | 1.25 | 562.50 Take deposition of Jon Lash: Set up meeting | 399 |
| 4886.01 | 09/26/2012 | mm/dd/yyyy | P | 550.00 | 2.00 | 0.00 Attended deposition of Jon Lash with Jim Wolfram, Lynn M. Hansen, Esq. and James M. Jimmerson, Esq. (NO CHARGE) | 406 |
| 4886.01 | 09/27/2012 | mm/dd/yyyy | P | 450.00 | 0.50 | 225.00 Review | 400 |
| 4886.01 | 09/27/2012 | mm/dd/yyyy | P | 450.00 | 0.20 | 90.00 Review trial setting | 401 |
| 4886.01 | 10/01/2012 | mm/dd/yyyy | P | 300.00 | 0.50 | 150.00 Drafting of, and, | 402 |
| 4886.01 | 10/01/2012 | mm/dd/yyyy | P | 550.00 | 1.20 | 660.00 Prepare for tomorrow's | 414 |
| 4886.01 | 10/02/2012 | mm/dd/yyyy | P | 300.00 | 0.60 | 180.00 Drafting | 403 |
| 4886.01 | 10/02/2012 | mm/dd/yyyy | P | 300.00 | 0.60 | 180.00 with Lynn M. Hansen, Esq. and Pat Lundvall | 404 |
| 4886.01 | 10/02/2012 | mm/dd/yyyy | P | 450.00 | 1.00 | 450.00 with Pardee counsel; Conference with James J. Jimmerson, Esq. and review of | 411 |
| 4886.01 | 10/02/2012 | mm/dd/yyyy | P | 450.00 | 0.50 | 225.00 Conference with James J. Jimmerson, Esq. | 412 |
| 4886.01 | 10/02/2012 | mm/dd/yyyy | P | 450.00 | 0.25 | 112.50 Phone call with Harvey Whitmire. | 413 |
| 4886.01 | 10/03/2012 | mm/dd/yyyy | P | 550.00 | 0.40 | 0.00 Conference with Lynn M. Hansen, Esq. and Shawn M. Goldstein, Esq. regarding and | 415 |
| 4886.01 | 10/03/2012 | mm/dd/yyyy | P | 550.00 | 0.40 | 220.00 Conference with Lynn M. Hansen, Esq. and James M. Jimmerson, Esq. regarding t: James J. Jimmerson, Esq. | 416 |

PLTF10479

Thursday 10/25/2012 4:11 pm

31a-016

JA007400

Date: 10/25/2012

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 10/03/2012 | mm/dd/yyyy | P | 450.00 | 0.60 | 270.00 Telephone conference with clients | 420 |
| 4886.01 | 10/04/2012 | mm/dd/yyyy | P | 300.00 | 0.30 | 90.00 Telephone conference with client | 407 |
| 4886.01 | 10/04/2012 | mm/dd/yyyy | P | 300.00 | 2.00 | 600.00 Review of | 408 |
| 4886.01 | 10/04/2012 | mm/dd/yyyy | P | 300.00 | 2.30 | 690.00 Settlement conference call | 409 |
| 4886.01 | 10/04/2012 | mm/dd/yyyy | P | 300.00 | 0.70 | 210.00 Meeting with S. Goldstein regarding | 410 |
| 4886.01 | 10/04/2012 | mm/dd/yyyy | P | 375.00 | 1.00 | 375.00 Conference with James M. Jimmerson, Esq. regarding | 417 |
| 4886.01 | 10/05/2012 | mm/dd/yyyy | P | 375.00 | 0.50 | 187.50 Reviewed and revised Notice of Deposition. Prepared, reviewed and revised letter to Opposing Counsel enclosing Notice of Deposition and Subpoena. | 418 |
| 4886.01 | 10/05/2012 | mm/dd/yyyy | P | 450.00 | 0.75 | 337.50 Review James M. Jimmerson, Esq. and James J. Jimmerson, Esq. | 423 |
| 4886.01 | 10/05/2012 | mm/dd/yyyy | P | 300.00 | 1.70 | 510.00 Drafting memorandum regarding | 424 |
| 4886.01 | 10/05/2012 | mm/dd/yyyy | P | 300.00 | 0.50 | 150.00 Issuing subpoena and notice of deposition of Harvey Whittemore | 425 |
| 4886.01 | 10/07/2012 | mm/dd/yyyy | P | 300.00 | 0.40 | 120.00 Meeting with JJJ regarding | 426 |
| 4886.01 | 10/08/2012 | mm/dd/yyyy | P | 450.00 | 0.50 | 225.00 Meeting with James M. Jimmerson, Esq. | 421 |
| 4886.01 | 10/08/2012 | mm/dd/yyyy | P | 450.00 | 0.50 | 225.00 Phone call with client | 422 |
| 4886.01 | 10/08/2012 | mm/dd/yyyy | P | 300.00 | 0.10 | 30.00 Securing the Certificate of the Custodian of Records from Chicago Title | 427 |
| 4886.01 | 10/08/2012 | mm/dd/yyyy | P | 300.00 | 0.50 | 150.00 Call with client regarding | 428 |
| 4886.01 | 10/08/2012 | mm/dd/yyyy | P | 300.00 | 3.60 | 1,080.00 Records Office acquiring maps | 429 |
| 4886.01 | 10/08/2012 | mm/dd/yyyy | P | 300.00 | 0.20 | 60.00 Meeting with Lynn M. Hansen, Esq. and James J. Jimmerson, Esq. regarding | 430 |
| 4886.01 | 10/08/2012 | mm/dd/yyyy | P | 300.00 | 1.60 | 480.00 Review documents from Chicago Title specifically looking at | 431 |
| 4886.01 | 10/09/2012 | mm/dd/yyyy | P | 300.00 | 1.60 | 480.00 Email to client attaching certain explaining the | 432 |
| 4886.01 | 10/12/2012 | mm/dd/yyyy | P | 300.00 | 0.70 | 210.00 Telephone conference with client regarding | 433 |

PLTF10480

31a-017

Thursday 10/25/2012 4:11 pm

JA007401

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 10/12/2012 | mm/dd/yyyy | P | 300.00 | 0.30 | 90.00 Meeting with Lynn M. Hansen. Esq. regarding | 434 |
| 4886.01 | 10/12/2012 | mm/dd/yyyy | P | 450.00 | 0.50 | 225.00 Telephone conference with Jim Wolfram and Walt Wilkes. | 435 |
| 4886.01 | 10/16/2012 | mm/dd/yyyy | P | 450.00 | 1.50 | 675.00 Conference with James M. Jimmerson. Esq. regarding | 436 |
| 4886.01 | 10/16/2012 | mm/dd/yyyy | P | 450.00 | 0.25 | 112.50 E-mail to Pat Lundvall. Esq. | 437 |
| 4886.01 | 10/16/2012 | mm/dd/yyyy | P | 450.00 | 0.25 | 112.50 Phone call with Pat Lundvall. Esq. regarding | 438 |
| 4886.01 | 10/16/2012 | mm/dd/yyyy | P | 300.00 | 0.80 | 240.00 Telephone conference with Harvey Whittemore. | 441 |
| 4886.01 | 10/16/2012 | mm/dd/yyyy | P | 300.00 | 0.58 | 174.00 Meeting with Lynn M. Hansen. Esq. regarding | 442 |
| 4886.01 | 10/16/2012 | mm/dd/yyyy | P | 300.00 | 0.50 | 150.00 Meeting with Lynn M. Hansen. Esq. regarding | 443 |
| 4886.01 | 10/17/2012 | mm/dd/yyyy | P | 450.00 | 3.00 | 1,350.00 Review documents to take Harry Whittemore's deposition | 439 |
| 4886.01 | 10/17/2012 | mm/dd/yyyy | P | 140.00 | 3.00 | 420.00 Deposition summary Jon Lash | 448 |
| 4886.01 | 10/18/2012 | mm/dd/yyyy | P | 450.00 | 0.30 | 135.00 Conference with James M. Jimmerson. Esq. regarding | 440 |
| 4886.01 | 10/18/2012 | mm/dd/yyyy | P | 300.00 | 4.90 | 1,470.00 Preparation for the Whittemore deposition | 444 |
| 4886.01 | 10/18/2012 | mm/dd/yyyy | P | 300.00 | 1.30 | 390.00 Research regarding | 445 |
| 4886.01 | 10/18/2012 | mm/dd/yyyy | P | 450.00 | 0.75 | 337.50 Review Court Order. Phone call with Defense Counsel. Prepare e-mail to Prepare letter to | 449 |
| 4886.01 | 10/19/2012 | mm/dd/yyyy | P | 300.00 | 1.50 | 450.00 Preparation for the Whittemore deposition in Reno | 446 |
| 4886.01 | 10/19/2012 | mm/dd/yyyy | P | 300.00 | 3.50 | 1,050.00 Taking of the Whittemore deposition. | 447 |
| 4886.01 | 10/19/2012 | mm/dd/yyyy | P | 450.00 | 3.50 | 1,575.00 Attend and take deposition of Harvey Wittemore | 450 |
| 4886.01 | 10/19/2012 | mm/dd/yyyy | P | 450.00 | 1.50 | 675.00 Prepare for Harvey Wittemore's deposition in Reno | 451 |
| 4886.01 | 10/19/2012 | mm/dd/yyyy | P | 450.00 | 3.00 | 1,350.00 Travel to and from Reno. | 452 |
| Total for Client ID 4886.01 | | | | Billable | 317.93 | 102,761.50 WILKES/ WOLFRAM | |
| | | | | Non-billable | 10.40 | 600.00 VS. PARDEE HOMES OF NEVADA | |
| | | | | Total | 328.33 | 103,361.50 | |

GRAND TOTALS

| | | |
|--------------|--------|------------|
| Billable | 317.93 | 102,761.50 |
| Non-billable | 10.40 | 600.00 |
| Total | 328.33 | 103,361.50 |

PLTF10481

Thursday 10/25/2012 4:11 pm

JA007402

Date: 03/13/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page: 1

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 10/24/2012 | 11/21/2012 | A | 450.00 | 0.25 | 112.50 Conference with James M. Jimmerson, Esq | ARCH |
| 4886.01 | 10/25/2012 | 11/21/2012 | A | 300.00 | 1.00 | 300.00 Legal research | ARCH |
| 4886.01 | 10/25/2012 | 11/21/2012 | A | 300.00 | 3.50 | 1,050.00 Responding to Motion for Summary Judgment | ARCH |
| 4886.01 | 10/26/2012 | 11/21/2012 | A | 450.00 | 2.00 | 900.00 Review supplemental disclosure. | ARCH |
| 4886.01 | 10/26/2012 | 11/21/2012 | A | 300.00 | 2.50 | 750.00 Supplement to Initial Disclosures. | ARCH |
| 4886.01 | 10/29/2012 | 11/21/2012 | A | 450.00 | 0.75 | 337.50 Review Motion for Summary Judgment; Review e-mail | ARCH |
| 4886.01 | 10/29/2012 | 11/21/2012 | A | 300.00 | 0.80 | 240.00 Supplement to Initial Disclosures. | ARCH |
| 4886.01 | 10/29/2012 | 11/21/2012 | A | 300.00 | 0.30 | 90.00 Email and conversation with A. Shipley regarding Motion for Summary Judgment. | ARCH |
| 4886.01 | 11/01/2012 | 11/21/2012 | A | 300.00 | 2.00 | 600.00 Drafting Opposition to Motion for Summary Judgment. | ARCH |
| 4886.01 | 11/02/2012 | 11/21/2012 | A | 300.00 | 1.20 | 360.00 Revising Opposition for Motion for Summary Judgment. | ARCH |
| 4886.01 | 11/03/2012 | 11/21/2012 | A | 300.00 | 1.50 | 450.00 Legal research Work | ARCH |
| 4886.01 | 11/05/2012 | 11/21/2012 | A | 300.00 | 0.60 | 180.00 Emails with opposing counsel regarding Motion for Summary Judgment. | ARCH |
| 4886.01 | 11/06/2012 | 11/21/2012 | A | 300.00 | 2.00 | 600.00 Legal research regarding | ARCH |
| 4886.01 | 11/08/2012 | 11/21/2012 | A | 450.00 | 1.50 | 675.00 Revised Opposition to Motion for Summary Judgment | ARCH |
| 4886.01 | 11/08/2012 | 11/21/2012 | A | 300.00 | 0.20 | 60.00 Emails and phone conversation with opposing counsel regarding service of the Opposition to Motion for Summary Judgment | ARCH |
| 4886.01 | 11/08/2012 | 11/21/2012 | A | 300.00 | 1.50 | 450.00 Drafting Motion to Seal Certain Exhibits in support of Opposition to Motion for Summary Judgment | ARCH |
| 4886.01 | 11/08/2012 | 11/21/2012 | A | 300.00 | 0.50 | 150.00 Preparing hard copy filings and exhibits for the court | ARCH |
| 4886.01 | 11/08/2012 | 11/21/2012 | A | 300.00 | 0.50 | 150.00 Call with Lynn M. Hansen, Esq. and opposing counsel regarding Motion for Summary Judgment | ARCH |
| 4886.01 | 11/08/2012 | 11/21/2012 | A | 300.00 | 0.50 | 150.00 Email with opposing counsel regarding hearing for Motion for Summary Judgment | ARCH |
| 4886.01 | 11/09/2012 | 11/21/2012 | A | 300.00 | 0.50 | 150.00 Call with Aaron Shipley regarding authentication of certain documents | ARCH |
| 4886.01 | 11/13/2012 | 11/21/2012 | A | 300.00 | 0.20 | 60.00 Emails to third parties regarding | ARCH |
| 4886.01 | 11/13/2012 | 11/21/2012 | A | 300.00 | 0.20 | 60.00 Emails with opposing counsel regarding motion for summary judgment. | ARCH |
| 4886.01 | 11/14/2012 | 11/21/2012 | A | 450.00 | 0.25 | 112.50 Review | ARCH |
| 4886.01 | 11/16/2012 | 11/21/2012 | A | 300.00 | 1.00 | 300.00 Meeting with Aaron Shipley regarding original documents and Motion for Summary Judgment | ARCH |
| 4886.01 | 11/16/2012 | 11/21/2012 | A | 300.00 | 1.50 | 450.00 Draft letter in response to | ARCH |

Wednesday 03/13/2013 1:16 pm

31a-019

PLT 10497

JA007403

Date: 03/13/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|-----------------------------------|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 11/19/2012 | 11/21/2012 | A | 140.00 | 3.00 | 420.00 correspondence. | ARCH |
| 4886.01 | 11/29/2012 | 12/21/2012 | A | 300.00 | 0.30 | 90.00 Deposition summary Harvey Whittemore | ARCH |
| 4886.01 | 11/30/2012 | 12/21/2012 | A | 450.00 | 0.50 | 225.00 Responding to the letter from | ARCH |
| 4886.01 | 11/30/2012 | 12/21/2012 | A | 450.00 | 0.30 | 135.00 Review letter to Plaintiff's Counsel | ARCH |
| 4886.01 | 11/30/2012 | 12/21/2012 | A | 450.00 | 0.30 | 135.00 Conference with James M. Jimmerson, Esq.; Review deposition of H. Wittemore | ARCH |
| 4886.01 | 11/30/2012 | 12/21/2012 | A | 450.00 | 0.30 | 135.00 Review Opposition to Counter-motion | ARCH |
| 4886.01 | 12/03/2012 | 12/21/2012 | A | 300.00 | 0.50 | 150.00 Drafting assignment | ARCH |
| 4886.01 | 12/05/2012 | 12/21/2012 | A | 450.00 | 0.30 | 135.00 Review Order changing Status Check; Phone call w/ court; Review memo from court regarding | ARCH |
| 4886.01 | 12/05/2012 | 12/21/2012 | A | 300.00 | 0.10 | 30.00 Client email | ARCH |
| 4886.01 | 12/06/2012 | 12/21/2012 | A | 550.00 | 1.00 | 550.00 Court status check; new dates set. Orders entered | ARCH |
| 4886.01 | 12/17/2012 | 12/21/2012 | A | | 1.20 | 0.00 Conference with | ARCH |
| 4886.01 | 12/17/2012 | 12/21/2012 | A | 300.00 | 1.00 | 300.00 Legal research | ARCH |
| 4886.01 | 12/17/2012 | 12/21/2012 | A | 300.00 | 2.50 | 750.00 Drafting response to Pat Lundvall's letter of November 29, 2012. | ARCH |
| 4886.01 | 12/17/2012 | 12/21/2012 | A | 300.00 | 0.10 | 30.00 Email Mark Carmen | ARCH |
| 4886.01 | 12/18/2012 | 12/21/2012 | A | 450.00 | 0.50 | 225.00 Review correspondence to Defense Counsel regarding | ARCH |
| 4886.01 | 12/19/2012 | 12/21/2012 | A | 300.00 | 0.50 | 150.00 Letter to | ARCH |
| 4886.01 | 12/20/2012 | 12/21/2012 | A | 300.00 | 1.50 | 450.00 Drafting reply | ARCH |
| 4886.01 | 12/20/2012 | 12/21/2012 | A | 550.00 | | -30,686.52 Balance | ARCH |
| 4886.01 | 12/27/2012 | 01/21/2013 | A | 300.00 | 0.50 | 150.00 Review of transcript of December 6 status check. | ARCH |
| 4886.01 | 12/28/2012 | 01/21/2013 | A | 450.00 | 0.25 | 112.50 Review transcript of hearing. | ARCH |
| 4886.01 | 12/31/2012 | 01/21/2013 | A | 450.00 | 0.20 | 90.00 Conference with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 01/09/2013 | 01/21/2013 | A | 450.00 | 1.60 | 720.00 Review Reply to Our Opposition | ARCH |
| 4886.01 | 01/14/2013 | 01/21/2013 | A | 300.00 | 0.30 | 90.00 Telephone conference with opposing counsel regarding order and motion for summary judgment. | ARCH |

31a-020

PLT10498

Wednesday 03/13/2013 1:16 pm

JA007404

Date: 03/13/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page: 3

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|----------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 01/17/2013 | 01/21/2013 | A | 300.00 | 4.40 | 1,320.00 Drafting Reply on Countermotion for Summary Judgment | ARCH |
| 4886.01 | 01/18/2013 | 01/21/2013 | A | 300.00 | 0.10 | 30.00 Editing and signing Order granting Motion to File Exhibits under Seal. | ARCH |
| 4886.01 | 01/21/2013 | 02/21/2013 | A | 300.00 | 1.50 | 450.00 Meeting with James J. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 01/21/2013 | 02/21/2013 | A | 550.00 | 3.00 | 1,650.00 Conference with James M. Jimmerson, Esq. | ARCH |
| 4886.01 | 01/22/2013 | 02/21/2013 | A | 300.00 | 0.50 | 150.00 Preparation for Motion for Summary Judgment hearing | ARCH |
| 4886.01 | 01/22/2013 | 02/21/2013 | A | 300.00 | 1.50 | 450.00 Meeting with James J. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 01/23/2013 | 02/21/2013 | A | 550.00 | 1.50 | 825.00 Phone call with Dept. IV; Telephone conference with clients, Hearing on Summary Judgment set over to 2/08/13 | ARCH |
| 4886.01 | 01/23/2013 | 02/21/2013 | A | 300.00 | 0.50 | 150.00 Meeting with James J. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 01/23/2013 | 02/21/2013 | A | 300.00 | 0.50 | 150.00 Preparation for the hearing on the Motion for Summary Judgment. | ARCH |
| 4886.01 | 01/27/2013 | 02/21/2013 | A | 550.00 | 2.00 | 1,100.00 Preparing Motions for Court Hearing; Review Submissions | ARCH |
| 4886.01 | 01/28/2013 | 02/21/2013 | A | 450.00 | 0.25 | 112.50 Conference with James M. Jimmerson, Esq. | ARCH |
| 4886.01 | 02/14/2013 | 02/21/2013 | A | 450.00 | 1.00 | 450.00 Review of the deposition of Jon Lash regarding | ARCH |
| 4886.01 | 02/20/2013 | 02/21/2013 | A | 550.00 | | -4,000.00 Courtesy Discount per James J. Jimmerson, Esq. | ARCH |
| Total for Client ID 4886.01 | | | | Billable | 59.95 | -14,174.02 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA | |
| GRAND TOTALS | | | | | | | |
| | | | | Billable | 59.95 | -14,174.02 | |

31a-021

PLT10499

Wednesday 03/13/2013 1:16 pm

JA007405

Date: 04/02/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmnt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 02/21/2013 | 03/21/2013 | A | 450.00 | 1.00 | 450.00 Review Pleadings for Court | ARCH |
| 4886.01 | 02/26/2013 | 03/21/2013 | A | 450.00 | 0.25 | 112.50 Review Motion to Enforce Order Shortening Time and Summary Judgment | ARCH |
| 4886.01 | 02/26/2013 | 03/21/2013 | A | 300.00 | 1.00 | 300.00 Review of Motion to Continue Trial | ARCH |
| 4886.01 | 02/27/2013 | 03/21/2013 | A | 300.00 | 0.50 | 150.00 Prepare Plaintiffs 7th Supplement to 16.1 Disclosures. | ARCH |
| 4886.01 | 02/28/2013 | 03/21/2013 | A | 300.00 | 8.10 | 2,430.00 Prepare Opposition to Motion to Continue (735); telephone call with opposing counsel regarding Motion to Continue and Motions in Limine (.6). | ARCH |
| 4886.01 | 03/01/2013 | 03/21/2013 | A | 450.00 | 0.25 | 112.50 Revise Opposition to Defendant's Motion to Enforce Order Shortening Time | ARCH |
| 4886.01 | 03/01/2013 | 03/21/2013 | A | 300.00 | 0.80 | 240.00 Telephone conference with opposing counsel regarding Motion to Continue and Motions in Limine. | ARCH |
| 4886.01 | 03/04/2013 | 03/21/2013 | A | 450.00 | 1.50 | 675.00 Review the Agreement for Hearing. | ARCH |
| 4886.01 | 03/04/2013 | 03/21/2013 | A | 450.00 | 0.50 | 225.00 Meeting with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 03/04/2013 | 03/21/2013 | A | 300.00 | 5.00 | 1,500.00 Prepare Memo in preparation with James J. Jimmerson, Esq. (1.0); Prep with James J. Jimmerson, Esq. on Motion for Summary Judgment Hearing (1.5); Research on (1.7) and Memo on standards on | ARCH |
| 4886.01 | 03/05/2013 | 03/21/2013 | A | 450.00 | 3.50 | 1,575.00 Attend Hearing on Motion for Summary Judgment | ARCH |
| 4886.01 | 03/05/2013 | 03/21/2013 | A | 450.00 | 0.30 | 135.00 Provide dates and tasks for calendaring pre-trial activities to assistant. | ARCH |
| 4886.01 | 03/05/2013 | 03/21/2013 | A | 300.00 | 5.30 | 1,590.00 Attend Hearing on Motion for Summary Judgment (3.0); Meeting with client regarding Hearing on Motion for Summary Judgment (.5); Meeting with James J. Jimmerson, Esq. regarding: (1.0) and meeting with James J. Jimmerson, Esq. in (.8). | ARCH |
| 4886.01 | 03/05/2013 | 03/21/2013 | A | 550.00 | 5.00 | 2,750.00 Prepared for and attended court hearing with Jim Wolfram in Pardee's Motion for Summary Judgment and our cross-motion for summary judgment; matter taken under advisement but our cross-motion for summary judgment is granted, teleconference with Wilkes; trial dates set. | ARCH |
| 4886.01 | 03/06/2013 | 03/21/2013 | A | 300.00 | 0.50 | 150.00 Telephone conference with client regarding | ARCH |
| 4886.01 | 03/07/2013 | 03/21/2013 | A | 450.00 | 1.25 | 562.50 Review | ARCH |
| 4886.01 | 03/08/2013 | 03/21/2013 | A | 300.00 | 2.70 | 810.00 Prepare Order regarding Partial Summary Judgment (1.4); Email with James J. Jimmerson, Esq. regarding (1.0); Research regarding (1.0). | ARCH |
| 4886.01 | 03/11/2013 | 03/21/2013 | A | 450.00 | 0.25 | 112.50 Conference with James M. Jimmerson, Esq. regarding | ARCH |

31a-022

PLTF10506

Thursday, 04/02/2013 11:02 am

JA007406

Date: 04/02/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page: 2

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|-----------------------------------|------------|------------|-----|----------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 03/11/2013 | 03/21/2013 | A | 300.00 | 0.20 | 60.00 Telephone conference with client regarding | ARCH |
| 4886.01 | 03/12/2013 | 03/21/2013 | A | 300.00 | 2.60 | 780.00 Telephone conference with client (.2); Legal research in (2.4). | ARCH |
| 4886.01 | 03/13/2013 | 03/21/2013 | A | 300.00 | 3.20 | 960.00 Legal research regarding (1.5); drafting Order regarding Motion for Summary Judgment (.5); call with clients regarding (1.2). | ARCH |
| 4886.01 | 03/14/2013 | 03/21/2013 | A | 300.00 | 3.20 | 960.00 Legal research in (1.2); drafting order denying summary judgment (.5); drafting motion for leave to amend (1.5) | ARCH |
| 4886.01 | 03/15/2013 | 03/21/2013 | A | 300.00 | 6.40 | 1,920.00 Review opposition to Motions in Limine (.2); drafting opposition to Motion in Limine on parol evidence (4.2); legal research (1.5); call with opposing counsel regarding orders and Motions in Limine (.5). | ARCH |
| 4886.01 | 03/18/2013 | 03/21/2013 | A | 300.00 | 10.40 | 3,120.00 Drafting opposition to motion in limine regarding attorney's fees (8.4); legal research (2.0); call with client regarding | ARCH |
| 4886.01 | 03/19/2013 | 03/21/2013 | A | 300.00 | 8.00 | 2,400.00 Revise order denying Motion for Summary Judgment (.2); Draft Opposition to Motion in Limine for compensation of time (6.8); call with client regarding (.5) and 8TH JUDICIAL DISTRICT COURT CLERK supplement (.5). | ARCH |
| 4886.01 | 03/19/2013 | 03/21/2013 | A | 450.00 | 1.25 | 562.50 Review Objections to Motion in Limine | ARCH |
| 4886.01 | 03/20/2013 | 03/21/2013 | A | 300.00 | 8.20 | 2,460.00 Prepare Opposition to Motion in Limine regarding disclosure after discovery deadline. | ARCH |
| 4886.01 | 03/20/2013 | 03/21/2013 | A | 550.00 | 2.00 | 1,100.00 Pardee's Motion for Summary Judgment denied; Minutes received; Telephone conference with J. Wolfram and W. Wilkes; | ARCH |
| Total for Client ID 4886.01 | | | | Billable | 83.15 | 28,202.50 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA | |
| GRAND TOTALS | | | | | | | |
| | | | | Billable | 83.15 | 28,202.50 | |

31a-023

PLTF10507

Tuesday 04/02/2013 11:03 am

JA007407

Date: 05/21/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|----------|---------------|--|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 03/21/2013 | 03/21/2013 | A | 300.00 | 0.40 | 120.00 Redact billing statement | ARCH |
| 4886.01 | 03/21/2013 | 03/21/2013 | A | 300.00 | 0.40 | 120.00 Review Motion for Leave to File Second Amended Complaint. | ARCH |
| 4886.01 | 03/21/2013 | 04/21/2013 | A | 300.00 | 4.20 | 1,260.00 Prepare and draft Motion to Leave to File 2nd Amended Complaint, e-filed, emailed and mailed to opposing counsel. | ARCH |
| 4886.01 | 03/22/2013 | 03/21/2013 | A | 450.00 | 0.60 | 270.00 Review Reply Brief | ARCH |
| 4886.01 | 03/22/2013 | 04/21/2013 | A | 300.00 | 0.20 | 60.00 Prepared and filed Notice of Hearing on Motion. | ARCH |
| 4886.01 | 03/25/2013 | 04/21/2013 | A | 300.00 | 0.30 | 90.00 Prepare e-mail to opposing counsel regarding: settlement, | ARCH |
| 4886.01 | 03/26/2013 | 04/21/2013 | A | 300.00 | 0.20 | 60.00 Prepare e-mail for opposing counsel regarding: EDCR 2.67 conference. | ARCH |
| 4886.01 | 03/29/2013 | 04/21/2013 | A | 300.00 | 1.50 | 450.00 Prepare email to opposing counsel regarding: motions in limine, EDCR 2.67 conference and phone call regarding the same. | ARCH |
| Total for Client ID 4886.01 | | | | Billable | 7.80 | 2,430.00 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA | |
| GRAND TOTALS | | | | | | | |
| | | | | Billable | 7.80 | 2,430.00 | |

31a-024

PLTF10508

Tuesday 05/21/2013 4:20 pm

JA007408

Date: 05/20/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P C.

Page: 1

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | Ref # |
|--|------------|------------|-----|--------|---------------|---|-------|
| Client ID 4886.01 WILKES/ WOLFRAM | | | | | | | |
| 4886.01 | 04/01/2013 | 04/21/2013 | A | 300.00 | 6.20 | 1,860.00 Trial preparation | ARCH |
| 4886.01 | 04/02/2013 | 04/21/2013 | A | 300.00 | 0.70 | 210.00 Review of letter from opposing counsel regarding: requesting advancing calendar call. | ARCH |
| 4886.01 | 04/02/2013 | 04/21/2013 | A | 300.00 | 4.50 | 1,350.00 Draft of letter in response to letter from opposing counsel regarding: requesting advancing calendar call. | ARCH |
| 4886.01 | 04/03/2013 | 04/21/2013 | A | 450.00 | 0.25 | 112.50 Conference with James M. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 04/03/2013 | 04/21/2013 | A | 300.00 | 1.50 | 450.00 Drafting of Offer of Judgment. | ARCH |
| 4886.01 | 04/03/2013 | 04/21/2013 | A | 300.00 | 0.20 | 60.00 Review of | ARCH |
| 4886.01 | 04/03/2013 | 04/21/2013 | A | 300.00 | 0.50 | 150.00 Prepare letter to counsel with opposing counsel regarding: teleconference. | ARCH |
| 4886.01 | 04/03/2013 | 04/21/2013 | A | 300.00 | 0.30 | 90.00 Telephone call to Judge's chambers regarding: trial dates. | ARCH |
| 4886.01 | 04/04/2013 | 04/21/2013 | A | 300.00 | 0.30 | 90.00 Telephone conference with Pat Lundvall regarding: setting of trial. | ARCH |
| 4886.01 | 04/05/2013 | 04/21/2013 | A | 300.00 | 0.40 | 120.00 Call with P Lundvall re: trial setting | ARCH |
| 4886.01 | 04/05/2013 | 04/21/2013 | A | 300.00 | 0.20 | 60.00 Conference with James J. Jimmerson, Esq. in advance of call with opposing counsel | ARCH |
| 4886.01 | 04/05/2013 | 04/21/2013 | A | 300.00 | 1.40 | 420.00 Legal research on | ARCH |
| 4886.01 | 04/05/2013 | 04/21/2013 | A | 300.00 | 1.00 | 300.00 drafting subpoenas of trial | ARCH |
| 4886.01 | 04/05/2013 | 04/21/2013 | A | 550.00 | 0.40 | 220.00 Telephone conference; Pardee wants to Bifurcate Trial; we do not agree. | ARCH |
| 4886.01 | 04/08/2013 | 04/21/2013 | A | 450.00 | 0.40 | 180.00 Conference with James M. Jimmerson, Esq. and James J. Jimmerson, Esq. regarding | ARCH |
| 4886.01 | 04/08/2013 | 04/21/2013 | A | 450.00 | 2.00 | 900.00 Review deposition of Jim Wolfram. | ARCH |
| 4886.01 | 04/08/2013 | 04/21/2013 | A | 450.00 | 1.50 | 675.00 Meeting with client for | ARCH |
| 4886.01 | 04/08/2013 | 04/21/2013 | A | 300.00 | 1.50 | 450.00 Meeting with client regarding: | ARCH |
| 4886.01 | 04/08/2013 | 04/21/2013 | A | 300.00 | 0.20 | 60.00 email with opposing counsel re: trial date. | ARCH |
| 4886.01 | 04/08/2013 | 04/21/2013 | A | 300.00 | 0.30 | 90.00 Telephone Conference with opposing counsel re: trial date and preserving Wilkes testimony | ARCH |
| 4886.01 | 04/08/2013 | 04/21/2013 | A | 300.00 | 1.00 | 300.00 Drafting reply to motion for leave to amend to file 2nd amended complaint. | ARCH |
| 4886.01 | 04/09/2013 | 04/21/2013 | A | 300.00 | 0.20 | 60.00 email w/opp; counsel re: trial date | ARCH |
| 4886.01 | 04/09/2013 | 04/21/2013 | A | 300.00 | 0.30 | 90.00 correspondence w/ court on trial | ARCH |
| 4886.01 | 04/10/2013 | 04/21/2013 | A | 450.00 | 0.50 | 225.00 Review Opposition to Plaintiff's Motion to file Amended Complaint. | ARCH |
| 4886.01 | 04/12/2013 | 04/21/2013 | A | 300.00 | 0.30 | 90.00 Telephone conference with client regarding; | ARCH |
| 4886.01 | 04/18/2013 | 04/21/2013 | A | 550.00 | 1.60 | 880.00 Review and revise Reply to Opposition and Amend Complaint | ARCH |

PLTF10511

31a-025

Monday 05/20/2013 1:48 pm

JA007409

Detail Fee / SECTION FILE LIST
JIMMER / HANSEN, P.C.

| Client | Trans Date | Stmt Date | H P | Rate | Hours to Bill | Amount | |
|-----------------------------|------------|-----------|-----|----------|---------------|----------|---|
| Total for Client ID 4886.01 | | | | Billable | 27.65 | 9,492.50 | WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA |
| GRAND TOTALS | | | | | | | |
| | | | | Billable | 27.65 | 9,492.50 | |

31a-026

PLTF10312

Monday 05/20/2013 1:48 pm

JA007410

File with
Master Calendar

MELP
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
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lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

HEARING REQUIRED

DATE: July 17, 2014

TIME: 8:30 am

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

MOTION TO EXPUNGE LIS PENDENS;

and

**FOR SANCTIONS REGARDING
PLAINTIFFS' VIOLATION OF THE
COURT'S PROTECTIVE ORDER**

and

**EX PARTE APPLICATION FOR AN
ORDER SHORTENING TIME**

Hearing Date:

Hearing Time:

AND RELATED CLAIMS

Despite clear Nevada law holding that a lis pendens is appropriate only in narrow circumstances involving a legal interest in real property, such as title disputes or lien foreclosures, Plaintiffs James Wolfram and Walt Wilkes filed a lis pendens with the Lincoln County Recorder related to Pardee's land at the Coyote Springs Development Project (the "Project"). However, Plaintiffs do not have any legal interest in Pardee's land and have never claimed one in this case; instead, Plaintiffs allege claims only for

1 monetary damages arising from Defendant's purported breach of a broker commission
2 contract. Accordingly, their lis pendens is highly improper, and it creates a continuing
3 cloud on Pardee's title.

4 Doubling down on this error, the Plaintiffs attached to the lis pendens a 25-page
5 exhibit that is clearly marked, on each and every page, as "Confidential." The
6 document was marked as Confidential because it contains Pardee's sensitive
7 commercial information and is protected by the parties' stipulated confidential
8 agreement, which the Court signed and entered as an Order on December 15, 2011
9 (the "Confidentiality Order"). Plaintiffs making the confidential exhibit a matter of public
10 record is a flagrant violation of the Confidentiality Order, and its continued recordation
11 in Lincoln County places Pardee at significant risk of competitive harm

12 Thus, to protect both its property rights and commercial privacy interests, Pardee
13 now comes to the Court seeking two forms of relief. First, Pardee seeks an order to
14 expunge the improper lis pendens and the confidential exhibit attached to it, and
15 requiring the Lincoln County Recorder to remove it from the public record. Second,
16 Pardee seeks an award of monetary sanctions against Plaintiffs and/or their counsel for
17 flagrantly violating the Confidentiality Order and placing Pardee in harm's way.

18 This motion is made and based on the papers and pleadings on file with the
19 Court, the following Memorandum of Points and Authorities along with any exhibits
20 attached thereto, and any and all oral arguments allowed by this Court at the time of
21 hearing.

22 DATED this 24 day of June, 2014.

23 McDONALD CARANO WILSON LLP

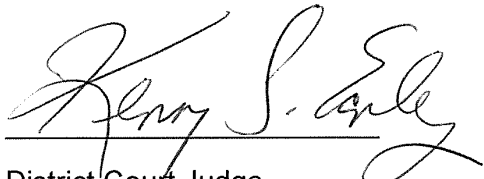
24 /s/ Pat Lundvall
25 Pat Lundvall (NSBN 3761)
26 Rory T. Kay (NSBN 12416)
27 2300 West Sahara Avenue, Suite 1000
28 Las Vegas, Nevada 89102

*Attorneys for Defendant Pardee Homes
of Nevada*

ORDER SHORTENING TIME

Good cause appearing, it is hereby ordered that the foregoing **MOTION TO EXPUNGE LIS PENDENS; AND FOR SANCTIONS REGARDING PLAINTIFFS' VIOLATION OF THE COURT'S PROTECTIVE ORDER** shall be heard on shortened time on the 7th day of July, 2014, at the hour of 8:00 a.m. in front of Dept. IV of the Eighth Judicial District Court. This Order Shortening Time shall be served on the parties by e-service, hand, facsimile, or email no later than day of , 2014

DATED this 23 day of June, 2014.


District Court Judge

Respectfully submitted,

MCDONALD CARANO WILSON LLP

/s/ Pat Lundvall
Pat Lundvall (NSBN 3761)
Rory T. Kay (NSBN 12416)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

Attorneys for Defendant Pardee Homes of Nevada

**DECLARATION OF PAT LUNDVALL IN SUPPORT OF MOTION TO EXPUNGE LIS
PENDENS; AND FOR MONETARY SANCTIONS REGARDING PLAINTIFFS'
VIOLATION OF THE STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER; AND EX PARTE APPLICATION FOR AN ORDER
SHORTENING TIME**

I, PAT LUNDVALL, declare under penalty of perjury as follows:

1. I am a Nevada-licensed attorney and partner with the law firm of McDonald Carano Wilson LLP, counsel for defendant Pardee Homes of Nevada ("Pardee") in the action entitled Wolfram v. Pardee Homes of Nevada, Eighth Judicial District Court, Clark County, Nevada, Case No. A-10-632338-C (the "Lawsuit").

2. This Declaration is made of my own personal knowledge. I am over the age of 18 years. If called as a witness, I could competently testify thereto.

3. I recently learned that on April 14, 2014, Plaintiffs Walt Wilkes and James Wolfram (collectively, "Plaintiffs"), through their counsel of record, James J. Jimmerson, Esq., caused a document to be recorded (the "Recorded Document") by the Recorder of Lincoln County, Nevada, related to Pardee's land on the Coyote Springs Development project (the "Project").

4. The Recorded Document bears all of the indicia of a lis pendens, including the case number of this litigation, the name and address of Plaintiffs' current counsel, the Bates stamps of both Pardee and Coyote Springs Investment, LLC ("CSI"), and the stamp of the clerk of this Court.

5. The Recorded Document acts as a cloud upon title to Pardee's land related to the Project because it gives the appearance that Plaintiffs may have some interest in Pardee's land pending the outcome of the Lawsuit. However, Plaintiffs have never alleged any interest in Pardee's land. Plaintiffs have only requested monetary damages in the Lawsuit.

6. Moreover, attached to the Recorded Document is a twenty-five page exhibit that is conspicuously marked "Confidential" on each and every page (the "Confidential Document"). The Confidential Document is clearly protected by the

1 Stipulated Confidentiality Agreement and Protective Order ("Confidentiality Order"),
2 which Plaintiffs and Pardee executed on December 9, 2011, and which the Court
3 entered on December 13, 2011.

4 7. The Confidential Document contains Pardee's highly sensitive commercial
5 information, and because the Plaintiffs violated the Confidentiality Order by making it a
6 matter of public record, Pardee's competitors now have access to this information. This
7 places Pardee at significant risk of commercial harm on a daily basis, not only on the
8 Project but in the broader home development market as well.

9 8. As such, there is an immediate need to expunge both the Recorded
10 Document and the Confidential Document from the Lincoln County public records,
11 including from all records, files, repositories, or other storage places (whether electronic
12 or hard copy) containing the documents. Thus, good cause exists for hearing this
13 matter on an order shortening time. Given the significant risk that accrues each day the
14 documents are matters of public record, Pardee respectfully requests that the Court
15 hear this matter on the earliest available date.

16 9. I declare under penalty of perjury under the law of the State of Nevada
17 that the foregoing is true and correct.

18 Executed this 24 day of June, 2014.

19
20 /s/ Pat Lundvall
Pat Lundvall

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

Plaintiffs James Wolfram ("Wolfram") and Walt Wilkes ("Wilkes") (collectively "Plaintiffs") filed this action against Pardee alleging that their predecessors in interest, Award Realty Group ("Award") and General Realty Group, Inc. ("General"), were brokers in Pardee's purchase of certain real estate from Coyote Springs Investment LLC ("CSI") related to the Coyote Springs development project (the "Project"). In its barest form, this breach-of-contract case focuses on three issues:

1. Whether Pardee fulfilled all of the obligations set forth in the Commission Agreement dated September 1, 2004, which the Plaintiffs countersigned ("Commission Agreement" or "Commission Letter");
2. Whether Pardee breached its duty to the Plaintiffs to deal with them fairly and in good faith; and
3. Whether Pardee must provide an accounting to Plaintiffs.

The case has never involved any claim by Plaintiffs that they are entitled to a legal interest in Pardee's land related to the Project. Rather, the Plaintiffs' requested remedies are monetary damages and an accounting related to the Project. See Plaintiffs' Second Amended Complaint at p. 7, on file with this Court.

A. The Parties Execute a Confidentiality Agreement

Early in the case, the parties recognized the sensitive nature of the litigation and executed a confidentiality agreement, which the Court signed and entered as an Order on December 15, 2011 (the "Confidentiality Order"). See Stipulated Confidentiality Agreement and Protective Order, on file with the Court. By executing the Confidentiality Order, the parties intended to protect "certain business records, information, financial records, trade secrets, confidential records, commercial information, and related information produced or otherwise disclosed by the parties." Id. at 1:21-25. Specifically, the parties were particularly concerned with documents produced by CSI and agreed that "all information or material" produced or disclosed by

1 CSI was "Confidential Information" protected by the Confidentiality Order. See id. at ¶
2 1.

3 The Confidentiality Order imposes numerous obligations on both the Plaintiffs
4 and Pardee. Either party producing Confidential Information was required to designate
5 such information as "Confidential" and stamp it accordingly on the cover of the
6 document. See id. at ¶ 1, 4. The parties were prohibited from disclosing Confidential
7 Information to third-parties other than (1) to certain persons approved by the
8 Confidentiality Order;¹ (2) to the extent the information was or became generally
9 available to the public through no fault of the parties; and (3) to the extent disclosure
10 was compelled by legal process. See id. at ¶ 3. The parties also agreed that any
11 dispute arising under the Confidentiality Order could be heard and decided by this
12 Court. See id. at ¶ 11.

13 **B. Plaintiffs File a Lis Pendens Relating to Pardee's Land**

14 On April 14, 2014, Plaintiffs recorded a "letter" (the "Recorded Document") with
15 the Lincoln County Recorder relating to Pardee's real property involved in the Project.
16 See Official Record of Lincoln County, Nevada, Document # 0145289, dated April 14,
17 2014, attached hereto as **Exhibit A**. Although the Plaintiffs titled it as a "letter," the
18 Recorded Document contains indicia of a lis pendens. On the first page, it bears the
19 Lincoln County Recorder's stamp in the upper right corner and lists Plaintiffs' counsel's
20 law firm as the entity that requested the recording. See Exhibit A at p. 1. At the bottom
21 of the same page, Plaintiffs' counsel's firm name and address appear, and Plaintiffs'
22 counsel, James J. Jimmerson, signed the document to have it recorded. Id. Page 2
23 of the Recorded Document contains a stamp on its upper right corner indicating it is
24 "Plaintiff's Exhibit #1" and listing the case number of this litigation, A632338. Id. at p. 2.

25
26 ¹ The persons approved by the Confidentiality Order include: (a) the parties
27 themselves, including their directors, officers, and management personnel; (b) the
28 parties' in-house and outside counsel; (c) outside copy services used by counsel or the
parties; (d) outside reporters used to record testimony in the litigation; (e) outside
experts or consultants, provided they sign the confidentiality agreement; and (f) the
Court and its staff. Id. at ¶ 6.

1 The same page also is Bates stamped with discovery labels, and the bottom of page 6
2 contains a stamp from the Clerk of the Court indicating it is a certified copy of the
3 original document on file with the Court. Id. at pp. 2, 6.

4 **C. Plaintiffs Attach a Confidential Document to the Lis Pendens**

5 Nowhere in the Confidentiality Order did it permit a party to make a confidential
6 document a matter of public record. Nevertheless, attached to the Recorded Document
7 is a 25-page exhibit titled "Amendment No. 2 to Option Agreement for the Purchase of
8 Real Property and Joint Escrow Instructions" (the "Confidential Document"). See id. at
9 p. 6. The Confidential Document is clearly stamped "Confidential" on each of its pages,
10 and CSI's Bates stamp, "CSI_Wolfram," appears on the lower right corner of each page
11 as well, signifying that CSI produced it during the litigation. See id. These are the very
12 documents that the Confidentiality Order was designed to address. The Confidential
13 Document lists various promises between CSI and Pardee related to the Project's
14 development, including the purchase prices for land, options held by Pardee for
15 additional land, relevant dates by which Pardee had to exercise those options, and
16 obligations to build certain improvements during the lifetime of the Project. See
17 generally id. The Confidential Document also has various development maps attached
18 as exhibits. See id.

19 **II. LEGAL ARGUMENT**

20 **A. Pardee is Entitled to Expungement and Monetary Sanctions for**
21 **Plaintiffs' Flagrant Violation of the Court's Confidentiality Order.**

22 **1. Plaintiffs violated the Confidentiality Order by making the**
23 **Confidential Document a matter of public record.**

24 There is no doubt that the Confidential Document falls within the Confidentiality
25 Order's definition of confidential information. First, the document was clearly produced
26 by CSI, as each page bears CSI's Bates stamp in its lower right corner, and the
27 Confidentiality Order states that "all information or material which is or has been
28 produced or disclosed by CSI" is confidential information. See Confidentiality Order at
¶ 1. Second, as the Confidentiality Order required the parties to do, the lower left

1 corner of each page is also marked "Confidential." Third, the Confidential Document
2 includes the specific type of information the parties intended the Confidentiality Order to
3 protect. It discusses Pardee's sensitive commercial information and business records
4 relating to the Project, including various purchase prices of real estate, Pardee's
5 obligations to build certain infrastructure, and detailed timelines as to the progression of
6 building on the Project. In fact, the Confidential Document goes to the very heart of the
7 Confidentiality Order.

8 Although the Confidentiality Order permits disclosure of confidential information
9 to third-parties in some circumstances, none of them are present here. The Lincoln
10 County Recorder does not fall within the class of persons approved by the
11 Confidentiality Order. See id. at ¶ 6. The Confidential Document was not generally
12 available to the public prior to Plaintiffs filing it, and in fact, the "confidential" stamp on
13 every page of the document indicates that Pardee and CSI took great care to preserve
14 its confidentiality in this litigation. In the litigation involving CSI and Pardee, this very
15 document has been repeatedly designated as "sealed" by the Honorable Mark Denton.
16 Finally, there is no court order or other legal decision that required the Plaintiffs to
17 record the Confidential Document with the Lincoln County Recorder.

18 Thus, there is no justification under the terms of the Confidentiality Order for
19 filing the Confidential Document, and Plaintiffs are in clear violation of the
20 Confidentiality Order for recording it. To cure this violation, Pardee requests an Order
21 directing immediate expungement of the Confidential Document from all records, files,
22 repositories, and other storage methods (whether electronic or hard copy) maintained
23 by Lincoln County.²

24 **2. The Court has the inherent equitable power to sanction**
25 **Plaintiffs for violating the Confidentiality Order.**

26 ² Additionally, Pardee is unaware of whether Plaintiffs have filed the Confidential
27 Document in Clark County, Nevada, which also encompasses a portion of Pardee's
28 land on the Project. To the extent the Plaintiffs have or may file the Confidential
Document in Clark County, Pardee requests the same relief for any Clark County
offices that may store the Confidential Document as a matter of public record.

1 Courts have “inherent equitable powers” to sanction parties for abusive litigation
2 practices. See Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 26, 235
3 P.3d 592, 598 (2010) (quoting Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92,
4 787 P.2d 777, 779 (1990)). These equitable powers permit “sanctions for discovery
5 and other litigation abuses not specifically proscribed by statute.” Bahena, 235 P.3d at
6 598. Sanctions “demonstrate to future litigants that they are not free to act with
7 wayward disregard of a court’s order,” and they are especially appropriate where a
8 party’s disregard for a court’s order prejudices the other side. Foster v. Dingwall, 126
9 Nev. Adv. Op. 6, 227 P.3d 1042, 1049 (2010).

10 Here, both the commercial prejudice to Pardee as well as the predatory nature
11 with which Plaintiffs violated the Court’s order call for monetary sanctions. Pardee’s
12 work on the Project has been the subject of significant media coverage, both in Nevada
13 and outside the state. Pardee’s competitors are well aware of its involvement in the
14 Project, and Plaintiffs’ recording of Pardee’s sensitive commercial information invites
15 those competitors to peek into Pardee’s business strategies, development plans, and
16 its profit and cost data on the Project. Access to this type of information could confer
17 significant advantages upon Pardee’s competitors and not only jeopardizes Pardee’s
18 performance on the Project itself, but also in the broader home development market
19 beyond the Project.

20 More concerning, though, is that Plaintiffs, feigning the spirit of cooperation,
21 stipulated to the Confidentiality Order with Pardee in exchange for this highly sensitive
22 commercial information, only to blatantly violate it once Plaintiffs received its benefits.
23 Plaintiffs represented themselves up front as cooperative litigants willing to protect
24 Pardee’s Confidential Information in exchange for its production. However, once
25 Plaintiffs used Pardee’s Confidential Information during discovery and in fact made it
26 one of their trial exhibits that this Court repeatedly maintained as confidential, they rid
27 themselves of the cloak of cooperation and instead waved the Confidential Information
28 around for the public and Pardee’s competitors to see.

1 This is the quintessential abusive litigation tactic, and its use in this case, absent
2 sanctions, will only cause Pardee and future litigants to retreat from the more open
3 discovery practices that confidentiality agreements are intended to create. Monetary
4 sanctions under the Court's inherent equitable power are therefore appropriate to deter
5 future litigants from similarly abusing confidentiality agreements and to compensate
6 Pardee for the commercial prejudice resulting from Plaintiffs' actions.

7 **B. Pardee is Also Entitled to Have Plaintiffs' Improper Lis Pendens**
8 **Removed from Lincoln County's Public Records.**

9 "It is fundamental to the filing and recordation of a lis pendens that the action
10 involves some legal interest in the challenged real property, such as title disputes or
11 lien foreclosures." In re Bradshaw, 315 B.R. 875, 888 (D. Nev. 2004); see also NRS
12 14.010 (limiting a lis pendens to those actions "for the foreclosure of a mortgage upon
13 real property, or affecting the title or possession of real property."). The Nevada
14 Supreme Court has recognized a claim to real property as the triggering point of lis
15 pendens:

16 [L]is pendens are not appropriate instruments for use in promoting
17 recoveries in actions for personal or money judgments; rather, their office
18 is to prevent the transfer or loss of real property which is the subject of
19 dispute in the action that provides the basis for the lis pendens.

20 Levinson v. Eighth Judicial Dist. Co. of State In & For Cnty. Of Clark, 109 Nev. 747,
21 750, 857 P.2d 18, 20 (1993). Thus, in Bradshaw, where the recording party's case was
22 "wholly unrelated to any claim" against real property, the bankruptcy court properly
23 labeled the lis pendens as "frivolous and legally unjustified" and expunged it to prevent
24 the daily harm it caused to the property owners. 315 B.R. at 888-89. Similarly,
25 because the recording party in Levinson was simply trying to enforce a personal injury
26 judgment rather than stating a claim for possession or title of real property, the Nevada
27 Supreme Court expunged the lis pendens because it did not comply with NRS 14.010.

28 The Recorded Document reveals its true nature as a lis pendens. At the top of
the Recorded Document's first page, the Lincoln County Recorder's notation clearly

1 states that Plaintiffs' counsel's firm is the entity that requested it be recorded. See
2 Exhibit A. On the bottom of the Recorded Document's first page, both the name and
3 the address of the firm appear. Id. In the middle of the first page, it appears that
4 James J. Jimmerson, Plaintiffs' counsel, signed the document to have it recorded. Id.
5 A buyer that ran a title search, located the Recorded Document, and searched Mr.
6 Jimmerson's name would no doubt find that he was an attorney with a well-earned
7 reputation in litigation. The Recorded Document thus bears the trademark indicia of a
8 lis pendens, and in the mind of any prospective buyer of Pardee's real estate, it would
9 create the impression of an existing lawsuit affecting the real property.

10 That impression would only be strengthened by looking at the other pages of the
11 Recorded Document. Flipping to its second page, a prospective buyer would see it is
12 labeled at the top as "Plaintiff's Exhibit #1" and lists the case number as "A632338."
13 Page 6 adds to the document's litigious gloss, as it bears a stamp of the Clerk of the
14 Court at the bottom of the page. All of these facts form a cloud on the title of Pardee's
15 real property and may therefore encourage reasonable buyers to steer clear of any
16 potential negotiations for its sale. See Bradshaw, 315 B.R. at 881 (noting a frivolous
17 filing of a lis pendens caused the sale of a home to collapse three days shy of closing).
18 Thus, in practice, if not technically in form, the Recorded Document is a lis pendens.

19 However, the Plaintiffs have not alleged any cause of action or filed any case
20 that would entitle them to a lis pendens. The Plaintiffs have not made any claim to title
21 or possession of Pardee's real property related to the Project. Rather, as discussed
22 above, this case is strictly one for breach of contract, and the only remedies available to
23 the Plaintiffs are money damages and an accounting. Neither of these remedies can
24 serve as the basis of a lis pendens, and in fact, as the Levinson court held, lis pendens
25 are particularly inappropriate in actions for money damages. Thus, clarity to Pardee's
26 title in the land can only be achieved by expungement of Plaintiffs' improper lis
27 pendens.
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
and that on the 24 day of June, 2014, I served a true and correct copy of the foregoing
**MOTION TO EXPUNGE LIS PENDENS; AND FOR SANCTIONS REGARDING
PLAINTIFFS' VIOLATION OF THE COURT'S PROTECTIVE ORDER; AND EX
PARTE APPLICATION FOR AN ORDER SHORTENING TIME** via hand delivery on
the following:

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

Attorney for Plaintiffs

/s/ Sally Wexler
An Employee of McDonald Carano Wilson
LLP

308568

EXHIBIT A

[FILED UNDER SEAL]

JA007426 – JA007456

FILED UNDERSEAL

1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA


CLERK OF THE COURT

4 JAMES WOLFRAM and
5 WALT WILKES,

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

6 Plaintiffs,

Trial Date: October 23, 2013

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

10 AND RELATED CLAIMS

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

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

24 **I. FINDINGS OF FACT**

25 **A. THE PARTIES**

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 31. Pardee did purchase "Purchase Property Price" property from CSI for
7 \$84,000,000.00. Plaintiffs have been paid in full their commissions on the \$84,000,000.00 Purchase
8 Property Price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 II. CONCLUSIONS OF LAW

9 A. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF CONTRACT

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

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

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

22 4. The Commission Letter Agreement constitutes a valid and enforceable
23 contract between Plaintiffs and Defendant.

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

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

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

10 8. Pardee has never exercised any such option.

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

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

14 11. CSI has not received more than \$84,000.000.00 for the single family detached
15 production residential land acquisition by Pardee from CSI at the Coyote Springs project.

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

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