

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 12:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

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10/23/2013	Trial Exhibit 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.

McDONALD CARANO LLP

By: /s/ Rory T. Kay
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CERTIFICATE OF SERVICE

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

/s/ Beau Nelson

An Employee of McDonald Carano LLP



CLERK OF THE COURT

ELECTRONICALLY SERVED
06/30/2015 08:36:12 AM

MOT

JIMMERSON HANSEN, P.C.
JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
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Attorneys for Plaintiffs
JAMES WOLFRAM and WALTER D. WILKES
And ANGELA L. LIMBOCKER-WILKES LIVING TRUST,
ANGELA L. LIMBOCKER-WILKES, TRUSTEE

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES)
and ANGELA L. LIMBOCKER-WILKES LIVING)
TRUST, ANGELA L. LIMBOCKER-WILKES,)
TRUSTEE,)

Plaintiffs,)

v.)

PARDEE HOMES OF NEVADA,)

Defendant.)

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

**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"**

1 Plaintiffs, JAMES WOLFRAM and ESTATE OF WALT WILKES, DECEASED, by
2 and through their counsel of record, JAMES J. JIMMERSON, ESQ. and LYNN M.
3 HANSEN, ESQ. of the law firm of JIMMERSON HANSEN, P.C. hereby submit their
4 Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June
5 15, 2015, to Amend the Findings of Fact/Conclusions of Law and Judgment Contained
6 therein, specifically referred to in the language Included in the Judgment at Page 2, Lines
7 8 through 13 and the Judgment at Page 2, Lines 18 Through 23, and to delete the same
8 to reflect the true fact that Plaintiff prevailed on their Complaint.


9 The basis for this Motion lies in the fact that the Court's language within the
10 Judgment, prepared solely by Defendant's counsel, and filed by the Court on June 15,
11 2015, is nowhere supported by the Court's Findings of Fact, Conclusions of Law and
12 Order, file-stamped on June 25, 2014, a copy of which is attached hereto as **Exhibit "1"**.
13 This so-called "Judgment" filed June 15, 2015, and is a fiction fabricated by the
14 Defendant in an effort to avoid the payment of additional attorney's fees associated with
15 its unreasonable failure to accept an Offer of Judgment made by Plaintiffs to Defendants
16 in the principal sum of \$133,761.25, plus interest to date, totaling \$149,000.00,
17 and which the Court's Findings of Fact, Conclusions of Law, and Order, awarded to
18 Plaintiff a greater sum than the Offer of Judgment totaling \$175,000.00 when including
19 legal interest. Defendant's attempt to establish a false and dubious basis to file its Motion
20 for Attorney's Fees in an amount of \$537,990.09 filed with the Court on May 28, 2015,
21 claiming it to be the "prevailing party", even though it did not prevail or win any single
22 claim pled by the Plaintiffs against the Defendants or pled by the Defendant either. The
23 offensive and false language within the Judgment should be made to reflect the true facts
24 of the Court's ruling on June 25, 2014, regarding accounting entered on June 27, 2014.
25 Nowhere is language that this Court entered a "Judgment" against Plaintiffs and in favor
26 of Pardee is nowhere found within the Court's rulings.

1 This Motion is further based on the pleadings and papers on file, the attached
2 Affidavit of James J. Jimmerson, Esq attached hereto as Exhibit "2", and the documents
3 attached hereto and arguments of counsel at the hearing of this Motion.

4 The Plaintiffs further request such other and further relief as the Court deems
5 proper in the premises.

6 DATED this 24 day of June, 2015.

8 JIMMERSON HANSEN, P.C.

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

18 NOTICE OF MOTION

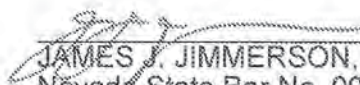
19 TO: ALL INTERESTED PARTIES:

20 PLEASE TAKE NOTICE that the undersigned will bring PLAINTIFFS' MOTION
21 PURSUANT TO NRCP 52(b) AND 59 TO AMEND THE COURT'S JUDGMENT ENTERED
22 ON JUNE 15, 2015, TO AMEND THE FINDINGS OF FACT/CONCLUSIONS OF LAW AND
23 JUDGMENT CONTAINED THEREIN, SPECIFICALLY REFERRED TO IN THE
24 LANGUAGE INCLUDED IN THE JUDGMENT AT PAGE 2, LINES 8 THROUGH 13 AND
25 THE JUDGMENT AT PAGE 2, LINES 18 THROUGH 23 TO DELETE THE SAME OR
26 AMEND THE SAME TO REFLECT THE TRUE FACT THAT PLAINTIFF PREVAILED ON
27 THEIR ENTITLEMENT TO THE FIRST CLAIM FOR RELIEF FOR AN ACCOUNTING, AND
28 DAMAGES FOR THEIR SECOND CLAIM FOR RELEAF OF BREACH OF CONTRACT,
AND THEIR THIRD CLAIM FOR RELIEF FOR BREACH OF THE IMPLIED COVENANT

1 FOR GOOD FAITH AND FAIR DEALING AND THAT DEFENDANT NEVER RECEIVED A
2 JUDGMENT IN ITS FORM AND AGAINST PLAINTIFFS WHATSOEVER AS
3 MISTAKENLY STATED WITHIN THE COURT'S LATEST "JUDGMENT" on for hearing
4 before the above-entitled Court on the 3 day of AUG 2015, at the hour of
5 IN CHAMBERS
 .m., of said date, in Dept. IV, or as soon thereafter as counsel may be heard.

6 DATED this 28 day of June, 1015.
7

8 JIMMERSON HANSEN, P.C.
9

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

I. STATEMENT OF PROCEDURAL HISTORY AND FACTS

INTRODUCTION:

Your Honor, it is regrettable that this Motion needs to be filed. But Pardee continues to attempt to overreach the Court and the Plaintiffs in a never-ending effort to avoid judgment being properly entered and this case ultimately concluded.

In this regard, the Court entered its Findings of Fact, Conclusions of Law, and Order on June 25, 2014, following a three (3) week trial between October 21, 2013, through December, 2013, at which time the Court took the matter under submission issuing its ultimate Findings of Fact, Conclusions of Law and Order on June 25, 2014. See **Exhibit "1"** attached hereto.

A review of the Court's judgment that the original Plaintiffs, James Wolfram and Walt Wiles, reveals that the Plaintiffs, makes Findings of Facts, Conclusions of Law and Order finding each of the Plaintiffs' claims within its original Complaint and as amended through its Amended Complaint and ultimately through its second Amended Complaint, a breach by the Defendant, Pardee Homes of Nevada of each of the three (3) claims for relief that were properly plead from the outset.

This case was about gaining information and documents. This case was conservatively pled by the Plaintiffs and was forced to be filed only because of the consistent refusal of Pardee to keep the Plaintiffs reasonably informed as the Commission Agreement required during the course of Pardee's development of their residential home construction at Coyote Springs. The Court will recall that the claims for relief never changed throughout the Complaint, the Amended Complaint, and the Second Amended Complaint. The first count was seeking an Accounting by virtue of the superior

1 relationship and superior knowledge that Pardee had over the Plaintiffs and the
2 information that it had and refused to provide to the Plaintiffs; the Second Count was for
3 breach of contract for its failure to provide this information, and the damages that flowed,
4 and within that contract, the breach of the implied covenant and good faith and fair dealing
5 to treat fairly the Plaintiffs with regard to the provision of information to keep them
6 reasonably informed as required by the Commission Agreement between the parties. The
7 Commission Agreement was Exhibit "1" at the time of trial.
8

9 Reading of the Amended Complaint and Second Amended Complaint, in every
10 case, reveals that this was a case about gaining information and the refusal of the
11 Defendant to keep the Plaintiffs reasonably informed which was their contractual
12 obligation. The breach of contract was the failure to keep the Plaintiffs so informed. Only
13 if, by virtue of the failure of the Defendant to keep the Plaintiffs' reasonably informed, it
14 was discovered that the Plaintiffs believed that the Defendant had exercised its option to
15 acquire additional land outside of the original boundaries of the original takedown of
16 properties, for what was additional commissions may be due. The point here is, that the
17 main claim here was looking for information, it was not a money damage based upon a
18 known breach of contract and failure to pay commission. It was a breach of contract for
19 the failure to provide information to ascertain whether in fact additional monies, if any,
20 were due by the Defendant to the Plaintiffs. Defendant knew this sad reality: It foolishly
21 rejected Plaintiffs' Offer of Judgment in the principal sum of \$133,761.25, which together
22 with interest to date, totaled \$149,000.00. By comparison, the Courts final Order granted
23 final Judgment in Plaintiffs' favor for \$141,500.00 plus applicable legal interest, which
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1 computes to over \$175,000.00 if not more. The sum of \$1.8 Million was never mentioned
2 throughout trial by each party or the Court.

3 The Court's Findings of Facts, Conclusions of Law and Order confirm this
4 statement throughout, including, but not limited to the following:

5 FINDINGS OF FACT (June 25, 2014)

6
7 40. When Plaintiffs began requesting information regarding Pardee's
8 land acquisitions from CSI, the only information provided by Pardee was the
9 location of the Purchase Property purchased for the Purchase Property
10 Price from CSI. All information provided was limited to the single family
11 production property acquisitions. Pardee informed the Plaintiffs that it had
12 purchased from CSI additional property at the Coyote Springs development,
13 but took the position that any documentation regarding the designations of
14 the use of the additionally purchased property was confidential and would
15 not be provided to Plaintiffs. Interestingly, Pardee had already provided to
16 Plaintiffs the initial Option Agreement, Amendments No. 1 and 2 and the
17 Amended Restated Option Agreement, which were also confidential
18 documents between Pardee and CSI.
19

20
21 41. Although Pardee co-developed with CSI a separate land transaction
22 agreement for the acquisition of lands designated for other uses than single
23 family detached production residential lots, Pardee had a separate duty to
24 Plaintiffs pursuant to the Commission Agreement to provide information so
25 Plaintiffs could verify the accuracy of their commission payments.
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1 42. Without access to the information regarding the type of land
2 designation that was purchased by Pardee as part of the separate land
3 transaction with CSI, Plaintiffs were not reasonably informed as to all
4 matters relating to the amount of their commission payments as they could
5 not verify the accuracy of their commission payments.
6

7 43. Although the complete documentation when provided in this litigation
8 verified that Plaintiffs were not due any further commissions at this time for
9 the additional purchases of land by Pardee, Pardee still had a duty to
10 provide sufficient information regarding the designation of the type of land
11 that had been purchased to Plaintiffs. Plaintiff Wolfram attempted through
12 public records to ascertain information regarding the additional lands, but
13 he was unable to verify the required information of the land use
14 designations.
15

16 CONCLUSIONS OF LAW

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

22 18. Plaintiffs satisfied any and all of their obligations under the
23 Commission
24 Agreement.
25

26 B. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF CONTRACT OF 27 THE COVENANT OF GOOD FAITH AND FAIR DEALING 28

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2 5. Pardee was not faithful to the purpose of the Commission Agreement
3 by failing to provide information regarding other land designations
4 purchased by Pardee at Coyote Springs so Plaintiffs could verify the
5 accuracy of their commission payments. Without this information, Pardee
6 failed to keep Plaintiffs reasonably informed as to all matters relating to their
7 Commission Agreement.
8

9 6. Pardee did not act in good faith when it breached its contractual duty
10 to keep Plaintiffs reasonably informed as to all matters relating to the
11 amount and due dates of their commission payments. Plaintiffs did not
12 breach any obligation they had to Pardee under the Commission Agreement
13 by requesting information regarding other land acquisitions by Pardee from
14 CSI at Coyote Springs. Plaintiffs acted in good faith at all times toward
15 Pardee and did not deny Pardee its justified expectations under the
16 Commission Agreement.
17

18 7. Pardee suffered no recoverable damages from Plaintiffs' inquiries.
19

20 C. PLAINTIFFS' CLAIM FOR AN ACCOUNTING

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

4 In the face of these findings, the Court has made a determination that the Plaintiff
5 is owed a Judgment in the amount of \$141,500.00 composed of \$6,000.00 of time that
6 Mr. Wolfram testified over 80 hours at a reasonable rate of \$75.00 per hour he spent to
7 communicate with Pardee in an effort to obtain information he never received, but that he
8 should have receive as the Court has so found. The Judgment is entitled to legal interest
9 and as such totals in excess of \$175,000.00, far in excess of the \$149,000.00 Offer of
10 Judgment Defendant Pardee did not accept. In addition, the Court heard the testimony of
11 Plaintiffs' counsel, Mr. Jimmerson, who testified that the efforts directly associated with
12 Mr. Jimmerson's law firm to acquire the information from Pardee, and the Court found the
13 sum of \$135,000.00 to be reasonable and necessary. But the Defendant does not
14 recognize the exercise of discretion by the Court in Pardee's favor, and has now set upon
15 a scheme to attempt to deprive the Plaintiffs of their prevailing party status, and the further
16 damages that the Plaintiffs are entitled to arising from the failure of the Defendant to
17 accept an Offer of Judgment submitted to it on April 29, 2013, and unreasonably rejected
18 by Pardee on May 10, 2013.

19 A review of the Findings of Facts, Conclusions of Law and Order therefore finds
20 that the Court has found that the Defendant owed to Plaintiff an accounting, in accordance
21 with Plaintiff's First Claim for Relief requesting an accounting, thus making the Plaintiffs
22 the prevailing party on this claim. Second, finding the Defendant having breached its
23 contract with Plaintiffs, in the form of its Commission Agreement, by failing to provide the
24

1 information requested, the damages of which were the \$6,000.00 in Mr. Wolfram's time
2 and the \$135,500.00 the Court found was reasonable and necessary as attorney's fees
3 to obtain this information expended by this law firm for a total of \$141,500.00, plus legal
4 interest of over \$35,000.00 total approximately \$178,000.00, for the Second Claim for
5 Relief, and the Court found that as to the Third Claim for Relief, Breach of the Implied
6 Covenant of Good Faith and Fair Dealing, the Defendant breached that covenant as well
7 and entitling the Plaintiffs to the damages that were set forth herein at the time of Mr.
8 Wolfram and the attorney's fees he incurred through the law firm totaling \$141,500.00
9 plus legal interest totaling in excess of \$175,000.00. In short, the Plaintiffs prevailed in
10 every single claim. They established their entitlement to an accounting, which the
11 Defendant opposed. They established the breach of contract and they established the
12 breach of the implied covenant of good faith and fair dealing, the two claims of which led
13 to the award of \$141,500.00, plus legal interest, total in excess of \$175,000.00 in money
14 damages against the Defendant. The Defendant prevailed on nothing as it relates to the
15 claims for relief that were filed against it. The only thing Defendant achieved was to avoid
16 a larger judgment against it.

17
18
19 The bulk of the trial, focused upon the Defendant's having failed to provide needed
20 information and required information to the Plaintiffs to keep them reasonably informed.
21 Had the Defendant changed direction in the choice of its takedown of land? Had it
22 essentially exercised its right to take Option Property and develop into single family
23 residential production use, without paying a commission? The Court will recall extensive
24 testimony by numerous witnesses as to the fact that Pardee, contrary to the June 1, 2004,
25 Option Agreement that it signed with Coyote Springs, LLC, on or about June 1, 2004
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1 chose to build horizontally, going East, instead of building vertically going North. In this
2 regard, had the Court found that the Defendant was obliged to build North and chose to
3 build East, there clearly could have been the exercise of additional Option Property and
4 possible additional commissions owed by Defendant to Plaintiffs. This Plaintiffs simply
5 did not know. However, this Court, over Plaintiffs' objection, made its Findings of Fact,
6 Conclusions of Law and Decision that Defendant was permitted, contrary to the Plaintiffs'
7 view of the language of the Option Agreement of June 1, 2004, to be allowed to build East
8 and that the Plaintiffs were not entitled to this opportunity to ask for further commissions
9 because the Court found that in being permitted to build easterly directly, there was not
10 the exercise of any Option Property entitling Plaintiffs to possible commissions. The Court
11 will also recall that this was a difficult decision for the Court and from the Plaintiffs' position
12 clearly erroneous, because during the mist of trial, the Plaintiffs learned of the Defendants
13 rezoning and re-designating of multi-family land to single family production residential
14 land with the County of Clark, never disclosed by the Defendant to the Plaintiffs, of course
15 adding further evidence of the Defendant's concealing relevant and vital information from
16 the Plaintiffs of its activities at Coyote Springs in the development of single family
17 production residential housing. The Court exercised its discretion favor of Pardee and
18 found that said re-designation did not constitute a breach of the parties' Commission
19 Agreement.
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23 Plaintiff believes that the above recited facts constitute a fair summary of the
24 Court's Findings of Facts, Conclusions of Law and Order, which specifically recognizes
25 that the Plaintiffs prevailed on each of their Claims as noted above. The Defendants
26 breached its Commission Agreement to provide information and keep the Plaintiffs
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1 reasonably informed, thus entitling the Plaintiffs to an accounting, Count I; breach of the
2 Commission Agreement requiring the Defendant to keep the Plaintiffs reasonably
3 informed, Second Claim for Relief; and, breach of the implied covenant of good faith and
4 fair dealing within that contract, in its failure to keep the Plaintiffs reasonably informed,
5 the Third Claim for Relief, totaling damages of \$141,500.00, plus legal interest. In doing
6 so, the Court did make findings in favor of Pardee that otherwise could have resulted in
7 a somewhat larger judgment against the Defendant, depending upon the calculation by
8 the Court of what amount of Option Property, if any, going East was requiring a
9 commission to be paid, if any. The Court did not make a calculation and the Plaintiffs did
10 not demand through the course of the trial any claim of \$1.8 Million, as Defendant falsely
11 includes within the June 15, 2015 "Judgment, because as the Court knows, the Court was
12 being asked to hold a further hearing to calculate the amount for which additional
13 commissions, if any, would be due if the Court found the building going easterly was a
14 breach of contract. At no time during the oral arguments during the trial or conclusion did
15 the Plaintiffs request a judgment of \$1,800,000.00, which would be the theoretical amount
16 of money that the Defendant might owe the Plaintiffs for commissions were all 3,000 acres
17 purchased by Pardee, and ultimately built out for single family production residential
18 homes at Coyote Springs over the balance of the contract of 40 years, which by 2013,
19 would have left an approximate 30 years to be developed and learned. These are facts
20 well known to the Court and though substantial time has passed, the Court will recall, in
21 reviewing this matter, the truth of these statements.

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26 It is with these facts in mind that makes the Defendant's behavior and actions so
27 reprehensible. Their hypocritical claim during the trial of "doing the right thing" turned out

1 to be laughable. Not only within the Court's Findings of Facts, Conclusions of Law and
2 Order, but also in the sanctimony that they proffered, despite their attempt to keep the
3 Plaintiffs uninformed and in the dark with regard to their activities. Their mischief has
4 continued now with the entry of the so-called Judgment, submitted to the Court on or
5 about May 29, 2015, without Plaintiffs' counsel having seen the same, for signature, but
6 instead submitting a document in an ex parte fashion to the Court, and in breach of their
7 agreement to keep Plaintiffs' counsel and staff aware of its interactions with this Court.
8 Specifically, the Court is reminded that the Plaintiffs', through their counsel, advised the
9 Defendant that Plaintiffs' chief counsel, Mr. Jimmerson does not routinely or regularly
10 read his emails, and that any communication in which the firm needed to add to that
11 emails to Burak Ahmed, Esq., who was co-counsel for this file after the departure of
12 James M. Jimmerson, Esq., as well as a copy to Mr. Jimmerson's Legal Assistant, Kim
13 Stewart at ks@jimmersonhansen.com. Defendants, intentionally, failed to communicate
14 with these individuals, failed to send any documents by regular mail, but instead
15 communicated only with Mr. Jimmerson by email and submitted the Court's Judgment
16 entered on June 15, 2015, to Mr. Jimmerson on or about May 28, 2015, only by email
17 without hard copy and without copying Mr. Ahmed or Ms. Stewart, see the email from
18 Defendant's counsel to Plaintiffs' counsel by email only attached hereto as **Exhibit "3"**.
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22 Had Plaintiffs' counsel or staff seen this Judgment, contemporaneous to its being
23 entered, Plaintiff would have filed the appropriate Motion to advise the Court of its
24 objection to the same, thus, necessitating this Motion being filed timely pursuant to NRCP
25 52(b) and NRCP 59. This Court and Plaintiffs have been taken advantage of by the
26 inclusion within the Judgment of a phony Finding at Page 2, Lines 8 through 13, that
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1 "Plaintiffs claimed \$1,952,000.00 in total damages related to their causes of action". This
2 is a lie. Further, the Defendant writes in the Court's Judgment, which again is erroneous,
3 that states that the Court enter Judgment "in favor" of Pardee and "against Plaintiffs" on
4 Plaintiffs' alleged fabricated request for \$1.8 Million in lost commissions supposedly
5 advanced at trial by Plaintiffs. Plaintiffs never made such a claim at trial or in any
6 Complaint. See the Court's own Findings of Fact, Conclusions of Law and Order filed
7 June 25, 2014, Exhibit 1 hereto. It is pure fabrication. So is the conclusion that it was the
8 "core" issue in the case. What a shameful allegation. The Plaintiffs claim for Defendant's
9 failure to keep them informed is the money damages the Court found. The use of the term
10 "purported" is false and should be stricken also. It is a decided issue by this Court that, in
11 fact, the Defendants failed to keep the Plaintiffs reasonably informed, breached its
12 contract in failing to do so, owed money damages arising from it, and further Plaintiffs are
13 entitled to an accounting by virtue of the Defendant's failure to keep the Plaintiffs
14 reasonably informed as the Court has specifically found within its Findings of Facts,
15 Conclusions of Law and Order. As such, the Court, in reviewing the Judgment, can see
16 the odorous nature of the language that the Defendant's Pardee has inserted within the
17 Judgment, which nowhere belongs within the same. It is also contrary specifically to the
18 findings of the Court and the conclusion of the Court and the Judgment of the Court.

22 The Court will now ask itself where did this \$1,952,000.00 arise? Where did \$1.8
23 Million arise? The answer is, the Plaintiffs, from time-to-time, under NRCP 16.1, as the
24 Defendant is obliged to keep the other side reasonably informed with regard to
25 information that is developed during the course of the trial. This results in supplemental
26 submission of documents pursuant to NRCP 16.1 that is disclosed to the Defendant. It

1 was never filed with the Court. It was never used at trial. Plaintiffs continually kept the
2 Defendant informed as to the Plaintiffs' position prior to trial, and reasonably and
3 seasonably did so through supplemental 16.1 disclosures. The Plaintiffs' supplemental
4 disclosures, to keep the Defendant informed and to have the Plaintiff further develop its
5 case as discovery went along, was accomplished by thirteen (13) supplemental
6 disclosures.
7

8 Within these numerous supplementations, Plaintiffs further advised the Defendant
9 as to money damages that Plaintiffs may seek, if the facts warranted the same at the time
10 of trial and did so using words like "if", "future", "potential" and "scenario". Because the
11 Defendant had not kept the Plaintiffs informed as to what property had been purchased,
12 where it had been purchased, how much property existed, whether it was in or out of the
13 original purchase as defined by the Option Agreement of June 1, 2004, the Plaintiffs were
14 not certain whether or not they were entitled to any further commissions or not. This
15 uncertainty was stated in its Pre-trial Brief, its Trial Brief, and opening statement to the
16 Court. A second hearing over accounting was specifically requested over liability and
17 damages had been determined by the Court. The Plaintiffs believed that the Defendant
18 breached its Option Agreement, by building easterly and not northerly as had been stated
19 within the Option Agreement, which is the only document referenced within the
20 Commission Agreement, and indicated that an accounting would be necessary following
21 the conclusion of the trial if the Court found liability, to identify the number of acres, if any,
22 that had been constructed or developed by the Defendant, which had not paid a
23 commission to the Plaintiffs, if any there be. At no time did the Plaintiffs state that
24 \$1,800,000.00 or \$1,952,000.00 was due and owing by the Defendant to the Plaintiffs at
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1 the time of commencement of the trial or any time thereafter. No testimony was introduced
2 on this issue. No exhibits containing this sum was advanced. And if the Court reviews the
3 Fifth Supplemental 16.1 disclosure, attached hereto as **Exhibit "9"**, the Court will see
4 that the Plaintiffs are simply augmenting their previously disclosures to advise the
5 Defendant that if, in fact, the Defendant had built outside to the Option Property defined
6 within the Option Agreement of June 1, 2014, and therefore built on Option Property as
7 defined within the Agreement further entitling the Plaintiffs to commissions, and if all 3,000
8 acres remaining to the Plaintiffs was, in fact, purchased by Pardee for single family
9 production residential use, as opposed to many other uses that were available to it, then
10 theoretically the Defendant could owe the Plaintiffs, over the next 30 years, up to
11 \$1,800,000.00 in possible, potential future commissions, in addition to the damages of
12 Mr. Wolfram that had been specifically identified.
13
14

15 The Court found that the Defendant was permitted to build easterly and did not
16 breach its agreement entitling the Plaintiffs to further commissions in doing so. This
17 reduced Defendant's exposure and reduced Plaintiffs' final judgment. The amount of
18 reduction was never identified as Jim Lash himself could tell the Court how many acres
19 were east of Parcel 1 upon which Pardee had acquired the land, let alone whether or not
20 it was for single famiy production residential use. This is a finding the Plaintiffs strongly
21 disagree with, but it was a finding of this Court. However, the Court never found within its
22 findings, because it was not an issue that was placed in issue at the time of trial, that the
23 Plaintiffs claimed \$1,800,000.00 in damages related to the loss of future commissions for
24 Pardee's breach of contract, but was being denied the same by the Court. Nothing could
25 be further from the truth. The Court did not even address that issue, because Plaintiffs
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1 never made that claim, and the Court found that Pardee could build easterly, beyond the
2 Parcel 1 defined within the original Option Agreement and that the same did not constitute
3 a breach of contract. But the concept that made the Defendant a "winner" or "prevailing
4 party" with regard to any claim.

5 This Court will recall that it asked both the Plaintiffs' counsel and Defendant's
6 counsel to submit proposed Findings of Fact, Conclusions of Law and Judgment for the
7 Court to review. Indeed, Defendant's proposed Findings of Fact, Conclusions of Law was
8 what became the outline for Defendant's argument and summation at the end of this case.
9 At no time in the proposed Findings of Fact, Conclusions of Law and Judgment by the
10 Plaintiffs or the Defendant did the parties argue that a \$1.8 Million amount was due and
11 owing for the so-called loss future commissions. That sum was never mentioned, nor
12 was it ever argued, nor is it contained in the Court's Findings of Fact, Conclusions of Law
13 and Order. All the Court needs to do is review its own Findings of Fact, Conclusions of
14 Law and Order filed June 25, 2014 to refresh its recollection that such a claim now made
15 by the Defendant, in an effort to attempt to bootstrap an improper claim for attorney's fees
16 has any substance or truth whatsoever. It does not.

17 ///

18 ///

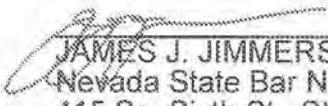
19 ///

1 The Plaintiffs incorporate by reference Plaintiffs' Motion to Strike Judgment
2 entered June 15, 2015, and filed June 29, 2015, and Plaintiffs' Opposition to Defendant's
3 Motion for Attorney's Fees filed June 29, 2015, and Plaintiffs' Motion for Attorney's Fees
4 filed June 29, 2015, by reference as if fully stated herein.

5
6 DATED this 27 day of June, 2015.

7 Respectfully submitted,

8 JIMMERSON HANSEN, P.C.

9
10 
11 JAMES J. JIMMERSON, ESQ.
12 Nevada State Bar No. 000264
13 415 So. Sixth St., Ste. 100
14 Las Vegas, NV 89101
15
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28

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy **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 RELEAF 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"** was made on the 29th day of June, 2015, as indicated below:

- ☒ [x] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to Nevada State Welfare, Dept. of Human Resources;
- ☐ [] by electronic mail;
- ☐ [] by hand-delivery with signed Receipt of Copy.

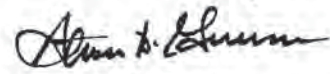
1 To the attorney(s) listed below at the address, email address, and/or facsimile number
2 indicated below:

3 Pat Lundvall, Esq.
4 Rory T. Kay, Esq.
5 MCDONALD CARANO WILSON, LLP
6 2300 W. Sahara Ave., Suite 1000
7 Las Vegas, NV 89102
8 Attorneys for Defendant


An employee of JIMMERSON HANSEN, P.C.

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

NEOJ

JAMES J. JIMMERSON, ESQ.

Nevada State Bar No.: 00264

jjj@jimmersonhansen.com

LYNN M. HANSEN, ESQ.

Nevada State Bar No.: 00244

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415 South 6th Street, Suite 100

Las Vegas, Nevada 89101

Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM and

WALT WILKES,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO.: A-10-632338-C

DEPT. NO.: IV

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

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

Dated this 27 day of June, 2014.

JIMMERSON HANSEN, P.C.



JAMES J. JIMMERSON, ESQ.

Nevada State Bar No.: 00264-0547

LYNN M. HANSEN, ESQ.

Nevada State Bar No.: 00244

415 South 6th Street, Suite 100

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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

By facsimile, pursuant to EDCR 7.26 (as amended)

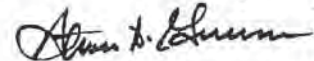
X By receipt of copy as indicated below

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


An employee of JIMMERSON HANSEN, P.C.

1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA


CLERK OF THE COURT

4 JAMES WOLFRAM and
5 WALT WILKES,

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

6 Plaintiffs,

Trial Date: October 23, 2013

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

10 AND RELATED CLAIMS

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

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

24 **I. FINDINGS OF FACT**

25 **A. THE PARTIES**

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 DECISION

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

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

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

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

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

10
11 DATED this 25 day of June, 2014.

12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15
16 CERTIFICATE OF SERVICE

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

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

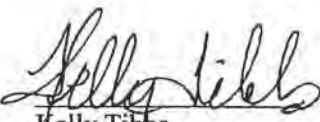
22
23 
24 Kelly Tibbs
25 Judicial Executive Assistant

EXHIBIT 2

EXHIBIT 2

AFFIDAVIT OF JAMES J. JIMMERSON, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

James J. Jimmerson, being duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and A Shareholder of the law firm of Jimmerson Hansen, P.C., and counsel for Plaintiffs, JAMES WOLFRAM and WALTER D. WILKES and ANGELA L. LIMBOCKER-WILKES LIVING TRUST, ANGELA L. LIMBOCKER-WILKES, TRUSTEE in the above entitled matter. I have personal knowledge of all matters contained herein, and am competent to testify thereto, expect for those matter stated on information and belief, and to those matters, I believe them to be true.

2. I personally did not read communication of the Defendant on May 28, 2015, in which the Defendant's counsel emailed me a copy of a proposed Judgment that was ultimately entered by the Court on June 15, 2015. This is because, as the Defendant's counsel specifically knows, I do not routinely read my emails. This is known to Defendant's counsel, since, the Defendant had submitted a paper in the fall of 2014 in this case, to the Court, in which he purported to email the document to me and also purported to send the document to me by U.S. Mail. By an email that I sent on September 15, 2014, a copy of which is attached hereto as Exhibit "3," I advised defense counsel that I do not routinely read my emails, that I had no seen the email directed to me, and only me, by defense counsel, and that in the future, I requested Defendant's counsel to copy my secretary, Kim Stewart, at ks@jimmersonhansen.com and my then associate Burak Ahmed at bsa@jimmersonhansen.com. See email of September 15, 2014 attached hereto as Exhibit "3."

3. Defendant's counsel failed to do so with regard to this crucial document called a "Judgment" that was ultimately filed by this Court when the Court did not hear any objection on June 15, 2015. Note that the defense counsel did not sent the proposed Order by U.S. Mail,

1 and did not copy my legal secretary at ks@jimmesonhansen.com or Mr. Ahmed at
2 bsa@jimmesonhansen.com.

3 4. As a result, neither I nor my staff who are designated to read these emails, did not saw
4 the Judgment until after it was entered by the Court. I will be filing a Motion to Compel the
5 Defendants in this case, and in every case I have against this specific defense counsel, since
6 they do not honor the professional courtesies requested, that any and all documents that are
7 going to be emailed to myself, also be emailed to my legal secretary, Kim Stewart, and our
8 associates, as is my practice.

9 5. That had I seen the Judgment, particularly considering the faults and the fabricated
10 wording at page 2, lines 8 – 13, and page 2, lines 22 – 29, I would certainly have objected
11 since a so-called finding and the so-called Order completely misstate the Court's Findings of
12 Fact, Conclusions of Law and Order of June 25, 2014 and it should be stricken. Furthermore,
13 a review of the Judgment, when compared to the Court's overall Findings of Fact, Conclusions
14 of Law and Order, misstates or softens the Court's findings the Court made in favor of Plaintiffs
15 and against Defendant on each of Plaintiffs' claims, and Plaintiffs request that the Judgment
16 be deleted and stricken, or in the alternative, that the offending language be deleted, and finally
17 that the Judgment comport verbatim to the Court's Findings of Fact, Conclusions of Law and
18 Order.
19

20 FURTHER, AFFIANT SAYETH NAUGHT.
21

22 
JAMES J. JIMMERSON, ESQ.

23 SUBSCRIBED AND SWORN to before me
24 this 21st day of June, 2015.

25 

26 NOTARY PUBLIC in and for said
27 County and State
28



EXHIBIT 3

EXHIBIT 3

Kim Stewart

From: James J. Jimmerson, Esq.
Sent: Monday, September 15, 2014 6:07 PM
To: Sally Wexler
Cc: Pat Lundvall; Aaron Shipley; Burak S. Ahmed; Kim Stewart
Subject: RE: Pardee/Wolfram

Ms. Lundvall:

Late Friday afternoon at 4:53 pm September 12, 2014, our office received by Wiznet your document "Pardee's Notice of Submission" dated September 11, 2014, which purports to evidence said Notice sent on September 11, 2014, received a day later on late Friday, September 12, 2014. Enclosed with said "Notice of Submission" which your office emailed me on September 11, 2104, was attached a letter dated September 10, 2014, addressed to me but copied to the Court purportedly by "email and US Mail." I note that nothing was emailed to me on September 10, 2014, as the letter is dated, but instead was apparently emailed to me the next day, September 11, 2014, as noted herein, and to this date, I have never received by mail your letter which you represent was also sent to me by "US Mail." Why you do not also copy Mr. Burak Ahmed, Esq., who you know is working with me on this matter is also unclear, but to insure our receipt of any and all documents you wish to send or serve upon me, I once again ask that you send them to Mr. Ahmed at his email address bsa@jimmersonhansen.com; my legal assistant Kim Stewart at ks@jimmersonhansen, as well as to myself.

I do object to your ex-parte communication with the Court. I did not copy my letter sent to you of August 21, 2014, to the Court, and our timely-filed Brief was served upon you and filed with the Court Clerk like any other Court filing on August 25, 2014. Why you take it upon yourself to communicate with the Court in an exparte fashion about this matter is beyond me, but it is not appropriate for you to do so. I object to your doing so, and i would ask you to cease doing so in the future.

To keep this matter on track, we will be serving and filing a Notice of Motion upon Plaintiff's Accounting Brief Pursuant to the Court's Order Entered on June 25, 2014, later this week, and we can discuss it with the Court at the appropriate time.

JJJ

From: Sally Wexler [mailto:swexler@mcdonaldcarano.com]
Sent: Thursday, September 11, 2014 2:46 PM
To: James J. Jimmerson, Esq.
Cc: Pat Lundvall; Aaron Shipley
Subject: Pardee/Wolfram

Pursuant to Pat Lundvall's instructions, please find attached correspondence regarding the above-referenced matter.

Sally Wexler|Executive Assistant to
Pat Lundvall| assistant to Rory T. Kay and
Jeff S. Riesenmy

MCDONALD CARANO WILSON LLP

2300 West Sahara Avenue, Suite 1200 | Las Vegas, NV 89102
phone (702) 257-4512|facsimile (702) 873-9966

WEBSITE



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EXHIBIT 4

EXHIBIT 4

9/12

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

1 **SUPP**
2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No. 000264
4 LYNN M. HANSEN, ESQ.
5 Nevada Bar No. 0244
6 AMANDA J. BROOKHYSER, ESQ.
7 Nevada Bar No. 11526
8 JIMMERSON HANSEN, P.C.
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11 Tel No.: (702) 388-7171; Fax No.: (702) 380-6406
12 lmh@jimmersonhansen.com
13 ajb@jimmersonhansen.com
14 Attorney for Plaintiffs
15 *James Wolfram and Walt Wilkes*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

PLAINTIFFS' FIRST SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF
WITNESSES AND DOCUMENTS

19 COME NOW Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their
20 attorneys, Lynn M. Hansen, Esq., and Amanda J. Brookhyser, Esq., of the law firm of
21 Jimmerson Hansen, P.C., and hereby submits the following First Supplement to list of
22 witnesses and production of documents, as follows (*new items in bold*):

I.
WITNESSES

24 Plaintiffs provide the following witnesses' identities, last known address and
25 telephone numbers:

- 26 1. James Wolfram
27 c/o Jimmerson Hansen, P.C.
28 415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
(702) 388-7171

1 This person most knowledgeable is expected to render testimony regarding the facts
2 and circumstances surrounding the subject matter of this litigation.

3 2. Walt Wilkes
4 c/o Jimmerson Hansen, P.C.
5 415 South Sixth Street, Suite 100
6 Las Vegas, Nevada 89101
7 (702) 388-7171

8 This person most knowledgeable is expected to render testimony regarding the facts
9 and circumstances surrounding the subject matter of this litigation.

10 3. Frances Butler
11 Chicago Title Company
12 Las Vegas, Nevada

13 This person was the head of the Real Estate Commercial Department of Chicago Title
14 Company, is most knowledgeable, and is expected to render testimony regarding the facts
15 and circumstances surrounding the subject matter of this litigation.

16 4. PARDEE HOMES OF NEVADA
17 Custodian of Records
18 McDonald Carano Wilson LLP
19 100 West Liberty Street, 10th Floor
20 Reno, Nevada 89501
21 (775) 788-2000

22 Pardee Homes of Nevada is a named Defendant in this matter. Its present or former
23 employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6)
24 and/or custodians of records are expected to testify regarding the facts and background of this
25 case.

26 5. PARDEE HOMES OF NEVADA
27 Person Most Knowledgeable
28 McDonald Carano Wilson LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
(775) 788-2000

Pardee Homes of Nevada is a named Defendant in this matter. Its present or former
employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6)
and/or Person Most Knowledgeable are expected to testify regarding the facts and background
of this case.

1 6. Jon Lash
2 c/o McDonald Carano Wilson LLP
3 100 West Liberty Street, 10th Floor
4 Reno, Nevada 89501
5 (775) 788-2000

6 Mr. Lash is an employee of PARDEE HOMES OF NEVADA and is expected to testify
7 regarding the facts and background of this case.

8 7. Clifford Anderson
9 c/o McDonald Carano Wilson LLP
10 100 West Liberty Street, 10th Floor
11 Reno, Nevada 89501
12 (775) 788-2000

13 Mr. Anderson is an employee of PARDEE HOMES OF NEVADA and is expected to
14 testify regarding the facts and background of this case.

15 8. Harvey Whitmore
16 c/o Coyote Springs
17 Address Unknown

18 Mr. Whitmore is the owner of the property involved in this lawsuit and is expected to
19 testify regarding the facts and background of this case.

20 9. Chicago Title Company
21 Las Vegas, Nevada
22 Custodian of Records

23 The Custodian of Records is expected to testify regarding the facts and background of
24 this case.

25 10. Chicago Title Company
26 Las Vegas, Nevada
27 Person Most Knowledgeable

28 The Person Most Knowledgeable is expected to testify regarding the facts and
background of this case.

Plaintiff reserves the right to call any and all witnesses who may be disclosed or
deposed throughout the course of discovery.

Plaintiff reserves the right to call any and all of Defendant's witnesses; and

Plaintiff reserves the right to call any and all rebuttal witnesses.

Plaintiff's experts, if any, as yet unidentified.

1 Plaintiff reserves the right to supplement this list of witnesses as discovery progresses
2 and until the time of trial in this case.

3 II.

4 DOCUMENTS

5 Pursuant to NRCP 16.1(a)(1)(B), Plaintiffs provide the following documents relating to
6 Plaintiffs and Defendants:

- 7 1. Any and all written agreements between the Parties;
- 8 2. Any and all documents evidencing damages to the Plaintiffs;
- 9 3. Any and all correspondence between the Parties;
- 10 4. Any and all appropriate Custodian of Record documents;
- 11 5. Any and all pleadings in this matter;
- 12 6. Documents labeled Bates Numbers PLTL0001-PLTL00244;

13 These documents are being reproduced has Plaintiffs' Initial NRCP 16.1
14 Disclosures of Witnesses and Documents had duplicate documents. The duplicate
copies have been removed and the documents are listed as follows:

- 15 A. Option Agreement for the Purpose of Real Property and Joint Escrow
16 Instructions dated May 2004 (Bates No. PLTF0001-0080);
- 17 B. Amended and Restated Option Agreement for the Purchase of Real
18 Property and Joint Escrow Instructions dated March 28, 2005, (Bates No.
19 PLTF0081-0152);
- 20 C. Two Assignments of Real Estate Commission and Personal Certification
21 Agreement (Bates No. PLTF0153-0157A)
- 22 D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes
23 regarding the attached Commission letter dated September 1, 2004, (Bates
24 No. PLTF0158-0162);
- 25 E. Amendment No. 2 to Option Agreement for the Purchase of Real Property
26 and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- 27 F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates
28 No. PLTF0175-0179);
- G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer,
Esq., (Bates No. PLTF0180-0187);
- H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer,
Esq., (Bates No. PLTF0188-0191);

- 1 I. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson,
2 Esq., (Bates No. PLTF0192-0193);
3 J. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles
4 E. Curtis, (Bates No. PLTF0194-0196);
5 K. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram,
6 (Bates No. PLTF0197-0202);
7 L. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No.
8 PLTF0203-0205);
9 M. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. Joh E.
10 Lash, (Bates No. PLTF0206-0209);
11 N. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson,
12 Esq., (Bates No. PLTF0210-0211);
13 7. Any and all documents the Defendants disclosed by any parties or used at any
14 depositions;
15 8. Any and all other relevant documents to this matter.

16 Plaintiffs reserve the right to identify and produce different and/or additional documents
17 as the investigation and discovery in this case proceeds.

18 III.

19 COMPUTATION OF DAMAGES

20 Plaintiffs calculate their damages to be all damages associated with the Defendant's
21 breach of contract and the Defendant's failure to meet their obligations to the Plaintiffs,
22 Attorney fees and costs of the suit. Discovery is still ongoing therefore the Plaintiffs reserve
23 the right to amend and supplement this response as the investigation and discovery in this
24 case proceeds.

25 Dated this 12 September, 2011

26 JIMMERSON HANSEN, P.C.

27 JAMES J. JIMMERSON, ESQ.
28 Nevada Bar No. 000264
LYNN M. HANSEN, ESQ.
Nevada Bar No. 0244
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CERTIFICATE OF SERVICE

I here by certify that service of a true correct copy of PLAINTIFFS' FIRST SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS

was made on the 23rd day of September, 2011, as indicated below:

- ☒ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below
- ☐ By electronic service through the E-filing system
- ☐ By facsimile, pursuant to EDCR 7.26 (as amended)
- ☐ By receipt of copy as indicated below

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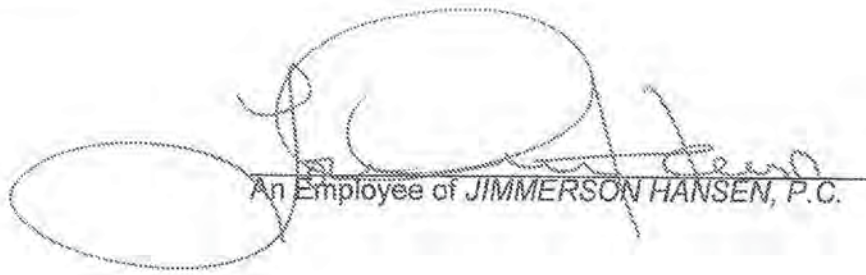

An Employee of JIMMERSON HANSEN, P.C.

Exhibit A

Exhibit A

JA008450

JA008451 – JA008585

FILED UNDERSEAL