

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

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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 49 OF 88

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Chronological Index to Joint Appendix

Date	Document Description	Volume	Labeled
12/29/2010	Complaint	1	JA000001- JA000006
01/14/2011	Amended Complaint	1	JA000007- JA000012
02/11/2011	Amended Summons	1	JA000013- JA000016
03/02/2011	Answer to Amended Complaint	1	JA000017- JA000023
10/25/2011	Transcript re Discovery Conference	1	JA000024- JA000027
11/08/2011	Scheduling Order	1	JA000028- JA000030
11/29/2011	Order Setting Civil Non-Jury Trial	1	JA000031- JA000032
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
12/16/2011	Notice of Entry of Stipulated Confidentiality Agreement and Protective Order	1	JA000040- JA000048
08/27/2012	Transcript re Hearing	1	JA000049- JA000050
08/29/2012	Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000051- JA000054
08/30/2012	Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000055- JA000060
09/21/2012	Amended Order Setting Civil Non-Jury Trial	1	JA000061- JA000062

Date	Document Description	Volume	Labeled
10/24/2012	Defendant's Motion for Summary Judgment	1	JA000063- JA000082
10/24/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment	1	JA000083- JA000206
10/24/2012	Declaration of Aaron D. Shipley in Support of Defendant's Motion for Summary Judgment	1	JA000207- JA000211
10/25/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment – filed under seal	2	JA000212- JA000321
11/07/2012	Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment	2	JA000322- JA000351
11/09/2012	Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment – sections filed under seal	3-6	JA000352- JA001332
11/13/2012	Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment	7-12	JA001333- JA002053
11/29/2012	Defendant's Opposition to Plaintiff's Counter Motion for Partial Summary Judgment Re: Real Parties in Interest	13	JA002054- JA002065
12/06/2012	Transcript re Status Check	13	JA002066- JA002080
01/07/2013	Reply Brief in Support of Defendant's Motion for Summary Judgment	13	JA002081- JA002101

Date	Document Description	Volume	Labeled
01/17/2013	Plaintiffs' Reply in Further Support of Their Counter Motion for Partial Summary Judgment	13	JA002102- JA002144
03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1)	13	JA002145- JA002175
03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2)	13	JA002176- JA002210
03/05/2013	Transcript of Proceedings - March 5, 2013	14	JA002211- JA002350
03/14/2013	Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002351- JA002353
03/15/2013	Notice of Entry of Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002354- JA002358
03/20/2013	Plaintiffs Opposition to Defendant's Motion in Limine to Exclude Plaintiffs Claim for Attorney's Fees as an Element of Damages MIL 1	15	JA002359- JA002408
03/20/2013	Plaintiffs Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the form of compensation for time MIL 2	15	JA002409- JA002433
03/21/2013	Motion to File Second Amended Complaint	15	JA002434- JA002461
04/02/2013	Order re Order Denying Defendants Motion for Summary Judgment	16	JA002462- JA002464
04/03/2013	Notice of Entry of Order re Order Denying Defendants Motion for Summary Judgment	16	JA002465- JA002470

Date	Document Description	Volume	Labeled
04/08/2013	Defendant's Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002471- JA002500
04/17/2013	Second Amended Order Setting Civil Non-Jury Trial	16	JA002501- JA002502
04/23/2013	Plaintiffs Reply in Further Support of Motion for Leave to File Second Amended Complaint	16	JA002503- JA002526
04/26/2013	Transcript re Hearing	16	JA002527- JA002626
05/10/2013	Plaintiffs Supplement to Motion for Leave to File a Second Amended Complaint Pursuant to the Courts order on Hearing on April 26, 2013	16	JA002627- JA002651
05/10/2013	Defendant's Supplemental Brief in Support of Its Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002652- JA002658
05/30/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002659- JA002661
06/05/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002662- JA002664
06/05/2013	Notice of Entry of Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002665- JA002669
06/06/2013	Second Amended Complaint	16	JA002670- JA002677
07/03/2013	Answer to Second Amended Complaint and Counterclaim	16	JA002678- JA002687
07/09/2013	Transcript re Hearing	17	JA002688- JA002723

Date	Document Description	Volume	Labeled
07/15/2013	Plaintiffs Reply to Defendants Counterclaim	17	JA002724- JA002731
07/18/2013	Plaintiffs' Motion in Limine To Permit James J. Jimmerson, Esq. To Testify Concerning Plaintiffs' Attorney's Fees and Costs (MIL #25)	17	JA002732- JA002771
07/22/2013	Defendant's Motion for Partial Summary Judgment	17	JA002772- JA002786
07/22/2013	Plaintiffs Supplemental Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the Form of Compensation for Time MIL 2	17	JA002787- JA002808
07/23/2013	Transcript re Status Check	17	JA002809- JA002814
08/05/2013	Defendant Pardee Homes of Nevada's Response to Plaintiffs' Motions in Limine #1-5; And #20-25	17	JA002815- JA002829
08/06/2013	Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment	17	JA002830- JA002857
09/16/2013	Reply in Support of Defendant's Motion for Partial Summary Judgment	17	JA002858- JA002864
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Claim for Attorney's Fees As An Element of Damages	17	JA002865- JA002869
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim For Damages in the Form of Compensation for Time	17	JA002870- JA002874
09/23/2013	Transcript re Hearing	18	JA002875- JA002987

Date	Document Description	Volume	Labeled
09/27/2013	Plaintiffs Supplement to Their Opposition to Defendants Motion for Partial Summary Judgment	19-21	JA002988- JA003203
09/27/2013	Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment	21	JA003204- JA003209
10/23/2013	Order Denying Motion for Partial Summary Judgment	21	JA003210- JA003212
10/23/2013	Transcript re Trial	22	JA003213- JA003403
10/23/2013	Trial Exhibit A	23	JA003404- JA003544
10/23/2013	Trial Exhibit B – filed under seal	23	JA003545- JA003625
10/23/2013	Trial Exhibit C	23	JA003626- JA003628
10/23/2013	Trial Exhibit D	23	JA003629- JA003631
10/23/2013	Trial Exhibit E – filed under seal	23	JA003632- JA003634
10/23/2013	Trial Exhibit F	23	JA003635- JA003637
10/23/2013	Trial Exhibit G	23	JA003638
10/23/2013	Trial Exhibit H	23	JA003639- JA003640
10/23/2013	Trial Exhibit I	23	JA003641- JA003643

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit J – filed under seal	24	JA003644- JA003669
10/23/2013	Trial Exhibit K	24	JA003670- JA003674
10/23/2013	Trial Exhibit L	24	JA003675- JA003678
10/23/2013	Trial Exhibit M	24	JA003679- JA003680
10/23/2013	Trial Exhibit N	24	JA003681- JA003683
10/23/2013	Trial Exhibit O – filed under seal	25-26	JA003684- JA004083
10/23/2013	Trial Exhibit P	27	JA004084
10/23/2013	Trial Exhibit Q	27	JA004085
10/23/2013	Trial Exhibit R	27	JA004086- JA004089
10/23/2013	Trial Exhibit S	27	JA004090
10/23/2013	Trial Exhibit T	27	JA004091- JA004092
10/23/2013	Trial Exhibit U	27	JA004093
10/23/2013	Trial Exhibit V	27	JA004094
10/23/2013	Trial Exhibit W	27	JA004095- JA004096

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit X	27	JA004097
10/23/2013	Trial Exhibit Y	27	JA004098
10/23/2013	Trial Exhibit Z	27	JA004099- JA004100
10/23/2013	Trial Exhibit AA	27	JA004101- JA004102
10/23/2013	Trial Exhibit BB	27	JA004103
10/23/2013	Trial Exhibit CC	27	JA004104
10/23/2013	Trial Exhibit DD	27	JA004105
10/23/2013	Trial Exhibit EE	27	JA004106- JA004113
10/23/2013	Trial Exhibit FF	27	JA004114- JA004118
10/23/2013	Trial Exhibit GG	27	JA004119- JA004122
10/23/2013	Trial Exhibit HH	27	JA004123
10/23/2013	Trial Exhibit II	27	JA004124
10/23/2013	Trial Exhibit JJ	27	JA004125
10/23/2013	Trial Exhibit KK	27	JA004126- JA004167

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit LL	27	JA004168
10/23/2013	Trial Exhibit MM	27	JA004169
10/23/2013	Trial Exhibit NN	27	JA004170- JA004174
10/23/2013	Trial Exhibit OO	27	JA004175- JA004183
10/23/2013	Trial Exhibit PP	27	JA004184- JA004240
10/23/2013	Trial Exhibit QQ	27	JA004241- JA004243
10/23/2013	Trial Exhibit RR	27	JA004244- JA004248
10/23/2013	Trial Exhibit SS	27	JA004249- JA004255
10/23/2013	Trial Exhibit TT	27	JA004256- JA004262
10/23/2013	Trial Exhibit UU	27	JA004263- JA004288
10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – filed under seal	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – filed under seal	27	JA004311- JA004312

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit 9 – filed under seal	27	JA004313- JA004319
10/23/2013	Trial Exhibit 10 – filed under seal	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – filed under seal	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – filed under seal	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – filed under seal	28	JA004361- JA004453
10/23/2013	Trial Exhibit 21	28	JA004454
10/23/2013	Trial Exhibit 25	28	JA004455- JA004462
10/24/2013	Transcript re Trial	29-30	JA004463- JA004790
10/24/2013	Trial Exhibit VV	31	JA004791
10/24/2013	Trial Exhibit 26	31	JA004792- JA004804
10/24/2013	Trial Exhibit 30	31	JA004805- JA004811
10/25/2013	Notice of Entry of Order Denying Motion for Partial Summary Judgment	31	JA004812- JA004817
10/25/2013	Plaintiffs Trial Brief Pursuant to EDCR 7.27	31	JA004818- JA004847
10/28/2013	Transcript re Trial – filed under seal	32-33	JA004848- JA005227

Date	Document Description	Volume	Labeled
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235
10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
10/28/2013	Trial Exhibit 20	34	JA005238- JA005254
10/28/2013	Trial Exhibit 23	34	JA005255- JA005260
10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
10/29/2013	Transcript re Trial – filed under seal	35	JA005264- JA005493
10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
10/29/2013	Trial Exhibit 29	36	JA005498- JA005511
10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
10/30/2013	Trial Exhibit 23a	39	JA005816- JA005817
10/30/2013	Trial Exhibit 27	39	JA005818- JA005820
12/09/2013	Transcript re Trial – filed under seal	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530

Date	Document Description	Volume	Labeled
12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Transcript re Trial – filed under seal	44-45	JA006533- JA006878
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935
12/12/2013	Trial Exhibit 39	46	JA006936- JA006948
12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
12/13/2013	Transcript re Trial - Part 1	46	JA006953- JA007107
12/13/2013	Transcript re Trial - Part 2	47-48	JA007108- JA007384
12/13/2013	Trial Exhibit 31a	48	JA007385- JA007410
06/24/2014	Pardee's Motion to Expunge Lis Pendens – section filed under seal	48	JA007411- JA007456
06/25/2014	Findings of Fact, Conclusions of Law and Order	48	JA007457- JA007474
06/27/2014	Notice of Entry of Findings of Fact, Conclusions of Law and Order	48	JA007475- JA007494
07/14/2014	Opposition to Pardee's Motion to Expunge Lis Pendens	48	JA007495- JA007559
07/15/2014	Reply in Support of Pardee's Motion to Expunge Lis Pendens	48	JA007560- JA007570

Date	Document Description	Volume	Labeled
07/24/2014	Order Granting Motion to Expunge Lis Pendens	48	JA007571- JA007573
07/25/2014	Notice of Entry of Order Granting Motion to Expunge Lis Pendens	48	JA007574- JA007578
07/17/2014	Transcript re Hearing	49	JA007579- JA007629
07/31/2014	Transcript re Hearing	49	JA007630- JA007646
08/25/2014	Plaintiff's Accounting Brief Pursuant to the court's Order Entered on June 25, 2014	49	JA007647- JA007698
08/25/2014	Pardee Homes of Nevada's Supplemental Brief Regarding Future Accounting	49	JA007699- JA007707
05/13/2015	Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007708- JA007711
05/13/2015	Notice of Entry of Order on Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007712- JA007717
05/28/2015	Pardee's Motion for Attorney's Fees and Costs	49	JA007718- JA007734
05/28/2015	Appendix of Exhibits to Pardee's Motion for Attorney's Fees and Costs	50-51	JA007735- JA008150
06/15/2015	Judgment	52	JA008151- JA008153
06/15/2015	Notice of Entry of Judgment	52	JA008154- JA008158
06/19/2015	Plaintiffs, James Wolfram and Walt Wilkes' Memorandum of Costs and Disbursements	52	JA008159- JA008191

Date	Document Description	Volume	Labeled
06/24/2015	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015	52	JA008192-JA008215
06/29/2015	Plaintiffs' Motion for Attorney's Fees and Costs	52-53	JA008216-JA008327
06/29/2015	Motion to Strike "Judgment", Entered June 15, 2015 Pursuant To NRCP. 52 (B) And N.R.C.P. 59, As Unnecessary and Duplicative Orders Of Final Orders Entered on June 25, 2014 and May 13, 2015, and as Such, is a Fugitive Document	53	JA008328-JA008394
06/29/2015	Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment – sections filed under seal	54-56	JA008395-JA008922
06/30/2015	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	57-58	JA008923-JA009109

Date	Document Description	Volume	Labeled
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
07/02/2015	Pardee Homes of Nevada's Motion to Amend Judgment	59	JA009207- JA009283
07/08/2015	Plaintiffs' Opposition to Pardee's Motion to Retax Costs	60-61	JA009284- JA009644
07/08/2015	Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document	62	JA009645- JA009652

Date	Document Description	Volume	Labeled
07/08/2015	Errata to Plaintiffs' Motion Pursuant to NRCp 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/Conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page, 2, Lines 8 through 13 and the Judgment at Page 2, Lines 18 through 23 to Delete the Same or Amend the Same to Reflect the True Fact that Plaintiff Prevailed on their Entitlement to the First Claim for Relief for an Accounting, and Damages for their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and that Defendant Never Received a Judgment in its form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment"	62	JA009653- JA009662
07/08/2015	Pardee's Emergency Motion to Stay Execution of Judgment: and Ex Parte Order Shortening Time	62	JA009663- JA009710
07/08/2015	Pardee's Supplemental Briefing in Support of its Emergency Motion to Stay Execution of Judgment	62	JA009711- JA009733
07/10/2015	Transcript re Hearing	62	JA009734- JA009752
07/10/2015	Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009753- JA009754

Date	Document Description	Volume	Labeled
07/10/2015	Notice of Entry of Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009755- JA009758
07/15/2015	Pardee Homes of Nevada's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	62	JA009759- JA009771
07/15/2015	Appendix of Exhibits to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	63	JA009772- JA009918
07/15/2015	Pardee Homes of Nevada's Consolidated Opposition To: (1) Plaintiff's Motion to Strike Judgment Entered on June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59; and (2) Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015	63	JA009919- JA009943
07/15/2015	Appendix of Exhibits to Pardee Homes of Nevada's Consolidated Opposition to: (1) Plaintiff's Motion to Strike Judgment Entered on June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59; and Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015	64	JA009944- JA010185
07/16/2015	Errata to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	65	JA010186- JA010202
07/17/2015	Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees	65-67	JA010203- JA010481

Date	Document Description	Volume	Labeled
07/24/2015	Plaintiffs' Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution	67	JA010482- JA010522
07/24/2015	Declaration of John W. Muije, Esq. In Support of Motion for Reconsideration	67	JA010523- JA010581
08/10/2015	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Reconsideration of the Order on Pardee's Emergency Motion to Stay Execution of Judgment	67	JA010582- JA010669
08/17/2015	Reply Points and Authorities in Support of Motion for Reconsideration	67	JA010670- JA010678
08/24/2015	Minute Order Denying Plaintiff's Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution	67	JA010679
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	68	JA010680- JA010722
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59	68	JA010723- JA010767
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment Entered on June 15, 2015	68	JA010768- JA010811

Date	Document Description	Volume	Labeled
09/12/2015	Pardee Homes of Nevada's Consolidated Reply in Support of (1) Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015; and (2) Motion for Attorney's Fees and Costs	68	JA010812-JA010865
12/08/2015	Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	68	JA010866-JA010895
12/08/2015	Notice of Defendant Pardee Homes of Nevada's Non-Reply and Non-Opposition to "Plaintiff's Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees"	69	JA010896-JA010945
12/30/2015	Pardee Homes of Nevada's Consolidated Response to: (1) Plaintiffs' Notice of Non-Reply and Non-Opposition to Plaintiffs' Opposition to Pardee's Motion to Amend Judgment and Countermotion for Attorney's Fees; and (2) Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	69	JA010946-JA010953
01/11/2016	Plaintiffs' Reply to Defendants Consolidated Response to (1) Plaintiffs' Notice of Non-Reply and Non-Opposition to Plaintiff's Opposition to Pardee's Motion to Amend Judgment and Countermotion for Attorney's Fees And (2) Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	69	JA010954-JA010961
01/15/2016	Transcript re Hearing	70	JA010962-JA011167

Date	Document Description	Volume	Labeled
03/14/2016	Plaintiffs' Motion to Settle Two (2) Competing Judgments and Orders	70	JA011168- JA011210
03/16/2016	Release of Judgment	71	JA011211- JA011213
03/23/2016	Pardee Homes of Nevada's Response to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011214- JA011270
04/20/2016	Plaintiffs' Reply to Defendant's Response and Supplement to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011271- JA011384
04/26/2016	Order from January 15, 2016 Hearings	71	JA011385- JA011388
05/16/2016	Judgment	71	JA011389- JA011391
05/17/2016	Notice of Entry of Judgment	71	JA011392- JA011396
05/23/2016	Plaintiffs' Memorandum of Costs and Disbursements	71	JA011397- JA011441
05/31/2016	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	71	JA011442- JA011454
06/01/2016	Pardee Homes of Nevada's Motion to Amend Judgment	72	JA011455- JA011589
06/06/2016	Pardee's Motion for Attorney's Fees and Costs	72	JA011590- JA011614
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 1	73-74	JA011615- JA011866

Date	Document Description	Volume	Labeled
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 2	75-76	JA011867- JA012114
06/08/2016	Plaintiffs' Motion for Attorney's Fees and Costs	77	JA012115- JA012182
06/20/2016	Plaintiffs' Opposition to Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	77-79	JA012183- JA012624
06/21/2016	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	80	JA012625- JA012812
06/21/2016	Plaintiffs' Opposition to Defendant, Pardee Homes of Nevada's, Motion to Amend Judgment and Plaintiffs' Countermotion for Attorneys' Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	81	JA012813- JA013024
06/27/2016	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	82	JA013025- JA013170
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion for Attorney's Fees and Costs	82	JA013171- JA013182
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion to Amend Judgment; and Opposition to Plaintiffs' Countermotion for Attorney's Fees	82	JA013183- JA013196
07/01/2016	Pardee Homes of Nevada's Reply in Support of Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	82	JA013197- JA013204
08/02/2016	Plaintiffs' Reply in Support of Motion for Attorney's Fees and Costs	83-84	JA013205- JA013357

Date	Document Description	Volume	Labeled
08/02/2016	Plaintiffs' Reply in Support of Countermotion for Attorney's Fees and Costs	84-85	JA013358-JA013444
08/15/2016	Transcript re Hearing - August 15, 2016	86	JA013445-JA013565
09/12/2016	Plaintiffs' Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013566-JA013590
10/17/2016	Pardee's Supplemental Brief Regarding Pre- and Post-Judgment Interest Pursuant to the Court's Order	86	JA013591-JA013602
11/04/2016	Plaintiffs' Reply Brief in Support of Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013603-JA013612
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendants Motion to Amend Judgment	86	JA013613-JA013615
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013616-JA013618
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013619-JA013621
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013622-JA013628
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013629-JA013635

Date	Document Description	Volume	Labeled
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment	86	JA013636- JA016342
01/12/2017	Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013643- JA013644
01/12/2017	Notice of Entry of Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013645- JA013648
01/12/2017	Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013649- JA013651
01/13/2017	Notice of Entry of Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013652- JA013656
02/08/2017	Pardee Notice of Appeal	86	JA013657- JA013659
04/07/2017	Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	86	JA013660- JA013668
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume I]	87	JA013669- JA013914
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume II]	88	JA013915- JA014065
04/27/2017	Plaintiffs' Response to Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014066- JA014068

Date	Document Description	Volume	Labeled
05/10/2017	Pardee's Reply in Support of Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014069- JA014071
05/12/2017	Plaintiffs' Opposition to Pardee's Motion Stay Execution of Judgment and Post-Judgment Orders	88	JA014072- JA014105
07/12/2007	Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014106- JA014110
07/14/2017	Notice of Entry of Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014111- JA014117
10/12/2017	Amended Judgment	88	JA014118- JA014129
10/13/2017	Notice of Entry of Amended Judgment	88	JA014130- JA014143
10/12/2017	Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014144- JA014146
10/13/2017	Notice of Entry of Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014147- JA014151
11/02/2017	Pardee Amended Notice of Appeal	88	JA014152- JA014154

Alphabetical Index to Joint Appendix

Date	Document Description	Volume	Labeled
01/14/2011	Amended Complaint	1	JA000007- JA000012
10/12/2017	Amended Judgment	88	JA014118- JA014129
09/21/2012	Amended Order Setting Civil Non-Jury Trial	1	JA000061- JA000062
02/11/2011	Amended Summons	1	JA000013- JA000016
03/02/2011	Answer to Amended Complaint	1	JA000017- JA000023
07/03/2013	Answer to Second Amended Complaint and Counterclaim	16	JA002678- JA002687
10/24/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment	1	JA000083- JA000206
10/25/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment – filed under seal	2	JA000212- JA000321
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume I]	87	JA013669- JA013914
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume II]	88	JA013915- JA014065
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 1	73-74	JA011615- JA011866

Date	Document Description	Volume	Labeled
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 2	75-76	JA011867-JA012114
07/15/2015	Appendix of Exhibits to Pardee Homes of Nevada's Consolidated Opposition to: (1) Plaintiff's Motion to Strike Judgment Entered on June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59; and Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015	64	JA009944-JA010185
07/15/2015	Appendix of Exhibits to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	63	JA009772-JA009918
05/28/2015	Appendix of Exhibits to Pardee's Motion for Attorney's Fees and Costs	50-51	JA007735-JA008150
11/09/2012	Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment – sections filed under seal	3-6	JA000352-JA001332
11/13/2012	Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment	7-12	JA001333-JA002053
12/29/2010	Complaint	1	JA000001-JA000006
10/24/2012	Declaration of Aaron D. Shipley in Support of Defendant's Motion for Summary Judgment	1	JA000207-JA000211

Date	Document Description	Volume	Labeled
07/24/2015	Declaration of John W. Muije, Esq. In Support of Motion for Reconsideration	67	JA010523- JA010581
08/05/2013	Defendant Pardee Homes of Nevada's Response to Plaintiffs' Motions in Limine #1-5; And #20-25	17	JA002815- JA002829
07/22/2013	Defendant's Motion for Partial Summary Judgment	17	JA002772- JA002786
10/24/2012	Defendant's Motion for Summary Judgment	1	JA000063- JA000082
03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1)	13	JA002145- JA002175
03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2)	13	JA002176- JA002210
11/29/2012	Defendant's Opposition to Plaintiff's Counter Motion for Partial Summary Judgment Re: Real Parties in Interest	13	JA002054- JA002065
04/08/2013	Defendant's Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002471- JA002500
05/10/2013	Defendant's Supplemental Brief in Support of Its Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002652- JA002658
07/08/2015	Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document	62	JA009645- JA009652

Date	Document Description	Volume	Labeled
07/16/2015	Errata to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	65	JA010186- JA010202
07/08/2015	Errata to Plaintiffs' Motion Pursuant to NRCp 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/Conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page, 2, Lines 8 through 13 and the Judgment at Page 2, Lines 18 through 23 to Delete the Same or Amend the Same to Reflect the True Fact that Plaintiff Prevailed on their Entitlement to the First Claim for Relief for an Accounting, and Damages for their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and that Defendant Never Received a Judgment in its form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment"	62	JA009653- JA009662
05/13/2015	Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007708- JA007711
06/25/2014	Findings of Fact, Conclusions of Law and Order	48	JA007457- JA007474
06/15/2015	Judgment	52	JA008151- JA008153
05/16/2016	Judgment	71	JA011389- JA011391

Date	Document Description	Volume	Labeled
08/24/2015	Minute Order Denying Plaintiff's Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution	67	JA010679
03/21/2013	Motion to File Second Amended Complaint	15	JA002434- JA002461
06/29/2015	Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to N.R.C.P. 52 (B) And N.R.C.P. 59, As Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 And May 13, 2015, And as Such, Is A Fugitive Document	53	JA008328- JA008394
12/08/2015	Notice of Defendant Pardee Homes of Nevada's Non-Reply and Non-Opposition to "Plaintiff's Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees"	69	JA010896- JA010945
10/13/2017	Notice of Entry of Amended Judgment	88	JA014130- JA014143
06/27/2014	Notice of Entry of Findings of Fact, Conclusions of Law and Order	48	JA007475- JA007494
06/15/2015	Notice of Entry of Judgment	52	JA008154- JA008158
05/17/2016	Notice of Entry of Judgment	71	JA011392- JA011396
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013629- JA013635

Date	Document Description	Volume	Labeled
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment	86	JA013636- JA016342
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013622- JA013628
10/25/2013	Notice of Entry of Order Denying Motion for Partial Summary Judgment	31	JA004812- JA004817
07/25/2014	Notice of Entry of Order Granting Motion to Expunge Lis Pendens	48	JA007574- JA007578
06/05/2013	Notice of Entry of Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002665- JA002669
01/13/2017	Notice of Entry of Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013652- JA013656
05/13/2015	Notice of Entry of Order on Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007712- JA007717
07/10/2015	Notice of Entry of Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009755- JA009758
01/12/2017	Notice of Entry of Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013645- JA013648
04/03/2013	Notice of Entry of Order re Order Denying Defendants Motion for Summary Judgment	16	JA002465- JA002470

Date	Document Description	Volume	Labeled
03/15/2013	Notice of Entry of Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002354-JA002358
10/13/2017	Notice of Entry of Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014147-JA014151
12/16/2011	Notice of Entry of Stipulated Confidentiality Agreement and Protective Order	1	JA000040-JA000048
08/30/2012	Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000055-JA000060
07/14/2017	Notice of Entry of Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014111-JA014117
11/07/2012	Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment	2	JA000322-JA000351
07/14/2014	Opposition to Pardee's Motion to Expunge Lis Pendens	48	JA007495-JA007559
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013619-JA013621
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendants Motion to Amend Judgment	86	JA013613-JA013615
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013616-JA013618
10/23/2013	Order Denying Motion for Partial Summary Judgment	21	JA003210-JA003212

Date	Document Description	Volume	Labeled
04/26/2016	Order from January 15, 2016 Hearings	71	JA011385- JA011388
07/24/2014	Order Granting Motion to Expunge Lis Pendens	48	JA007571- JA007573
05/30/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002659- JA002661
06/05/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002662- JA002664
01/12/2017	Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013649- JA013651
07/10/2015	Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009753- JA009754
01/12/2017	Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013643- JA013644
04/02/2013	Order re Order Denying Defendants Motion for Summary Judgment	16	JA002462- JA002464
03/14/2013	Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002351- JA002353
10/12/2017	Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014144- JA014146
11/29/2011	Order Setting Civil Non-Jury Trial	1	JA000031- JA000032
11/02/2017	Pardee Amended Notice of Appeal	88	JA014152- JA014154

Date	Document Description	Volume	Labeled
07/15/2015	Pardee Homes of Nevada's Consolidated Opposition To: (1) Plaintiff's Motion to Strike Judgment Entered on June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59; and (2) Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015	63	JA009919- JA009943
09/12/2015	Pardee Homes of Nevada's Consolidated Reply in Support of (1) Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015; and (2) Motion for Attorney's Fees and Costs	68	JA010812- JA010865
12/30/2015	Pardee Homes of Nevada's Consolidated Response to: (1) Plaintiffs' Notice of Non-Reply and Non-Opposition to Plaintiffs' Opposition to Pardee's Motion to Amend Judgment and Countermotion for Attorney's Fees; and (2) Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	69	JA010946- JA010953
06/01/2016	Pardee Homes of Nevada's Motion to Amend Judgment	72	JA011455- JA011589
07/02/2015	Pardee Homes of Nevada's Motion to Amend Judgment	59	JA009207- JA009283
06/27/2016	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	82	JA013025- JA013170
07/15/2015	Pardee Homes of Nevada's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	62	JA009759- JA009771

Date	Document Description	Volume	Labeled
08/10/2015	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Reconsideration of the Order on Pardee's Emergency Motion to Stay Execution of Judgment	67	JA010582-JA010669
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion for Attorney's Fees and Costs	82	JA013171-JA013182
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion to Amend Judgment; and Opposition to Plaintiffs' Countermotion for Attorney's Fees	82	JA013183-JA013196
07/01/2016	Pardee Homes of Nevada's Reply in Support of Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	82	JA013197-JA013204
03/23/2016	Pardee Homes of Nevada's Response to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011214-JA011270
08/25/2014	Pardee Homes of Nevada's Supplemental Brief Regarding Future Accounting	49	JA007699-JA007707
02/08/2017	Pardee Notice of Appeal	86	JA013657-JA013659
07/08/2015	Pardee's Emergency Motion to Stay Execution of Judgment: and Ex Parte Order Shortening Time	62	JA009663-JA009710
06/06/2016	Pardee's Motion for Attorney's Fees and Costs	72	JA011590-JA011614
05/28/2015	Pardee's Motion for Attorney's Fees and Costs	49	JA007718-JA007734
06/24/2014	Pardee's Motion to Expunge Lis Pendens – section filed under seal	48	JA007411-JA007456

Date	Document Description	Volume	Labeled
06/24/2015	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015	52	JA008192- JA008215
05/31/2016	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	71	JA011442- JA011454
04/07/2017	Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	86	JA013660- JA013668
05/10/2017	Pardee's Reply in Support of Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014069- JA014071
10/17/2016	Pardee's Supplemental Brief Regarding Pre- and Post-Judgment Interest Pursuant to the Court's Order	86	JA013591- JA013602
07/08/2015	Pardee's Supplemental Briefing in Support of its Emergency Motion to Stay Execution of Judgment	62	JA009711- JA009733
08/25/2014	Plaintiff's Accounting Brief Pursuant to the court's Order Entered on June 25, 2014	49	JA007647- JA007698
09/12/2016	Plaintiffs' Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013566- JA013590
05/23/2016	Plaintiffs' Memorandum of Costs and Disbursements	71	JA011397- JA011441
06/08/2016	Plaintiffs' Motion for Attorney's Fees and Costs	77	JA012115- JA012182
06/29/2015	Plaintiffs' Motion for Attorney's Fees and Costs	52-53	JA008216- JA008327
07/24/2015	Plaintiffs' Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution	67	JA010482- JA010522

Date	Document Description	Volume	Labeled
07/18/2013	Plaintiffs' Motion in Limine To Permit James J. Jimmerson, Esq. To Testify Concerning Plaintiffs' Attorney's Fees and Costs (MIL #25)	17	JA002732- JA002771
06/29/2015	Plaintiffs' Motion Pursuant to NRCp 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment – sections filed under seal	54-56	JA008395- JA008922
03/14/2016	Plaintiffs' Motion to Settle Two (2) Competing Judgments and Orders	70	JA011168- JA011210
06/21/2016	Plaintiffs' Opposition to Defendant, Pardee Homes of Nevada's, Motion to Amend Judgment and Plaintiffs' Countermotion for Attorneys' Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	81	JA012813- JA013024
08/06/2013	Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment	17	JA002830- JA002857

Date	Document Description	Volume	Labeled
03/20/2013	Plaintiffs Opposition to Defendant's Motion in Limine to Exclude Plaintiffs Claim for Attorney's Fees as an Element of Damages MIL 1	15	JA002359- JA002408
03/20/2013	Plaintiffs Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the form of compensation for time MIL 2	15	JA002409- JA002433
07/17/2015	Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees	65-67	JA010203- JA010481
06/30/2015	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	57-58	JA008923- JA009109
06/21/2016	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	80	JA012625- JA012812
05/12/2017	Plaintiffs' Opposition to Pardee's Motion Stay Execution of Judgment and Post-Judgment Orders	88	JA014072- JA014105
07/08/2015	Plaintiffs' Opposition to Pardee's Motion to Retax Costs	60-61	JA009284- JA009644
06/20/2016	Plaintiffs' Opposition to Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	77-79	JA012183- JA012624
11/04/2016	Plaintiffs' Reply Brief in Support of Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013603- JA013612
04/23/2013	Plaintiffs Reply in Further Support of Motion for Leave to File Second Amended Complaint	16	JA002503- JA002526

Date	Document Description	Volume	Labeled
01/17/2013	Plaintiffs' Reply in Further Support of Their Counter Motion for Partial Summary Judgment	13	JA002102- JA002144
08/02/2016	Plaintiffs' Reply in Support of Countermotion for Attorney's Fees and Costs	84-85	JA013358- JA013444
08/02/2016	Plaintiffs' Reply in Support of Motion for Attorney's Fees and Costs	83-84	JA013205- JA013357
01/11/2016	Plaintiffs' Reply to Defendants Consolidated Response to (1) Plaintiffs' Notice of Non-Reply and Non-Opposition to Plaintiff's Opposition to Pardee's Motion to Amend Judgment and Countermotion for Attorney's Fees And (2) Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	69	JA010954- JA010961
07/15/2013	Plaintiffs Reply to Defendants Counterclaim	17	JA002724- JA002731
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	68	JA010680- JA010722
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment Entered on June 15, 2015	68	JA010768- JA010811
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59	68	JA010723- JA010767
04/20/2016	Plaintiffs' Reply to Defendant's Response and Supplement to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011271- JA011384

Date	Document Description	Volume	Labeled
04/27/2017	Plaintiffs' Response to Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014066- JA014068
05/10/2013	Plaintiffs Supplement to Motion for Leave to File a Second Amended Complaint Pursuant to the Courts order on Hearing on April 26, 2013	16	JA002627- JA002651
12/08/2015	Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	68	JA010866- JA010895
09/27/2013	Plaintiffs Supplement to Their Opposition to Defendants Motion for Partial Summary Judgment	19-21	JA002988- JA003203
07/22/2013	Plaintiffs Supplemental Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the Form of Compensation for Time MIL 2	17	JA002787- JA002808
10/25/2013	Plaintiffs Trial Brief Pursuant to EDCR 7.27	31	JA004818- JA004847
06/19/2015	Plaintiffs, James Wolfram and Walt Wilkes' Memorandum of Costs and Disbursements	52	JA008159- JA008191
03/16/2016	Release of Judgment	71	JA011211- JA011213
01/07/2013	Reply Brief in Support of Defendant's Motion for Summary Judgment	13	JA002081- JA002101
09/16/2013	Reply in Support of Defendant's Motion for Partial Summary Judgment	17	JA002858- JA002864
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Claim for Attorney's Fees as An Element of Damages	17	JA002865- JA002869

Date	Document Description	Volume	Labeled
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time	17	JA002870- JA002874
07/15/2014	Reply in Support of Pardee's Motion to Expunge Lis Pendens	48	JA007560- JA007570
08/17/2015	Reply Points and Authorities in Support of Motion for Reconsideration	67	JA010670- JA010678
11/08/2011	Scheduling Order	1	JA000028- JA000030
06/06/2013	Second Amended Complaint	16	JA002670- JA002677
04/17/2013	Second Amended Order Setting Civil Non-Jury Trial	16	JA002501- JA002502
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
08/29/2012	Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000051- JA000054
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
09/27/2013	Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment	21	JA003204- JA003209
07/12/2007	Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014106- JA014110

Date	Document Description	Volume	Labeled
03/05/2013	Transcript of Proceedings - March 5, 2013	14	JA002211- JA002350
10/25/2011	Transcript re Discovery Conference	1	JA000024- JA000027
08/27/2012	Transcript re Hearing	1	JA000049- JA000050
04/26/2013	Transcript re Hearing	16	JA002527- JA002626
07/09/2013	Transcript re Hearing	17	JA002688- JA002723
09/23/2013	Transcript re Hearing	18	JA002875- JA002987
07/17/2014	Transcript re Hearing	49	JA007579- JA007629
07/31/2014	Transcript re Hearing	49	JA007630- JA007646
07/10/2015	Transcript re Hearing	62	JA009734- JA009752
01/15/2016	Transcript re Hearing	70	JA010962- JA011167
08/15/2016	Transcript re Hearing - August 15, 2016	86	JA013445- JA013565
12/06/2012	Transcript re Status Check	13	JA002066- JA002080
07/23/2013	Transcript re Status Check	17	JA002809- JA002814
10/23/2013	Transcript re Trial	22	JA003213- JA003403

Date	Document Description	Volume	Labeled
10/24/2013	Transcript re Trial	29-30	JA004463- JA004790
10/28/2013	Transcript re Trial – filed under seal	32-33	JA004848- JA005227
10/29/2013	Transcript re Trial – filed under seal	35	JA005264- JA005493
10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
12/09/2013	Transcript re Trial – filed under seal	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530
12/12/2013	Transcript re Trial – filed under seal	44-45	JA006533- JA006878
12/13/2013	Transcript re Trial - Part 1	46	JA006953- JA007107
12/13/2013	Transcript re Trial - Part 2	47-48	JA007108- JA007384
10/23/2013	Trial Exhibit A	23	JA003404- JA003544
10/23/2013	Trial Exhibit B – filed under seal	23	JA003545- JA003625
10/23/2013	Trial Exhibit C	23	JA003626- JA003628
10/23/2013	Trial Exhibit D	23	JA003629- JA003631
10/23/2013	Trial Exhibit E – filed under seal	23	JA003632- JA003634

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit F	23	JA003635- JA003637
10/23/2013	Trial Exhibit G	23	JA003638
10/23/2013	Trial Exhibit H	23	JA003639- JA003640
10/23/2013	Trial Exhibit I	23	JA003641- JA003643
10/23/2013	Trial Exhibit J – filed under seal	24	JA003644- JA003669
10/23/2013	Trial Exhibit K	24	JA003670- JA003674
10/23/2013	Trial Exhibit L	24	JA003675- JA003678
10/23/2013	Trial Exhibit M	24	JA003679- JA003680
10/23/2013	Trial Exhibit N	24	JA003681- JA003683
10/23/2013	Trial Exhibit O – filed under seal	25-26	JA003684- JA004083
10/23/2013	Trial Exhibit P	27	JA004084
10/23/2013	Trial Exhibit Q	27	JA004085
10/23/2013	Trial Exhibit R	27	JA004086- JA004089
10/23/2013	Trial Exhibit S	27	JA004090

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit T	27	JA004091- JA004092
10/23/2013	Trial Exhibit U	27	JA004093
10/23/2013	Trial Exhibit V	27	JA004094
10/23/2013	Trial Exhibit W	27	JA004095- JA004096
10/23/2013	Trial Exhibit X	27	JA004097
10/23/2013	Trial Exhibit Y	27	JA004098
10/23/2013	Trial Exhibit Z	27	JA004099- JA004100
10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
10/23/2013	Trial Exhibit 10 – filed under seal	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – filed under seal	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – filed under seal	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – filed under seal	28	JA004361- JA004453
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235

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

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

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

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

Dated this 28th day of February, 2018.

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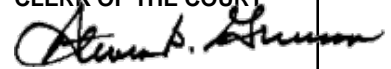
Attorneys for Appellant

CERTIFICATE OF SERVICE

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

/s/ Beau Nelson

An Employee of McDonald Carano LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,)
)
 PLAINTIFF,)
)
 vs.) CASE NO. A-10-632338-C
)
 PARDEE HOMES OF NEVADA,)
)
)
)
 DEFENDANT.)

ORIGINAL

**REPORTER'S TRANSCRIPT
OF
PROCEEDINGS**

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE

HELD ON THURSDAY, JULY 17, 2014

AT 9:00 A.M.

Reported by: Loree Murray, CCR No. 426

Loree Murray, CCR #426
(702) 234-0845

APPEARANCES:

For the Plaintiff: JAMES J. JIMMERSON, ESQ.

BURAK AHMED, ESQ.

For the Defendant: PAT LUNDVALL, ESQ.

RORY T. KAY, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, JULY 17, 2014

2 9:00 A.M.

3
4 * * * * *

5 THE COURT: Good morning, everyone.

6 MR. JAMES J. JIMMERSON: Your Honor,
7 James Jimmerson and Burak Ahmed appearing on behalf
8 James Wolfram, the estate or trust of Walter Wilkes,
9 and present is also James Wolfram.

10 THE COURT: Counsel?

11 MS. LUNDVALL: Good morning, your Honor.
12 Pat Lundvall with McDonald Carano Wilson here on behalf
13 of Pardee Homes of Nevada.

14 MR. KAY: Good morning, your Honor. Rory Kay
15 on behalf of Pardee Homes also.

16 THE COURT: Could you tell me a little bit,
17 you know, because I'm from Reno, and I know I was aware
18 of Coyote Springs, but I haven't been able to read this
19 entire file. It's lengthy, and Judge Earley has made
20 several key rulings, and I think that there's just a
21 few issues left for her to wrap up after having made a
22 decision, but is Pardee the successor in interest to
23 whatever limited liability corporation that originally
24 developed Coyote Springs?

25 MS. LUNDVALL: If the Court will allow me to

1 give you a little bit of background?

2 THE COURT: Yes.

3 MS. LUNDVALL: It was the late '90s when
4 Harvey Whittemore formed the company of Coyote Springs
5 Investments, and we've repeatedly referred to that
6 company as CSI during the course of this litigation.
7 So he had a company that owned a lot of land, and I'm
8 talking a lot of land, 160,000 acres, and it's north of
9 Las Vegas. And what he, at that point in time, after
10 he perfected entitlement to water, he went searching
11 for a developer to help him develop the property, and
12 that developer was Pardee Homes.

13 So we entered into our first contract, Pardee
14 entered into its first contract then with CSI in 2004.
15 That first contract did this: It said that we were
16 gonna buy 84 -- ultimately \$84 million worth of land
17 from Mr. Whittemore and his company. In addition, we
18 were taking an option or the opportunity to purchase
19 additional lands in the future.

20 And so we have secured that \$84 million in
21 land from Mr. Whittemore, and we have never exercised
22 the options to purchase any additional land from the
23 company that used to be owned by Mr. Whittemore, CSI.

24 THE COURT: How many acres did you take down
25 in your first option?

1 MS. LUNDVALL: In the first option, it was
2 ultimately 2,300 acres, and --

3 THE COURT: And the golf course that was
4 planned for that?

5 MS. LUNDVALL: The golf course planned for
6 that, originally Mr. Whittemore was responsible for
7 doing the construction of what was called the
8 commercial improvements. Those commercial improvements
9 included the golf course, golf clubhouse, certain other
10 commercial improvements.

11 When CSI started running into financial
12 problems, we renegotiated some of those contracts, and
13 we purchased the golf course then from CSI, and we
14 currently own the golf course.

15 THE COURT: And have the remaining 2,300
16 acres been subdivided so that they're actual lots?

17 MS. LUNDVALL: There has been some
18 development out there.

19 And to kind of give the Court some context,
20 in essence, between Pardee and CSI, they were trying to
21 create a new town out there, and so they had everything
22 to do with being able to bring utilities there.

23 THE COURT: Do they have offsites to the
24 premises?

25 MS. LUNDVALL: No, they did not have offsites

1 to the premises. They had to create and originate then
2 the utility. And also everything from -- Pardee spent
3 about \$48 million putting in electrical substations,
4 entering into contracts with Lincoln County by which
5 then to create the power grid and power entitlement out
6 there.

7 THE COURT: What did the state engineer do
8 with the water rights?

9 MS. LUNDVALL: The water rights are still
10 held by CSI. The parties put together what they call a
11 general improvement district. They entered into an
12 agreement with the Las Vegas Valley Water District.
13 That is the, kind of the operating arm of the Southern
14 Nevada Water Authority, and they created a separate GID
15 that is managed by the Las Vegas Valley Water District.
16 That Las Vegas Valley Water District was required to
17 have CSI dedicate water rights then to the GID and --

18 THE COURT: Was the water being imported from
19 other basins, or is it all within that basin?

20 MS. LUNDVALL: The original water that is
21 being used for development originated from that basin.
22 CSI had 4,600 acre feet that originated out of that
23 basin, and that set the foundation for the original
24 development.

25 THE COURT: The agreement, even if -- I'm

1 talking about the broker's agreement, even if recorded
2 in the official records in Lincoln County, is not a
3 covenant which would typically run with the land, I
4 believe?

5 MS. LUNDVALL: That's correct, your Honor.

6 THE COURT: And so one question I had when I
7 was reading through the materials with the law clerk
8 was: How can a broker's agreement exist in perpetuity
9 so that it latches on to future phases of the
10 subdivision or has no terminus or anything? How can a
11 broker's agreement go on and on and on out into the
12 distant future? I know this is a land issue, and
13 there's in perpetuity because this is a land issue, but
14 even contracts have some kind of terminus.

15 Can you address that issue?

16 MS. LUNDVALL: Yes, I can, your Honor.

17 In the original agreement between CSI and
18 Pardee, as we indicated, we purchased \$84 million worth
19 of land, and we paid them full commission on that
20 \$84 million. It's right at \$2.6 million in commissions
21 we paid to them.

22 We had an option to purchase additional
23 property from CSI. That option ran for a finite period
24 of time.

25 THE COURT: Right.

1 MS. LUNDVALL: That option expires in I think
2 2045, so in other words, the opportunity for the
3 brokers to earn more commission is the same lifespan as
4 our option to purchase more property. And so if, in
5 fact, we purchase more property between now and 2045,
6 they may be entitled to a commission.

7 And I'm now painting with a very broad brush,
8 because there's specific type of lands that if we
9 purchased and then specific types of ways pursuant to
10 their broker agreements do they get their commission.

11 But the point being is this: In 2045, when
12 our option expires, then their contract or their right
13 to additional commission would expire as well.

14 THE COURT: What -- I believe that still to
15 be done in this case is to have, and I don't think I'm
16 inclined to do it, because this is Judge Earley's case,
17 but to formulate some method of notifying the
18 plaintiffs in this case of the existing, the takedown
19 of other property so that they could argue the
20 attachment of their real estate.

21 Do you have any suggestions in that respect?

22 MS. LUNDVALL: Yes, your Honor.

23 As a matter of fact, what I've been doing, I
24 will tell you, is I've been faxing that kind of notice
25 provision.

1 The Court, in her order at the conclusion of
2 trial, that order was just issued, and it gave us a --
3 it was issued in what, June?

4 MR. JAMES J. JIMMERSON: June 27.

5 MS. LUNDVALL: June 27th. And in that order,
6 what she required us to do is within a 60-day time
7 frame then, to come back to her with what the
8 requirements for kind of the future notification might
9 be.

10 What I have been doing is fashioning that,
11 and what I'm trying to do is put it in final form so I
12 can submit it to Mr. Jimmerson so that he can be aware
13 of it, and hopefully we can bring agreement then to the
14 Court at the expiration of that 60 days rather than
15 have to have further briefing.

16 THE COURT: Mr. Jimmerson?

17 MR. JAMES J. JIMMERSON: Yes, your Honor.

18 THE COURT: Can I play devil's advocate for a
19 moment? You kind of know me.

20 MR. JAMES J. JIMMERSON: Yes, sir.

21 THE COURT: If the duck that used to be a
22 golden goose is ever gonna fly again so that at least
23 part of this city is developed out there to the benefit
24 of everybody, including your clients who have an
25 argument that they're gonna get a sales broker

1 agreement, what kind of a practical cloud on title, I'm
2 not talking about legal, I'm talking about a man who
3 knows what the title companies do, which is they see if
4 there's anything that they need to except out on the
5 transfer, so as soon as they see some kind of recorded
6 document, doesn't that put a huge damper on the entire
7 marketing of the property out there?

8 MR. JAMES J. JIMMERSON: The answer is no,
9 but I am willing to work with opposing counsel and the
10 Court to solve that issue.

11 The answer to your question is this: The
12 letter is simply a disclosure of the Commission
13 Agreement. There is no language in the Commission
14 Agreement that --

15 THE COURT: Did you attach to the letter
16 several things that you had earlier agreed were
17 confidential and so should not be disclosed?

18 MR. JAMES J. JIMMERSON: The answer is I did,
19 and that's why we agreed to expunge that, but if I can
20 briefly respond to my firm's defense, the document that
21 was attached was an Amendment Number 2. It was not
22 confidential. It was delivered to my clients without
23 any attempt to make it confidential. It became
24 confidential, because it was part of the protective
25 order that we signed during this litigation, so it was

1 my error to attach that.

2 What I could substitute in its place are the
3 seven deeds of record, public record, to evidence which
4 property is subject to the Commission Agreement, but to
5 answer your question directly, it does not provide a
6 cloud, and there's no affidavit here.

7 THE COURT: And we're talking about a cloud
8 on the market. I'm talking about a person who's
9 interested in maybe investing in this next phase or
10 something like that, and they go to this thing and they
11 say, What's this all about?

12 MR. JAMES J. JIMMERSON: Here's the answer to
13 the question in part: The testimony of Pardee's
14 president, Jon Lash, on October 28th, 2013, as relates
15 to single-family land: Yes, if we go forward from here
16 on out, whatever we purchase is truly option property
17 for single-family, and we're more than happy to pay a
18 commission.

19 And another answer on the very next page:
20 And it's your understanding that if Pardee, within the
21 terms of the agreement, buys any single-family detached
22 land which you call production housing, that you owe a
23 commission to Mr. Wilkes and Mr. Wolfram?

24 Answer, Yes.

25 THE COURT: If you guys --

1 MR. JAMES J. JIMMERSON: Here's my --

2 THE COURT: Wait, wait, wait.

3 MR. JAMES J. JIMMERSON: It applies to
4 successors and assigns. That's what's important.

5 THE COURT: Say again.

6 MR. JAMES J. JIMMERSON: This contract is
7 binding upon Pardee's successors and assigns.

8 And Mr. Wilkes, one of the plaintiffs, passed
9 away in April, and so I believe it's incumbent upon our
10 firm to honor our duties to our clients in the
11 remaining 35 years of this contract, and I agree with
12 opposing counsel, it expires in 2045. There will be no
13 further involvement at that point.

14 THE COURT: You're gonna have to allow me to
15 interrupt you so I can keep my train of thought.

16 MR. JAMES J. JIMMERSON: Yes, sir.

17 THE COURT: If you have a sitting judge in
18 the Eighth Judicial District who's trying to monitor a
19 way that you can receive reasonable notice, is it
20 overkill to put something of record in Lincoln County
21 which is going to alert potential buyers to a lawsuit
22 confidential memorandum that they're going to be
23 interested in knowing what's that all about? Doesn't
24 it have a truly dampening effect on the marketability
25 of the property?

1 MR. JAMES J. JIMMERSON: I don't believe so.

2 THE COURT: How would you answer that
3 question?

4 MR. JAMES J. JIMMERSON: It does have a
5 notice provision that if you're a successor to Pardee
6 or obviously if you're Pardee, and you buy more option
7 property for use as single-family residential property,
8 you will owe a commission. I don't suggest for one
9 moment our client has an ownership interest, but you
10 are going to owe this money.

11 Now, the reason that is a sensitive issue,
12 and Ms. Lundvall and I went round and round for three
13 weeks or four weeks over four months, is that the Court
14 found that Pardee failed to keep the plaintiffs
15 reasonably informed about what they were doing in
16 Coyote Springs.

17 Now, I'm dealing with a man in his 70s, I'm
18 dealing with an estate.

19 THE COURT: He looks pretty healthy to me.

20 MR. JAMES J. JIMMERSON: When I'm dead and
21 buried in 20 years, I need somebody to be able to have
22 an obligation, like you've indicated, and opposing and
23 I would work together, that there be no game playing,
24 that there would be notification as it relates to
25 single-family homes and commissions be paid. It's a

1 40-year transaction.

2 THE COURT: Ms. Lundvall?

3 MS. LUNDVALL: Let me answer the Court's
4 question from a practical standpoint. How we learned
5 about this is not from Mr. Jimmerson. He didn't send
6 me a copy of this before he put it on file. There were
7 certain negotiations that are ongoing concerning Coyote
8 Springs. We had a title company do a title search, and
9 the title company comes up with this cloud on our
10 title, and so what happens, and it's not only Pardee
11 land that is impacted, it is Coyote Springs' land that
12 is impacted, land over which that we have no control,
13 land over which the parties, when they were jointly
14 developing the Coyote Springs project, fully
15 anticipated guest builders to come out there for them
16 to sell tracts of land to these guest builders, so
17 these guest builders then would come out and construct
18 additional homes, not that Pardee would construct them,
19 not that Pardee would acquire these lands, but guest
20 builders.

21 And so as a practical consequence, typically
22 what happens is that this guest builder goes to CSI and
23 says, I want to buy some of your land. They're going
24 to do their own title search and they're going to come
25 up with the cloud on the title.

1 So what's gonna happen is that typically you
2 have a 30 to 60-day due diligence. Then what they have
3 to try to do is to either negotiate with counsel to get
4 this cloud removed or to pay something to remove it.
5 That's what happens in the real world from a real
6 estate perspective, and I think that that's really kind
7 of what's going on here.

8 This case was originally filed in 2010. At
9 no point during any of this was there any type of a
10 lis pendens filed against this property, and it was
11 before the Court had entered her order that this was
12 filed, this, this lis pendens then was filed in Lincoln
13 County.

14 MR. JAMES J. JIMMERSON: Judge, this is no
15 lis pendens.

16 MS. LUNDVALL: So from a practical
17 perspective, it does have huge impact on land
18 transactions between parties, particularly
19 sophisticated parties.

20 MR. JAMES J. JIMMERSON: What I will say to
21 the Court is first of all this is not a lis pendens.
22 That's --

23 THE COURT: Is it the functional equivalent
24 of a lis pendens?

25 MR. JAMES J. JIMMERSON: No, your Honor, but

1 I will say this --

2 THE COURT: A lis pendens allows people an
3 early shot at court to get it lifted, and what kind of
4 remedy did you put in this recorded Memorandum of
5 Agreement of a broker's commission?

6 MR. JAMES J. JIMMERSON: I understand. What
7 I'm gonna suggest is that we have with the right, for
8 example, to record the judgment that we won, and it was
9 hard fought, by the way.

10 MS. LUNDVALL: Not, not against the property,
11 not against the real property. I disagree
12 wholeheartedly with that.

13 MR. JAMES J. JIMMERSON: It attaches against
14 Pardee for the obligation that it owes. We're
15 absolutely allowed to record a judgment.

16 THE COURT: Let me cut this short a little
17 bit.

18 MR. JAMES J. JIMMERSON: What I will say --

19 THE COURT: Let me ask you a question,
20 Mr. Jimmerson. If the Court, if I order you personally
21 and your client to expunge it --

22 MR. JAMES J. JIMMERSON: Yes, sir.

23 THE COURT: -- I'm not doing something that
24 requires a Seventh Judicial District Court, I'm doing
25 in persona jurisdiction over the people here.

1 MR. JAMES J. JIMMERSON: No question.

2 And we also filed a petition in Lincoln
3 County.

4 THE COURT: You're going to expunge it?

5 MR. JAMES J. JIMMERSON: I already filed an
6 application to have it expunged in Lincoln County.

7 THE COURT: When will that happen?

8 MR. JAMES J. JIMMERSON: Here's the point, we
9 can expunge it tomorrow or we'll simply file a document
10 that says, Notice of Expungement of Letter, which is
11 what we recorded, and that's it. We've offered that to
12 Ms. Lundvall.

13 THE COURT: Would you eventually have to
14 go --

15 MR. JAMES J. JIMMERSON: But I need some
16 notification, I need some good faith basis.

17 THE COURT: I understand.

18 What I see on a preliminary title report
19 coming out is the effect of the filing and recordation
20 of the Memorandum of Agreement, the effect of the
21 expungement of that agreement, all in the exception
22 part of the title report.

23 To get a clear title, so to speak, don't you
24 have to get a judgment out of this, is it the Seventh
25 Judicial District?

1 MR. JAMES J. JIMMERSON: Yes, Judge.

2 THE COURT: Because now you're talking about
3 in rem or in situs jurisdiction.

4 MS. LUNDVALL: No, your Honor. On this one I
5 will disagree from a jurisdictional standpoint, and let
6 me understand why. This Court -- a lis pendens arises
7 out of litigation. You file your notice out of the
8 litigation.

9 THE COURT: It means that in Latin, right.

10 MS. LUNDVALL: That's correct.

11 And so from a standpoint the Court has
12 jurisdiction then not only over the litigation, but the
13 lis pendens that arises out of it, no matter where it's
14 filed. And so to the extent that this Court has the
15 ability to issue an order expunging the lis pendens,
16 and as part of that order we would also request that,
17 in fact, the confidential document be removed from the
18 public record. The Court, because of the jurisdiction
19 over this litigation, has that power, has that
20 authority, and it does not need to happen out of
21 Lincoln County.

22 And moreover, from the perspective of what
23 counsel keeps tagging on to his argument is that we
24 need some kind of notice, for the last four years he's
25 operated with no notice.

1 The Option Agreement and the way the
2 Commission Agreement works is that we have to file a
3 whole boat load of public documents to be able to
4 secure any new transaction or new property, and when we
5 file those documents, they'll be a matter of public
6 record.

7 Part of what we're offering to do is, as a
8 courtesy, is to send to Mr. Jimmerson, to any of the
9 estate, to any of the parties, to anyone else, the
10 documents that we're making as a matter of public
11 record. That is what secures their right to additional
12 commissions, but it does not as far as exist against
13 real property in and of itself. Essentially it's real
14 property that Pardee doesn't own.

15 MR. JAMES J. JIMMERSON: That's the first
16 time I've heard this.

17 MS. LUNDVALL: It's owned by CSI.

18 MR. JAMES J. JIMMERSON: What has happened,
19 Judge, because you live in Nevada and you are alerted
20 to this, Mr. Whittemore lost control of CSI. The Seeno
21 brothers are in charge that. They are at odds with
22 Pardee. Massive litigation went on between Pardee and
23 Coyote Springs.

24 THE COURT: I can imagine.

25 MR. JAMES J. JIMMERSON: All I'm saying is

1 there's nothing in the papers or reply to say, Listen,
2 we'll serve you a copy of the --

3 THE COURT: Is there anything in these
4 confidential memorandums that may have been unlawfully
5 disclosed which brings to bear on the Seeno/Harvey
6 Whittemore controversy?

7 MR. JAMES J. JIMMERSON: No, Judge. This is
8 a legal description.

9 MS. LUNDVALL: No, no, there I disagree
10 wholeheartedly. That's why we've have been so adamant
11 and we came to the Court so quickly on an
12 order-shortening time to seek the expungement.

13 Let me give you a little bit of history.
14 When CSI and Pardee negotiated their original
15 agreement, they knew what they were doing was doing
16 long-term agreements dealing with the values and the
17 price of land, the strike prices between themselves.

18 THE COURT: Right.

19 MS. LUNDVALL: What they did not want known
20 publicly to others in the market is that information,
21 and therefore, they employed confidentiality agreements
22 between themselves.

23 Those confidentiality agreements have been
24 respected not only in this case, but also in the case
25 that we have before Judge Denton. Judge Denton has

1 jurisdiction over the dispute that arose after
2 Mr. Whittemore got the boot from the Seenos, that there
3 was a dispute that arose between Pardee and CSI.

4 In the very first Complaint that was filed,
5 there was a request to make these documents
6 confidential. Judge Denton has repeatedly respected
7 that confidentiality, and all of those documents have
8 been filed under seal that have been necessary to
9 litigate that.

10 In this case, opposing counsel went to CSI
11 and asked for the documents that he put on public
12 record from CSI. CSI says, I'm not giving it to you
13 unless there is a protective order protecting it, so
14 that's when we came to the Court. Judge Earley gave us
15 a protective order. They obtained these documents.

16 Each and every time there was a filing in
17 this case, they are filed under seal. Each and every
18 time a witness talked about those documents from the
19 witness stand, the Judge cleared the courtroom,
20 protecting the confidentiality. The respect that has
21 been given by this jurisdiction has been manifest
22 concerning that confidentiality, and then opposing
23 counsel then takes those documents and makes them a
24 matter of public record.

25 MR. JAMES J. JIMMERSON: That couldn't be

1 more false. This exhibit was given from her client,
2 Pardee, to my clients on September 1 of 2004, period.
3 They had that document as part of the Commission
4 Agreement that was assigned on the same day.

5 THE COURT: Let me say this, the easiest
6 thing in the world for me to do would be to duck this
7 and allow Judge Earley to come back, because she has to
8 fashion and give her Court-ordered approval to the
9 reasonable notice provisions that are now being
10 crafted, or I guess in absence of a stipulation, has to
11 craft them herself.

12 MR. JAMES J. JIMMERSON: Right.

13 THE COURT: As logical as it sounds to have
14 those two things go simultaneously with the expungement
15 of the recorded document, I am distressed enough about
16 the impact on the market, notwithstanding any other
17 taint that might exist, that I'm going to order its
18 immediate expungement.

19 MR. JAMES J. JIMMERSON: I will do so, Judge.

20 THE COURT: Pardon?

21 MR. JAMES J. JIMMERSON: I said we'll do so.

22 THE COURT: Okay.

23 MS. LUNDVALL: Your Honor, may I as far as
24 ask counsel not to interrupt so that the Court can
25 enter and issue the full scope of the order rather than

1 having him cut off?

2 MR. JAMES J. JIMMERSON: By saying "I would
3 do so, I did not mean to interrupt the Court.

4 THE COURT: I'm almost finished anyway.

5 There's going to have to be another hearing
6 before Judge Earley pretty soon. I think there's
7 enough attention now that any sales, as Ms. Lundvall
8 was just saying, couldn't possibly go surreptitiously,
9 and to get that cloud off the title in the most
10 effective way possible, I will include in the order the
11 provisions that you suggest I have jurisdiction to do,
12 which cleans up the title by ordering the clerk at the
13 recorder's office to remove them.

14 Now, I suppose an interlocutory order from
15 the senior judge can be revisited if somebody wants to
16 file a motion for reconsideration before the judge
17 who's handling the case, but I think you're entitled to
18 the immediate removal of the expungement by an order I
19 would like you to draft and run it by counsel.

20 MR. JAMES J. JIMMERSON: Thank you, Judge.

21 May I inquire, ask you to augment that order
22 with one additional provision, and that is to accept
23 Ms. Lundvall's offer that any sale of the option
24 property, that we be notified of the same?

25 THE COURT: Sure.

1 MR. JAMES J. JIMMERSON: You know, concurrent
2 with whatever they're doing so we can track it? We're
3 talking about people who live out of the state.

4 THE COURT: I understand. I'm not ruling --

5 MR. JAMES J. JIMMERSON: It would --

6 THE COURT: -- any long-term consequence, I'm
7 just saying get the dam thing off there, please.

8 MR. JAMES J. JIMMERSON: If you will add that
9 to the order, and we'll do it voluntarily.

10 THE COURT: Thank you.

11 MS. LUNDVALL: Your Honor, this will be an
12 order from the Court, and we will craft this order from
13 the Court. I will send it to Mr. Jimmerson for his
14 review, but it's my understanding the Court is around
15 today so we can get a signature then and be able to get
16 it immediately?

17 THE COURT: I will be here for some time.

18 MS. LUNDVALL: There's one last aspect of our
19 motion that we would ask for the Court for your
20 consideration upon. We never should have had to be
21 here on breach of a protective order. This is a
22 document that has been treated as confidential.
23 Counsel knew that. So to the extent that what we had
24 to do is to incur attorney's fees in bringing this
25 issue to the Court's attention; therefore, we would ask

1 the Court to allow us to submit then the amount that
2 we've incurred in bringing this motion and utilize that
3 then as a consequence of Mr. Jimmerson's failure to
4 adhere to the protective order which had been admitted
5 in his papers?

6 THE COURT: I will allow you to file a motion
7 for fees and costs and stuff like that, but I don't
8 feel steeped enough in this controversy and the
9 equities on both sides and the historical context to be
10 signing some big attorney's fee award. I would feel
11 much more comfortable allowing Judge Earley to do that.

12 MR. JAMES J. JIMMERSON: We agree we should
13 not be here and opposing counsel -- I mean I have a
14 client who passed away and I have a finding by Court
15 that there's a breach by Pardee for failure to give
16 notice. I can't trust Pardee at this point in time to
17 do the right thing.

18 MS. LUNDVALL: Your Honor, at this point I'm
19 going to correct the record as far as on this, and I
20 find, as far as counsel's comments, to be offensive.

21 When we first learned about this on June
22 17th, I called his office.

23 MR. JAMES J. JIMMERSON: Left a message.

24 MS. LUNDVALL: And I left a message, a very
25 detailed and explicit message, because I was informed

1 Mr. Jimmerson was out of the country. His associate
2 who's sitting here at counsel table sent me an email
3 acknowledging the fact that I called.

4 I waited for Mr. Jimmerson to come back and
5 to try to address this, and when we didn't get any
6 return calls, that's when we filed this.

7 MR. JAMES J. JIMMERSON: She filed it the day
8 I went back.

9 MS. LUNDVALL: When, in fact, I did get a
10 return call from Mr. Jimmerson, what he wanted to do
11 was to play Let's Make a Deal. He wanted to say, Well,
12 I will take the confidentiality document, but I'm gonna
13 leave the lis pendens. That's what he was asking for
14 when finally he contacted me in an effort to try to
15 remediate then the error that he made.

16 MR. JAMES J. JIMMERSON: Your Honor, this is
17 not a lis pendens. Whatever term the Court wants to
18 use, I appreciate the Court stating in practical terms
19 is this a cloud. The last thing my clients can afford
20 to do is to litigate against this Goliath like Pardee,
21 which is why we proceeded in our opposition to expunge
22 these documents, but it is a successor and assign
23 provision for 35 more years that my clients' are
24 entitled to a commission on the very next purchase they
25 make for single-family production homes.

1 THE COURT: So you proceeded in your normally
2 bashful fashion, is that right, Mr. Jimmerson?

3 MR. JAMES J. JIMMERSON: I did, your Honor,
4 and I attached the wrong documents. I could have
5 attached the legal description and had no issues.

6 THE COURT: I understand, but I'm gonna defer
7 the ruling on attorneys fees. I will accept the
8 motion, but I will leave it to her.

9 MS. LUNDVALL: Thank you, your Honor.

10 THE COURT: Thank you all.

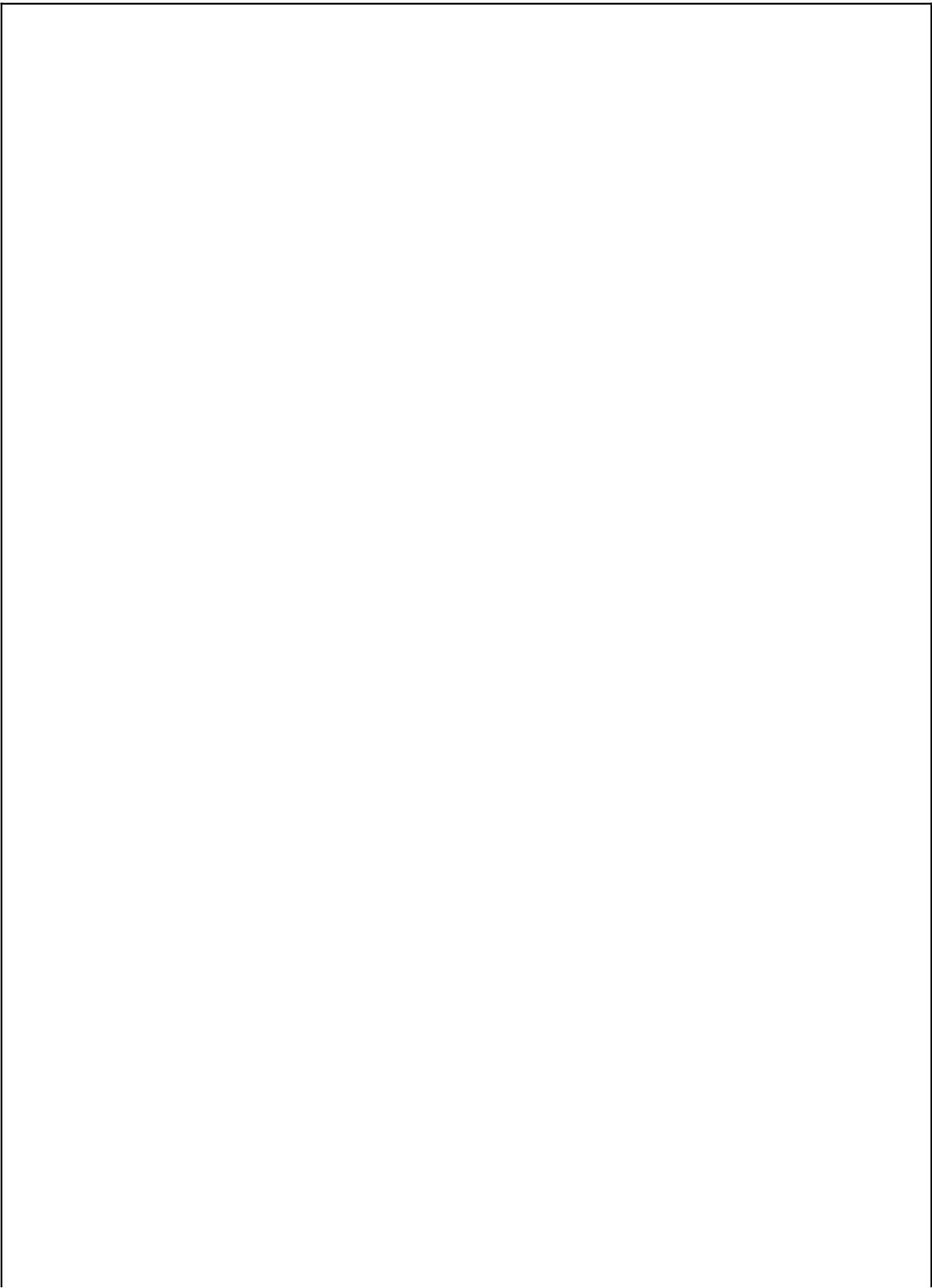
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12 ATTEST:

13 Full, true, and accurate transcription of proceedings.

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18 Loree Murray, CCR #426

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15
16
17
18
19
20
21
22
23
24
25



1 -

12616 [1]
2:8

- 2 -

2016 [2]
1:17; 2:1

- 3 -

30TH [1]
22:12

- A -

A.M. [2]
1:18; 2:2
ABLE [1]
12:25
ABOUT [15]
4:6, 20;
5:19; 7:4;
8:13; 9:21;
11:10, 24;
12:11, 19;
14:5; 16:24;
17:5, 12;
18:2
ABSENT [2]
12:22; 13:22
ABSOLUTELY [1] 12:19
ACCURATE
[1] 23:10
ACTIONS [1]
9:4
ACTUAL [1]
11:15
ACTUALLY
[12] 2:23;
5:3; 10:11,
13; 12:9,
10; 13:1;
14:1, 10, 11;
15:25

ADDITIONAL
LY [2] 9:14;
17:20
ADDRESS [2]
3:5; 14:16
ADDRESSED
[2] 9:12;
21:2
ADDRESSING [1] 22:9
AFTER [2]
12:13, 14
AGAIN [4]
10:6; 11:8;
17:10; 22:19
AGITATED
[2] 10:9;
11:12
AGREE [1]
20:2
AGREEMENT
[1] 21:20
AHEAD [1]
6:16
ALONE [1]
21:1
ALREADY [1]
9:12
ALSO [8]
2:8; 5:20;
6:7; 11:6;
13:2; 15:16;
16:1, 2
ALTHOUGH
[1] 11:12
ALWAYS [1]
4:5
AMBIGUOUS
[2] 7:2;
10:6
AMOUNTED
[1] 20:8
AMOUNTING
[1] 15:9
ANOTHER
[1] 18:8
ANSWER [2]
6:17; 16:9
ANTICIPATE
D [1] 4:16

ANTICIPATING [1]
14:12
ANYONE [4]
5:22, 23;
9:24; 13:1
ANYTHING
[4] 12:3, 4;
20:23; 21:8
APARTMENT
[4] 7:12, 13;
10:14, 18
APOLOGIZE
[1] 20:24
APPEARANCES [1] 1:20
APPEARED
[1] 4:4
APPEARS [3]
15:24; 16:1,
3
APPRECIATE
[4] 3:3;
12:23; 13:1,
11
APPROACHED [3] 4:19;
10:5, 8
APPROXIMATELY [2]
10:15, 20
AREA [1]
4:15
AREAS [1]
2:17
ARGUE [1]
17:24
ARGUING [1]
18:10
ARGUMENT
[4] 14:21;
18:17; 19:8,
15
ARGUMENTATIVE [1]
15:18
ARGUMENTS
[1] 3:6

ARMED [4]
5:21, 23;
9:23; 10:10
ASKED [2]
16:10, 11
ASKING [1]
13:16
ASSASSIN
[2] 17:8, 13
ASSAULT [2]
4:23; 9:22
ASSERTING
[1] 13:21
ASSOCIATING [1] 8:25
ASSOCIATION [1] 8:24
ASSUME [3]
10:23; 21:8
ATTACHMENT [1] 17:17
ATTEMPTED
[1] 9:7
ATTENDED
[1] 13:9
ATTENDING
[1] 12:18
ATTENTION
[2] 19:5, 8
ATTEST [1]
23:9
ATTORNEY
[1] 1:21
AUGUST [3]
1:17; 2:1;
22:12

- B -

BACK [1]
12:7
BASED [2]
15:17; 20:19
BASICALLY
[2] 14:21,
24
BASIS [3]
18:11;
19:24; 20:2

BECAME [1]
10:9
BECAUSE
[16] 3:11;
9:2; 14:9,
19; 15:21;
16:14, 23;
17:3, 16, 21,
23; 18:8,
13; 20:14;
21:17; 22:3
BEEN [1]
14:4
BEFORE [2]
1:15; 4:4
BEHALF [2]
2:9, 11
BEING [2]
5:23; 9:1
BELIEVE [2]
7:7; 19:2
BEST [1]
10:7
BETWEEN
[8] 3:17;
6:3; 7:7, 8;
8:24; 9:5;
11:16; 14:3
BILL [21]
7:19; 14:17;
15:6, 22, 23,
24; 16:1, 7,
8, 12, 23;
17:1, 11, 14,
16, 21;
20:8, 18, 20,
24
BODY [2]
13:4, 6
BOTH [1]
22:22
BRANDON
[9] 6:2, 4,
15; 7:9;
8:18; 9:24;
10:3; 11:2,
16
BREAK [1]
2:22

BRIEFED [1]
19:3
BRIEFLY [1]
21:19
BRIEFS [1]
19:12
BROUGHT
[4] 4:22;
6:21; 12:11;
19:10
BUCK [10]
3:20; 6:1,
14; 7:9;
8:18; 9:17,
24; 10:3;
11:2, 16
BURDEN [1]
19:18

- C -

C-16-315599
-2 [1] 1:7
C-A-M [1]
2:15
CAITLYN [2]
1:22; 2:7
CALENDAR
[6] 21:15,
21, 23;
22:10, 11, 25
CALL [7]
17:7; 21:15,
21, 23;
22:10, 11, 25
CALLED [2]
17:15, 21
CALLS [1]
15:25
CAME [4]
9:20; 10:16;
12:7; 20:19
CAN'T [3]
16:21, 22;
18:7
CANNOT [1]
9:3
CAREFULLY
[1] 20:10

CASE [13]
1:7; 3:16,
21; 4:8, 22;
15:16; 18:5,
9, 13;
19:23; 21:1,
17; 22:7
CASES [2]
2:24; 18:15
CASH [1]
14:9
CAUSE [1]
19:20
CERTAINLY
[1] 23:3
CHARGED
[2] 3:18;
19:21
CHECK [1]
5:17
CHIEF [1]
1:21
CIRCUMSTA
NTIALLY [1]
14:2
CLARK [1]
1:2
CLEAR [3]
3:22; 4:9,
18
CLERK [4]
2:14; 22:10,
12, 15
CO-DEFEND
ANT [4]
3:18, 19, 20;
22:14
CO-DEFEND
ANTS [1]
22:3
COCAINE [9]
4:12, 21, 25;
5:15, 17, 19;
9:8; 11:9;
14:8
COGNIZANT
[2] 21:1;
22:6

COME [3]
10:17;
12:25; 21:23
COMES [1]
21:9
COMMITTED
[2] 12:9;
19:20
COMMUNICA
TIONS [1]
5:24
COMPLETEL
Y [1] 19:7
CONFIRM [1]
14:2
CONSPIRAC
Y [8] 3:17;
9:2, 3, 5, 14;
12:1; 14:3,
21
CONSPIRAT
ORS [1]
12:9
CONTEXT [2]
10:23; 20:19
CONVENIEN
CE [3] 5:10,
12; 12:24
CONVERGE
[1] 11:22
CONVERSAT
ION [9] 6:3,
8, 11, 12,
13; 7:8;
8:14; 10:4;
14:5
CORPUS [1]
2:5
CORRECT
[8] 3:12, 14;
13:5; 14:22,
23; 15:1;
16:12, 13
CORROBORA
TED [1] 5:2
COULD [3]
6:1; 20:25;
21:23
COULDN'T
[1] 10:22

COUNT [3]
9:10; 14:21, 22
COUNTS [5]
2:18, 22;
14:20;
19:20; 23:4
COUNTY [1]
1:2
COURSE [1]
3:19
COURT [76]
1:1, 16; 2:4, 17; 3:1, 4, 7, 9, 11, 13, 15, 23; 4:7; 5:6, 10, 13, 15; 6:16, 19, 24; 7:3, 5, 10, 16, 19; 8:4, 7, 10, 16, 19, 22; 9:9; 10:17, 21; 11:1, 7, 11, 14; 13:3, 13, 18; 14:14, 18, 24; 15:2, 9, 12, 14; 16:5, 14, 20, 25; 17:9, 19, 25; 18:6, 20, 25; 19:4, 8, 10, 13, 14, 16; 20:5; 21:16; 22:2, 11, 13, 17, 19, 21, 24; 23:1, 3, 7
COURT'S [3]
6:23; 8:20; 19:5
COUSIN [1]
5:4
CREDIBILITY
[1] 13:17
CREDIBLE
[1] 13:15

CUSTODY [1]
2:10

- D -

DATE [5]
21:14, 20;
22:1, 9, 23
DEADLY [2]
9:11, 15
DEATH [1]
12:12
DECEDENT
[12] 4:9, 22;
5:5, 21;
9:21, 22;
10:10;
11:13, 16;
12:11, 15
DECEDENT'S
[3] 4:14;
10:14; 13:25
DEFENDANT
[9] 1:9, 22;
17:24;
19:20;
20:22;
21:13, 14;
22:18, 20
DEFENDANT'S
[1] 2:5
DEFENSE [1]
18:4
DEPUTY [1]
1:21
DESCRIBING
[1] 11:6
DETECTIVE
[2] 20:16;
21:7
DIDN'T [9]
4:2; 12:8, 25; 16:6, 7, 25; 19:10;
20:1, 24
DIFFERENTIATE [1]
18:13

DIRECTION
[3] 12:1, 5, 8
DISCREPANCIES [1]
13:19
DISCUSS [1]
22:5
DISMISS [1]
2:18
DISMISSED
[1] 2:20
DISORDER
[1] 17:21
DISPLAYING
[1] 9:24
DISTRICT [5]
1:1, 16, 21;
18:5; 20:5
DOES [1]
20:5
DOING [1]
13:14
DONE [3]
20:20; 21:4, 6
DOWN [2]
2:22; 21:9
DRAW [1]
19:5
DURING [1]
18:11
DUTY [2]
15:15, 17

- E -

EARLEY [1]
1:15
EARSHOT [1]
6:1
EITHER [1]
21:4
ELSE [3]
4:13; 5:22;
9:25
ELSE'S [1]
5:23
ENHANCEMENT [1] 9:15

ENSUED [1]
10:12
ERIC [1]
4:13
ESTABLISH
[2] 9:2, 3
ESTABLISHING [1]
19:18
EVEN [6]
4:16; 16:9;
17:3, 4, 7;
20:13
EVENING [1]
14:4
EVENTS [2]
13:2, 23
EVER [2]
8:9; 11:20
EVERYBODY
[4] 6:6; 7:4;
12:21; 14:6
EVERYONE
[6] 4:24;
8:15; 10:4;
11:12, 21, 23
EVERYTHING [4] 2:23, 24; 18:1;
21:23
EVIDENCE
[2] 18:19;
19:19
EXACTLY [2]
5:11; 22:3
EXCHANGE
[2] 4:20;
11:4
EXCULPATORY [2]
18:19; 20:3
EXCUSE [1]
8:3

- F -

FACT [7]
12:21; 14:7;
15:23;

16:10; 17:6;
18:18; 21:7
FAMILIAR
[1] 3:2
FANTASTICA
L [1] 17:6
FEEL [7]
18:10;
19:18, 24;
20:1, 4, 14;
21:3
FINALLY [1]
20:16
FIND [5]
7:24; 10:22;
15:4; 17:3;
20:8
FINE [2]
3:7, 13
FIREARM [2]
11:20; 12:4
FIRST [3]
2:17; 4:13;
16:9
FLAT [1]
18:6
FLED [1]
12:22
FOLLOW [1]
20:21
FOLLOWED
[1] 12:5
FOOD [1]
5:10
FORTUNATE
LY [1] 20:11
FORWARD
[4] 9:16;
19:23; 23:2
FOUR [2]
2:18; 19:20
FOURTH [1]
11:5
FRANCHISE
[2] 17:12,
17
FROM [6]
3:25; 10:7;
16:9, 24;
19:6; 23:3

FRONT [3]
4:4; 6:7;
16:2
FULL [1]
23:10
FUMO [1]
22:15
FUMO'S [1]
21:25

- G -

GENERALLY
[2] 16:23;
17:2
GETS [1]
12:16
GISENDANE
R [7] 6:2;
9:17; 22:15,
16, 18, 20,
21
GIVE [2]
12:16; 18:12
GIVEN [1]
18:3
GLOCK [1]
7:6
GOES [1]
19:23
GOING [5]
6:1; 8:1;
9:18; 22:8;
23:1
GONE [1]
10:2
GONNA [5]
9:9; 14:8,
12; 21:9;
22:6
GOSH [1]
21:16
GRAND [9]
2:20; 3:22,
25; 4:8;
16:2; 18:4,
11; 19:17;
20:4
GROUND [2]
12:15; 13:10

GUYS [1]
18:15

- H -

HABEAS [1]
2:5
HANDS [3]
11:19, 21;
12:3
HANGING [2]
4:19; 14:4
HAPPEN [1]
14:12
HAPPENED
[1] 20:11
HAPPENS [1]
12:14
HAPPY [2]
6:17; 11:13
HAVING [3]
5:8; 8:14;
11:4
HEALTH [1]
17:23
HEAR [1]
6:1
HEARD [2]
7:6; 21:13
HELD [1]
1:17
HELP [1]
18:16
HERE [4]
2:9; 4:15;
6:22; 22:22
HIMSELF [1]
17:23
HOLD [1]
17:25
HOLDING [1]
12:17
HOLDS [1]
18:6
HOME [11]
5:8, 12;
7:20, 21, 22,
25; 8:6, 9;
12:8, 24

HONOR [11]
2:13; 3:16;
7:15; 14:15;
15:8; 18:24;
19:2; 21:11,
12, 24; 23:6
HONORABLE
[1] 1:15
HOOKED [1]
21:7
HOWEVER
[3] 3:1;
4:24; 6:2
HUNDRED
[2] 3:24

- I -

I'VE [1] 17:3
IGNORED [1]
19:7
IMMEDIATEL
Y [2] 12:14;
13:9
INCLUDING
[3] 5:4, 5, 7
INCREASING
LY [1] 10:9
INCUMBENT
[1] 16:17
INDICATED
[2] 6:9;
10:15
INDICATION
[4] 5:21;
9:23; 14:10,
11
INDICTMENT
[1] 15:17
INDIVIDUAL
S [2] 8:25;
12:13
INDULGENC
E [1] 6:23
INFLAME [1]
21:6
INFLAMMAT
ORY [4]
15:18, 23;
17:16; 20:23

INFORMATIO
N [1] 2:21
INITIAL [2]
11:25; 12:9
INITIALLY
[2] 11:3, 8
INSIDE [10]
4:25; 5:1, 8,
14, 25;
6:11; 8:6, 8;
10:2, 3
INSTEAD [1]
14:1
INSTIGATIO
N [1] 6:14
INSTIGATOR
[1] 6:4
INSTRUCT
[1] 20:3
INSTRUCTIO
N [5] 16:18,
19, 20;
18:4, 12
INSUFFICIEN
CY [1] 9:3
INSUFFICIEN
T [1] 9:1
INTERACT
[1] 13:1
INTERACTIO
N [1] 12:12
INTERESTED
[1] 19:14
INTO [3]
7:19, 21;
16:16
INTRODUCE
[1] 16:7
INVESTIGATI
ON [1]
20:17
INVOLVEME
NT [1] 5:19
ISSUE [2]
9:20; 14:16
ISSUES [1]
17:23
IT'S [22]
2:15; 5:1;
6:2; 7:7;

10:5, 7, 15,
19, 20;
11:4; 13:22;
14:24;
15:15, 16;
16:17; 17:2,
10, 15, 25;
18:9, 18;
22:25

- J -

JACOB [1]
1:21
JAKE [1]
2:11
JESSICA [2]
5:4; 10:14
JUDGE [1]
1:16
JURY [11]
2:20; 3:22,
25; 4:9;
16:2, 22;
18:4, 12;
19:17; 20:4;
21:6

- K -

KENNETH [5]
1:8; 7:18;
8:5; 14:17;
20:18
KERRY [1]
1:15
KILL [21]
7:19; 14:17;
15:6, 22, 23,
24; 16:1, 7,
8, 12, 23;
17:1, 11, 14,
16, 21;
20:8, 18, 20,
24
KILLER [1]
17:16
KILLING [2]
17:5, 13

KIND [4]
5:8; 11:20;
16:16; 17:17
KINDS [1]
15:19
KNEW [5]
7:24; 9:25;
16:7; 20:12,
18
KNOW [21]
2:21; 4:4, 6,
14, 24;
5:16; 6:6,
24; 15:21;
16:6, 10, 12;
17:1, 4, 7;
18:14, 15;
20:15, 24
KNOWLEDGE
[8] 5:18, 20,
22; 6:5;
9:17, 21;
14:7
KNOWN [2]
16:23; 17:2
KNOWS [1]
23:1
KRISTINA [2]
1:23; 2:8

- L -

LACK [1]
9:13
LAST [1]
2:14
LATER [2]
11:4; 12:7
LAYING [1]
12:15
LEAST [4]
9:25; 14:2;
17:18, 22
LEAVE [2]
21:20; 22:6
LEFT [3]
8:9; 21:15,
22
LEGAL [5]
16:11;

18:11;
19:23; 20:1,
13
LEGALLY [1]
9:4
LET'S [2]
7:16; 14:6
LIABLE [2]
9:4, 13
LIGHT [1]
15:23
LIKE [2]
6:9; 17:15
LIKELY [1]
23:5
LIMITING [3]
16:18, 19, 20
LINE [3]
7:17; 8:20;
21:10
LITTLE [3]
7:1, 3; 10:6
LOCATE [1]
14:9
LOCATION
[2] 6:20;
9:1
LOOK [2]
16:8; 20:19
LOOKED [4]
10:21;
16:14, 15;
20:22
LOREE [3]
1:25; 23:14

- M -

MAKE [3]
10:24;
14:18; 18:18
MARGINAL
[1] 19:19
MARY [2]
2:15, 16
MATTER [1]
19:3
MCAMIS [57]
1:22; 2:7,
15, 25; 3:3,

5, 8, 10, 12,
14, 16; 4:3,
8; 5:7, 11,
14, 18;
6:17, 23;
7:1, 4, 7, 15,
17; 8:2, 5,
8, 11, 17,
20, 23;
9:12; 10:19,
24; 11:2, 8,
12, 15;
13:5, 16, 20;
14:15, 23;
15:1, 8, 11,
13, 15;
16:13, 16,
22; 17:2,
10, 20;
18:17, 23

MC GEE [31]

1:8; 2:9;
3:18; 4:10,
16, 24;
5:14, 25;
6:5, 6, 11,
21; 7:12;
8:24; 9:13;
10:2, 15, 17;
11:5, 19;
12:2, 20;
14:3; 15:6,
22; 16:4;
17:13, 20;
20:7, 12, 18

MC GEE'S [3]

9:21; 11:18;
14:7

MEAN [1]

4:2

MEMBER [1]

4:13

MENTAL [1]

17:23

MERE [4]

8:23; 18:4,
12; 20:4

MISCONDUCT

[3] 15:10;
20:9; 21:3

MONEY [1]

14:10

MORE [3]

3:8; 18:15;
19:22

MOST [1]

23:5

MOVED [2]

22:2, 4

MOVIE [8]

16:24; 17:2,
3, 5, 11, 12,
17, 18

MUCH [1]

7:10

MURDER [2]

9:6, 10

MURRAY [3]

1:25; 23:14

- N -

NAME [9]

2:14; 16:3,
6, 8, 11;
20:13, 25

NEAL [3]

6:7, 20;
7:18

NEED [3]

18:7; 19:24;
22:22

NEEDS [1]

21:2

NEIGHBOR

[5] 5:5, 7;
6:7; 9:6;
12:23

NEVADA [7]

1:2, 5, 19;
2:1; 18:6, 9;
20:5

NEXT [3]

15:4; 18:20

NICKNAME

[1] 20:18

NOBODY [1]

23:1

NOTES [2]

2:6; 15:12

NOTICE [1]

22:5

NOTICEABLE

[2] 12:22;
13:22

NUMBER [2]

2:7; 20:1

- O -

OBLIGATION

[1] 18:18

OBSERVED

[1] 8:8

OBVIOUSLY

[3] 17:1;
20:25; 21:1

OFFENSE [1]

12:10

OFFER [1]

16:18

OFFICE [2]

2:8; 21:25

OKAY [30]

2:25; 3:9,
15; 4:7;
5:13; 7:16,
23; 8:10,
16, 19, 22;
10:21, 22;
11:1, 7, 14;
14:14, 18;
15:2, 12, 13,
14; 17:9,
19, 25;
18:21, 25;
19:16

ONLY [5]

8:12, 17;
14:7; 16:6,
12

OPEN [1]

6:10

OPPORTUNITY [1]

4:16

ORDER [1]

3:5

ORIGINAL

[1] 1:9

OTHER [8]

4:11; 6:25;
7:6, 25;
8:24; 18:2;
21:13; 22:14
OUTSIDE [4]
5:25; 6:4, 5;
8:13

OVER [4]

11:15; 13:4,
6; 17:6

OVERHEAR

[1] 12:25

OVERHEARD

[3] 6:8, 10;
9:6

OVERLOOKING

[1]

13:23

- P -

PAGE [5]

6:21; 7:15;
16:2; 19:6,
12

PAGES [6]

3:24; 7:7;
8:2, 12;
19:16

PART [5]

2:18; 6:13;
7:11, 13;
11:25

PARTY [6]

4:10, 14, 18;
12:15, 18;
13:25

PEOPLE [14]

4:11; 5:2, 4;
6:25; 8:13,
17; 10:13;
11:25;
12:19; 13:7,
8; 14:3, 12;
17:5

PERCIPIENT

[1] 5:3

PERSON [5]

11:5; 13:5,

11, 21;
20:17
PERSONALITY [1] 17:21
PETITION [1]
2:5
PHONETICALLY [1]
22:17
PHYSICALLY
[1] 13:7
PLACE [1]
16:10
PLAINTIFF
[1] 1:6
PLANNING
[1] 23:1
PLAY [1]
17:14
PLEADINGS
[3] 3:2; 4:5;
18:24
POCKETS [1]
12:20
POINT [9]
5:1; 10:5, 7,
20; 11:5,
22, 23;
18:10, 14
POINTING
[1] 13:20
POPULAR [1]
17:11
POSITION
[2] 8:23;
10:16
POSSESSION
[1] 12:4
POSSIBLE
[1] 11:5
POTENTIAL
[3] 4:20;
14:8; 17:23
POTENTIALLY [2] 5:23;
14:9
PREJUDICIAL [2] 14:16;
15:18

PREMISE [1]
17:4
PREMISED
[2] 3:17;
18:17
PRESENCE
[4] 6:5;
18:5, 12;
20:4
PRESENT [5]
2:8, 10;
4:11; 6:12;
15:16
PRESENTED
[1] 18:19
PRESENTS
[1] 17:22
PRETEND [1]
15:20
PRETTY [4]
3:22; 4:9,
18; 17:12
PREVIOUSLY
[1] 14:4
PRIOR [1]
4:10
PROBABLE
[1] 19:19
PROBLEM
[1] 18:22
PROCEEDING
[1] 19:17
PROCEEDINGS [2] 1:14;
23:10
PROCESS [1]
16:22
PRONOUNCED [1] 6:2
PROSECUTOR'S [2]
15:15, 17
PROSECUTORIAL [2]
15:9; 20:9
PROTAGONIST [1] 17:7
PROXIMITY
[1] 13:7

PULL [1]
18:9
PULLED [1]
2:24
PURCHASE
[1] 14:8
PURSUANT
[1] 9:13
PUTS [1]
11:18

- Q -

QUEST [1]
4:12
QUESTIONS
[5] 6:18;
19:13;
20:13, 20, 21
QUOTE [1]
8:14
QUOTES [1]
19:6

- R -

RAISED [1]
3:6
RATHER [1]
11:21
READ [13]
3:23, 24;
4:5, 6; 8:3;
10:24;
16:14; 18:5,
9, 14, 15,
21; 20:10
READING [1]
17:25
REAL [1]
4:11
REALIZE [2]
13:18; 16:25
REALLY [6]
3:17; 5:19;
11:24;
14:16;
15:18; 18:17

REASONS
[1] 9:15
RECALL [1]
21:12
RECOLLECTED [1] 7:14
RECORD [2]
3:23; 4:1
REFER [1]
16:21
REFERENCE
[1] 8:21
REFERENCE
[1] 20:25
REFERENCES [3] 15:5,
22; 20:7
REFERRED
[1] 17:13
REFERRING
[1] 14:17
RELATIONS
HIP [2]
4:10, 11
RELIABILITY
[2] 15:10;
20:10
RELYING [1]
13:21
REMEMBER
[2] 6:20;
22:2
REMEMBERS
[1] 21:24
REPEATED
[2] 15:5, 22
REPEATEDLY [1] 17:14
REPLY [1]
3:11
REPORTED
[1] 1:25
REPORTER'S
[1] 1:12
REPUGNANT
[2] 17:4, 10
REQUESTED
[2] 20:7;
21:25

REQUIRE [1]
20:5
REQUIRED
[3] 18:11;
20:2; 22:4
REQUIRING
[1] 20:3
REQUISITE
[1] 2:21
RESET [2]
21:21; 22:23
RESPONDED
[1] 14:13
RESPONSE
[1] 3:10
RETURN [1]
16:3
REVENGE [1]
17:5
REVIEW [2]
19:16, 24
REVIEWED
[3] 2:23, 24;
15:3
RHODES [1]
19:7
RIFLE [5]
4:23; 9:22;
10:11;
11:17, 20
RIGHT [14]
2:4, 24;
5:15, 18;
8:7, 11;
13:14; 15:3;
18:2, 25;
21:16, 18, 24
ROBBERY
[2] 9:7
RULING [1]
21:10
RUMMAGING
[1] 12:20
RUNNING [1]
12:24

- S -

SAID [9]
4:14, 24;

7:23; 10:17;
15:21;
16:11; 18:3;
20:15; 22:21
SALE [4]
4:20; 5:10,
20; 11:9
SAME [7]
9:1; 12:8;
13:7, 24, 25;
14:5, 21
SANBORN
[1] 20:16
SAYING [3]
7:11; 10:22;
13:22
SAYS [2]
7:16; 18:6
SCENE [2]
12:13, 21
SCHUSTER
[3] 18:5, 13;
20:4
SEEK [1]
15:17
SEEMED [1]
11:21
SEEMS [1]
17:22
SELL [1]
4:12
SEMANTICS
[1] 17:15
SEPARATE
[2] 9:9;
12:5
SEPARATED
[3] 11:23,
25; 14:19
SHARICE [1]
6:7
SHOT [2]
12:10, 15
SHOULD [3]
3:25; 9:14;
19:17
SHOWED [5]
4:17; 9:22;
11:6, 13;
14:12

SHOWING [1]
11:3
SHOWN [1]
4:17
SIMILAR [1]
14:24
SITUATION
[1] 16:17
SLIGHT [1]
19:19
SOME [6]
2:24; 5:11;
10:12;
17:23; 21:5
SOMETHING
[2] 18:8;
21:2
SOMEWHERE
E [1] 4:13
SORRY [3]
2:4; 4:2;
6:16
SORT [2]
5:11; 10:12
SPECIFIC [1]
20:21
SPECIFICALLY [5] 6:20;
7:9, 17; 9:6,
16
SPEEDY [2]
21:24; 22:1
SPELL [1]
2:14
SPOKE [1]
21:18
STAGE [1]
23:4
STANDARD
[1] 2:19
STANDING
[1] 9:14
STANTON [2]
21:4, 5
STARTS [1]
12:16
STATE [15]
1:5, 21;
2:12; 13:20;
15:20, 25;

16:7, 17;
17:14; 18:3,
11; 19:18;
20:2, 3
STATE'S [3]
13:23; 16:3;
18:18
STAY [1]
8:8
STAYING [1]
12:20
STEP [1]
18:20
STILL [1]
18:10
STORE [3]
5:10, 12;
12:24
STORY [1]
17:8
STRUGGLE
[3] 10:12;
11:10, 15
STRUGGLED
[1] 12:11
SUBMIT [2]
18:23; 19:12
SUBSEQUENT [1] 11:4
SUCH [1]
16:18
SUFFICIENT
LY [1] 19:3
SULLY [2]
10:14; 13:9
SUMMARY
[1] 7:8
SUPPLEMEN
T [1] 3:8
SUPPOSED
[4] 11:9, 10;
13:13, 14
SURE [2]
14:19; 18:18
SWORN [1]
13:24

- T -

TAINTED [2]	2, 12;	21:7, 19, 23;	TOGETHER
15:10; 20:9	16:13;	22:2	[6] 4:19;
TAKE [2]	17:11; 21:2,	THEY'RE [1]	8:3, 13;
8:2; 19:8	10, 16	12:17	10:20; 11:3,
TALK [1]	THEIR [10]	THING [2]	25
18:1	4:12; 5:23;	8:1; 14:1	TOOK [2]
TALKING [2]	6:3; 9:4, 18;	THINGS [3]	7:19; 9:4
8:13; 12:17	10:3, 8, 19;	12:25; 14:1;	TRANSACTI
TELLING [1]	12:21; 13:24	23:4	ON [2] 5:19;
11:24	THEM [7]	THINK [2]	10:9
TERM [1]	2:19; 8:3,	21:19; 22:22	TRANSCRIPT
16:24	25; 9:25;	THIS [38]	[6] 1:12;
TEST [2]	10:1; 16:10;	2:4, 6; 3:16,	3:25; 6:21;
5:15; 14:8	22:22	21; 4:8, 21,	15:25; 16:2;
TESTED [1]	THEMSELVE	22, 25; 5:3,	19:6
5:16	S [2] 6:3;	8; 6:7, 8,	TRANSCRIPT
TESTIFIED	9:5	10; 7:8, 25;	ION [1]
[12] 5:2;	THEN [5]	8:13, 14;	23:10
6:8, 24;	3:19; 4:13;	9:6; 11:8, 9,	TRANSCRIPT
7:11; 12:19;	10:15; 11:3;	22, 24;	S [1] 4:6
13:3, 6, 12;	22:9	12:9, 11;	TRANSFER
14:1; 16:6;	THERE [16]	14:12;	[2] 4:21;
20:12, 17	4:15; 5:22;	15:21, 24;	11:9
TESTIFY [2]	7:23; 9:23;	16:16, 22,	TRIAL [7]
7:5; 13:25	13:18; 14:2,	24; 17:3, 4,	9:15; 21:14,
TESTIFYING	9, 11;	12; 19:3, 7;	20, 25;
[2] 6:20;	16:18; 18:8,	21:1, 17, 20	22:1, 9, 23
7:18	10; 19:19,	THOSE [2]	TROUBLE [1]
TESTIMONY	22; 20:1,	8:17; 12:12	11:6
[26] 3:21;	13; 23:4	THOUGH [1]	TRUCK [8]
4:9, 18;	THERE'S	18:21	4:19; 10:5,
5:16; 6:11;	[10] 2:19;	THOUGHT	8, 11; 11:3;
7:1, 24; 8:5,	5:21; 8:9;	[1] 13:3	12:16; 13:8
9, 12; 10:6,	9:2; 11:18,	THOUGHTFU	TRUE [2]
13, 19;	19; 12:2, 3,	L [1] 4:5	13:22; 23:10
11:18, 19;	12; 22:7	THROUGH	TRULY [1]
12:2, 3, 19,	THESE [1]	[4] 8:3, 12;	15:23
21; 13:14,	20:21	12:20; 14:20	TRYING [4]
19, 21, 24;	THEY [32]	THURSDAY	6:19; 7:24;
15:19; 16:8;	4:12, 17, 19;	[4] 1:17;	12:16; 20:14
19:7	9:4, 18, 25;	2:1	TUESDAY [1]
THANK [4]	10:4, 8, 9,	TIME [7]	21:12
2:13; 8:22;	14, 17;	7:25; 8:25;	TYPE [1]
21:11; 23:6	11:2, 6;	9:20; 10:2,	21:1
THAT'S [20]	12:1; 16:6,	10; 12:18;	
3:7, 12, 13,	7, 9, 10;	21:14	<hr/>
14, 17; 5:2;	18:6, 7;	TIMELINE [1]	- U -
8:11; 10:12;	19:24; 20:2,	10:25	<hr/>
12:22; 13:5;	12, 14, 18;	TIMES [2]	UH-HUH [1]
14:23; 15:1,		15:24; 16:1	5:6

UNCHARGED
[1] 3:19
UNDER [1]
2:18
UNDERSTAN
D [5] 4:3;
10:7; 15:3,
16; 19:22
UNDERSTOO
D [1] 14:22
UNFORTUNA
TLY [2]
16:5; 20:11
UNLESS [2]
19:13; 22:13
UNOFFICIAL
[1] 5:8
UPON [1]
16:17
UPSET [1]
4:24

- V -

VACATE [1]
21:20
VACATED [2]
21:14, 22
VARIOUS [1]
2:17
VEGAS [2]
1:19; 2:1
VERBAL [3]
3:10; 4:20;
5:24
VERBALIZED
[1] 9:5
VERSION [2]
13:2, 23
VERSUS [2]
18:5; 20:5
VERY [6]
4:4; 14:24;
17:5, 11;
20:10; 22:6
VIABLE [1]
23:5
VILLANI [15]
1:21; 2:11;
19:1, 2, 5,

11; 21:4, 5,
11, 18;
22:16, 22,
25; 23:6
VISIBLE [1]
4:23

- W -

WAIVED [1]
21:24
WANT [7]
2:19, 21;
3:1; 14:15,
18; 15:7;
22:13
WANTED [2]
10:8; 18:3
WANTS [2]
15:20; 17:14
WASN'T [4]
6:12; 17:18;
20:22
WATCHED
[1] 17:3
WATER [1]
12:17
WAYS [1]
17:22
WE'LL [1]
21:9
WE'RE [1]
22:5
WE'VE [3]
9:12; 19:2,
6
WEAPON [8]
9:11, 15, 18,
19, 20, 24,
25; 11:20
WEIGH [3]
13:13, 15, 16
WELCOME
[2] 3:4;
23:7
WELL [3]
8:2, 10;
17:16
WENT [9]
4:13, 25;

5:14; 8:6;
11:22, 23;
12:1, 7;
18:20
WERE [16]
4:12; 5:3;
6:25; 8:13,
17; 9:18,
24; 11:25;
13:7, 18, 24;
19:21;
20:14, 20,
21; 22:3
WHAT'S [2]
11:24; 15:4
WHATEVER
[4] 4:25;
6:10; 7:12;
9:4
WHERE [9]
2:6; 3:21;
4:8; 6:25;
7:4, 11, 24;
23:4
WHEREAS
[1] 16:1
WHICH [1]
9:10
WHO'S [4]
2:10; 13:15;
22:13
WHOLE [1]
7:25
WHOSE [1]
7:21
WIDELY-KNO
WN [1]
17:12
WILDEVELD
[5] 1:23;
2:9; 21:19,
22; 22:8
WILDEVELD'
S [1] 2:8
WILL [3]
3:5; 4:25;
21:8
WINDOWS
[1] 6:10

WITNESS [4]
15:21; 16:9,
11; 20:15
WITNESSES
[5] 5:3;
13:24; 16:5;
20:12, 22
WOULD [5]
4:17; 9:16;
18:23;
19:12; 23:5
WRIT [6]
2:5, 18;
14:20; 16:3;
19:24; 21:13

- Y -

YOU'RE [5]
3:4; 4:4;
7:11; 10:22;
23:7
YOUR [13]
2:13, 14;
3:16; 7:15;
14:15, 20;
15:8; 18:24;
19:2; 21:11,
12, 24; 23:6

- 1 -

160,000 [1]
4:8
17TH [1]
25:22

- 2 -

2,300 [2]
5:2, 15
2004 [2]
4:14; 22:2
2010 [1]
15:8
2013 [1]
11:14
2014 [2]
1:21; 3:1

2045 [4]
8:2, 5, 11;
12:12
27TH [1] 9:5
28TH [1]
11:14

- 4 -

4,600 [1]
6:22
40-YEAR [1]
14:1

- 6 -

60-DAY [2]
9:6; 15:2

- A -

A-10-632338
-C [1] 1:7
A.M. [2]
1:22; 3:2
ABILITY [1]
18:15
ABLE [5]
3:18; 5:22;
13:21; 19:3;
24:15
ABOUT [15]
6:3; 7:1;
10:2; 11:7,
8, 11;
12:23;
13:15; 14:5;
18:2; 21:18;
22:15; 24:3;
25:21
ABSENCE [1]
22:10
ABSOLUTEL
Y [1] 16:15
ACCEPT [2]
23:22; 27:7
ACCURATE
[1] 27:13

ACKNOWLED
GING [1]
26:3
ACQUIRE [1]
14:19
ACRE [1]
6:22
ACRES [4]
4:8, 24; 5:2,
16
ACTUAL [1]
5:16
ADAMANT
[1] 20:10
ADDITION
[1] 4:17
ADDITIONAL
[7] 4:19, 22;
7:22; 8:13;
14:18;
19:11; 23:22
ADDRESS [2]
7:15; 26:5
ADHERE [1]
25:4
ADMITTED
[1] 25:4
ADVOCATE
[1] 9:18
AFFIDAVIT
[1] 11:6
AFFORD [1]
26:19
AFTER [3]
3:21; 4:9;
21:1
AGAIN [2]
9:22; 12:5
AGAINST [6]
15:10;
16:10, 11,
13; 19:12;
26:20
AGREE [2]
12:11; 25:12
AGREED [2]
10:16, 19
AGREEMENT
[19] 6:12,
25; 7:1, 8,

11, 17;
9:13; 10:1,
13, 14;
11:4, 21;
16:5; 17:20,
21; 19:1, 2;
20:15; 22:4
AGREEMENT
S [4] 8:10;
20:16, 21, 23
AHMED [2]
2:3; 3:7
ALERT [1]
12:21
ALERTED [1]
19:19
ALLOW [5]
3:25; 12:14;
22:7; 25:1,
6
ALLOWED
[1] 16:15
ALLOWING
[1] 25:11
ALLOWS [1]
16:2
ALMOST [1]
23:4
ALREADY [1]
17:5
ALSO [6]
3:9, 15; 6:2;
17:2; 18:16;
20:24
AMENDMENT
[1] 10:21
AMOUNT [1]
25:1
ANOTHER
[2] 11:19;
23:5
ANSWER [9]
10:8, 11, 18;
11:5, 12, 19,
24; 13:2;
14:3
ANTICIPATE
D [1] 14:15
ANYONE [1]
19:9

ANYTHING
[3] 7:10;
10:4; 20:3
ANYWAY [1]
23:4
APPEARANC
ES [1] 2:1
APPEARING
[1] 3:7
APPLICATIO
N [1] 17:6
APPLIES [1]
12:3
APPRECIATE
[1] 26:18
APPROVAL
[1] 22:8
APRIL [1]
12:9
ARGUE [1]
8:19
ARGUMENT
[2] 9:25;
18:23
ARISES [2]
18:6, 13
AROSE [2]
21:1, 3
AROUND [1]
24:14
ASKED [1]
21:11
ASKING [1]
26:13
ASPECT [1]
24:18
ASSIGN [1]
26:22
ASSIGNED
[1] 22:4
ASSIGNS [2]
12:4, 7
ASSOCIATE
[1] 26:1
ATTACH [2]
10:15; 11:1
ATTACHED
[3] 10:21;
27:4, 5

ATTACHES
 [1] 16:13
ATTACHMENT [1] 8:20
ATTEMPT [1] 10:23
ATTENTION
 [2] 23:7;
 24:25
ATTEST [1] 27:12
ATTORNEY'S
 [2] 24:24;
 25:10
ATTORNEYS
 [1] 27:7
AUGMENT
 [1] 23:21
AUTHORITY
 [2] 6:14;
 18:20
AWARD [1] 25:10
AWARE [2] 3:17; 9:12
AWAY [2] 12:9; 25:14

- B -

BACK [4] 9:7; 22:7;
 26:4, 8
BACKGROUND
 [1] 4:1
BASHFUL [1] 27:2
BASIN [3] 6:19, 21, 23
BASINS [1] 6:19
BASIS [1] 17:16
BEAR [1] 20:5
BECAME [1] 10:23
BECAUSE
 [10] 3:17;
 7:13; 8:8,

16; 10:24;
 18:2, 18;
 19:19; 22:7;
 25:25
BEEN [15] 3:18; 5:16,
 17; 8:23,
 24; 9:10;
 20:4, 10, 23;
 21:8, 21;
 24:22; 25:4
BEFORE [6] 1:18; 14:6;
 15:11;
 20:25; 23:6,
 16
BEHALF [3] 3:7, 12, 15
BEING [5] 5:22; 6:18,
 21; 8:11;
 22:9
BELIEVE [4] 7:4; 8:14;
 12:9; 13:1
BENEFIT [1] 9:23
BETWEEN
 [8] 5:20;
 7:17; 8:5;
 15:18;
 19:22;
 20:17, 22;
 21:3
BINDING [1] 12:7
BOAT [1] 19:3
BOOT [1] 21:2
BOTH [1] 25:9
BREACH [2] 24:21; 25:15
BRIEFING
 [1] 9:15
BRIEFLY [1] 10:20
BRING [2] 5:22; 9:13

BRINGING
 [2] 24:24;
 25:2
BRINGS [1] 20:5
BROAD [1] 8:7
BROKER [2] 8:10; 9:25
BROKER'S
 [4] 7:1, 8,
 11; 16:5
BROKERS
 [1] 8:3
BROTHERS
 [1] 19:21
BRUSH [1] 8:7
BUILDER [1] 14:22
BUILDERS
 [4] 14:15,
 16, 17, 20
BURAK [2] 2:3; 3:7
BURIED [1] 13:21
BUYERS [1] 12:21
BUYS [1] 11:21

- C -

CALL [3] 6:10; 11:22;
 26:10
CALLED [3] 5:7; 25:22;
 26:3
CALLS [1] 26:6
CAME [2] 20:11; 21:14
CAN'T [1] 25:16
CARANO [1] 3:12
CASE [10] 1:7; 8:15,

16, 18;
 15:8; 20:24;
 21:10, 17;
 23:17
CERTAIN [2] 5:9; 14:7
CHARGE [1] 19:21
CITY [1] 9:23
CLARK [1] 1:2
CLEANS [1] 23:12
CLEAR [1] 17:23
CLEARED [1] 21:19
CLERK [2] 7:7; 23:12
CLIENT [4] 13:9; 16:21;
 22:1; 25:14
CLIENTS [6] 9:24; 10:22;
 12:10; 22:2;
 26:19, 23
CLOUD [8] 10:1; 11:6,
 7; 14:9, 25;
 15:4; 23:9;
 26:19
CLUBHOUSE
 [1] 5:9
COME [6] 9:7; 14:15,
 17, 24;
 22:7; 26:4
COMES [1] 14:9
COMFORTABLE [1] 25:11
COMING [1] 17:19
COMMENTS
 [1] 25:20
COMMERCIAL [3] 5:8, 10
COMMISSION [15] 7:19;

8:3, 6, 10,
13; 10:12,
13; 11:4,
18, 23;
13:8; 16:5;
19:2; 22:3;
26:24
COMMISSIO
NS [3] 7:20;
13:25; 19:12
COMPANIES
[1] 10:3
COMPANY
[7] 4:4, 6, 7,
17, 23;
14:8, 9
COMPLAINT
[1] 21:4
CONCERNIN
G [2] 14:7;
21:22
CONCLUSIO
N [1] 9:1
CONCURREN
T [1] 24:1
CONFIDENTI
AL [9]
10:17, 22,
23, 24;
12:22;
18:17; 20:4;
21:6; 24:22
CONFIDENTI
ALITY [6]
20:21, 23;
21:7, 20, 22;
26:12
CONSEQUEN
CE [3]
14:21; 24:6;
25:3
CONSIDERA
TION [1]
24:20
CONSTRUCT
[2] 14:17,
18
CONSTRUCT
ION [1] 5:7

CONTACTED
[1] 26:14
CONTEXT [2]
5:19; 25:9
CONTRACT
[6] 4:13, 14,
15; 8:12;
12:6, 11
CONTRACTS
[3] 5:12;
6:4; 7:14
CONTROL
[2] 14:12;
19:20
CONTROVER
SY [2] 20:6;
25:8
COPY [2]
14:6; 20:2
CORPORATI
ON [1] 3:23
CORRECT
[3] 7:5;
18:10; 25:19
COSTS [1]
25:7
COULD [4]
3:16; 8:19;
11:2; 27:4
COULDN'T
[2] 21:25;
23:8
COUNSEL
[12] 3:10;
10:9; 12:12;
15:3; 18:23;
21:10, 23;
22:24;
23:19;
24:23;
25:13; 26:2
COUNSEL'S
[1] 25:20
COUNTRY
[1] 26:1
COUNTY [8]
1:2; 6:4;
7:2; 12:20;
15:13; 17:3,
6; 18:21

COURSE [6]
4:6; 5:3, 5,
9, 13, 14
COURT [84]
1:1, 19; 3:5,
10, 16, 25;
4:2, 24; 5:3,
15, 19, 23;
6:7, 18, 25;
7:6, 25;
8:14; 9:1,
14, 16, 18,
21; 10:10,
15; 11:7,
25; 12:2, 5,
14, 17;
13:2, 13, 19;
14:2; 15:11,
21, 23;
16:2, 3, 16,
19, 20, 23,
24; 17:4, 7,
13, 17;
18:2, 6, 9,
11, 14, 18;
19:24; 20:3,
11, 18;
21:14; 22:5,
13, 20, 22,
24; 23:3, 4,
25; 24:4, 6,
10, 12, 13,
14, 17, 19;
25:1, 6, 14;
26:17, 18;
27:1, 6, 10
COURT'S [2]
14:3; 24:25
COURT-ORD
ERED [1]
22:8
COURTESY
[1] 19:8
COURTROO
M [1] 21:19
COVENANT
[1] 7:3
COYOTE [8]
3:18, 24;
4:4; 13:16;

14:7, 11, 14;
19:23
CRAFT [2]
22:11; 24:12
CRAFTED [1]
22:10
CREATE [3]
5:21; 6:1, 5
CREATED [1]
6:14
CURRENTLY
[1] 5:14

- D -

DAMPENING
[1] 12:24
DAMPER [1]
10:6
DAYS [1]
9:14
DEAD [1]
13:20
DEAL [1]
26:11
DEALING [3]
13:17, 18;
20:16
DECISION
[1] 3:22
DEDICATE
[1] 6:17
DEEDS [1]
11:3
DEFENDANT
[2] 1:10;
2:5
DEFENSE [1]
10:20
DEFER [1]
27:6
DELIVERED
[1] 10:22
DENTON [3]
20:25; 21:6
DESSCRIPTIO
N [2] 20:8;
27:5
DETACHED
[1] 11:21

DETAILED	23; 26:22;	EFFECTIVE	EVEN [3]
[1] 25:25	27:4	[1] 23:10	6:25; 7:1,
DEVELOP [1]	DOES [5]	EFFORT [1]	14
4:11	11:5; 13:4;	26:14	EVENTUALL
DEVELOPED	15:17;	EIGHTH [1]	Y [1] 17:13
[2] 3:24;	18:20; 19:12	12:18	EVER [1]
9:23	DOESN'T [3]	EITHER [1]	9:22
DEVELOPER	10:6; 12:23;	15:3	EVERY [2]
[2] 4:11, 12	19:14	ELECTRICAL	21:16, 17
DEVELOPIN	DOING [9]	[1] 6:3	EVERYBODY
G [1] 14:14	5:7; 8:23;	ELSE [1]	[1] 9:24
DEVELOPME	9:10; 13:15;	19:9	EVERYONE
NT [3] 5:18;	16:23, 24;	EMAIL [1]	[1] 3:5
6:21, 24	20:15; 24:2	26:2	EVERYTHIN
DEVIL'S [1]	DONE [1]	EMPLOYED	G [2] 5:21;
9:18	8:15	[1] 20:21	6:2
DIDN'T [2]	DOWN [1]	ENGINEER	EVIDENCE
14:5; 26:5	4:24	[1] 6:7	[1] 11:3
DILIGENCE	DRAFT [1]	ENOUGH [3]	EXAMPLE [1]
[1] 15:2	23:19	22:15; 23:7;	16:8
DIRECTLY	DUCK [2]	25:8	EXCEPT [1]
[1] 11:5	9:21; 22:6	ENTER [1]	10:4
DISAGREE	DURING [3]	22:25	EXCEPTION
[3] 16:11;	4:6; 10:25;	ENTERED [4]	[1] 17:21
18:5; 20:9	15:9	4:13, 14;	EXERCISED
DISCLOSED	DUTIES [1]	6:11; 15:11	[1] 4:21
[2] 10:17;	12:10	ENTERING	EXHIBIT [1]
20:5		[1] 6:4	22:1
DISCLOSUR		ENTIRE [2]	EXIST [3]
E [1] 10:12		3:19; 10:6	7:8; 19:12;
DISPUTE [2]		ENTITLED	22:17
21:1, 3	EACH [2]	[3] 8:6;	EXISTING [1]
DISTANT [1]	21:16, 17	23:17; 26:24	8:18
7:12	EARLEY [6]	ENTITLEMEN	EXPIRATION
DISTRESSED	1:18; 3:19;	T [2] 4:10;	[1] 9:14
[1] 22:15	21:14; 22:7;	6:5	EXPIRE [1]
DISTRICT [9]	23:6; 25:11	EQUITIES [1]	8:13
1:1, 19;	EARLEY'S	25:9	EXPIRES [3]
6:11, 12, 15,	[1] 8:16	EQUIVALENT	8:1, 12;
16; 12:18;	EARLIER [1]	[1] 15:23	12:12
16:24; 17:25	10:16	ERROR [2]	EXPLICIT [1]
DOCUMENT	EARLY [1]	11:1; 26:15	25:25
[8] 10:6, 20;	16:3	ESSENCE [1]	EXPUNGE [5]
17:9; 18:17;	EARN [1]	5:20	10:19;
22:3, 15;	8:3	ESSENTIAL	16:21; 17:4,
24:22; 26:12	EASIEST [1]	Y [1] 19:13	9; 26:21
DOCUMENTS	22:5	ESTATE [5]	EXPUNGED
[11] 19:3, 5,	EFFECT [3]	3:8; 8:20;	[1] 17:6
10; 21:5, 7,	12:24;	13:18; 15:6;	EXPUNGEME
11, 15, 18,	17:19, 20	19:9	NT [6]

- E -

17:10, 21;
20:12;
22:14, 18;
23:18
EXPUNGING
[1] 18:15
EXTENT [2]
18:14; 24:23

- F -

FACT [5]
8:5, 23;
18:17; 26:3,
9
FAILED [1]
13:14
FAILURE [2]
25:3, 15
FAITH [1]
17:16
FALSE [1]
22:1
FASHION [2]
22:8; 27:2
FASHIONING
[1] 9:10
FAXING [1]
8:24
FEEL [2]
25:8, 10
FEES [3]
24:24; 25:7;
27:7
FEET [1]
6:22
FILE [8]
3:19; 14:6;
17:9; 18:7;
19:2, 5;
23:16; 25:6
FILED [12]
15:8, 10, 12;
17:2, 5;
18:14; 21:4,
8, 17; 26:6,
7
FILING [2]
17:19; 21:16

FINAL [1]
9:11
FINALLY [1]
26:14
FINANCIAL
[1] 5:11
FIND [1]
25:20
FINDING [1]
25:14
FINISHED [1]
23:4
FINITE [1]
7:23
FIRM [1]
12:10
FIRM'S [1]
10:20
FIRST [9]
4:13, 14, 15,
25; 5:1;
15:21;
19:15; 21:4;
25:21
FORM [1]
9:11
FORMED [1]
4:4
FORMULATE
[1] 8:17
FORWARD
[1] 11:15
FOUGHT [1]
16:9
FOUND [1]
13:14
FOUNDATIO
N [1] 6:23
FOUR [3]
13:13; 18:24
FRAME [1]
9:7
FROM [26]
3:17; 4:17,
21, 22;
5:13; 6:2,
18, 21;
7:23; 11:15;
14:4, 5;
15:5, 16;

18:5, 11, 17,
22; 21:2,
12, 18;
22:1; 23:14;
24:12; 26:10
FULL [3]
7:19; 22:25;
27:13
FULLY [1]
14:14
FUNCTIONA
L [1] 15:23
FURTHER [2]
9:15; 12:13
FUTURE [4]
4:19; 7:9,
12; 9:8

- G -

GAME [1]
13:23
GAVE [2]
9:2; 21:14
GENERAL [1]
6:11
GIVE [5]
4:1; 5:19;
20:13; 22:8;
25:15
GIVEN [2]
21:21; 22:1
GIVING [1]
21:12
GOES [1]
14:22
GOING [10]
12:21, 22;
13:10;
14:23, 24;
15:7; 17:4;
22:17; 23:5;
25:19
GOLDEN [1]
9:22
GOLF [6]
5:3, 5, 9, 13,
14
GOLIATH [1]
26:20

GONNA [8]
4:16; 9:22,
25; 12:14;
15:1; 16:7;
26:12; 27:6
GOOD [4]
3:5, 11, 14;
17:16
GOOSE [1]
9:22
GRID [1] 6:5
GUESS [1]
22:10
GUEST [5]
14:15, 16,
17, 19, 22
GUYS [1]
11:25

- H -

HANDLING
[1] 23:17
HAPPEN [3]
15:1; 17:7;
18:20
HAPPENED
[1] 19:18
HAPPENS [3]
14:10, 22;
15:5
HAPPY [1]
11:17
HARD [1]
16:9
HARVEY [2]
4:4; 20:5
HAVEN'T [1]
3:18
HAVING [2]
3:21; 23:1
HE'S [1]
18:24
HEALTHY [1]
13:19
HEARD [1]
19:16
HEARING [1]
23:5

HELD [2]
1:21; 6:10
HELP [1]
4:11
HERE [9]
3:12; 11:6;
15:7; 16:25;
24:17, 21;
25:13; 26:2
HERE'S [3]
11:12; 12:1;
17:8
HERSELF [1]
22:11
HISTORICAL
[1] 25:9
HISTORY [1]
20:13
HOMES [7]
1:8; 3:13,
15; 4:12;
13:25;
14:18; 26:25
HONOR [16]
3:6, 11, 14;
7:5, 16;
8:22; 9:17;
12:10;
15:25; 18:4;
22:23;
24:11;
25:18;
26:16; 27:3,
9
HONORABLE
[1] 1:18
HOPEFULLY
[1] 9:13
HOUSING [1]
11:22
HUGE [2]
10:6; 15:17

- I -

I'VE [3]
8:23, 24;
19:16
IMAGINE [1]
19:24

IMMEDIATE
[2] 22:18;
23:18
IMMEDIATELY
[1] 24:16
IMPACT [2]
15:17; 22:16
IMPACTED
[2] 14:11,
12
IMPORTANT
[1] 12:4
IMPORTED
[1] 6:18
IMPROVEMENT
[1] 6:11
IMPROVEMENTS [3] 5:8,
10
INCLINED [1]
8:16
INCLUDE [1]
23:10
INCLUDED
[1] 5:9
INCLUDING
[1] 9:24
INCUMBENT
[1] 12:9
INCUR [1]
24:24
INCURRED
[1] 25:2
INDICATED
[2] 7:18;
13:22
INFORMATION
[1] 20:20
INFORMED
[2] 13:15;
25:25
INQUIRE [1]
23:21
INTEREST
[2] 3:22;
13:9
INTERESTED
[2] 11:9;
12:23

INTERLOCUTORY [1]
23:14
INTERRUPT
[3] 12:15;
22:24; 23:3
INTO [6]
4:13, 14;
5:11; 6:4,
11; 7:11
INVESTING
[1] 11:9
INVESTMENT
S [1] 4:5
INVOLVEMENT
[1] 12:13
ISSUE [8]
7:12, 13, 15;
10:10;
13:11;
18:15;
22:25; 24:25
ISSUED [2]
9:2, 3
ISSUES [2]
3:21; 27:5
IT'S [11]
3:19; 4:8;
7:20; 11:20;
12:9; 13:25;
14:10;
18:13;
19:13, 17;
24:14
ITSELF [1]
19:13

- J -

JAMES [49]
1:5; 2:2;
3:6, 7, 8, 9;
9:4, 17, 20;
10:8, 18;
11:12; 12:1,
3, 6, 16;
13:1, 4, 20;
15:14, 20,
25; 16:6,
13, 18, 22;

17:1, 5, 8,
15; 18:1;
19:15, 18,
25; 20:7;
21:25;
22:12, 19,
21; 23:2,
20; 24:1, 5,
8; 25:12,
23; 26:7,
16; 27:3
JIMMERSON
[56] 2:2;
3:6, 7; 9:4,
12, 16, 17,
20; 10:8,
18; 11:12;
12:1, 3, 6,
16; 13:1, 4,
20; 14:5;
15:14, 20,
25; 16:6,
13, 18, 20,
22; 17:1, 5,
8, 15; 18:1;
19:8, 15, 18,
25; 20:7;
21:25;
22:12, 19,
21; 23:2,
20; 24:1, 5,
8, 13;
25:12, 23;
26:1, 4, 7,
10, 16;
27:2, 3
JIMMERSON'S [1] 25:3
JOINTLY [1]
14:13
JUDGE [20]
1:19; 3:19;
8:16; 12:17;
15:14; 18:1;
19:19; 20:7,
25; 21:6,
14, 19;
22:7, 19;
23:6, 16, 20;
25:11

JUDGMENT

[3] 16:8, 15;
17:24

JUDICIAL [3]

12:18;
16:24; 17:25

JULY [2]

1:21; 3:1

JUNE [4]

9:3, 4, 5;
25:21

JURISDICTION

[7]

16:25; 18:3,
12, 18;

21:1, 21;

23:11

JURISDICTIONAL

[1]

18:5

- K -

KEEP [2]

12:15; 13:14

KEEPS [1]

18:23

KERRY [1]

1:18

KIND [11]

5:19; 6:13;

7:14; 8:24;

9:8, 19;

10:1, 5;

15:6; 16:3;

18:24

KNEW [2]

20:15; 24:23

KNOW [5]

3:17; 7:12;

9:19; 24:1

KNOWING

[1] 12:23

KNOWN [1]

20:19

KNOWS [1]

10:3

- L -

LAND [19]

4:7, 8, 16,

21, 22; 7:3,

12, 13, 19;

11:15, 22;

14:11, 12,

13, 16, 23;

15:17; 20:17

LANDS [3]

4:19; 8:8;

14:19

LANGUAGE

[1] 10:13

LASH [1]

11:14

LAST [3]

18:24;

24:18; 26:19

LATCHES [1]

7:9

LATE [1]

4:3

LATIN [1]

18:9

LAWSUIT [1]

12:21

LEARNED [2]

14:4; 25:21

LEAST [1]

9:22

LEAVE [2]

26:13; 27:8

LEFT [3]

3:21; 25:23,

24

LEGAL [3]

10:2; 20:8;

27:5

LENGTHY [1]

3:19

LET'S [1]

26:11

LETTER [3]

10:12, 15;

17:10

LIABILITY

[1] 3:23

LIFESPAN

[1] 8:3

LIFTED [1]

16:3

LIKE [5]

11:10;

13:22;

23:19; 25:7;

26:20

LIMITED [1]

3:23

LINCOLN [7]

6:4; 7:2;

12:20;

15:12; 17:2,

6; 18:21

LISTEN [1]

20:1

LITIGATE [2]

21:9; 26:20

LITIGATION

[7] 4:6;

10:25; 18:7,

8, 12, 19;

19:22

LITTLE [4]

3:16; 4:1;

16:16; 20:13

LIVE [2]

19:19; 24:3

LOAD [1]

19:3

LOGICAL [1]

22:13

LONG-TERM

[2] 20:16;

24:6

LOOKS [1]

13:19

LOREE [3]

1:25; 27:17

LOST [1]

19:20

LOTS [1]

5:16

LUNDVALL

[35] 2:5;

3:11, 12, 25;

4:3; 5:1, 5,

17, 25; 6:9,

20; 7:5, 16;

8:1, 22; 9:5;

13:12; 14:2,

3; 15:16;

16:10;

17:12; 18:4,

10; 19:17;

20:9, 19;

22:23; 23:7;

24:11, 18;

25:18, 24;

26:9; 27:9

LUNDVALL'S

[1] 23:23

- M -

MADE [3]

3:19, 21;

26:15

MAKE [4]

10:23; 21:5;

26:11, 25

MAKES [1]

21:23

MAKING [1]

19:10

MANAGED

[1] 6:15

MANIFEST

[1] 21:21

MANY [1]

4:24

MARKET [3]

11:8; 20:20;

22:16

MARKETABILITY

[1] 12:24

MARKETING

[1] 10:7

MASSIVE [1]

19:22

MATERIALS

[1] 7:7

MATTER [5]

8:23; 18:13;

19:5, 10;

21:24

MAYBE [1]
11:9
MCDONALD
[1] 3:12
MEAN [2]
23:3; 25:13
MEANS [1]
18:9
MEMORANDUM [3]
12:22; 16:4;
17:20
MEMORANDUMS [1]
20:4
MESSAGE
[3] 25:23,
24, 25
METHOD [1]
8:17
MIGHT [2]
9:8; 22:17
MILLION [6]
4:16, 20;
6:3; 7:18,
20
MOMENT [2]
9:19; 13:9
MONEY [1]
13:10
MONITOR [1]
12:18
MONTHS [1]
13:13
MORE [8]
8:3, 4, 5;
11:17; 13:6;
22:1; 25:11;
26:23
MOREOVER
[1] 18:22
MORNING [3]
3:5, 11, 14
MOST [1]
23:9
MOTION [5]
23:16;
24:19; 25:2,
6; 27:8

MUCH [1]
25:11
MURRAY [3]
1:25; 27:17

- N -

NECESSARY
[1] 21:8
NEED [6]
10:4; 13:21;
17:15, 16;
18:20, 24
NEGOTIATE
[1] 15:3
NEGOTIATED [1] 20:14
NEGOTIATIONS [1] 14:7
NEVADA [6]
1:2, 8; 3:1,
13; 6:14;
19:19
NEVER [2]
4:21; 24:20
NEXT [3]
11:9, 19;
26:24
NORMALLY
[1] 27:1
NORTH [1]
4:8
NOTHING [1]
20:1
NOTICE [9]
8:24; 12:19;
13:5; 17:10;
18:7, 24, 25;
22:9; 25:16
NOTIFICATION
ON [3] 9:8;
13:24; 17:16
NOTIFIED [1]
23:24
NOTIFYING
[1] 8:17
NOTWITHSTANDING [1]
22:16

NUMBER [1]
10:21

- O -

OBLIGATION
[2] 13:22;
16:14
OBTAINED
[1] 21:15
OBVIOUSLY
[1] 13:6
OCTOBER
[1] 11:14
ODDS [1]
19:21
OFFENSIVE
[1] 25:20
OFFER [1]
23:23
OFFERED [1]
17:11
OFFERING
[1] 19:7
OFFICE [2]
23:13; 25:22
OFFICIAL [1]
7:2
OFFSITES
[2] 5:23, 25
OKAY [1]
22:22
ONGOING [1]
14:7
ONLY [3]
14:10;
18:12; 20:24
OPERATED
[1] 18:25
OPERATING
[1] 6:13
OPPORTUNITY [2] 4:18;
8:2
OPPOSING
[6] 10:9;
12:12;
13:22;
21:10, 22;
25:13

OPPOSITION
[1] 26:21
OPTION [12]
4:18, 25;
5:1; 7:22,
23; 8:1, 4,
12; 11:16;
13:6; 19:1;
23:23
OPTIONS [1]
4:22
ORDER [21]
9:1, 2, 5;
10:25;
15:11;
16:20;
18:15, 16;
21:13, 15;
22:17, 25;
23:10, 14,
18, 21;
24:9, 12, 21;
25:4
ORDER-SHORTENING [1]
20:12
ORDERING
[1] 23:12
ORIGINAL
[5] 1:8;
6:20, 23;
7:17; 20:14
ORIGINALLY
[3] 3:23;
5:6; 15:8
ORIGINATE
[1] 6:1
ORIGINATED
[2] 6:21, 22
OTHER [5]
5:9; 6:19;
8:2, 19;
22:16
OTHERS [1]
20:20
OVER [7]
13:13;
14:12, 13;
16:25;

18:12, 19;
21:1

OVERKILL

[1] 12:20

OWES [1]

16:14

OWNED [3]

4:7, 23;

19:17

OWNERSHIP

[1] 13:9

- P -

PAGE [1]

11:19

PAID [3]

7:19, 21;

13:25

PAINTING

[1] 8:7

PAPERS [2]

20:1; 25:5

PARDEE [26]

1:8; 3:13,

15, 22;

4:12, 13;

5:20; 6:2;

7:18; 11:20;

13:5, 6, 14;

14:10, 18,

19; 16:14;

19:14, 22;

20:14; 21:3;

22:2; 25:15,

16; 26:20

PARDEE'S

[2] 11:13;

12:7

PARDON [1]

22:20

PART [7]

9:23; 10:24;

11:13;

17:22;

18:16; 19:7;

22:3

PARTICULAR

LY [1] 15:18

PARTIES [5]

6:10; 14:13;

15:18, 19;

19:9

PASSED [2]

12:8; 25:14

PENDENS

[11] 15:10,

12, 15, 21,

24; 16:2;

18:6, 13, 15;

26:13, 17

PEOPLE [3]

16:2, 25;

24:3

PERFECTED

[1] 4:10

PERIOD [2]

7:23; 22:2

PERPETUITY

[2] 7:8, 13

PERSON [1]

11:8

PERSONA

[1] 16:25

PERSONALL

Y [1] 16:20

PERSPECTIV

E [3] 15:6,

17; 18:22

PETITION [1]

17:2

PHASE [1]

11:9

PHASES [1]

7:9

PLACE [1]

11:2

PLAINTIFF

[2] 1:6; 2:2

PLAINTIFFS

[3] 8:18;

12:8; 13:14

PLANNED [2]

5:4, 5

PLAY [2]

9:18; 26:11

PLAYING [1]

13:23

PLEASE [1]

24:7

POINT [7]

4:9; 8:11;

12:13; 15:9;

17:8; 25:16,

18

POSSIBLE

[1] 23:10

POSSIBLY

[1] 23:8

POTENTIAL

[1] 12:21

POWER [3]

6:5; 18:19

PRACTICAL

[5] 10:1;

14:4, 21;

15:16; 26:18

PRELIMINAR

Y [1] 17:18

PREMISES

[2] 5:24;

6:1

PRESENT [1]

3:9

PRESIDENT

[1] 11:14

PRETTY [2]

13:19; 23:6

PRICE [1]

20:17

PRICES [1]

20:17

PROBLEMS

[1] 5:12

PROCEEDED

[2] 26:21;

27:1

PROCEEDIN

GS [2] 1:16;

27:13

PRODUCTIO

N [2] 11:22;

26:25

PROJECT [1]

14:14

PROPERTY

[18] 4:11;

7:23; 8:4, 5,

19; 10:7;

11:4, 16;

12:25; 13:7;

15:10;

16:10, 11;

19:4, 13, 14;

23:24

PROTECTIN

G [2] 21:13,

20

PROTECTIVE

[5] 10:24;

21:13, 15;

24:21; 25:4

PROVIDE [1]

11:5

PROVISION

[4] 8:25;

13:5; 23:22;

26:23

PROVISIONS

[2] 22:9;

23:11

PUBLIC [7]

11:3; 18:18;

19:3, 5, 10;

21:11, 24

PUBLICLY

[1] 20:20

PURCHASE

[7] 4:18, 22;

7:22; 8:4, 5;

11:16; 26:24

PURCHASED

[3] 5:13;

7:18; 8:9

PURSUANT

[1] 8:9

PUTTING [1]

6:3

- Q -

QUESTION

[8] 7:6;

10:11; 11:5,

13; 13:3;

14:4; 16:19;

17:1

QUICKLY [1]
20:11

- R -

RATHER [2]
9:14; 22:25
READ [1]
3:18
READING [1]
7:7
REAL [6]
8:20; 15:5;
16:11; 19:13
REALLY [1]
15:6
REASON [1]
13:11
REASONABLE [2] 12:19;
22:9
REASONABLE
Y [1] 13:15
RECEIVE [1]
12:19
RECONSIDERATION [1]
23:16
RECORD [11]
11:3; 12:20;
16:8, 15;
18:18; 19:6,
11; 21:12,
24; 25:19
RECORDATION
ON [1]
17:19
RECORDED
[5] 7:1;
10:5; 16:4;
17:11; 22:15
RECORDER'S
S [1] 23:13
RECORDS
[1] 7:2
REFERRED
[1] 4:5
RELATES [2]
11:14; 13:24

REMAINING
[2] 5:15;
12:11
REMEDiate
[1] 26:15
REMEDY [1]
16:4
REMOVAL
[1] 23:18
REMOVE [2]
15:4; 23:13
REMOVED
[2] 15:4;
18:17
RENEGOTIATED [1] 5:12
RENO [1]
3:17
REPEATEDLY [2] 4:5;
21:6
REPLY [1]
20:1
REPORT [2]
17:18, 22
REPORTED
[1] 1:25
REPORTER'S
[1] 1:14
REQUEST [2]
18:16; 21:5
REQUIRED
[2] 6:16;
9:6
REQUIREMENTS [1] 9:8
REQUIRES
[1] 16:24
RESIDENTIAL [1] 13:7
RESPECT [2]
8:21; 21:20
RESPECTED
[2] 20:24;
21:6
RESPOND
[1] 10:20
RESPONSIBLE [1] 5:6

RETURN [2]
26:6, 10
REVIEW [1]
24:14
REVISITED
[1] 23:15
RIGHT [10]
7:20, 25;
8:12; 16:7;
18:9; 19:11;
20:18;
22:12;
25:17; 27:2
RIGHTS [3]
6:8, 9, 17
RORY [2]
2:6; 3:14
ROUND [2]
13:12
RULING [2]
24:4; 27:7
RULINGS [1]
3:20
RUNNING [1]
5:11

- S -

SAID [2]
4:15; 22:21
SALE [1]
23:23
SALES [2]
9:25; 23:7
SAME [3]
8:3; 22:4;
23:24
SAYING [4]
19:25; 23:2,
8; 24:7
SAYS [3]
14:23;
17:10; 21:12
SCOPE [1]
22:25
SEAL [2]
21:8, 17
SEARCH [2]
14:8, 24

SEARCHING
[1] 4:10
SECURE [1]
19:4
SECURED [1]
4:20
SECURES [1]
19:11
SEEK [1]
20:12
SEENO [2]
19:20; 20:5
SEENOS [1]
21:2
SELL [1]
14:16
SEND [3]
14:5; 19:8;
24:13
SENIOR [1]
23:15
SENSITIVE
[1] 13:11
SENT [1]
26:2
SEPARATE
[1] 6:14
SEPTEMBER
[1] 22:2
SERVE [1]
20:2
SEVEN [1]
11:3
SEVENTH [2]
16:24; 17:24
SEVERAL [2]
3:20; 10:16
SHORT [1]
16:16
SHOT [1]
16:3
SHOULD [3]
10:17;
24:20; 25:12
SIDES [1]
25:9
SIGNATURE
[1] 24:15
SIGNED [1]
10:25

SIGNING [1]	14:8, 11, 14;	SURREPTITI	19:15;
25:10	19:23	OUSLY [1]	20:10;
SIMPLY [2]	STAND [1]	23:8	21:14; 26:6,
10:12; 17:9	21:19		13
SIMULTANE	STANDPOIN	<hr/>	THEIR [8]
OUSLY [1]	T [3] 14:4;	<hr/>	8:10, 12, 20;
22:14	18:5, 11		14:24;
SINGLE-FAM	STARTED [1]	TABLE [1]	19:11; 20:14
ILY [6]	5:11	26:2	THEM [7]
11:15, 17,	STATE [2]	TAGGING [1]	7:19, 21;
21; 13:7,	6:7; 24:3	18:23	14:15, 18;
25; 26:25	STATING [1]	TAINT [1]	21:23;
SITTING [2]	26:18	22:17	22:11; 23:13
12:17; 26:2	STEEPED [1]	TAKE [2]	THEMSELVE
SITUS [1]	25:8	4:24; 26:12	S [2] 20:17,
18:3	STILL [2]	TAKEDOWN	22
SOLVE [1]	6:9; 8:14	[1] 8:18	THEN [19]
10:10	STIPULATIO	TAKES [1]	4:14; 5:13;
SOME [12]	N [1] 22:10	21:23	6:1, 5, 17;
5:12, 17, 19;	STRIKE [1]	TAKING [1]	8:9, 12; 9:7,
7:14; 8:17;	20:17	4:18	13; 14:17;
10:5; 14:23;	STUFF [1]	TALKED [1]	15:2, 12;
17:15, 16;	25:7	21:18	18:12;
18:24;	SUBDIVIDED	TALKING [8]	21:22, 23;
24:17; 25:10	[1] 5:16	4:8; 7:1;	24:15; 25:1,
SOMEBODY	SUBDIVISIO	10:2; 11:7,	3; 26:15
[2] 13:21;	N [1] 7:10	8; 18:2;	THERE [21]
23:15	SUBJECT [1]	24:3	5:17, 18, 21,
SOMETHING	11:4	TELL [2]	22; 6:6;
[4] 11:10;	SUBMIT [2]	3:16; 8:24	9:23; 10:7,
12:20; 15:4;	9:12; 25:1	TERM [1]	13; 12:12;
16:23	SUBSTATIO	26:17	13:23, 24;
SOON [2]	NS [1] 6:3	TERMINUS	14:6, 15;
10:5; 23:6	SUBSTITUTE	[2] 7:10, 14	15:9; 20:3,
SOPHISTICA	[1] 11:2	TERMS [2]	9; 21:2, 5,
TED [1]	SUCCESSOR	11:21; 26:18	13, 16; 24:7
15:19	[3] 3:22;	TESTIMONY	THERE'S
SOUNDS [1]	13:5; 26:22	[1] 11:13	[10] 3:20;
22:13	SUCCESSOR	THAN [3]	7:13; 8:8;
SOUTHERN	S [2] 12:4, 7	9:14; 11:17;	10:4; 11:6;
[1] 6:13	SUGGEST [3]	22:25	20:1; 23:5,
SPEAK [1]	13:8; 16:7;	THANK [4]	6; 24:18;
17:23	23:11	23:20;	25:15
SPECIFIC [2]	SUGGESTIO	24:10; 27:9,	THEREFORE
8:8, 9	NS [1] 8:21	10	[2] 20:21;
SPENT [1]	SUPPOSE [1]	THAT'S [13]	24:25
6:2	23:14	7:5; 10:19;	THESE [7]
SPRINGS [8]	SURE [1]	12:4; 15:5,	14:16, 17,
3:18, 24;	23:25	6, 22;	19; 20:3;
4:4; 13:16;		17:11;	
		18:10;	

21:5, 15;
26:22
THEY [28]
5:20, 21, 23,
25; 6:1, 10,
11, 14; 8:6,
10, 19;
10:3, 4, 5;
11:10;
13:15;
14:13; 15:2;
19:21;
20:15, 19,
21; 21:15,
17; 22:3;
26:24
THEY'LL [1]
19:5
THEY'RE [6]
5:16; 9:25;
12:22;
14:23, 24;
24:2
THING [5]
11:10; 22:6;
24:7; 25:17;
26:19
THINGS [2]
10:16; 22:14
THINK [6]
3:20; 8:1,
15; 15:6;
23:6, 17
THIS [64]
3:18; 4:6,
15; 7:12,
13; 8:11,
15, 16, 18;
9:23; 10:11,
25; 11:9,
10, 11;
12:6, 11;
13:10; 14:5,
6, 9, 22;
15:4, 8, 9,
10, 11, 12,
14, 21;
16:1, 4, 16;
17:24; 18:4,
6, 14, 19;

19:16, 20;
20:7, 24;
21:10, 17,
21; 22:1, 5,
6; 24:11,
12, 21, 24;
25:2, 8, 16,
18, 19, 21;
26:5, 6, 16,
19, 20
THOSE [8]
5:8, 12;
19:5; 20:23;
21:7, 18, 23;
22:14
THOUGHT
[1] 12:15
THREE [1]
13:12
THROUGH
[1] 7:7
THURSDAY
[2] 1:21;
3:1
TIME [9]
4:9; 7:24;
9:6; 19:16;
20:12;
21:16, 18;
24:17; 25:16
TITLE [13]
10:1, 3;
14:8, 9, 10,
24, 25;
17:18, 22,
23; 23:9, 12
TODAY [1]
24:15
TOGETHER
[2] 6:10;
13:23
TOMORROW
[1] 17:9
TOWN [1]
5:21
TRACK [1]
24:2
TRACTS [1]
14:16

TRAIN [1]
12:15
TRANSACTION [2] 14:1;
19:4
TRANSACTIONS [1]
15:18
TRANSCRIPT
[1] 1:14
TRANSCRIPT
ION [1]
27:13
TRANSFER
[1] 10:5
TREATED [1]
24:22
TRIAL [1]
9:2
TRUE [1]
27:13
TRULY [2]
11:16; 12:24
TRUST [2]
3:8; 25:16
TRYING [3]
5:20; 9:11;
12:18
TYPE [2]
8:8; 15:9
TYPES [1]
8:9
TYPICALLY
[3] 7:3;
14:21; 15:1

- U -

ULTIMATELY
[2] 4:16;
5:2
UNDER [2]
21:8, 17
UNDERSTAND
[5] 16:6;
17:17; 18:6;
24:4; 27:6
UNDERSTANDING [2]
11:20; 24:14

UNLAWFULLY [1] 20:4
UNLESS [1]
21:13
UPON [3]
12:7, 9;
24:20
USED [3]
4:23; 6:21;
9:21
UTILITIES
[1] 5:22
UTILITY [1]
6:2
UTILIZE [1]
25:2

- V -

VALLEY [3]
6:12, 15, 16
VALUES [1]
20:16
VEGAS [5]
3:1; 4:9;
6:12, 15, 16
VERY [5]
8:7; 11:19;
21:4; 25:24;
26:24
VOLUNTARILY [1] 24:9

- W -

WAIT [3]
12:2
WAITED [1]
26:4
WALTER [1]
3:8
WANT [2]
14:23; 20:19
WANTED [2]
26:10, 11
WANTS [2]
23:15; 26:17
WATER [10]
4:10; 6:8, 9,

12, 14, 15, 16, 17, 18, 20	WHO'S [4] 11:8; 12:18; 23:17; 26:2	19; 17:13; 18:16; 22:6; 23:2, 19; 24:5, 19, 25; 25:10
WAYS [1] 8:9	WHOLE [1] 19:3	WRAP [1] 3:21
WE'LL [4] 17:9; 20:2; 22:21; 24:9	WHOLEHEAR TEDLY [2] 16:12; 20:10	WRONG [1] 27:4
WE'RE [6] 11:7, 17; 16:14; 19:7, 10; 24:2	WILKES [3] 3:8; 11:23; 12:8	<hr/>
WE'VE [4] 4:5; 17:11; 20:10; 25:2	WILL [20] 3:25; 8:24; 12:12; 13:8; 15:20; 16:1, 18; 17:7; 18:5; 22:19; 23:10; 24:8, 11, 12, 13, 17; 25:6; 26:12; 27:7, 8	<hr/> - Y - <hr/>
WEEKS [2] 13:13	WILLING [1] 10:9	YEARS [4] 12:11; 13:21; 18:24; 26:23
WELL [2] 8:13; 26:11	WILSON [1] 3:12	YOU'RE [6] 12:14; 13:5, 6; 17:4; 18:2; 23:17
WENT [5] 4:10; 13:12; 19:22; 21:10; 26:8	WITHIN [3] 6:19; 9:6; 11:20	YOU'VE [1] 13:22
WERE [8] 4:15, 18; 5:20; 10:16; 13:15; 14:6, 13; 20:15	WITHOUT [1] 10:22	YOUR [25] 3:6, 11, 14; 4:25; 7:5, 16; 8:22; 9:17, 24; 10:11; 11:5, 20; 14:23; 15:25; 16:21; 18:4; 22:23; 24:11, 19; 25:18; 26:16; 27:1, 3, 9
WHAT'S [5] 11:11; 12:4, 23; 15:1, 7	WITNESS [2] 21:18, 19	
WHATEVER [4] 3:23; 11:16; 24:2; 26:17	WOLFRAM [4] 1:5; 3:8, 9; 11:23	
WHERE [1] 18:13	WORDS [1] 8:2	
WHICH [13] 6:4; 7:3; 10:3; 11:3, 22; 12:21; 14:12, 13; 17:10; 20:5; 23:12; 25:4; 26:21	WORK [2] 10:9; 13:23	
WHITTEMOR E [8] 4:4, 17, 21, 23; 5:6; 19:20; 20:6; 21:2	WORKS [1] 19:2 WORLD [2] 15:5; 22:6 WORTH [2] 4:16; 7:18 WOULD [17] 7:3; 8:13; 13:2, 24; 14:17, 18,	



DISTRICT COURT
CLARK COUNTY, NEVADA

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

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE
HELD ON THURSDAY, JULY 31, 2014
AT 9:00 A.M.

APPEARANCES:

For the Plaintiff: JAMES J. JIMMERSON, ESQ.

For the Defendant: AARON D. SHIPLEY, ESQ.

Reported by: Loree Murray, CCR No. 426

Loree Murray, CCR #426
(702) 234-0845

1 LAS VEGAS, NEVADA, THURSDAY, JULY 31, 2014

2 9:00 A.M.

3
4 * * * * *

5 THE COURT: Case A632338, Wolfram versus
6 Pardee Homes of Nevada.

7 MR. JAMES J. JIMMERSON: Good morning.

8 THE COURT: Good morning, counsel.

9 My understanding, and help me with this, and
10 we were aware, and I'm sorry, that Mr. Wilkes died. I
11 mean when we saw him testify, we all knew that he was
12 really suffering, so I'm sorry. My condolences on
13 that.

14 MR. JAMES J. JIMMERSON: Thank you so much.

15 THE COURT: And my understanding is
16 Mr. Jimmerson was going to bring documents today to
17 confirm who the trustee is, because obviously I have to
18 have that jurisdiction.

19 MR. JAMES J. JIMMERSON: Right. I
20 understand. The limited opposition by Pardee was
21 entirely appropriate.

22 We brought the original trust. We have, for
23 purposes of filing, we only have the cover page, the
24 page that showed the assignment of the contract and
25 signature page, but, so Mr. Shipley or Ms. Lundvall

1 could look at the trust.

2 And also there's a bill of transfer here,
3 Aaron, that assigns the contract rights of the 40-year
4 commission contract over to the trust.

5 THE COURT: To the trust.

6 MR. JAMES J. JIMMERSON: Yes, and the
7 trustees are Angela Wilkes, the widow of Walt Wilkes,
8 and there are successor trustees, their son Tom, and
9 then there are several grandchildren as beneficiaries
10 of the trust.

11 THE COURT: Okay.

12 MR. JAMES J. JIMMERSON: But for purposes of
13 today, we'll be substituting as party plaintiffs in the
14 place of Walt D. Wilkes, the Walter D. Wilkes and
15 Angela D. Leebocker (phonetic) Wilkes with
16 Angela Wilkes as trustee and Thomas Wilkes on her
17 passing and according to the trust.

18 I don't have an objection if Mr. Shipley
19 wants a copy of the trust, just please keep it to this
20 purpose for this case.

21 MR. SHIPLEY: I would agree with that.

22 THE COURT: And I want to make sure for the
23 record the documents have been reviewed to make sure I
24 have jurisdiction. That's all I care about.

25 MR. JAMES J. JIMMERSON: I'm happy to provide

1 a copy to the Court.

2 THE COURT: Okay. If you don't mind, I want
3 to make sure we don't have a jurisdictional issue.

4 MR. SHIPLEY: I don't have a problem with
5 that.

6 THE COURT: Okay. Thank you.

7 Mr. JAMES J. JIMMERSON: And with that, I
8 think we can have the motion granted, and we'll
9 substitute that and give appropriate notice to both, of
10 course, Pardee and to all of the beneficiaries.

11 MR. SHIPLEY: Yeah, your Honor, I, again, I'm
12 only stating a limited opposition here, and it's on
13 really procedural grounds.

14 When the motion for substitution of parties
15 was originally filed, they were seeking, plaintiffs
16 were seeking Thomas Wilkes --

17 MR. JAMES J. JIMMERSON: Right.

18 MR. SHIPLEY: -- the son, and then they've
19 changed course, and I understand why now that the
20 documents have been presented.

21 THE COURT: I think more information has come
22 forward.

23 MR. SHIPLEY: More information has come
24 forward, apparently, and I understand that.

25 The only, again, the limited opposition is

1 based on procedure.

2 And for the Court to take jurisdiction over
3 the trust in rem and confirm the appointment of a
4 successor trustee, I don't think they have fulfilled
5 the procedural responsibilities to do that.

6 THE COURT: What else do they need?

7 MR. SHIPLEY: Under NRS 164 and NRS 155, they
8 are supposed to provide a minimum of ten days notice to
9 all interested parties.

10 And again, I have only seen until right at
11 this moment limited portions of the trust, and --

12 THE COURT: Ten days notice to interested
13 parties, meaning?

14 MR. SHIPLEY: All interested parties could
15 mean all, all beneficiaries.

16 MR. JAMES J. JIMMERSON: We agree.

17 THE COURT: Okay. I agree with that.

18 MR. SHIPLEY: Potential creditors, possibly.

19 THE COURT: Creditors?

20 MR. SHIPLEY: Possibly. Again --

21 THE COURT: I know the facts of this case
22 pretty well, so I'm trying to figure out where there
23 would be a creditor.

24 MR. SHIPLEY: But what I'm trying --

25 THE COURT: You're doing it procedurally,

1 okay.

2 MR. SHIPLEY: We're not talking about the
3 facts of this case, we're talking about the -- they're
4 asking the Court now to assume jurisdiction over a
5 trust --

6 THE COURT: I understand that.

7 MR. SHIPLEY: -- that's not related to the
8 facts of the case.

9 THE COURT: So that I can then appoint them
10 in this. I understand the jurisdiction. That's why I
11 wanted the documents.

12 MR. SHIPLEY: So all interested parties under
13 Nevada statute, and again, I'm only talking Nevada
14 statute, it's very possible the California statute
15 applies, because if Ms. Wilkes is a California
16 resident, which I think she is, there may be a totally
17 different set of procedures in order for a court to
18 assume jurisdiction and confirm a trustee.

19 So, again, it's a procedural question that
20 I've raised in my limited opposition.

21 And ultimately, as the Court's aware, NRCP 25
22 is meant to protect the estate and the decedent and all
23 parties to the litigation. That would include a
24 defendant in this case.

25 THE COURT: Right.

1 MR. SHIPLEY: And so I guess the question is
2 whether or not, based on this information, your Honor
3 has a comfort level to, to grant the motion and allow
4 the successor trustee of the Wilkes Living Trust to be
5 substituted in, and that's ultimately your discretion.
6 I just raise the question.

7 THE COURT: Right, which is why I --

8 MR. SHIPLEY. Because in the last six weeks
9 it's a totally altered course here on who they have
10 asked to substitute.

11 With that, I would leave it to your
12 discretion.

13 THE COURT: Right. My only issue would be if
14 there is an issue on the ten days notice.

15 MR. JAMES J. JIMMERSON: Right.

16 THE COURT: That's the only issue that would
17 give me, make me uncomfortable.

18 What expression did you use, make sure I have
19 a comfort level? I have to make sure I have a legal
20 jurisdictional level.

21 MR. SHIPLEY: It's NRS. The confirmation of
22 a trustee is done pursuant to NRS 164.010 and then
23 164.037, which cites to the notice procedure under
24 155.010.

25 MR. JAMES J. JIMMERSON: 164.037, which

1 Mr. Shipley refers to, defines interested person, the
2 people entitled to notice.

3 THE COURT: Right.

4 MR. JAMES J. JIMMERSON: And interested
5 persons are, quote, A settler, trustee, beneficiary, or
6 any other person to whom the Court directs that notice
7 be given in the Court.

8 THE COURT: Okay.

9 MR. JAMES J. JIMMERSON: So the beneficiaries
10 will again, of course, be given notice, the
11 grandchildren.

12 THE COURT: And they have been given notice.

13 MR. JAMES J. JIMMERSON: The settler has been
14 given notice. Angela was a settler with Walt, and, of
15 course, now she is the trustee, so notice would be --
16 and maybe to satisfy Mr. Aaron's concern, we are happy
17 to issue an order that says absent objection within ten
18 business days from today the order would be confirmed
19 so we don't have to come back a second time.

20 I don't see, respectfully, I don't see a need
21 to give notice to any creditors. This is not a probate
22 matter. They assigned, before his death, his contract
23 rights to his trust.

24 THE COURT: So there wouldn't be a creditor.

25 MR. JAMES J. JIMMERSON: So respectfully,

1 while I appreciate Mr. Shipley wants to make sure
2 whoever is needed to be noticed is noticed, the
3 definition of who has to be noticed is essentially
4 this, and I would think that includes Pardee, because
5 they are a party to the litigation, which, of course,
6 we have given them notice. I think we can have it
7 resolved, and I think that will give the proper comfort
8 level.

9 MR. SHIPLEY: The notice has been given, just
10 not ten days since the petition was filed. Again, I'm
11 not trying to drag everybody back to court.

12 THE COURT: Believe me, I know. I love
13 having you all here, but I'm sure you all have other
14 cases.

15 MR. JAMES J. JIMMERSON: Thank you.

16 For Mr. Shipley, we thought from what
17 Tom Wilkes told us he was the executor, but it turned
18 out --

19 THE COURT: I can understand.

20 MR. JAMES J. JIMMERSON: -- his mom was the
21 trustee.

22 THE COURT: I understand why he may have been
23 confused. We all listened to his testimony. We
24 understood. I'm not finding fault with the information
25 coming later than one would expect. I certainly

1 understand the circumstances, since I've been involved
2 from day one.

3 I am comfortable if you do put that caveat in
4 the order.

5 MR. JAMES J. JIMMERSON: I would, your Honor.

6 THE COURT: Mr. Jimmerson, that will address
7 the ten days notice.

8 MR. JAMES J. JIMMERSON: Right.

9 THE COURT: So that I think that's the best
10 comfort level I can get.

11 MR. JAMES J. JIMMERSON: I appreciate it.

12 MR. SHIPLEY: Yeah, and maybe if we could see
13 like a certificate of service or the notice provision
14 given to all the beneficiaries so we know who was given
15 notice, and then we would know whether or not we have
16 looked --

17 THE COURT: And then it would be of record,
18 which would protect me, the Court, also.

19 MR. SHIPLEY: Right.

20 THE COURT: It would be of record.

21 MR. JAMES J. JIMMERSON: I will do that
22 order.

23 THE COURT: So I will grant the motion based
24 on that.

25 Will you please -- I know you will run the

1 order for form and content past Pardee's counsel.

2 MR. JAMES J. JIMMERSON: And I will put in it
3 that Pardee will limit their use of the trust to this
4 litigation.

5 MR. SHIPLEY: Absolutely no problem with
6 that. And again --

7 THE COURT: For the record, I have it from my
8 review too, and I have reviewed it at the bench, and I
9 am satisfied with the representations of Mr. Jimmerson.

10 MR. JAMES J. JIMMERSON: Big new paragraph.
11 Under the judgment that you issued --

12 THE COURT: I don't know if I should open
13 that door or not.

14 MR. JAMES J. JIMMERSON: I just want to alert
15 everyone to this. We're coming back. We're submitting
16 papers IN 60 days for the decision. The decision was
17 June 27, so roughly August 27 we're going to provide
18 you the accounting we promised.

19 Here's my big concern --

20 THE COURT: Okay.

21 MR. JAMES J. JIMMERSON: -- we learned that
22 in a transaction, in a transaction that was announced
23 in the news, that --

24 THE COURT: I read the article about
25 Weyerhaeuser --

1 MR. SHIPLEY: We may want to address that.

2 THE COURT: Okay.

3 MR. SHIPLEY: I will have a conversation in
4 the hallway with Mr. Jimmerson about this.

5 THE COURT: Okay.

6 MR. JAMES J. JIMMERSON: I just want to have
7 some comfort with that.

8 THE COURT: Right.

9 MR. JAMES J. JIMMERSON: Because as you know,
10 the contract applies to successors and assigns.

11 THE COURT: Okay. When I read the paper, it
12 does apply, and the clerk says, Why do you want this?

13 MR. JAMES J. JIMMERSON: I want to make sure
14 Weyerhaeuser is on notice.

15 THE COURT: I feel you can work it out, so
16 I'm aware because I happened to read the same article.

17 MR. JAMES J. JIMMERSON: So that's all I
18 wanted to alert the Court to.

19 THE COURT: That obviously got my attention.

20 MR. JAMES J. JIMMERSON: All right. Thank
21 you, and thank Mr. Shipley.

22 THE COURT: Thank you so much. It's a
23 pleasure having you in the courtroom again.

24 MR. SHIPLEY: It's nice to see you.

25 MR. JAMES J. JIMMERSON: Nice to see you.

1 THE COURT: Okay. Thank you.
2 So that motion is granted for substitution of
3 parties.
4 I'm gonna put this copy with it.

5
6 * * * * *

7 ATTEST:
8 Full, true, and accurate transcription of proceedings.

9
10
11
12 /s/Loree Murray
13 Loree Murray, CCR #426
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<p>*</p> <hr/> <p>* [6] 13:6,6,6,6,6</p> <hr/> <p>/</p> <hr/> <p>/s/loree [1] 13:12</p> <hr/> <p>1</p> <hr/> <p>155 [1] 5:7 155.010 [1] 7:24 164 [1] 5:7 164.010 [1] 7:22 164.037 [2] 7:23,25</p> <hr/> <p>2</p> <hr/> <p>25 [1] 6:21 27 [2] 11:17,17</p> <hr/> <p>4</p> <hr/> <p>40-year [1] 3:3</p> <hr/> <p>6</p> <hr/> <p>60 [1] 11:16</p> <hr/> <p>A</p> <hr/> <p>a [33] 3:2,19 4:1,3,4,12 5:3, 8,23 6:4,15,16,17,18,19,23 7:3,9,19,19,22 8:5,14,19,20, 21,24 9:5 10:13 11:22,22 12:3,22 aaron [1] 3:3 aaron's [1] 8:16 about [5] 3:24 6:2,3 11:24 12:4 absent [1] 8:17 absolutely [1] 11:5 according [1] 3:17 accounting [1] 11:18 accurate [1] 13:8 address [2] 10:6 12:1 again [10] 4:11,25 5:10,20 6:13,19 8:10 9:10 11:6 12: 23 agree [3] 3:21 5:16,17 alert [2] 11:14 12:18 all [14] 3:24 4:10 5:9,14,15, 15 6:12,22 9:13,13,23 10: 14 12:17,20</p>	<p>allow [1] 7:3 also [2] 3:2 10:18 altered [1] 7:9 am [2] 10:3 11:9 an [3] 3:18 7:14 8:17 and [48] 3:2,6,8,8,14,16,17, 22 4:7,8,9,10,12,18,19,24 5: 2,3,7,10,11 6:13,18,21,22, 22 7:1,3,5,22 8:4,12,14,16 9:4,7 10:12,15,17 11:1,2,6, 8,8 12:10,12,21 13:8 angela [4] 3:7,15,16 8:14 announced [1] 11:22 any [2] 8:6,21 apparently [1] 4:24 applies [2] 6:15 12:10 apply [1] 12:12 appoint [1] 6:9 appointment [1] 5:3 appreciate [2] 9:1 10:11 appropriate [1] 4:9 are [7] 3:7,8,9 5:8 8:5,16 9: 5 article [2] 11:24 12:16 as [5] 3:9,13,16 6:21 12:9 asked [1] 7:10 asking [1] 6:4 assigned [1] 8:22 assigns [2] 3:3 12:10 assume [2] 6:4,18 at [3] 3:1 5:10 11:8 attention [1] 12:19 attest [1] 13:7 august [1] 11:17 aware [2] 6:21 12:16</p>	<p>believe [1] 9:12 bench [1] 11:8 beneficiaries [5] 3:9 4:10 5:15 8:9 10:14 beneficiary [1] 8:5 best [1] 10:9 big [2] 11:10,19 bill [1] 3:2 both [1] 4:9 business [1] 8:18 but [4] 3:12 5:24 9:13,17</p> <hr/> <p>C</p> <hr/> <p>california [2] 6:14,15 can [6] 4:8 6:9 9:6,19 10:10 12:15 care [1] 3:24 case [5] 3:20 5:21 6:3,8,24 cases [1] 9:14 caveat [1] 10:3 certainly [1] 9:25 certificate [1] 10:13 changed [1] 4:19 circumstances [1] 10:1 cites [1] 7:23 clerk [1] 12:12 come [3] 4:21,23 8:19 comfort [5] 7:3,19 9:7 10: 10 12:7 comfortable [1] 10:3 coming [2] 9:25 11:15 commission [1] 3:4 concern [2] 8:16 11:19 confirm [2] 5:3 6:18 confirmation [1] 7:21 confirmed [1] 8:18 confused [1] 9:23 content [1] 11:1 contract [4] 3:3,4 8:22 12: 10 conversation [1] 12:3 copy [3] 3:19 4:1 13:4 could [3] 3:1 5:14 10:12 counsel [1] 11:1 course [6] 4:10,19 7:9 8: 10,15 9:5 court [51] 3:5,11,22 4:1,2,6,</p>	<p>21 5:2,6,12,17,19,21,25 6:4, 6,9,17,25 7:7,13,16 8:3,6,7, 8,12,24 9:11,12,19,22 10:6, 9,17,18,20,23 11:7,12,20, 24 12:2,5,8,11,15,18,19,22 13:1 courtroom [1] 12:23 court's [1] 6:21 creditor [2] 5:23 8:24 creditors [3] 5:18,19 8:21</p> <hr/> <p>D</p> <hr/> <p>d [3] 3:14,14,15 day [1] 10:2 days [7] 5:8,12 7:14 8:18 9: 10 10:7 11:16 death [1] 8:22 decedent [1] 6:22 decision [2] 11:16,16 defendant [1] 6:24 defines [1] 8:1 definition [1] 9:3 did [1] 7:18 different [1] 6:17 directs [1] 8:6 discretion [2] 7:5,12 do [5] 5:5,6 10:3,21 12:12 documents [3] 3:23 4:20 6:11 does [1] 12:12 doing [1] 5:25 done [1] 7:22 don't [9] 3:18 4:2,3,4 5:4 8: 19,20,20 11:12 door [1] 11:13 drag [1] 9:11</p>
	<hr/> <p>B</p> <hr/> <p>back [3] 8:19 9:11 11:15 based [3] 5:1 7:2 10:23 be [14] 3:13 5:23 6:16 7:4, 13 8:7,10,15,18,24 9:2,3 10: 17,20 because [5] 6:15 7:8 9:4 12:9,16 been [7] 3:23 4:20 8:12,13 9:9,22 10:1 before [1] 8:22</p>	<hr/> <p>E</p> <hr/> <p>else [1] 5:6 entitled [1] 8:2 essentially [1] 9:3 estate [1] 6:22 everybody [1] 9:11 everyone [1] 11:15 executor [1] 9:17 expect [1] 9:25 expression [1] 7:18</p>	

<p>F</p> <p>facts [3] 5:21 6:3,8 fault [1] 9:24 feel [1] 12:15 figure [1] 5:22 filed [2] 4:15 9:10 finding [1] 9:24 for [11] 3:12,20,22 4:14 5:2 6:17 9:16 11:1,7,16 13:2 form [1] 11:1 forward [2] 4:22,24 from [4] 8:18 9:16 10:2 11:7 fulfilled [1] 5:4 full [1] 13:8</p>	<p>his [5] 8:22,22,23 9:20,23 honor [3] 4:11 7:2 10:5</p> <p>I</p> <p>i [62] 3:18,21,22,23,24 4:2,4,7,11,19,21,24 5:4,10,17,21 6:6,9,10,10,16 7:1,6,7,11,18,19,19 8:20,20 9:1,4,6,7,12,12,19,22,25 10:3,5,9,10,11,21,23,25 11:2,7,8,8,12,12,14,24 12:3,6,11,13,15,16,17 if [7] 3:18 4:2 6:15 7:13 10:3,12 11:12 i'm [10] 3:25 4:11 5:22,24 6:13 9:10,13,24 12:16 13:4 in [17] 3:13 5:3 6:10,17,20,24 7:5,8 8:7 10:3 11:2,16,22,22,23 12:3,23 include [1] 6:23 includes [1] 9:4 information [4] 4:21,23 7:2 9:24 interested [6] 5:9,12,14 6:12 8:1,4 involved [1] 10:1 is [15] 4:25 6:15,16,22 7:1,7,14,22 8:15,21 9:2,2,3 12:14 13:2 issue [5] 4:3 7:13,14,16 8:17 issued [1] 11:11 it [14] 3:19 5:25 7:11 9:6,17 10:11,17,20 11:2,7,8 12:11,15 13:4 it's [7] 4:12 6:14,19 7:9,21 12:22,24 i've [2] 6:20 10:1</p>	<p>14,21 12:6,9,13,17,20,25 jimmerson [31] 3:6,12,25 4:7,17 5:16 7:15,25 8:4,9,13,25 9:15,20 10:5,6,8,11,21 11:2,9,10,14,21 12:4,6,9,13,17,20,25 judgment [1] 11:11 june [1] 11:17 jurisdiction [5] 3:24 5:2 6:4,10,18 jurisdictional [2] 4:3 7:20 just [5] 3:19 7:6 9:9 11:14 12:6</p>	<p>mean [1] 5:15 meaning [1] 5:13 meant [1] 6:22 mind [1] 4:2 minimum [1] 5:8 mom [1] 9:20 moment [1] 5:11 more [2] 4:21,23 motion [5] 4:8,14 7:3 10:23 13:2 mr [60] 3:6,12,18,21,25 4:4,7,11,17,18,23 5:7,14,16,18,20,24 6:2,7,12 7:1,8,15,21,25 8:1,4,9,13,16,25 9:1,9,15,16,20 10:5,6,8,11,12,19,21 11:2,5,9,10,14,21 12:1,3,4,6,9,13,17,20,21,24,25 ms [1] 6:15 much [1] 12:22 murray [1] 13:12 my [5] 6:20 7:13 11:7,19 12:19</p>
<p>G</p> <p>get [1] 10:10 give [4] 4:9 7:17 8:21 9:7 given [8] 8:7,10,12,14 9:6,9 10:14,14 going [1] 11:17 gonna [1] 13:4 got [1] 12:19 grandchildren [2] 3:9 8:11 grant [2] 7:3 10:23 granted [2] 4:8 13:2 grounds [1] 4:13 guess [1] 7:1</p>	<p>information [4] 4:21,23 7:2 9:24 interested [6] 5:9,12,14 6:12 8:1,4 involved [1] 10:1 is [15] 4:25 6:15,16,22 7:1,7,14,22 8:15,21 9:2,2,3 12:14 13:2 issue [5] 4:3 7:13,14,16 8:17 issued [1] 11:11 it [14] 3:19 5:25 7:11 9:6,17 10:11,17,20 11:2,7,8 12:11,15 13:4 it's [7] 4:12 6:14,19 7:9,21 12:22,24 i've [2] 6:20 10:1</p>	<p>K</p> <p>keep [1] 3:19 know [7] 5:21 9:12 10:14,15,25 11:12 12:9</p> <p>L</p> <p>last [1] 7:8 later [1] 9:25 learned [1] 11:21 leave [1] 7:11 leebocker [1] 3:15 legal [1] 7:19 level [5] 7:3,19,20 9:8 10:10 like [1] 10:13 limit [1] 11:3 limited [4] 4:12,25 5:11 6:20 listened [1] 9:23 litigation [3] 6:23 9:5 11:4 living [1] 7:4 look [1] 3:1 looked [1] 10:16 love [1] 9:12</p>	<p>mean [1] 5:15 meaning [1] 5:13 meant [1] 6:22 mind [1] 4:2 minimum [1] 5:8 mom [1] 9:20 moment [1] 5:11 more [2] 4:21,23 motion [5] 4:8,14 7:3 10:23 13:2 mr [60] 3:6,12,18,21,25 4:4,7,11,17,18,23 5:7,14,16,18,20,24 6:2,7,12 7:1,8,15,21,25 8:1,4,9,13,16,25 9:1,9,15,16,20 10:5,6,8,11,12,19,21 11:2,5,9,10,14,21 12:1,3,4,6,9,13,17,20,21,24,25 ms [1] 6:15 much [1] 12:22 murray [1] 13:12 my [5] 6:20 7:13 11:7,19 12:19</p>
<p>H</p> <p>hallway [1] 12:4 happened [1] 12:16 happy [2] 3:25 8:16 has [6] 4:21,23 7:3 8:13 9:3,9 have [24] 3:18,23,24 4:3,4,8,20 5:4,10 7:9,18,19,19 8:12,19 9:6,6,13,22 10:15 11:7,8 12:3,6 having [2] 9:13 12:23 he [2] 9:17,22 her [1] 3:16 here [4] 3:2 4:12 7:9 9:13 here's [1] 11:19</p>	<p>J</p> <p>j [28] 3:6,12,25 4:7,17 5:16 7:15,25 8:4,9,13,25 9:15,20 10:5,8,11,21 11:2,10,14,21 12:6,9,13,17,20,25 james [28] 3:6,12,25 4:7,17 5:16 7:15,25 8:4,9,13,25 9:15,20 10:5,8,11,21 11:2,10,14,21 12:6,9,13,17,20,25</p>	<p>M</p> <p>make [8] 3:22,23 4:3 7:17,18,19 9:1 12:13 matter [1] 8:22 may [3] 6:16 9:22 12:1 maybe [2] 8:16 10:12 me [4] 7:17,17 9:12 10:18</p>	<p>N</p> <p>need [2] 5:6 8:20 needed [1] 9:2 nevada [2] 6:13,13 new [1] 11:10 news [1] 11:23 nice [2] 12:24,25 no [1] 11:5 not [9] 6:2,7 7:2 8:21 9:10,11,24 10:15 11:13 notice [18] 4:9 5:8,12 7:14,23 8:2,6,10,12,14,15,21 9:6,9 10:7,13,15 12:14 noticed [3] 9:2,2,3 now [3] 4:19 6:4 8:15 nrcp [1] 6:21 nrs [4] 5:7,7 7:21,22</p>
			<p>O</p> <p>objection [2] 3:18 8:17 obviously [1] 12:19 of [30] 3:2,3,7,10,12,14,19 4:9,10,14 5:3,8,11,21 6:3,8,17 7:4,21 8:10,14 9:3,5 10:</p>

<p>13,17,20 11:3,9 13:2,8 okay ^[1] 3:11 4:2,6 5:17 6:1 8:8 11:20 12:2,5,11 13:1 on ^[8] 3:16 4:12 5:1 7:2,9,14 10:24 12:14 one ^[2] 9:25 10:2 only ^[6] 4:12,25 5:10 6:13 7:13,16 open ^[1] 11:12 opposition ^[3] 4:12,25 6:20 or ^[5] 7:2 8:5 10:13,15 11:13 order ^[6] 6:17 8:17,18 10:4,22 11:1 originally ^[1] 4:15 other ^[2] 8:6 9:13 out ^[3] 5:22 9:18 12:15 over ^[3] 3:4 5:2 6:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>paper ^[1] 12:11 papers ^[1] 11:16 paragraph ^[1] 11:10 pardee ^[3] 4:10 9:4 11:3 pardee's ^[1] 11:1 parties ^[7] 4:14 5:9,13,14 6:12,23 13:3 party ^[2] 3:13 9:5 passing ^[1] 3:17 past ^[1] 11:1 people ^[1] 8:2 person ^[2] 8:1,6 persons ^[1] 8:5 petition ^[1] 9:10 phonetic ^[1] 3:15 place ^[1] 3:14 plaintiffs ^[2] 3:13 4:15 please ^[2] 3:19 10:25 pleasure ^[1] 12:23 portions ^[1] 5:11 possible ^[1] 6:14 possibly ^[2] 5:18,20 potential ^[1] 5:18 presented ^[1] 4:20 pretty ^[1] 5:22 probate ^[1] 8:21</p>	<p>problem ^[2] 4:4 11:5 procedural ^[3] 4:13 5:5 6:19 procedurally ^[1] 5:25 procedure ^[2] 5:1 7:23 procedures ^[1] 6:17 proceedings ^[1] 13:8 promised ^[1] 11:18 proper ^[1] 9:7 protect ^[2] 6:22 10:18 provide ^[3] 3:25 5:8 11:17 provision ^[1] 10:13 purpose ^[1] 3:20 purposes ^[1] 3:12 pursuant ^[1] 7:22 put ^[3] 10:3 11:2 13:4</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question ^[3] 6:19 7:1,6 quote ^[1] 8:5</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raise ^[1] 7:6 raised ^[1] 6:20 read ^[3] 11:24 12:11,16 really ^[1] 4:13 record ^[4] 3:23 10:17,20 11:7 refers ^[1] 8:1 related ^[1] 6:7 rem ^[1] 5:3 representations ^[1] 11:9 resident ^[1] 6:16 resolved ^[1] 9:7 respectfully ^[2] 8:20,25 responsibilities ^[1] 5:5 review ^[1] 11:8 reviewed ^[2] 3:23 11:8 right ^[11] 4:17 5:10 6:25 7:7,13,15 8:3 10:8,19 12:8,20 rights ^[2] 3:3 8:23 roughly ^[1] 11:17 run ^[1] 10:25</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>same ^[1] 12:16 satisfied ^[1] 11:9</p>	<p>satisfy ^[1] 8:16 says ^[2] 8:17 12:12 second ^[1] 8:19 see ^[5] 8:20,20 10:12 12:24,25 seeking ^[2] 4:15,16 seen ^[1] 5:10 service ^[1] 10:13 set ^[1] 6:17 settler ^[3] 8:5,13,14 several ^[1] 3:9 she ^[2] 6:16 8:15 shipley ^[28] 3:18,21 4:4,11,18,23 5:7,14,18,20,24 6:2,7,12 7:1,8,21 8:1 9:1,9,16 10:12,19 11:5 12:1,3,21,24 should ^[1] 11:12 since ^[2] 9:10 10:1 six ^[1] 7:8 so ^[18] 5:22 6:9,12,19 7:1 8:9,15,19,24,25 10:9,14,23 11:17 12:15,17,22 13:2 some ^[1] 12:7 son ^[2] 3:8 4:18 stating ^[1] 4:12 statute ^[3] 6:13,14,14 submitting ^[1] 11:15 substitute ^[2] 4:9 7:10 substituted ^[1] 7:5 substituting ^[1] 3:13 substitution ^[2] 4:14 13:2 successor ^[3] 3:8 5:4 7:4 successors ^[1] 12:10 supposed ^[1] 5:8 sure ^[8] 3:22,23 4:3 7:18,19 9:1,13 12:13</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take ^[1] 5:2 talking ^[3] 6:2,3,13 ten ^[6] 5:8,12 7:14 8:17 9:10 10:7 testimony ^[1] 9:23 than ^[1] 9:25 thank ^[6] 4:6 9:15 12:20,21,22 13:1 that ^[35] 3:3,21 4:5,7,9,19,</p>	<p>24 5:5,17 6:6,9,19,23 7:11,16 8:6,17 9:4,7 10:3,6,9,21,24 11:3,6,11,13,21,22,23 12:1,7,19 13:2 that's ^[7] 3:24 6:7,10 7:5,16 10:9 12:17 their ^[2] 3:8 11:3 them ^[2] 6:9 9:6 then ^[6] 3:9 4:18 6:9 7:22 10:15,17 there ^[6] 3:8,9 5:22 6:16 7:14 8:24 there's ^[1] 3:2 they ^[8] 4:15 5:4,6,7 7:9 8:12,22 9:5 they're ^[1] 6:3 they've ^[1] 4:18 think ^[8] 4:8,21 5:4 6:16 9:4,6,7 10:9 this ^[15] 3:19,20 5:11,21 6:3,10,24 7:2 8:21 9:4 11:3,15 12:4,12 13:4 thomas ^[2] 3:16 4:16 thought ^[1] 9:16 time ^[1] 8:19 to ^[60] 3:4,5,17,19,22,23,25 4:1,3,9,10 5:2,5,8,8,12,22 6:4,7,17,22,23 7:3,3,4,10,11,19,22,23 8:1,2,6,16,17,19,21,21,23 9:1,2,3,5,11,11,23 10:14 11:3,14,15,17 12:1,6,10,13,16,18,18,24,25 today ^[2] 3:13 8:18 told ^[1] 9:17 tom ^[2] 3:8 9:17 too ^[1] 11:8 totally ^[2] 6:16 7:9 transaction ^[2] 11:22,22 transcription ^[1] 13:8 transfer ^[1] 3:2 true ^[1] 13:8 trust ^[12] 3:1,4,5,10,17,19 5:3,11 6:5 7:4 8:23 11:3 trustee ^[8] 3:16 5:4 6:18 7:4,22 8:5,15 9:21 trustees ^[2] 3:7,8</p>
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WOLFRAM V. PARDEE

7/31/14

trying ^[3] 5:22,24 9:11	why ^[5] 4:19 6:10 7:7 9:22
turned ^[1] 9:17	12:12
<hr/> U <hr/>	widow ^[1] 3:7
ultimately ^[2] 6:21 7:5	wilkes ^[11] 3:7,7,14,14,15,
uncomfortable ^[1] 7:17	16,16 4:16 6:15 7:4 9:17
under ^[4] 5:7 6:12 7:23 11:	will ^[10] 8:10 9:7 10:6,21,23,
11	25,25 11:2,3 12:3
understand ^[7] 4:19,24 6:	with ^[13] 3:15,21 4:4,7 5:17
6,10 9:19,22 10:1	7:11 8:14 9:24 11:5,9 12:4,
understood ^[1] 9:24	7 13:4
until ^[1] 5:10	within ^[1] 8:17
us ^[1] 9:17	work ^[1] 12:15
use ^[2] 7:18 11:3	would ^[15] 3:21 5:23 6:23
<hr/> V <hr/>	7:11,13,16 8:15,18 9:4,25
very ^[1] 6:14	10:5,15,17,18,20
<hr/> W <hr/>	wouldn't ^[1] 8:24
walt ^[3] 3:7,14 8:14	<hr/> Y <hr/>
walter ^[1] 3:14	yeah ^[2] 4:11 10:12
want ^[7] 3:22 4:2 11:14 12:	yes ^[1] 3:6
1,6,12,13	you ^[20] 4:2,6 7:18 9:13,13,
wanted ^[2] 6:11 12:18	15 10:3,25,25 11:11,18 12:
wants ^[2] 3:19 9:1	9,12,15,21,22,23,24,25 13:
was ^[8] 4:15 8:14 9:10,17,	1
20 10:14 11:16,22	your ^[5] 4:11 7:2,5,11 10:5
we ^[17] 4:3,8 5:16 8:16,19 9:	you're ^[1] 5:25
6,6,16,23,23 10:12,14,15,	
15 11:18,21 12:1	
weeks ^[1] 7:8	
well ^[1] 5:22	
we'll ^[2] 3:13 4:8	
were ^[2] 4:15,16	
we're ^[5] 6:2,3 11:15,15,17	
weyerhaeuser ^[2] 11:25	
12:14	
what ^[4] 5:6,24 7:18 9:16	
when ^[2] 4:14 12:11	
where ^[1] 5:22	
whether ^[2] 7:2 10:15	
which ^[6] 6:16 7:7,23,25 9:	
5 10:18	
while ^[1] 9:1	
who ^[3] 7:9 9:3 10:14	
whoever ^[1] 9:2	
whom ^[1] 8:6	

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM; and ANGELA L.
LIMBOCKER-WILKES as trustee of the
WALTER D. WILKES AND ANGELA L.
LIMBOCKER-WILKES LIVING TRUST,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PLAINTIFFS' ACCOUNTING BRIEF
PURSUANT TO THE COURT'S ORDER
ENTERED ON JUNE 25, 2014**

COMES NOW Plaintiffs JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST (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 Accounting Brief pursuant to the Court's Order entered on June 25, 2014, detailing what information Pardee, its successors, and assigns should provide to Plaintiffs under the Commission Agreement dated September 1, 2004 (hereinafter "Commission Agreement").

///

1 **I. INTRODUCTION**

2 In 2003 and 2004, Plaintiffs JAMES WOLFRAM and WALT WILKES brokered an
3 agreement between Defendant PARDEE HOMES OF NEVADA (hereinafter "Pardee"), and
4 COYOTE SPRINGS INVESTMENT, LLC. (hereinafter "CSI"), for Pardee to purchase real
5 estate property located in Lincoln and Clark counties. (See NEO, Part I, ¶7, June 27,
6 2014, attached hereto as **Exhibit "1"**). Pardee and CSI memorialized their agreement in a
7 written contract entitled "Option Agreement for the Purchase of Real Property and Joint
8 Escrow Instructions" in May 2004 (hereinafter "Option Agreement"), where Pardee agreed
9 to purchase thousands of acres of land and it secured a forty-year option to buy tens of
10 thousands more. (*Id.* at Part I, ¶10). The Option Agreement was amended on July 28,
11 2004, and August 31, 2004, and then on September 1, 2004, Pardee's president JOHN
12 LASH confirmed Pardee's Commission Agreement to pay Plaintiffs a commission upon
13 Pardee's purchase of Purchase Property¹ and Option Property², from CSI. (*Id.* at Part I,
14 ¶13).

15 The Commission Agreement required Pardee to provide Plaintiffs with notification
16 and information concerning future transactions between Pardee and CSI and it states:
17 "Pardee shall keep each of you reasonably informed as to all matters relating to the
18 amounts and due dates of your commission payments." (*Id.* at Part I, ¶24). The
19 Commission Agreement also included a successors and assigns provision and it stated
20

21

22 ¹ The Option Agreement defined "Purchase Property" as: Parcel 1 as shown on Parcel
23 Map 98-57 recorded July 21, 2000 in Book 2000072, as Document No. 01332, Official
24 Records, Clark County, Nevada (containing approximately 3,605.22 acres.)

25 ² The Option Agreement defined "Option Property" as: "the remaining portion of the
26 Entire Site which is or becomes designated for single-family detached production
27 residential use..." The Option Agreement further states that "[t]he Purchase Property
28 and the Option Property are sometimes referred to herein collectively as the "Production
Residential Property[,]" [which] means that portion of the Net Usable Acreage [] that
encompasses all of the Purchase Property and the Option Property which includes,
without limitation, all single-family detached production residential lots (which shall
include lots on which custom homes are constructed by Buyer), all land for roadways,
utilities, government facilities, including schools and parks...

1 that "Pardee, its successors and assigns, shall take no action to circumvent or avoid its
2 obligations to [Plaintiffs] as set forth in the [Commission] Agreement." (See Commission
3 Agreement, p. 2, ¶ 4, attached hereto as **Exhibit "2"**). Thus, the Court found that Plaintiffs
4 reasonably imparted special confidence in Pardee to faithfully inform them of the
5 developments of Coyote Springs that would impact their future commission payments.
6 (See NEO at Part I, ¶27, **Ex. "1"**).

7 While Plaintiffs received a copy of the Option Agreement, the July 28, 2004, and
8 August 31, 2004, amendments to the Option Agreement, and the Amended and Restated
9 Option Agreement, Pardee refused to provide Plaintiffs with Amendments Nos. 1 through 8
10 to the Amended and Restated Option Agreement until after commencement of this
11 litigation. (*Id.* at Part I, ¶¶11 & 39). These undisclosed amendments showed multiple take
12 downs of property and they included designation information about land transactions
13 involving multi-family, custom lots, and commercial property. (*Id.* at Part II.A, ¶16).
14 Further, although certain documents were public record regarding the development of
15 Coyote Springs, the documents referencing internally set land designations for certain land
16 in Coyote Springs are not found within the public records. (*Id.* at Part I, ¶30).

17 When Plaintiffs began requesting information regarding Pardee's acquisition of real
18 estate from CSI, the only information provided by Pardee was the location of the Purchase
19 Property purchased from CSI for the Purchase Property Price. (*Id.* at Part I, ¶40). All
20 information provided was limited to single family production property acquisitions. (*Id.*).
21 Pardee informed the Plaintiffs that it had purchased additional property from CSI at the
22 Coyote Springs development, but it took the position that any documentation regarding
23 designation of the use of the additional property was confidential and would not be
24 provided to Plaintiffs. (*Id.*).

25 After a bench trial, the Court found that the designation of the type of property
26 Pardee was purchasing from CSI during the development of Coyote Springs was material
27 to Plaintiffs to verify if the commissions they had received were accurate and, if not, what
28

1 amount they were entitled to as further commissions pursuant to the Commission
2 Agreement. (*Id.* at Part I, ¶28). Since Pardee failed to provide such information to
3 Plaintiffs, the Court found that Pardee breached the Commission Agreement's requirement
4 to keep Plaintiffs reasonably informed as to all matters relating to the Commission
5 Agreement and further breached its implied covenant of good faith and fair dealing. (*Id.* at
6 Part II.A., ¶¶14—17, Part II.B., ¶¶4-6).

7 **II. ARGUMENT**

8 **A. The Court Should Order Pardee to Provide Plaintiffs with an**
9 **Accounting of the Assignment and/or Transfer of the Commission**
10 **Agreement from Pardee to Weyerhaeuser NR Company**

11 The Commission Agreement requires Pardee to keep Plaintiffs³ reasonably
12 informed as to all matters relating to the amount and due dates of Plaintiffs' commission
13 payments and the Commission Agreement included a successor and assigns provision:

14
15 For purposes of this Agreement, the term "Pardee" shall
16 include any successor assignee of Pardee's rights under the
17 Option Agreement, and Pardee's obligation to pay the
18 commission to you at the times and in the manner described
19 above shall be binding upon Pardee and its successors and
20 assigns.

21 (See Commission Agreement, p. 2, ¶4, Ex. "2").

22 Three weeks ago, on August 5, 2014, counsel for Pardee delivered correspondence
23 to counsel for Plaintiffs that stated that Pardee has assigned and/or transferred all of its
24 rights and obligations under the Option Agreement, including the Commission Agreement,
25 to WEYERHAEUSER NR COMPANY (hereinafter "WNR"). (See Correspondence, Aug. 5,
26 2014, attached hereto as Exhibit "3"). While the August 5, 2014 correspondence
27 purported to negotiate WNR's accounting requirements, the correspondence was not
28 signed by any known agent of WNR, it failed to adequately explain the transaction between
Pardee and WNR, it failed to have any acknowledgment that counsel for Pardee had

³ As used in this Brief, the term "Plaintiffs" shall include their successors and assigns.

1 authority to negotiate on WNR's behalf, and it failed to acknowledge who would satisfy the
2 ONE HUNDRED AND FORTY ONE THOUSAND FIVE HUNDRED 00/100 DOLLAR
3 (\$141,500.00), Judgment entered in this Action. (*Id.*).

4 In order for Plaintiffs to acknowledge the representation that their rights under the
5 Commission Agreement were assigned to WNR, Plaintiffs requested an accounting of the
6 assignment of the Commission Agreement to WNR, with a full explanation of the
7 transaction. (See Correspondence, Aug. 21, 2014, attached hereto as **Exhibit "4"**).⁴ As
8 the Court is aware, assignments that substantially alter the risk to the beneficiary of a
9 contract may be void and/or may require the beneficiaries consent. See *e.g. Easton Bus.*
10 *Opp. v. Town Executive Suites*, 230 P.3d 827, 126 Nev.Adv.Op. 13 (2010) (stating "[u]nder
11 ordinary rules of contract law, a contractual right is assignable unless assignment
12 materially changes the terms of the contract..." citing Restatement (Second) of Contracts
13 §317(2)(a)-(c)(1981)).

14 Plaintiffs therefore request an accounting of the purported assignment so that
15 Plaintiffs can confirm that an assignment did in fact occur and to confirm that no material
16 changes to the Commission Agreement occurred. Since neither Pardee nor WNR has
17 provided Plaintiffs with any authentic evidence confirming the purported assignment of the
18 Commission Agreement, Plaintiffs respectfully request an accounting of the same with a
19 full explanation of the transaction and the effects, if any, of the rights of Plaintiffs under the
20 Commission Agreement.

21
22 **B. Plaintiffs Accounting Should Require Pardee, its Successors and**
23 **Assigns to Provide Plaintiffs with All Amendments to the Option**
24 **Agreement and Amended and Restated Option Agreement**

25 The Commission Agreement and the Option Agreement are legally entangled: the
26 Commission Agreement even states that all capitalized terms used in the Commission

27
28 ⁴ As of today's date, counsel for Plaintiffs has not receive any response to the August
21, 2014 correspondence requesting such information.

1 Agreement shall have the exact meanings set forth in the Option Agreement. (See NEO,
2 Part I, ¶ 18, Ex. "1"). Further, the Commission Agreement prevents Pardee, its
3 successors, and assigns from taking actions to circumvent or avoid their obligations in the
4 Commission Agreement:

5 Pardee, its successors, and assigns, shall take no action to
6 circumvent or avoid its obligation to you as set forth in the
7 Agreement.

(See Commission Agreement, p.2, ¶4, Ex. "2").

8 Before the Commission Agreement at issue in this case, the Option Agreement was
9 amended twice, first on July 28, 2004, and again on August 31, 2004. While Plaintiffs
10 received the Option Agreement, the July 28 and August 31, 2004 amendments, and the
11 Amended and Restated Option Agreement, Pardee refused to provide Plaintiffs with
12 Amendments Nos. 1 through 8 to the Amended Restated Option Agreement until after the
13 commencement of this litigation. (See NEO, Part I, ¶¶18 & 39, Ex. "1").

14 Although the Court found that the past amendments to the Option Agreement did
15 not change Plaintiffs' commissions due under the Commission Agreement, the information
16 contained in the amendments contained designation information about the separate land
17 transactions involving multi-family, custom lots, and commercial property. (*Id.* at Part II.A,
18 ¶16). This information was needed by Plaintiffs as it was necessary to determine the
19 impact, if any, on Plaintiffs' commission payments. (*Id.*). Since the Commission
20 Agreement and the Option Agreement are legally entangled and Pardee, its successors,
21 and assigns, are prohibited from taking action to circumvent or avoid their obligations to
22 Plaintiffs under the Commission Agreement, Plaintiffs submit that their accounting should
23 include true and correct copies of all changes, amendments, and alterations to the Option
24 Agreement going forward into the future until satisfaction is complete under the
25 Commission Agreement.

26 ///

27 ///

1 **C. Plaintiffs Accounting Should Include Documents Referencing Internally**
2 **Set Land Designations and Re-Designations for All Land in Coyote**
3 **Springs**

4 The Commission Agreement requires Pardee, its successors, and assigns, to keep
5 Plaintiffs reasonably informed as to all matters relating to the amount and due dates of
6 Plaintiffs commission payments:

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

12 (See Commission Agreement, p.2, ¶2, Ex. "2").

13 The Court found that although Pardee co-developed with CSI a separate land
14 transaction agreement for the acquisition of lands designated for other uses than single
15 family detached production residential lots, Pardee still had a separate duty to Plaintiffs to
16 provide information pursuant to the Commission Agreement so that Plaintiffs could verify
17 the accuracy of their commission. (See NEO, Part I, ¶41). During the development of the
18 Coyote Springs Project, Pardee and CSI cooperatively mapped and entitled all land before
19 the specific location of any lands designated for single family detached production
20 residential would be transferred by CSI to Pardee. (*Id.* at Part I, ¶21). This cooperative
21 mapping and entitling should continue so that Plaintiffs too can properly map and entitle
22 the development of the Coyote Springs Project.

23 Plaintiffs submit that Pardee, its successors, and assigns, should provide Plaintiffs
24 with actual and personal notice of any purchase and/or sale of any property ten (10) days
25 before the close of escrow of such property, or if done outside of escrow or not utilizing an
26 escrow company, before the purchase and/or sale of such property, together with
27 information as to (1) the identification of the buyer and seller, (2) the designation of all
28

1 property being purchased, (3) the location of the property being purchased, (4) the escrow
2 number, (5) the name of the title company and officer performing the transaction, (6) the
3 sale price, (7) the number of acres, (8) the parcel numbers, (9) the recording date, (10) a
4 parcel map, (11) the close of escrow documents to see the terms of sale and document
5 date, (12) a breakdown of the commissions to be paid pursuant to the Commission
6 Agreement, (13) and any other documentation relating to the amount and due dates of
7 Plaintiffs' commission payment. (See Correspondence, p. 2, Aug. 21, 2014, Ex. "4" and
8 incorporated fully herein).

9 Plaintiffs also request Pardee, its successors, and assigns, to provide Plaintiffs with
10 all mapping and tentative mapping submitted to the Counties of Lincoln and Clark for all
11 Option Property, including land sales and land developments that relate to single family
12 production lots and residential home sales. This information is generally included in the
13 myriad of documents included in a land-sale transaction. Further, Plaintiffs submit that
14 Pardee should provide Plaintiffs with documents relation to any re-designation of land so
15 that Plaintiffs can confirm that Pardee's re-designation of such property is not being done
16 in an effort to circumvent or avoid its obligations to Plaintiffs. (See Commission
17 Agreement, p. 2, ¶4, Ex. "2"). The receipt of the above information will allow Plaintiffs to
18 confirm that their commission payments are accurate and, if not, to determine what
19 amounts Plaintiffs are entitled to as further commissions under the Commission
20 Agreement.

21
22 **D. Plaintiffs Are Willing to Designate Certain Individuals as Agents to**
23 **Receive Information from Pardee, its Successors, and Assigns, to**
24 **Ensure Cooperative Exchange of Information and Confidentiality**

25 Plaintiffs are willing to designate certain individuals as agents to demand and
26 receive information from Pardee, its successors, and assigns, and to ensure the
27 cooperative exchange of information. Plaintiff ANGELA L. LIMBOCKER-WILKES as
28 trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING

1 TRUST is prepared to appoint THOMAS WILKES as an authorized agent to demand
2 and/or receive information, and Plaintiff JAMES WOLFRAM is prepared to appoint himself,
3 and then upon his death and/or incapacity, his wife SHARON WOLFRAM, and upon her
4 death and/or incapacity, their daughter KRISTEN NICOLE DINGERSON, as an authorized
5 agent to demand and receive information from Pardee, its successors, and assigns,
6 relating to the Commission Agreement. These agents will appoint future agents or
7 successors as necessary.

8 Plaintiffs and/or their agents should be permitted to openly communicate with both
9 Pardee, its successors, and assigns, and the title officers during and after the sale all
10 property, and they are prepared to keep confidential the information so designated by the
11 Court and Pardee, its successors, and assigns, and execute a confidentiality agreement
12 upon reasonable and necessary terms (including the purported assignment from Pardee to
13 WNR). Since Plaintiffs are prepared to appoint authorized representatives to ensure the
14 cooperative exchange of information, Plaintiffs submit that Pardee, its successors, and
15 assigns, should be required to provide Plaintiffs with actual and personal notice of any
16 information required to be exchanged pursuant to the Commission Agreement.

17 **III. CONCLUSION**

18 Based upon the above, Plaintiffs respectfully submit that Pardee's accounting

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should include the foregoing information pursuant to the Commission Agreement.

Respectfully submitted,

DATED this 25 day of August, 2014.

JIMMERSON HANSEN, P.C.



JAMES J. JIMMERSON, ESQ.
Nevada Bar No.: 00264
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy **PLAINTIFFS' ACCOUNTING BRIEF PURSUANT TO THE COURT'S ORDER ENTERED ON JUNE 25, 2014** was made on the 25 day of August, 2014, as indicated below:

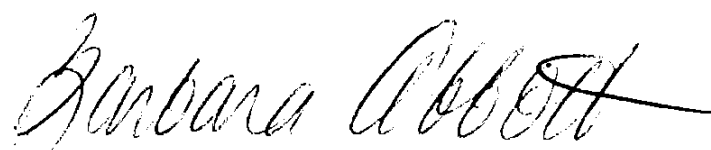
 X By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

 X By Electronic Service

_____ By facsimile, pursuant to EDCR 7.26 (as amended)

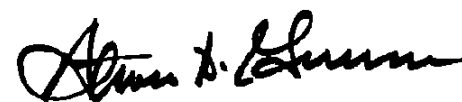
_____ By receipt of copy as indicated below

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



An employee of JIMMERSON HANSEN, P.C.

EXHIBIT “1”



CLERK OF THE COURT

1 NEOJ
2 JAMES J. JIMMERSON, ESQ.
3 Nevada State Bar No.: 00264
4 jjj@jimmersonhansen.com
5 LYNN M. HANSEN, ESQ.
6 Nevada State Bar No.: 00244
7 lmh@jimmersonhansen.com
8 415 South 6th Street, Suite 100
9 Las Vegas, Nevada 89101
10 Attorney for Plaintiffs

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 JAMES WOLFRAM and
10 WALT WILKES,
11
12 Plaintiffs,

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

11 vs.


12 PARDEE HOMES OF NEVADA,
13
14 Defendant.

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

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

19 Dated this 27 day of June, 2014.

21 JIMMERSON HANSEN, P.C.

22
23 
24 JAMES J. JIMMERSON, ESQ.
25 Nevada State Bar No.: 00264-12547
26 LYNN M. HANSEN, 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,

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

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.

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 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.

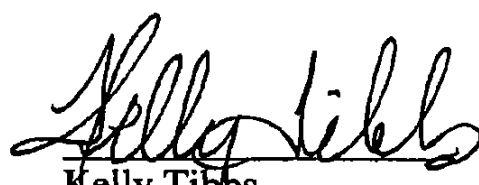
10
11 DATED this 25 day of June, 2014.

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

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

EXHIBIT “2”



JON E. LASH
Sr. Vice President
(310) 475-3525 ext. 251
(310) 446-1295

September 1, 2004

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

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

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

Gentlemen:

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

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

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

PH 000135

JA007680

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

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

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

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

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

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

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

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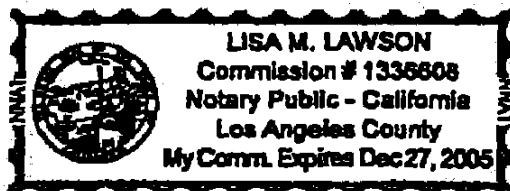
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 3

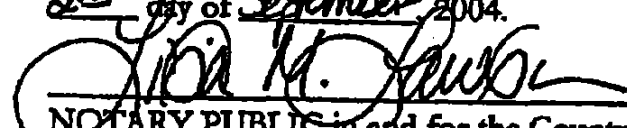
Our signatures below will represent our binding agreement to the above.

Sincerely,

PARDEE HOMES OF NEVADA,
a Nevada corporation


By: 
Jon E. Lash
Senior Vice President

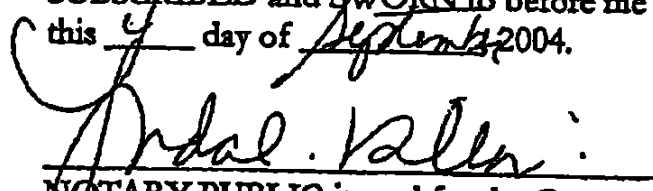


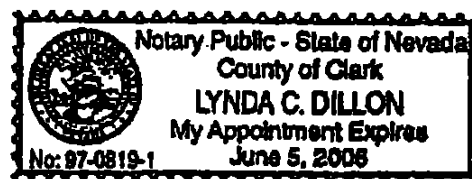
SUBSCRIBED and SWORN to before me this
2nd day of September, 2004.

NOTARY PUBLIC in and for the County of
Los Angeles, State of California

Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By: 
Walt Wilkes

SUBSCRIBED and SWORN to before me
this 4 day of September, 2004.

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



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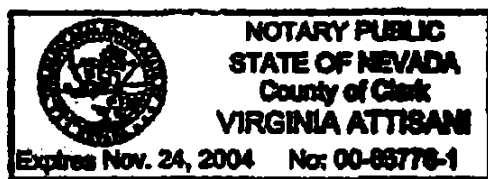
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 4

AWARD REALTY GROUP

By: Jim Wolfram
Jim Wolfram

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

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



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PH 000138

JA007683

EXHIBIT “3”



McDONALD·CARANO·WILSON^{LLP}

Pat Lundvall

plundvall@mcdonaldcarano.com

Reply to Las Vegas

August 5, 2014

VIA EMAIL AND U.S. MAIL

James J. Jimmerson
JIMMERSON HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
jjj@jimmersonhansen.com

**Re: James Wolfram, Walt Wilkes v. Pardee Homes of Nevada
A-10-632338-C**

Dear Mr. Jimmerson:

The purpose of this letter is twofold: (1) to formally notify James Wolfram and the heirs and/or successors of Walt Wilkes (collectively "Plaintiffs") that Pardee Homes of Nevada's rights and obligations under the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions ("AROA") have been assigned to a related party; and (2) to propose a plan to provide Plaintiffs notice of any purchase of Option Property as defined under the terms of the AROA.

First, as you are aware, Weyerhaeuser Company was the former ultimate parent of Pardee Homes of Nevada. In early July, TRI Pointe Homes, Inc. ("TPH") merged with Weyerhaeuser Company's homebuilding subsidiary, Weyerhaeuser Real Estate Company ("WRECO"). WRECO survived the merger and became a wholly owned subsidiary of TPH. As a result, TPH is now the parent company of Pardee Homes, which includes Pardee Homes of Nevada. However, this merger did not involve Pardee's rights and interest in the Coyote Springs Project. At or around the time of the merger, WRECO transferred and assigned all of its rights, title and interest in and to the Coyote Springs Project to Weyerhaeuser NR Company ("WNR"), a Washington corporation that was WRECO's corporate parent up until the time of the TPH merger. This includes the rights and obligations created under the terms of the Commission Agreement dated September 1, 2004.

100 WEST LIBERTY ST., 10TH FLOOR
RENO, NEVADA 89501

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

ATTORNEYS AT LAW



www.mcdonaldcarano.com

2300 WEST SAHARA AVENUE
SUITE 1200
LAS VEGAS, NEVADA 89102
702-873-4100
FAX 702-873-9966

JA007685

Second, the court's Findings of Fact, Conclusions of Law and Order, entered on June 27, 2014, directed the parties to provide supplemental briefs detailing what information they believe should be provided by Pardee to Plaintiffs, and their heirs when applicable, as an accounting. The supplemental briefs may not be necessary if the parties can agree on a plan going forward regarding what WNR will produce to your clients in the event that WNR exercises an option to purchase Option Property as defined under the terms of the AROA.

WNR reaffirms the obligations set forth in the express terms of the Commission Agreement. WNR proposes the following:

1. Within fourteen (14) days of the relevant event described below, WNR shall to provide Plaintiffs with courtesy copies of:
 - (a) all publicly-recorded documents related to any transaction involving WNR's purchase of Option Property from CSI;
 - (b) each written option exercise notice given pursuant to paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date;
 - (c) a parcel map which reflects the exact location of the related Option Property, if one is available; and
 - (d) documents that reflect the purchase price of the Option Property, along with a breakdown of the calculation of commission owed pursuant to paragraph (iii) of the Commission Agreement.
2. In the event there is a purchase of Option Property, WNR shall pay into escrow any commissions owed to Plaintiffs concurrently with WNR's deposit of the Option Property Price.
3. In the event that the AROA is terminated, WNR shall provide notice thereof to Plaintiffs within fourteen (14) days of the effective date of the termination.



If this general plan is acceptable to Plaintiffs, we would be willing to set forth the specifics in a separate document as long as Plaintiffs agree to forego the supplemental briefs requested by the Court. As all parties will need to begin working on the supplemental briefs in the coming days, time is of the essence. Therefore, I look forward to your response to this letter by the close of business **Friday, August 8, 2014**.

Sincerely,

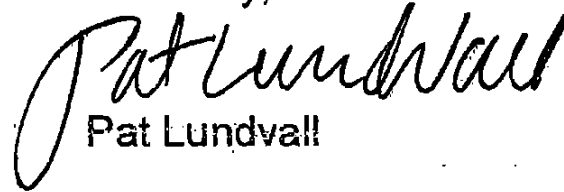

Pat Lundvall

EXHIBIT “4”



James J. Jimmerson
Lynn M. Hansen

Shawn M. Goldstein
Burak S. Ahmed
Samantha J. Mentzel

*ALSO ADMITTED IN CALIFORNIA
**AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS
***CERTIFIED FAMILY LAW
SPECIALIST

August 21, 2014

VIA EMAIL ONLY

Pat Lundvall, Esq.
MCDONALD CARANO WILSON
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com

Re: *Wolfram et.al. v. Pardee Homes of Nevada*

Dear Ms. Lundvall,

This correspondence is in response to yours dated August 5, 2014, regarding a purported assignment and/or transfer of Pardee's interest in the Coyote Springs Project to Weyerhaeuser NR Company ("WNR"), including the rights and obligations under the Commission Agreement dated September 1, 2004 ("Commission Agreement"). At this time, neither Pardee nor WNR has provided Plaintiffs with sufficient information regarding the purported transfer and/or assignment of the Commission Agreement.

Please understand that if the roles were reversed, and you had the privilege of representing Mr. Wolfram and the Walter Wilkes and Angela L. Limbocker-Wilkes' Trust, and I represented Pardee and/or WNR, you would be, again, very disappointed in Pardee for their failure to communicate more timely about this sale to WNR and the substantial changes that have recently occurred between Pardee and WNR. Always learning of these material changes long after the fact, which has been a pattern by Pardee, and which intentional failure to effectively communicate is what led to the commencement of this litigation in the first place. We know this may not be something your firm was in control over, but we have struggled with and need to try to solve this issue together.

In order for Plaintiffs to acknowledge and/or confirm your representations of what occurred, Plaintiffs request an accounting of the transfer and/or assignment of the Commission Agreement to WNR, with a full explanation of the transaction.

Second, Plaintiffs request an acknowledgment by WNR that your office has the authority to represent WNR for the matters discussed herein. Are you authorized to enter an appearance for WNR as their counsel?

Third, Plaintiffs request an acknowledgment by WNR, by affidavit, of their acknowledgment to perform Pardee's Commission Agreement obligations to Plaintiffs.

Fourth, Plaintiffs request WNR to acknowledge and affirm, by affidavit, Jon Lash's trial testimony on October 28, 2013, at P. 76:19—77:2 and P. 106:13—107:2 of the trial transcript in this Action, attached hereto as **Exhibit "1"**, that the next purchase of Option Property for production housing will generate a commission to Plaintiffs.

Fifth, Plaintiffs request WNR to provide Plaintiffs, their successors, and assigns with actual and personal notice of any purchase and/or sale of Option Property ten (10) days before the close of escrow of such property, or before the purchase or sale of such property occurs if done outside of escrow, or not utilizing an escrow company, together with information as to the identification of the buyer and seller, the title company, the title officer, the sale date, the sale price, the number of acres, the parcel numbers, the escrow numbers, the recording date, the close of escrow and date, a parcel map, the close of escrow documents to see the terms of sale and document date, a breakdown of the commissions to be paid pursuant to the Commission Agreement, and any additional information relevant to the sale.

Sixth, Plaintiffs request WNR to provide Plaintiffs, their successors, and assigns with all mapping and tentative mapping submitted to the Counties of Lincoln and Clark for all land sales from 2004 to the present date, and going forward into the future.

Seventh, Plaintiffs request an acknowledgment by either WNR or Pardee as to who and when payment will be made under the \$141,500.00 Judgment entered in this Action on June 25, 2014, including interest.

Eighth, Plaintiffs request Pardee and/or WNR to produce each transaction agreement of all purchases and sales of real estate made from 2004 to the present date and going forward into the future, beyond those already identified by existing trial exhibits.

Ninth, Plaintiffs request WNR to execute an authorization or Court Order allowing Plaintiffs, their successors and assigns, to effectively communicate back and forth with the Title Officers and WNR during and after the sale of such Option Property.

Tenth, Plaintiffs request WNR to execute a separate document providing for a ten percent (10%), liquidated damages provision for late payment, beyond 31 days from when due, of any Commission payment to Plaintiffs, their successors, and assigns, in addition to annual contract interest at a rate of seven percent (7%), on any late payment of Commissions.

Finally, Plaintiffs request WNR to provide Plaintiffs, their successors, and assigns, with any amendments to the Option Agreement made from 2004 to the present date and going forward into the future, beyond those already identified by existing trial exhibits.

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Pat Lundvall, Esq.
MCDONALD CARANO WILSON
August 21, 2014
Page 3

Upon receipt of the requested information, Plaintiffs can move forward to finalizing this matter. Thank you for your prompt attention to this matter.

Sincerely,

JIMMERSON HANSEN, P.C.

/s/

James J. Jimmerson, Esq.

EXHIBIT “1”

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, et al.,
Plaintiffs,
vs.
PARDEE HOMES OF NEVADA,
Defendant.

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

REPORTER'S TRANSCRIPT OF BENCH TRIAL

BEFORE THE HON. KERRY L. EARLEY, DISTRICT COURT JUDGE

On Monday, October 28, 2013

At 8:30 a.m.

APPEARANCES:

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

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

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

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

CONFIDENTIAL

1 MS. LUNDVALL: I think the Court has a question
2 to the witness.

3 THE COURT: I just want to know what you mean
4 by "single-family." We just throw these terms around
5 and I want to make sure I understand your position. I
6 certainly understand with the agreement says. When you
7 say --

8 THE WITNESS: So my definition of single-family
9 detached land is primarily production housing, which
10 would include various lot sizes. It would not include
11 multi-family, which is townhouses, apartments --

12 THE COURT: Condos.

13 THE WITNESS: -- condos.

14 THE COURT: Not include multi-family.

15 THE WITNESS: Not include multi-family and not
16 include true custom lots, which is typically a bigger
17 lot than a production lot, and it's got a lot more
18 amenitized house than a regular production house.

19 THE COURT: So when you say you called it
20 production housing, that's why -- okay.

21 And it's your understanding then if Pardee,
22 within the terms of this agreement, buys any
23 single-family detached land, which you call production
24 housing, that you owe a commission to Mr. Wilkes and
25 Mr. Wolfram?

1 THE WITNESS: Absolutely. We're an honorable
2 company. We'll definitely honor the agreement.

3 Q. (BY MR. J.J. JIMMERSON) And production
4 residential property is as defined in page 2 of
5 Exhibit 2; is that right?

6 MS. LUNDVALL: Production residential property
7 has a different designation.

8 MR. J.J. JIMMERSON: It's right there,
9 Production residential property means that -- I've read
10 that into the record. That's the definition of the --

11 THE WITNESS: But you questioned custom homes.

12 Q. (BY MR. J.J. JIMMERSON) I'm not asking that.
13 I'm saying when you use the word -- your obligation
14 going forward, Pardee's obligation going forward --

15 A. Yes.

16 Q. -- is to pay a -- under your understanding,
17 which is different than theirs -- but under your
18 understanding is to pay a commission of one and a half
19 percent of the purchase price times the number of acres
20 as a commission for production residential property as
21 defined at page 2 of the Option Agreement, Exhibit 2?

22 MS. LUNDVALL: Your Honor, once again, I need
23 to place an objection because it is not production
24 residential property. That has a different designation
25 within this contractual arrangement. It's single-family

1 Q. Now, if you didn't -- if you and Pardee --
2 excuse me.

3 If you and CSI were to make a deal going
4 forward in the future, in the next 35 years, and you
5 bought any property there that was for residential use
6 beyond the acreage you presently have and the
7 \$84 million that Pardee has spent, would that entitle
8 our clients, Mr. Wolfram and Mr. Wilkes, separately,
9 their branches of their family, to a commission on this
10 Commission Agreement?

11 A. No. It would only be for the single-family
12 detached.

13 Q. So if an agreement is reached in the future as
14 it relates to single-family detached residences, as
15 those terms are defined in Exhibit 2, then the
16 commission would be due and owing; is that correct?

17 A. Correct.

18 Q. And that would be irrespective of whether
19 there's a specific notice given? If you and CSI make an
20 agreement that bypasses those type of notices, you would
21 still have that obligation; correct?

22 A. Yes.

23 Q. And by virtue of the terms, specifically of the
24 second paragraph of page 2 of the Commission Agreement,
25 you would have an affirmative obligation to notify the

1 Wilkes family and the Wolfram family; isn't that true?

2 A. Yes.

3 Q. Now --

4 A. I think we would follow the same procedure
5 we've been following. I mean, I'm kind of taken aback
6 by the fact that we went for four or five years making
7 49 payments only to figure out the system isn't working.
8 I don't know why we waited four and a half years to
9 figure out they are not happy with the way we're doing
10 it.

11 Q. Well, you didn't read the Complaint to inquire,
12 did you, sir?

13 A. I did not.

14 Q. Well, that might have been an answer for you.

15 Look at Exhibit A. What is Exhibit A, please,
16 Defendant's Exhibit A?

17 A. It looks like it's an e-mail to Walt Wilkes
18 from Linda Jones at Stewart Title.

19 Q. Look at all of them, please. Because this is
20 what I think you may be referring to when you say 40
21 notes or 49 notices. And I just wanted to make sure
22 that I was on the same wavelength as you so we have the
23 same understanding.

24 MS. LUNDVALL: Exhibit A is 132 pages. Do you
25 want him to look at each one of these pages?

Barbara Abbott

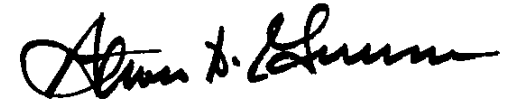
From: Barbara Abbott
Sent: Thursday, August 21, 2014 11:43 AM
To: 'plundvall@mcdonaldcarano.com'
Cc: James J. Jimmerson, Esq.; Kim Stewart; Burak S. Ahmed
Subject: Wolfram, et. al. v. Pardee Homes of Nevada
Attachments: LTR to Lundvall 8.21.14.pdf

Ms. Lundvall:

Please see attached correspondence.

Barbara Abbott

Legal Secretary to
Burak S. Ahmed, Esq., and
Samantha J. Mentzel, Esq.
JIMMERSON HANSEN, P.C.
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CLERK OF THE COURT

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7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,
WALT WILKES

11 Plaintiffs,

12 vs.

13
14 PARDEE HOMES OF NEVADA,

15 Defendant.

16
17 **AND RELATED CLAIMS**
18

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

**PARDEE HOMES OF NEVADA'S
SUPPLEMENTAL BRIEF REGARDING
FUTURE ACCOUNTING**

Trial Date: October 23, 2013

19 On June 25, 2014, this Court entered its Findings of Fact, Conclusions of Law
20 and Order ("FFCL") in the matter, and ordered the parties to provide supplemental
21 briefs detailing the information and documentation Pardee Homes of Nevada ("Pardee")
22 shall be required to provide Plaintiffs, and their heirs, as an accounting of the amount
23 and due dates of any future commission payments due and owing to Plaintiffs if Pardee
24 ever exercises its option to purchase of Option Property at Coyote Springs. Therefore,
25 pursuant to the Court's order, Pardee submits the following memorandum of points and
26 authorities and proposal for the Court's consideration.
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS

Relevant to the issue of Pardee's obligation to provide future accountings to Plaintiffs, the Court made specific findings of fact. In or about May 2004, Pardee and Coyote Springs Investment LLC ("CSI") entered into a written agreement entitled Option Agreement for the Purchase of Real Property and Joint Escrow Instructions ("Option Agreement")¹, which set forth the terms of the deal, among many others, concerning Pardee's acquisition of the Production Residential Property from CSI at Coyote Springs. FFCL at "Findings of Fact" ¶ 10. Prior to Pardee and Plaintiffs executing the Commission Agreement, the Option Agreement was amended twice. *Id.* at ¶ 11. Plaintiffs received both the Amendment to Option Agreement for the Purchase of Real Property and Joint Escrow Instruction dated July 28, 2004, and the Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated August 31, 2004. *Id.*

At the same time Pardee was negotiating the Option Agreement (including amendments thereto), Pardee also extensively negotiated with Plaintiffs and executed the Commission Agreement dated September 1, 2004. *Id.* at ¶ 13. The Commission Agreement was an arms-length transaction. *Id.* Among other things, the Commission Agreement provided that, in exchange for the procuring services rendered by Plaintiffs, Pardee agreed to pay certain commissions to Plaintiffs for land purchased from CSI, and send Plaintiffs information concerning the real estate purchases made under the Option Agreement and the corresponding commission payments. *Id.* at ¶ 14.

The Commission Agreement states that all of the capitalized terms used in the Commission Agreement shall have the exact meaning set forth in the Option Agreement. *Id.* at ¶ 18. The Commission Agreement set forth a schedule for payment

¹ Unless otherwise specified herein, the Option Agreement, along with the subsequent amendments, will be collectively referred to as the "Option Agreement."

1 of commissions to Plaintiffs related to the Purchase Property Price (as defined in the
2 Option Agreement). Id. at ¶ 17. These commissions were not dependent upon acreage
3 or location of the lands being acquired, or upon the closing of any land transaction. Id.
4 at ¶ 21, 33. All commissions owed to Plaintiffs relative to the Purchase Property Price
5 were paid in full. Id. at ¶ 20, 31. Further, Plaintiffs were informed of the amount and
6 due dates of each commission payment. Id. at ¶ 32. Plaintiffs were paid a total of
7 \$2,632,000.00 in commissions pursuant to paragraphs (i) and (ii) of the Commission
8 Agreement. Id. at ¶ 34.

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

18 The general term "Option Property" is defined in the Option Agreement as
19 follows: "the remaining portion of the Entire Site which is or becomes designated for
20 single-family detached production residential use, as described below . . . in a number
21 of separate phases (referred to herein collectively as the 'Option Parcels' and
22 individually as 'Option Parcel'), upon the terms and conditions hereinafter set forth." Id.
23 at ¶ 23. The definition of "Option Property" never changed. Id. In sum, no commission
24 is payable under (iii) of the Commission Agreement unless the property purchased fell
25 within the definition of Option Property purchased pursuant to paragraph 2 of the Option
26 Agreement. Id. at ¶ 36.

27 Pursuant to the Commission Agreement, Pardee is required to provide Plaintiffs
28 with notifications and information concerning future transactions between Pardee and

1 CSI under the Option Agreement. Id. at ¶ 24. The specific language of the Commission
2 Agreement is as follows:

3 Pardee shall provide to each of you a copy of each written option exercise
4 notice given pursuant to paragraph 2 of the Option Agreement, together
5 with information as to the number of acres involved and the scheduled
6 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.

7 Id. at ¶ 24 (emphasis included). Pardee did provide information relating to the amount
8 and due dates related to Plaintiffs' commission payments paid under paragraph (i) and
9 (ii) of the Commission Agreement. Id. at ¶ 38. Specifically, Plaintiffs received
10 information including the date, escrow number, name of title company, percentage of
11 commission to be paid, to whom and the split between Plaintiffs. Id. Each commission
12 payment was paid pursuant to an Order to Pay Commission to Broker. Id.

13 Pardee has not exercised any option to purchase single family production
14 residential property pursuant to paragraph 2 of the Option Agreement. Id. at ¶ 36.
15 "Therefore, Pardee as of the present time does not owe any commission to Plaintiffs
16 under paragraph iii of the Commission Agreement." Id. Further, Plaintiffs are not
17 entitled to any additional commission in the event Pardee re-designates lands already
18 owned at Coyote Springs. Id. at ¶ 44.

19 The Commission Agreement applies to any successor or assignee of Pardee's
20 rights under the Option Agreement. In this regard, it is important to note that
21 Weyerhaeuser Company was the former ultimate parent of Pardee Homes of Nevada.
22 In early July 2014, TRI Pointe Homes, Inc. ("TPH") merged with Weyerhaeuser
23 Company's homebuilding subsidiary, Weyerhaeuser Real Estate Company ("WRECO").
24 WRECO survived the merger and became a wholly owned subsidiary of TPH. As a
25 result, TPH is now the parent company of Pardee Homes, which includes Pardee
26 Homes of Nevada. However, this merger did not involve Pardee's rights and interest in
27 the Coyote Springs Project. At or around the time of the merger, WRECO transferred
28 and assigned all of its rights, title and interest in and to the Coyote Springs Project to

1 Weyerhaeuser NR Company ("WNR"), a Washington corporation that was WRECO's
2 corporate parent up until the time of the TPH merger. This includes the rights and
3 obligations created under the terms of the Commission Agreement. WNR
4 acknowledges its continuing duties under the Commission Agreement. In addition,
5 counsel for Pardee, McDonald Carano Wilson LLP, has authority to represent WNR
6 with regard to any issues related to this litigation and WNR's continuing duties under
7 the Commission Agreement. However, for the sake of clarity and consistency, the term
8 "Pardee" will continue to be used in this brief and shall mean and refer to WNR or any
9 other future successor or assignee of Pardee's rights under the Option Agreement.

10 **II. RELEVANT CONCLUSIONS OF LAW**

11 Again, relevant to the issue of Pardee's obligation to provide future accountings
12 to Plaintiffs, the Court made specific legal conclusions. The Commission Agreement is
13 a valid and enforceable contract between Plaintiffs and Pardee. FFCL at "Conclusions
14 of Law" ¶ 4. Pursuant to the Commission Agreement, Pardee agreed to pay
15 commissions and provide information to keep Plaintiffs reasonably informed as to all
16 matter relating to the amount and due date of their commissions. *Id.* at ¶ 5. All
17 commissions owed to Plaintiffs related to the Purchase Property Price and paragraphs
18 (i) and (ii) of the Commission Agreement have been paid. *Id.* at ¶ 6, 9. The Purchase
19 Property Price was not tied to specific acreage or boundaries. *Id.* at ¶ 12-13.

20 Pardee is also required to pay commissions on its purchase of Option Property,
21 if exercised, but to date, Pardee has not exercised its option to purchase Option
22 Property pursuant to paragraph 2 of the Option Agreement. *Id.* at ¶ 7-8. The potential
23 boundaries for Option Property are subject to change. *Id.* at ¶ 12. There are many
24 factors that necessitated flexibility in the boundaries of the Purchase Property and
25 Option Property, including: BLM configuration, moving the utility corridor, mapping, the
26 subdivision process, the entitlement and permitting processes, the Moapa Dace issues
27 and other wildlife issues, and the design by Jack Nicklaus of the golf courses. *Id.*
28 Many of these issues were, and are, out of Pardee's and CSI's hands. *Id.*

1 There is a multi-step process required of Pardee if it exercises its option to
2 purchase Option Property under the terms of the Option Agreement. Id. at ¶ 14. It
3 involves a myriad of written documents, some of which would need to be recorded in
4 the public record. Id. However, no such option has been exercised, and therefore, no
5 additional commission payments are owed to Plaintiffs. Id.

6 Finally, the Court found that “there is a special relationship of trust between
7 Plaintiffs and Pardee that entitles Plaintiffs to an accounting or the information
8 concerning the development of Coyote Springs in the future as it pertains to Plaintiffs’
9 commissions on option property. There is no way for Plaintiffs or their heirs to
10 determine whether a commission payment is due in the future without an accounting of
11 the type of land of any future purchases by Pardee from CSI at Coyote Spring. Access
12 to said information is required to ensure the accuracy of commission payments that
13 may be due and owing in the future.” FFCL at “Conclusion of Law--Plaintiffs’ Claim for
14 an Accounting” ¶ 6.

15 **III. PROPOSAL FOR FUTURE ACCOUNTING**

16 The Court ordered the parties to provide written supplemental briefs within 60
17 days of entry of the FFCL detailing what information should be provided by Pardee to
18 Plaintiffs and their heirs as an accounting in the future. FFCL at “Decision” ¶ 3. As
19 such, Pardee reaffirms the obligations set forth in the express terms of the Commission
20 Agreement, including the provisions that require Pardee to provide notice to Plaintiffs if
21 and when it exercises its option to purchase Option Property from CSI at Coyote
22 Springs, and to keep Plaintiffs reasonably informed as to all matters relating to the
23 amount and due dates of any related commission payments. In order to specify the
24 circumstances and methods by which Pardee will keep Plaintiffs reasonably informed,
25 Pardee submits the following proposal for the Court’s approval.

- 26 (1) Within fourteen (14) days of the relevant event described below, Pardee shall
27 provide Plaintiffs with courtesy copies of the following:

- All publicly-recorded documents related to any transaction involving Pardee's purchase of Option Property from CSI;
- Each written option exercise notice given pursuant to paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date;
- A parcel map which reflects the exact location of the related Option Property, if one is available; and
- Documents that reflect the purchase price of the Option Property, along with a breakdown of the calculation of commission owed pursuant to paragraph (iii) of the Commission Agreement.
- Pardee shall notify Plaintiffs which escrow company will handle any Option Property purchases

(2) In the event there is a purchase of Option Property, Pardee shall pay into escrow any commissions owed to Plaintiffs concurrently with Pardee's deposit of the Option Property Price.

(3) In the event that the Option Agreement is terminated, Pardee shall provide notice thereof to Plaintiffs within fourteen (14) days of the effective date of the termination.

(4) Plaintiffs shall notify Pardee of the name and address of the person or entity that should receive notice of the foregoing information and documents.

(5) Pardee will provide Plaintiffs, their successors and/or assigns, with copies of any future amendments to the Option Agreement, subject to Plaintiffs executing a confidentiality agreement.

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1 **IV. CONCLUSION**

2 Pardee respectfully requests the Court enter an order setting forth the foregoing
3 proposal.

4 Respectfully submitted this ____ day of August, 2014.

6 **McDONALD CARANO WILSON LLP**

7
8 /s/ Pat Lundvall
9 Pat Lundvall (#3761)
10 Aaron D. Shipley (#8258)
11 2300 West Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102

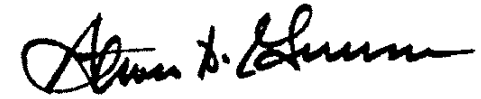
13 *Attorneys for Defendant Pardee*
14 *Homes of Nevada*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 25 day of August, 2014, I served a true and correct copy of the foregoing **Pardee Homes of Nevada's Supplemental Brief Regarding Future Accounting** via e-service via the Wiznet e-filing system utilized by the Eighth Judicial District Court, Clark County, Nevada:

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

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



CLERK OF THE COURT

ORDR
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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 ON FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
SUPPLEMENTAL BRIEFING RE
FUTURE ACCOUNTING**

AND RELATED CLAIMS

On October 23, 2013, the above-referenced matter came on for bench trial before the Honorable Judge Kerry Earley. The Court, having reviewed the record, testimony of witnesses, the documentary evidence, stipulations of counsel, the papers submitted by the respective parties, and considered the arguments of counsel at trial in this matter, entered Findings of Fact and Conclusions of Law (the "Decision") on June 25, 2014. That Decision is hereby incorporated into this Order.

In the Decision, the Court ordered both parties to provide the Court with supplemental briefs detailing information the Defendant should provide to the Plaintiffs consistent with the Court's Decision. The parties complied with the Court's order, as the Plaintiffs submitted Plaintiffs' Accounting Brief and the Defendant submitted Pardee

1 Homes of Nevada's Supplemental Brief Regarding Future Accounting as well as a
2 Notice of Submission. On February 10, 2015, the Court issued a minute order
3 reflecting its decision on the supplemental briefing.

4 Now, having considered the parties' briefings, any arguments by counsel
5 presented in support of the same, and good cause appearing therefore, the Court
6 decides the submitted issues as follows:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Pardee
8 Homes of Nevada or its successors in interest and/or assigns (hereinafter collectively
9 referred to as "Pardee") shall provide to Plaintiffs an affidavit or unsworn declaration in
10 lieu thereof pursuant to NRS 53.045 executed under penalty of perjury by a corporate
11 representative from Weyerhaeuser NR Company ("WNR") acknowledging and
12 confirming the representations contained in Pat Lundvall's letter dated August 5, 2014,
13 regarding the transactions which resulted in Pardee's rights and obligations under the
14 Commission Agreement being assigned/transferred to WNR.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that
16 Pardee shall provide to Plaintiffs and their successors and/or assigns all future
17 amendments, if any, to the Amended and Restated Option Agreement dated March 28,
18 2005. The documents will be designated CONFIDENTIAL pursuant to the protective
19 order in the above-referenced matter.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, in
21 compliance with the Court's Decision, Pardee provide the following to Plaintiffs in the
22 future to keep them reasonably informed pursuant to the Commission Agreement:

- 23 1. Within fourteen (14) days of the relevant event described below, Pardee shall
24 provide Plaintiffs with courtesy copies of the following:
- 25
26
27
28

- a. All publicly-recorded documents related to any transaction involving Pardee's purchase of Option Property¹ from CSI;
- b. Each written option exercise notice given pursuant to Paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date;
- c. A parcel map which reflects the exact location of the related Option Property, if one is available;
- d. Documents that reflect the purchase price of the Option Property, along with a breakdown of the calculation of commission owed pursuant to paragraph (iii) of the Commission Agreement; and
- e. Pardee shall notify Plaintiffs which escrow company will handle any Option Property purchases.

2. If there is a purchase of Option Property, Pardee shall pay into escrow any commissions owed to Plaintiffs concurrently with Pardee's deposit of the Option Property Price.
3. If the Option Agreement is terminated, Pardee shall provide notice thereof to Plaintiffs within fourteen (14) days of the effective date of the termination.
4. Plaintiffs shall notify counsel for Pardee and WNR of the name and address of the person or entity that should receive notice of the foregoing information and documents.

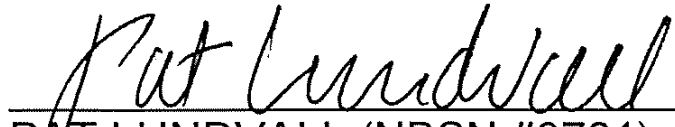
DATED this 20th day of April, 2015.


DISTRICT COURT JUDGE
upk

¹ Any capitalized term in this Order referring to the Amended and Restated Option Agreement dated March 28, 2005 will have the same meaning as in the Amended and Restated Option Agreement or any amendments thereto.

Submitted by:

McDONALD CARANO WILSON LLP



PAT LUNDVALL (NBSN #3761)

RORY T. KAY (NSB #12416)

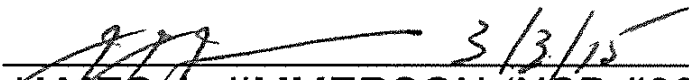
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Attorneys for Pardee Homes of Nevada

Reviewed and approved by:

JIMMERSON HANSEN P.C.



JAMES J. JIMMERSON (NSB #00264)

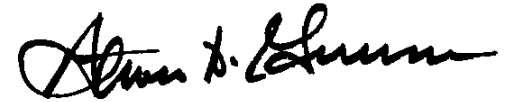
LYNN M. HANSEN (NSB #00244)

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CLERK OF THE COURT

1 **NEOJ**
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11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

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

10 JAMES WOLFRAM,
11 WALT WILKES

11 Plaintiffs,

12 vs.

13 PARDEE HOMES OF NEVADA,

14 Defendant.

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

**NOTICE OF ENTRY OF
ORDER ON FINDINGS OF
FACT AND CONCLUSIONS OF
LAW AND SUPPLEMENTAL
BRIEFING RE FUTURE
ACCOUNTING**

15
16 PLEASE TAKE NOTICE that an **ORDER ON FINDINGS OF FACT AND**
17 **CONCLUSIONS OF LAW AND SUPPLEMENTAL BRIEFING RE FUTURE**
18 **ACCOUNTING** was entered in the above-referenced case on the 20th day of April,
19 2015, a copy of which is attached hereto.

20
21 DATED this 13th day of May, 2014.

22 McDONALD CARANO WILSON LLP

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

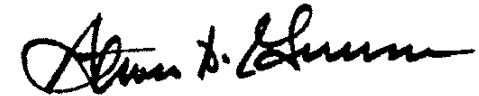
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 13th day of May, 2015, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER ON FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SUPPLEMENTAL BRIEFING RE FUTURE ACCOUNTING** 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



CLERK OF THE COURT

1 **ORDR**
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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 JAMES WOLFRAM,
16 WALT WILKES

17 Plaintiffs,

18 vs.

19 PARDEE HOMES OF NEVADA,
20 Defendant.

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

21 **ORDER ON FINDINGS OF FACT AND**
22 **CONCLUSIONS OF LAW AND**
23 **SUPPLEMENTAL BRIEFING RE**
24 **FUTURE ACCOUNTING**

25 **AND RELATED CLAIMS**

26 On October 23, 2013, the above-referenced matter came on for bench trial
27 before the Honorable Judge Kerry Earley. The Court, having reviewed the record,
28 testimony of witnesses, the documentary evidence, stipulations of counsel, the papers
submitted by the respective parties, and considered the arguments of counsel at trial in
this matter, entered Findings of Fact and Conclusions of Law (the "Decision") on June
25, 2014. That Decision is hereby incorporated into this Order.

In the Decision, the Court ordered both parties to provide the Court with
supplemental briefs detailing information the Defendant should provide to the Plaintiffs
consistent with the Court's Decision. The parties complied with the Court's order, as
the Plaintiffs submitted Plaintiffs' Accounting Brief and the Defendant submitted Pardee

1 Homes of Nevada's Supplemental Brief Regarding Future Accounting as well as a
2 Notice of Submission. On February 10, 2015, the Court issued a minute order
3 reflecting its decision on the supplemental briefing.

4 Now, having considered the parties' briefings, any arguments by counsel
5 presented in support of the same, and good cause appearing therefore, the Court
6 decides the submitted issues as follows:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Pardee
8 Homes of Nevada or its successors in interest and/or assigns (hereinafter collectively
9 referred to as "Pardee") shall provide to Plaintiffs an affidavit or unsworn declaration in
10 lieu thereof pursuant to NRS 53.045 executed under penalty of perjury by a corporate
11 representative from Weyerhaeuser NR Company ("WNR") acknowledging and
12 confirming the representations contained in Pat Lundvall's letter dated August 5, 2014,
13 regarding the transactions which resulted in Pardee's rights and obligations under the
14 Commission Agreement being assigned/transferred to WNR.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that
16 Pardee shall provide to Plaintiffs and their successors and/or assigns all future
17 amendments, if any, to the Amended and Restated Option Agreement dated March 28,
18 2005. The documents will be designated CONFIDENTIAL pursuant to the protective
19 order in the above-referenced matter.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, in
21 compliance with the Court's Decision, Pardee provide the following to Plaintiffs in the
22 future to keep them reasonably informed pursuant to the Commission Agreement:

- 23 1. Within fourteen (14) days of the relevant event described below, Pardee shall
24 provide Plaintiffs with courtesy copies of the following:
- 25
26
27
28

- a. All publicly-recorded documents related to any transaction involving Pardee's purchase of Option Property¹ from CSI;
 - b. Each written option exercise notice given pursuant to Paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date;
 - c. A parcel map which reflects the exact location of the related Option Property, if one is available;
 - d. Documents that reflect the purchase price of the Option Property, along with a breakdown of the calculation of commission owed pursuant to paragraph (iii) of the Commission Agreement; and
 - e. Pardee shall notify Plaintiffs which escrow company will handle any Option Property purchases.
2. If there is a purchase of Option Property, Pardee shall pay into escrow any commissions owed to Plaintiffs concurrently with Pardee's deposit of the Option Property Price.
 3. If the Option Agreement is terminated, Pardee shall provide notice thereof to Plaintiffs within fourteen (14) days of the effective date of the termination.
 4. Plaintiffs shall notify counsel for Pardee and WNR of the name and address of the person or entity that should receive notice of the foregoing information and documents.

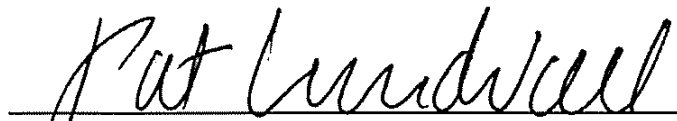
DATED this 20th day of April, 2015.


DISTRICT COURT JUDGE
upk

¹ Any capitalized term in this Order referring to the Amended and Restated Option Agreement dated March 28, 2005 will have the same meaning as in the Amended and Restated Option Agreement or any amendments thereto.

Submitted by:

McDONALD CARANO WILSON LLP



PAT LUNDVALL (NBSN #3761)

RORY T. KAY (NSB #12416)


2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

Attorneys for Pardee Homes of Nevada

Reviewed and approved by:

JIMMERSON HANSEN P.C.



JAMES J. JIMMERSON (NSB #00264)

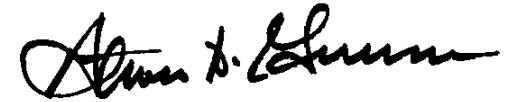
LYNN M. HANSEN (NSB #00244)

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Attorneys for Pardee Homes of Nevada



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Pardee Homes of Nevada

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,
WALT WILKES

11 Plaintiffs,

12 vs.

13
14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**PARDEE'S MOTION FOR ATTORNEY'S
FEES AND COSTS**

Hearing Date:

Time:

16 AND RELATED CLAIMS
17

18 Pursuant to NRCP 54(d), NRS 18.010(1) and the Commission Agreement dated
19 September 1, 2004, Defendant Pardee Homes of Nevada ("Pardee") hereby moves the
20 Court for an award of its reasonable attorney's fees and costs incurred in defending and
21 prevailing in the above-referenced matter. In 2004, Pardee and plaintiffs James
22 Wolfram and Walt Wilkes (collectively "Plaintiffs") executed a Commission Agreement
23 concerning the Coyote Springs Project. The Commission Agreement broadly
24 discussed Pardee's development on the Coyote Springs Project and set forth a broker
25 commission for Plaintiffs subject to Pardee entering into certain land transactions. The
26 Commission Agreement also stated that the prevailing party in any litigation to enforce
27 its contractual rights was entitled to its reasonable attorney's fees and costs.
28



1 After disagreement between the parties regarding certain transactions on the
2 Coyote Springs Project, Plaintiffs brought suit and claimed over \$1.9 million in damages
3 resulting from Pardee's purported breach of the Commission Agreement, including the
4 following claimed damages:

- 5 (1) \$1.8 million in lost future commissions;
- 6 (2) \$146,000 in attorney's fees; and
- 7 (3) \$6,000 in time and effort expended searching for information regarding what
8 Pardee owed them under the Commission Agreement.

9 Perhaps realizing the frailty of these claimed damages, Plaintiffs served Pardee with an
10 Offer of Judgment for \$149,000 before trial. Pardee rejected the Offer, contending that
11 the Plaintiffs were not due any lost future commissions under the Commission
12 Agreement.

13 The parties' trial then began on October 23, 2013, and after a full presentation of
14 the evidence, the Court entirely rejected Plaintiffs' claim to \$1.8 million in damages in
15 lost future commissions, finding in favor of Pardee on that portion of plaintiffs' breach of
16 contract claim. The Court awarded Plaintiffs only \$6,000 in compensatory damages for
17 another portion of their breach of contract and accounting claim, and \$141,000 in
18 attorney's fees as special damages on those claims. In total, the Court awarded the
19 Plaintiffs only 7.5% of their total damages claim and only .03% of their claimed
20 compensatory damages. Plaintiffs' \$147,000 recovery also fell short of their Offer of
21 Judgment. Thus, Pardee entirely prevailed on Plaintiffs' claim to lost future
22 commissions, which was the case's most significant and bitterly contested issue.
23 Therefore, under the Commission Agreement, NRS 18.010(1), and applicable case law,
24 Pardee is entitled to its attorney's fees and costs as the prevailing party on this issue.

1 This Motion is based on NRS 18.010(1), the Commission Agreement, the
2 pleadings and papers on file, the attached Memorandum of Points and Authorities, the
3 declaration of Pat Lundvall, and any oral argument the Court may entertain at the
4 hearing of this Motion.

5 DATED this 28 day of May, 2015.

6
7 McDONALD CARANO WILSON LLP

8
9 /s/ Rory T. Kay
10 PAT LUNDVALL (NBSN #3761)
11 RORY T. KAY (NSB #12416)
12 2300 West Sahara Avenue, Suite 1200
13 Las Vegas, Nevada 89102

14 *Attorneys for Pardee Homes of Nevada*

15 NOTICE OF MOTION

16
17 TO: All Parties and Their Counsel of Record:

18 PLEASE TAKE NOTICE that the undersigned will bring the foregoing
19 **PARDEE'S MOTION FOR ATTORNEY'S FEES** for hearing before the above-entitled
20 Court on the 15 day of July, 2015 at the hour of 9:00am in Department IV of
21 the above-entitled Court, or as soon thereafter as counsel can be heard.

22 MCDONALD CARANO WILSON LLP

23
24 /s/ Rory T. Kay
25 PAT LUNDVALL (NSBN 3761)
26 RORY KAY (NSBN 12416)
27 2300 West Sahara Avenue, Suite 1000
28 Las Vegas, Nevada 89102

Attorneys for Pardee Homes of Nevada

**DECLARATION OF PAT LUNDVALL IN SUPPORT OF PARDEE HOMES OF
NEVADA'S MOTION FOR ATTORNEY'S FEES**

Pat Lundvall declares as follows:

1. I am a partner in the law firm of McDonald Carano Wilson LLP ("McDonald Carano"), counsel of record for Pardee Homes of Nevada ("Pardee") in Clark County, Nevada District Court Case A-10-632338-C.

2. This Declaration, which is submitted in support of Pardee's Motion for Attorney's Fees and Costs, is made of my own personal knowledge. The information contained in this declaration and the attached invoices from McDonald Carano Wilson to Pardee for this case are not intended to waive the attorney-client or work product privileges, nor should they be construed to waive those privileges.

3. I have been practicing law in Nevada since 1989. I have been an attorney with McDonald Carano Wilson since June 1994, and a partner with the firm since 1996. I have represented clients in all aspects of commercial litigation in state court (including the Nevada Supreme Court), federal court, the Ninth Circuit of Appeals and the Supreme Court of the United States. A copy of my resume is attached as Exhibit A. I was lead counsel for Pardee in the case brought by Plaintiffs James Wolfram and Walt Wilkes. My hourly rate varied between \$465 and \$525 during the Plaintiffs' case against Pardee.

4. Aaron Shipley joined McDonald Carano in 2002. He is admitted to the Bars of Nevada and Utah. McDonald Carano offered Mr. Shipley partnership in 2012, which he accepted. He has over ten years of experience litigating complex commercial matters in Nevada and federal courts. A copy of his resume is attached as Exhibit B. Mr. Shipley served as second chair in this matter, and his hourly rate varied between \$290 and \$325 during the Plaintiffs' case against Pardee.

5. Rory Kay joined McDonald Carano in 2012. He is admitted to the Bars of Nevada and California. Mr. Kay is an associate at McDonald Carano, and he has three years of experience litigating complex commercial matters in Nevada and federal

1 courts, including representing Pardee in other litigation involving the Coyote Springs
2 Project. A copy of his resume is attached as Exhibit C. Mr. Kay provided limited
3 services in the post-trial phase of this case, and his hourly rate was \$240 during the
4 entire time he defended Pardee in Plaintiffs' case.

5 6. Brian Grubb and Karen Suroweic served as paralegals on this matter.
6 They helped prepare and present important documents during depositions, trial
7 preparation and the trial. They also completed relevant legal research related to the
8 plaintiffs' causes of action, helped the billing attorneys with witness preparation, and
9 assisted with various filings in the case.

10 7. All attorney's fees invoiced to Pardee were discounted 10%, pursuant to
11 an agreement with Pardee.

12 8. I am familiar with the billing rates for attorneys and paralegals in the Las
13 Vegas legal market. All of the foregoing hourly rates are fair and reasonable rates for
14 professional services by litigation attorneys and paralegals with similar levels of
15 experience and expertise within the Las Vegas legal market.

16 9. All of the work performed in this case was necessary to protect Pardee's
17 rights pursuant to the Commission Agreement and on the Coyote Springs Project.
18 Pardee's counsel handled the case from beginning to end, vigorously conducting
19 discovery, preparing for and executing the trial, and litigating the case until its final post-
20 trial judgment. Pardee also brought various meritorious motions and defeated a
21 substantial number of Plaintiffs' motions. All of the work done was consistent with civil
22 litigation practice in Las Vegas, Nevada in similar cases, especially in cases where
23 potential damages may exceed \$1,000,000.00.

24 10. In connection with the foregoing work, each attorney's work was billed on
25 an hourly basis and reflected on each attorney's time sheets, which were required to be
26 made at or about the time of the activity reflected thereon, and to accurately reflect the
27 amount of time expended on the particular activities done on Pardee's behalf. The
28 individual time sheets were entered into a billing program in McDonald Carano's

1 computer system, and sorted by client and matter number so that each client/matter
2 number received a separate accounting of the time spent by each attorney on that file
3 during the preceding month. Those entries were then prepared in a format that
4 constituted a draft of the monthly bill, with time converted to dollar amounts. Each
5 attorney and I reviewed the draft bills for accuracy. If I, as the billing attorney, believed
6 that a write down was appropriate, then the client was given a discount which was
7 never reflected on their invoice. I made such write downs to my time and other billing
8 professionals throughout the entire case. This procedure has proven to be trustworthy
9 and to render accurate and timely billing statements.

10 11. The billing statements that are attached hereto as Exhibit D are true and
11 correct copies of the billing statements generated in connection with McDonald
12 Carano's activities on Pardee's behalf in this case. All of the work identified in the
13 billing statements was reasonable and necessary, as were all of the costs. The
14 invoices were sent to the client and McDonald Carano Wilson has been paid in full on
15 those invoices.

16 12. The spreadsheet that is attached to the Motion as Exhibit E is a summary
17 of the fees and costs contained in the billing statement.

18 13. By this Motion, Pardee does not seek to recover all of its attorney's fees
19 and costs incurred in defending against the plaintiffs' claims. Instead, Pardee only
20 seeks to recover its reasonable attorney's fees and costs incurred in defending against
21 the lost future commissions portion of plaintiffs' breach of contract claim, which was the
22 most significant and bitterly contested portion of the case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS.

A. Plaintiffs and Pardee Execute the Commission Agreement.

In 1990s, Harvey Whittemore formed Coyote Springs Investment, LLC (“CSI”) and began developing the Coyote Springs Project (the “Project”), a 43,000 acre development just northeast of Las Vegas, Nevada. The Project straddled both Clark and Lincoln Counties. See Findings of Fact and Conclusions of Law at 2:9-12, on file with the Court. As licensed real estate brokers, Plaintiffs began tracking Whittemore’s Project in 2002, and shortly thereafter, they contacted Jon Lash, Pardee’s executive responsible for land acquisition, to see if he was interested in purchasing land and/or developing homes on the Project. See *id.* at 1:27-2:18. Lash agreed to allow Plaintiffs to represent Pardee as a potential purchaser, and the Plaintiffs arranged a meeting between Pardee and Whittemore to discuss Pardee’s interest in the Project. See *id.* at 2:24-3:8. At this meeting, Pardee indicated it only wanted to purchase the land designated as single-family detached production residential. See *id.*

After the initial meeting, Pardee and CSI informed Plaintiffs that their services were no longer needed because Pardee and CSI could negotiate the land sales between themselves. See *id.* at 3:9-12. Accordingly, Plaintiff and Pardee began negotiating the Plaintiffs’ broker commissions related to the Project and Plaintiffs’ introduction of Whittemore and Lash. See *id.* at 3:9-12. The end result of those negotiations was a Commission Agreement, which Pardee and James Wolfram executed on September 2, 2004 and Walt Wilkes executed on September 6, 2004. See *id.* at 4:24-26.

The Commission Agreement sets forth the parties’ rights concerning Pardee’s land purchases on the Project. See *generally* Commission Agreement Dated September 1, 2004, attached as Exhibit F. The only provision relevant to this Motion is the one that details the prevailing party’s right to attorney’s fees and costs if litigation arose to enforce the Commission Agreement:

1 In the event either party brings an action to enforce its rights under
2 this Agreement, the prevailing party shall be awarded reasonable
attorneys' fees and costs.

3 *Id.* at p .2 (emphasis added).

4 B. Pardee Purchases Land on the Project and Pays the Plaintiffs'
5 Commissions Pursuant to the Commission Agreement.

6 After the parties executed the Commission Agreement, Pardee purchased
7 relevant land from CSI that was covered by the Commission Agreement. See Findings
8 of Fact and Conclusion of Law at 8:6-9. Pursuant to the Commission Agreement,
9 Pardee also paid the Plaintiffs \$2,632,000.00 in commissions. See *id.* at 8:19-20.
10 These were the only commissions due under the Commission Agreement, and Pardee
11 has made no other purchases from CSI that would require them to pay Plaintiffs any
12 commissions under the Commission Agreement. See *id.* at 8:21-11:3.

13 C. Plaintiffs Demand \$1.8 Million in Additional Commissions and File Suit
14 Against Pardee.

15 Nevertheless, Plaintiffs insisted that they were due additional commissions from
16 Pardee and filed the current case on December 29, 2010. See Complaint, on file with
17 the Court. In their operative Complaint, the Plaintiffs alleged causes of action for
18 accounting, breach of the Commission Agreement, and breach of the implied duty of
19 good faith and fair dealing. See *generally* Second Amended Complaint. Plaintiffs
20 claimed over \$1.9 million in damages, including \$1.8 million in purportedly lost
21 commissions, \$146,000 in attorney's fees, and \$6,400 in time and effort expended
22 related to the accounting cause of action. See Plaintiffs' Twelfth Supplement to NRCP
23 16.1 Disclosure of Witnesses and Documents at 8:23-10:15, attached as Exhibit G.
24 The dominant theory in Plaintiffs' lawsuit was that Pardee purportedly reclassified
25 certain land purchases on the Project, therefore "robbing" Plaintiffs of \$1.8 million in
26 future commissions. See *id.* at 8:27-9:14. The \$1.8 million in future commissions were
27 92% of the Plaintiffs' claimed damages. See *generally id.*
28

1 D. The Suit Proceeds to Trial and the Court Entirely Rejects Plaintiffs' Claim
2 to Additional Commissions.

3 After a full bench trial beginning on October 23, 2013, the Court rejected the
4 Plaintiffs' claim to additional commissions. See *generally* Findings of Fact and
5 Conclusions of Law, on file with the Court. The Court noted that Pardee had paid the
6 Plaintiffs \$2.6 million in commissions pursuant to the Commission Agreement for all
7 land purchases that Pardee made on the Project. See *id.* at 8:19-20. The Court also
8 explained that "Pardee as of the present time does not owe any commission to Plaintiffs
9" See *id.* at 8:25-9:4. According to the Court, the Plaintiffs' dominant theory that
10 Pardee reclassified certain land purchases on the Project and "robbed" Plaintiffs of \$1.8
11 million in future commissions had no basis in law or in fact. See *id.* at 12:16-13:9.
12 Thus, the Court only awarded Plaintiffs \$6,000 in time and effort expended to research
13 accounting matters related to their commissions and \$135,500 in special damages for
14 attorney's fees and costs. See *id.* at 14:7-15:3 and 17:25-18:2. And the Court's total
15 award of \$141,500 was even less than the Plaintiffs' pre-trial Offer of Judgment. See
16 Plaintiffs' Offer of Judgment, attached as Exhibit H.

17 Because Pardee entirely prevailed on Plaintiffs' demand for \$1.8 million in lost
18 future commissions,, which was the case's most significant and bitterly contested issue,
19 Pardee now moves for the portion of its attorney's fees and costs incurred in defending
20 against that claim, pursuant to the Commission Agreement as the prevailing party in
21 this litigation.

22 II. ARGUMENT.

23 A. Legal Standard.

24 NRS 18.010(1) states that the fees of an attorney for his or her services are
25 governed by agreement, express or implied, which is not restrained by law. Thus, a
26 district court may award attorney's fees if authorized to do so by statute, rule or
27 contract, and parties "are free to provide for attorney fees by express contractual
28 provision." See *Davis v. Beling*, 128 Nev. Adv. Op. 28, 278 P. 3d 501, 515 (2012). The

1 goal in “interpreting an attorney fees provision, as with all contracts, is to discern the
2 intent of the contracting parties.” *Id.* In this matter, the Commission Agreement calls
3 for attorney’s fees for the “prevailing party.” Exhibit F, Commission Agreement at p. 2.

4 The term “prevailing party” is “broadly construed so as to encompass plaintiffs,
5 counterclaimants, and defendants.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106
6 P.3d 1198, 1200 (2005). A party prevails if “it succeeds on any significant issue in
7 litigation which achieves some of the benefit it sought” *Cole-Monahan v. Salvo*,
8 No. 62849, 2014 WL 5686290, at *2 (Nev. Nov. 3, 2014); see also *Moritz v. Hoyt*
9 *Enterprises, Inc.*, 604 So. 2d 807, 810 (Fla. 1992) (“[T]he party prevailing on the
10 significant issue in the litigation is that party that should be considered the prevailing
11 party for attorney’s fees.”). And the fairest way to determine the prevailing party is “to
12 allow the trial judge to determine from the record which party has in fact prevailed on
13 the significant issues tried before the court.” *Moritz*, 604 So. 2d at 810. In considering
14 the prevailing party, the trial judge should always be mindful that “[c]ontract provisions
15 for the payment of attorney’s fees by the losing party provide an incentive to settle and
16 reduce litigation.” *Dimick v. Dimick*, 112 Nev. 402, 405, 915 P.2d 254, 256 (1996).

17 In determining how to apportion attorney’s fees and costs in cases where neither
18 party was entirely victorious, the trial court has discretion to award fees and costs using
19 its sound judgment. See *Gunderson v. D.R. Horton, Inc.*, 130 Nev. Op. 9, 319 P.3d
20 606, 616 (noting a trial court’s discretion “includes the power to determine questions to
21 which no strict rule of law is applicable but which, from their nature, and the
22 circumstances of the case, are controlled by the personal judgment of the court.”); see
23 also *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 594, 879 P.2d 1180, 1188 (1994)
24 (stating “a trial court must award a reasonable fee, however the method upon which a
25 reasonable fee is determined is subject to the direction of the court.”). Thus, the Court
26 is free to consider “unsuccessful claims” by the plaintiff and apportion attorney’s fees to
27 the defendant on such claims. See *Tarkanian*, 110 Nev. at 596, 879 P.2d at 1189
28 (“Tarkanian’s unsuccessful claims have been considered at various points throughout

1 this litigation, and the fees were accordingly reduced to arrive at a reasonable fee
2 award.”).

3 Once a litigant shows it is the prevailing party under a contract, it must also show
4 that its attorney’s fees and costs are reasonable. The guiding case in this analysis is
5 *Brunzell v. Golden Gate Nat’l Bank*, which demands that the trial court consider the
6 following factors to determine reasonableness: (1) the quality of the advocate; (2) the
7 character of the work done; (3) the work actually performed; and (4) the result obtained.
8 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). NRCP 54 also requires an affidavit or
9 declaration from the movant’s attorney swearing that the fees were reasonably incurred
10 and supporting documentation evidencing the fees claimed.

11 The Nevada Supreme Court has further clarified that awarded costs must be
12 reasonable, and that the parties may not simply “estimate” a reasonable amount of
13 costs. See *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d
14 1049, 1054 (Mar. 26, 2015). Instead, the statute requires the requesting party to
15 provide a verification under oath that “to the best of his or her knowledge and belief the
16 items are correct, and that the costs have been necessarily incurred in the action or
17 proceeding.” *Id.* Thus, the party must provide supporting documentation to
18 “demonstrate how such fees were necessary to and incurred in the present action.” *Id.*
19 This documentation may include receipts or court records, or it may be line item entries
20 of the cost so long as they indicate “the reason for each [cost],” which is “precisely what
21 is required under Nevada law.” *Id.*

22 B. Pardee is Entitled to Its Reasonable Attorney’s Fees and Costs in this
23 Litigation.

- 24 1. Pardee is the “prevailing party” and is therefore entitled to its
25 attorney’s fees pursuant to the Commission Agreement.

26 The significant issue in this case during trial was always Plaintiffs’ claim to \$1.8
27 million in lost future commissions under the Commission Agreement. The following
28 chart illustrates the Plaintiffs’ claimed damages in this case, including a breakdown of
each type of damages and the percentage of total damages that the type represented:

<u>Type of Damages</u>	<u>Claimed Amount</u>	<u>Amount Awarded by the Court</u>	<u>% of Plaintiffs' Total Claimed Damages</u>	<u>% of Plaintiffs' Total Awarded Damages</u>
Lost Future Commissions	\$1,800,000.00	\$0	92.2%	0%
Time and Expense to Conduct Accounting	\$6,400.00	\$6,000	.3%	4.2%
Attorney's Fees	\$146,000.00	\$135,500	7.5%	95.8%
Totals	\$1,952,000.00	\$141,500		

See Exhibit G, Plaintiffs' NRCP 16.1 Supplement at 8:23-10:15; see *also* Findings of Fact and Conclusions of Law. As the chart shows, the Plaintiffs' claim to lost future commissions was the significant issue in the case because it comprised 92.2% of the Plaintiffs' total claimed damages and also provided the very incentive for Plaintiffs to bring the lawsuit. See Letter Dated May 19, 2009 from James J. Jimmerson to Pardee ("My clients are of the belief that they have not been paid for all of the sales which they are due, and Pardee's failure to comply with its contract constitutes a material breach of this contract for which my clients will be obliged to seek appropriate legal redress for the harm your company has, and is, causing them."), attached as Exhibit I. Without Plaintiffs claiming \$1.8 million in damages for purported lost future commissions, they had no economic incentive to bring the lawsuit because their possible attorney's fees (\$146,000) far outweighed the meager damages they could possibly recover for their time and expense in conducting their own accounting (\$6,400).

And yet Pardee eviscerated Plaintiffs' demand for lost future commissions, with the Court finding that Pardee paid all necessary commissions under the Commission Agreement and awarding Plaintiffs not a single penny in damages for any commissions owed. See *generally* Findings of Fact and Conclusions of Law. Thus, on the case's significant issue, Pardee was the prevailing party having completely defeated Plaintiffs' claim to lost future commissions.¹ Under the plain language of the Commission

¹ In fact, as the above chart shows, because of Pardee's victory on the case's most significant issue, Plaintiffs only recovered 7.2% of their total claimed damages.

1 Agreement, then, Pardee is entitled to its reasonable attorney's fees and costs. See
2 Exhibit F, Commission Agreement at p. 2.

3 2. Pardee's attorney's fees are reasonable and supported by
4 adequate evidentiary documentation.

5 *Brunzell's* demand that the Court consider the quality of Pardee's counsel, the
6 character of the work done, the work actually performed, and the result obtained shows
7 the reasonableness of Pardee's claimed attorney's fees. Moreover, under *Cadle Co.*,
8 Pardee has provided sufficient supporting documentation to prove the reason for each
9 cost.

10 a. Quality of the Advocates.

11 Pardee was primarily represented by Pat Lundvall and Aaron Shipley through
12 trial, and Rory Kay performed minimal work after the trial concluded. Ms. Lundvall, as a
13 partner in the law firm of McDonald Carano Wilson LLP ("McDonald Carano"), has over
14 25 years of experience litigating in Nevada courts, is AV rated by her peers, and has
15 been named to the Legal Elite, Super Lawyers, Best Lawyers in America, the Silver
16 State's Top 100, and Chambers USA. She is board certified by the National Board of
17 Trial Advocacy, the National Board of Civil Pretrial Practice Advocacy, and the State
18 Bar of Nevada, and was lead counsel on this matter.

19 Mr. Shipley, as one of Ms. Lundvall's partners at McDonald Carano, has 13
20 years of experience in Nevada courts, and has been recognized as a Mountain States
21 Super Lawyer. He has experience handling commercial litigation, including claims
22 similar to the ones at issue in this case, and he served as second chair throughout the
23 trial.

24 Mr. Kay is an associate at McDonald Carano, having been admitted to the
25 Nevada Bar in 2011 and the California Bar in 2013. He has experience litigating
26

27 And Plaintiffs also recovered less in each of the other two damages types than they
28 claimed, as well as less than their pre-trial Offer of Judgment. See Exhibit H, Plaintiffs'
Offer of Judgment.

1 complex commercial matters, including representing Pardee in other litigation regarding
2 the Project.

3 Ms. Lundvall, Mr. Shipley and Mr. Kay all charged hourly rates commensurate
4 with their experience and education, and consistent with prevailing rates in the Nevada
5 legal market.

6 b. The Character of the Work Done.

7 The work of Pardee's attorneys was necessary to protect Pardee's interests on
8 the Project and under the Commission Agreement. Pardee's counsel handled the case
9 from beginning to end, vigorously conducting discovery, preparing for and executing the
10 trial, and litigating the case until its final post-trial judgment. Pardee also brought
11 various meritorious motions. All of the work done was consistent with civil litigation
12 practice in Las Vegas, Nevada in similar cases where potential damages may exceed
13 \$1,000,000.00.

14 c. The Work Actually Performed.

15 A breakdown of the work performed (including the nature of the work, the
16 attorneys' hourly rates, and total fees incurred in connection with each task) and costs
17 incurred is contained in Exhibits D and E.

18 d. The Results Obtained.

19 As discussed above, Pardee's counsel successfully defended Pardee on the
20 significant issue in the case, eliminating 92.2% of Plaintiffs' total claimed damages.
21 Moreover, Pardee's counsel successfully reduced Plaintiffs claimed damages for the
22 other types of damages so that Plaintiffs only recovered 7.2% of their total claimed
23 damages, an amount less than Plaintiffs' final pre-trial Offer of Judgment.

24 III. CONCLUSION.

25 The Commission Agreement grants attorney's fees and costs to the prevailing
26 party in any litigation arising from the contract. In this case, Pardee prevailed on the
27 most significant issue in the litigation, entirely eliminating Plaintiffs' claim to lost future
28 earnings, which equaled 92% of Plaintiffs' total claimed damages. Thus, Pardee is the

1 prevailing party pursuant to the Commission Agreement, and it is entitled to its
2 reasonable attorney's fees and costs. Consistent with the *Brunzell* analysis above,
3 Pardee respectfully requests that the Court award Pardee \$520,163.69 in attorney's
4 fees and \$17,826.40 in costs, for a total award of \$537,990.09.

5 DATED this 28th day of May, 2015.

6
7 MCDONALD CARANO WILSON LLP

8
9 /s/ Rory T. Kay
10 Pat Lundvall (NSBN 3761)
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17 *Attorneys for Defendant Pardee Homes of*
18 *Nevada*
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
3 and that on the ____ day of May, 2015, I e-served and e-filed a true and correct copy of
4 the foregoing **PARDEE HOMES OF NEVADA'S MOTION FOR ATTORNEY'S FEES**
5 **AND COSTS** via Wiznet, as utilized in the Eighth Judicial District in Clark County,
6 Nevada, on the following:

7 James J. Jimmerson
8 Lynn M. Hansen
9 Burak Ahmed
10 JIMMERSON HANSEN, P.C.
415 S. Sixth Street, Suite 100
Las Vegas, Nevada 89101

11 *Attorney for Plaintiffs*

12
13
14 /s/ Sally Wexler
An Employee of McDonald Carano Wilson
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