

Case No.: A-10-632338-C

James Wolfram & Walt Wilkes v. Pardee Homes of Nevada

The undersigned being duly sworn states that I received the within Writ of Garnishment on the _____ day of _____, 20____, and I personally served a copy of the same on the _____ day of _____, 20____ by delivering and leaving a copy, along with the statutory fee of \$5.00, with _____ at _____, County of Clark, State of Nevada.

Deputy Sheriff

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH:

1. Are you in any manner indebted to the defendant(s) _____

or either of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars.

Answer: _____

2. Are you an employer of one or all of the defendants? If so, state the length of your pay period and the amount each defendant presently earns during a pay period.

Answer: _____

3. Did you have in your possession, in your charge or under your control, on the date the Writ of Garnishment was served upon you any money, property, effects, goods, chattels, rights, credits or choses in action of the defendant(s) or either of them, or in which defendant(s) is (are) interested? If so, state its value and state fully all particulars.

Answer: _____

4. Do you know of any debts owing to the defendant(s), whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to the defendant(s) or either of them, or in which defendant(s) is (are) interested, and now in the possession or under the control of others? If so, state particulars:

ANSWER: _____

5. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

ANSWER: _____

Garnishee

STATE OF NEVADA

COUNTY OF CLARK

I, _____, do solemnly swear that the answers to the foregoing interrogatories by me subscribed are true.

Garnishee

SUBSCRIBED and SWORN TO before me
this day of _____, 20__.

NOTARY PUBLIC

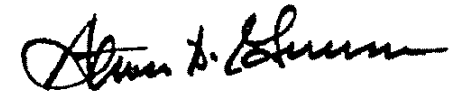
"Pursuant to N.R.S. Chapter 31, you are specifically directed to levy upon, attach and deliver to the Sheriff any and all funds held for or in any way related to the Defendants, including all bank accounts upon which defendants have signing authority.

Plaintiff is informed and believes and therefore alleges that one or more judgment debtor(s) is funneling money through accounts at your institution or has a substantial beneficial interest in such account(s). Obviously, should your depositor(s) disagree, they have statutory remedies under Chapter 31 of which they may avail themselves. Should you disagree and/or in any way ignore the express directions on this Writ of Garnishment, your alternative is to interplead the funds, or face liability for failure to properly answer a lawful writ of this court. Under appropriate circumstances, failure to comply fully and completely and deliver all available funds in the referenced account to the Sheriff will lead to Plaintiff's to seeking a full award of attorney's fees, costs, and sanctions against the aforesaid financial institution and possibly result in a judgment against said financial institution for the full amount sought under Plaintiff's Writ of Execution submitted herewith."

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EXHIBIT G

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CLERK OF THE COURT

1 MRTX
2 PAT LUNDVALL (NSBN 3761)
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13
14 DISTRICT COURT
15 CLARK COUNTY, NEVADA
16

17 JAMES WOLFRAM,
18 WALT WILKES

19 Plaintiffs,

20 vs.

21 PARDEE HOMES OF NEVADA,
22 Defendant.

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


PARDEE'S MOTION TO RETAX
PLAINTIFFS' MEMORANDUM OF
COSTS FILED JUNE 19, 2015

Hearing Date:

Time:

23 AND RELATED CLAIMS
24
25
26
27
28

Pursuant to NRS 18.110(4), Defendant Pardee Homes of Nevada ("Pardee") hereby moves the Court to retax and settle the costs included in Plaintiffs' Memorandum of Costs and Disbursements. See Plaintiffs James Wolfram and Walt Wilkes' Memorandum of Costs and Disbursements, filed with the Court on June 19, 2015. Because the Plaintiffs were not the prevailing party in this case and did not make the required demonstration under *Cadle Co. v. Woods & Erickson LLP*, Pardee respectfully requests that the Court deny Plaintiffs' alleged costs.

 McDONALD-CARANO-WILSON
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1 This Motion is based on NRS 18.110(4), the pleadings and papers on file, the
2 attached Memorandum of Points and Authorities, and any oral argument the Court may
3 entertain at the hearing of this Motion.

4 DATED this 24th day of June, 2015.

6 McDONALD CARANO WILSON LLP

7
8 /s/ Rory T. Kay
9 PAT LUNDVALL (NBSN #3761)
10 RORY T. KAY (NSB #12416)
11 2300 West Sahara Avenue, Suite 1200
12 Las Vegas, Nevada 89102

11 *Attorneys for Pardee Homes of Nevada*

13 NOTICE OF MOTION

16 TO: All Parties and Their Counsel of Record:

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing
18 **PARDEE'S MOTION TO RETAX PLAINTIFFS' MEMORANDUM OF COSTS FILED**
19 **JUNE 19, 2015** for hearing before the above-entitled Court on the 27 day of
20 JULY, 2015 at the hour of ^{IN CHAMBERS} in Department IV of the above-entitled Court, or
21 as soon thereafter as counsel can be heard.

22 MCDONALD CARANO WILSON LLP

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

Attorneys for Pardee Homes of Nevada

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT.

A. Legal Standard.

Plaintiffs claim that they are entitled to \$50,897.03 in costs pursuant to NRS 18.110 and 18.020(3). NRS 18.110 states that “the party in whose favor judgment is rendered, and who claims costs, must file . . . within 5 days after the entry of judgment . . . a memorandum of the items of the costs in the action or proceeding . . . [that] have been necessarily incurred in the action or proceeding.” NRS 18.110(1). NRS 18.020(3) states that costs “must be allowed [] to the prevailing party . . . in an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.” In sum, only a prevailing party is entitled to a cost award

Although NRS 18.110 and 18.020 give district courts considerable discretion in determining costs, the statutes do not grant unlimited discretion. See *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (Mar. 26, 2015). Instead, awarded costs must always be reasonable, necessary, and actually incurred, and parties cannot “simply estimate a reasonable amount of costs” without providing documentation of reasonableness and necessity. See *id.*; see also *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205-06, 885 P.2d 540, 543 (1994). In sum, a party seeking cost recovery must provide the required justifying documentation.

A party moving for costs must provide this “justifying documentation” to show the district court that the “costs were reasonable, necessary and actually incurred.” See *Cadle Co.*, 131 Nev. Adv. Op. 15, 345 P.3d at 1244. An affidavit or verification from the party’s counsel telling the trial court that costs were reasonable and necessary is not sufficient under the statutes; instead, the party must “demonstrate how such fees were necessary to and incurred in the present action.” *Id.* Thus, mere invoices or line items showing the cost’s amount and date are insufficient to determine reasonableness and necessity under the statutes. See *id.* Rather the party must go beyond providing

1 mere documents and instead demonstrate why each cost was reasonable and
2 necessary. *Id.*; see also *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481,
3 493, 117 P.3d 219, 227 (2005) ("Reasonable costs must be actual and reasonable,
4 'rather than a reasonable estimate or calculation of such costs.'").

5 B. Plaintiffs Are Not Entitled to Any Cost Recovery Under NRS 18.110 and
6 NRS 18.020.

7 1. Plaintiffs were not the prevailing party in the instant litigation.

8 In their two-page memorandum of costs, Plaintiffs do not include any analysis as
9 to why they are putatively entitled to their costs. Rather Plaintiffs ignore the prevailing
10 party requirement in this matter for the purposes of NRS 18.110 and NRS 18.020.
11 However, as Pardee addressed in its previously filed Motion for Attorney's Fees and
12 Costs, Pardee prevailed entirely on Plaintiffs' claim to lost future commissions, the most
13 significant issue in this litigation and the one that comprised over 90% of Plaintiffs'
14 claimed damages. See Pardee's Motion for Attorney's Fees and Costs at 12:23-14:2,
15 on file with the Court.¹ The Court recognized as much in its judgment, wherein in
16 stated that "judgment is entered against Plaintiffs and for Pardee as to Plaintiffs' claim
17 for \$1,800,000 in damages related to the lost future commissions under the
18 Commission Agreement." Judgment entered on June 15, 2015, on file with the Court.
19 Simply put, the Plaintiffs were not the prevailing party and therefore are not entitled to
20 recover any of their costs under either NRS 18.110 or NRS 18.020.

21 2. Plaintiffs have not provided the Court with any basis to conclude
22 their claimed costs were reasonable and necessary.

23 As *Cadle Co.* makes clear, a party must go beyond simply providing an invoice
24 or line item detailing the claimed costs. *Cadle Co.*, 131 Nev. Adv. Op. 15, 345 P.3d at
25 1244. The Nevada Supreme Court held in that case that a generalized affidavit from

26 ¹ Pardee's Motion for Attorney's Fees and Costs includes a more complete
27 analysis of why Plaintiffs, after claiming over \$1.9 million in damages but only
28 recovering less than a tenth of those damages, are not the "prevailing" party in this
litigation. Pardee incorporates the entirety of that analysis in this current motion as
well. A copy of this Motion is attached as Exhibit A.

1 counsel telling "the court that costs were reasonable and necessary" is not sufficient
2 under the statutes. *Id.* Instead, the affidavit and supporting documentation must
3 "demonstrate how such [costs] were necessary to and incurred in the present action."
4 *Id.* A party should not be permitted to supply such information after the fact.

5 Under any possible reading of *Cadle Co.*'s standard, Plaintiffs' Motion is deficient
6 in all respects. In "justifying" Plaintiffs' claimed costs, Plaintiffs' counsel's verification
7 states only that "he believes those charges to be true and correct, and to be reasonably
8 and necessarily incurred in this action or proceeding." See Motion at 3:1-9. The Motion
9 itself is only a paragraph long and does not provide any demonstration as to how such
10 costs "were necessary to and incurred in the present action." See Motion at 1:19-26.
11 The supporting documentation attached to the Motion only shows the date and amount
12 of each cost, along with a generic (and at times incomplete) description of the cost.
13 See *id.* Thus, what is so obviously missing from the Motion and counsel's verification is
14 **any demonstration as to why the costs were incurred**, which is what is required by
15 *Cadle Co.* and which would allow the Court to evaluate the reasonableness and
16 necessity of the costs.

17 Absent such a supporting demonstration, the Nevada Supreme Court has been
18 resolute in stating that a district court must deny the memorandum of costs, even when
19 a party is prevailing. See *Cadle Co.*, 131 Nev. Adv. Op. 15, 345 P.3d at 1244-45
20 ("Because the district court had no evidence on which to judge the reasonableness or
21 necessity of each photocopy charge, we conclude that the court lacked justifying
22 documentation to award photocopy costs."). This Court must therefore deny Plaintiffs'
23 memorandum of costs because there is no evidence to judge the reasonableness or
24 necessity of their claimed costs.

25 Additionally, because the Plaintiffs have provided no explanation regarding the
26 purported reasonableness of their claimed costs, Pardee cannot determine if such
27 costs are genuinely recoverable under the Nevada statutes. Therefore Pardee
28

1 reserves the right to advance additional reasons why the costs are not recoverable if
2 the Plaintiffs provide supplemental explanation at a later date.

3 II. CONCLUSION.

4 Under *Cadle Co.* and the Nevada Supreme Court's prior precedent, the Plaintiffs'
5 bare motion, with no discussion as to why they incurred the costs they claim, does not
6 satisfy the reasonableness standard inherent in NRS 18.110 and 18.020. Moreover,
7 even assuming they had made such a showing, Plaintiffs were not the "prevailing party"
8 under either statute. Thus, Pardee respectfully requests that the Court deny Plaintiffs'
9 memorandum of costs.

10 DATED this 24th day of June, 2015.

11
12 MCDONALD CARANO WILSON LLP

13
14 /s/ Rory T. Kay

15 Pat Lundvall (NSBN 3761)
16 Rory T. Kay (NSBN 12416)
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21 *Attorneys for Defendant Pardee Homes of*
22 *Nevada*
23
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27
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CERTIFICATE OF SERVICE

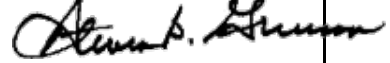
I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 24th day of June, 2015, I e-served and e-filed a true and correct copy of the foregoing **PARDEE HOMES OF NEVADA'S MOTION TO RETAX PLAINTIFFS' MEMORANDUM OF COSTS FILED JUNE 19, 2015** via Wiznet, as utilized in the Eighth Judicial District in Clark County, Nevada, on the following:

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

Attorney for Plaintiffs

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

336845



DISTRICT COURT
CLARK COUNTY, NEVADA

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOSEPH T. BONAVENTURE, SENIOR JUDGE

ON FRIDAY, JULY 10, 2015

AT 9:00 A.M.

APPEARANCES:

For the Plaintiffs: JOHN W. MUIJE, ESQ.
HOLLY A. FIC, ESQ.
For the Defendant: PATRICIA K. LUNDVALL, ESQ.
RORY T. KAY, ESQ.

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

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

1 FRIDAY, JULY 10, 2015, 9:00 A.M.

2 LAS VEGAS, NEVADA

3 -oOo-

4 THE COURT: Case A-10-632338-C, James Wolfram
5 versus Pardee.

6 Who is here for the record?

7 MR. MUIJE: Good morning, Your Honor. John
8 Muije appearing on behalf of the plaintiffs.

9 MS. LUNDVALL: Good morning, Your Honor. Pat
10 Lundvall from McDonald Carano Wilson. I'm here on
11 behalf of Pardee Homes of Nevada.

12 MR. KAY: Good morning, Your Honor. Rory Kay
13 also on behalf of Pardee Homes of Nevada.

14 MR. MUIJE: Your Honor, this is --

15 MS. FIC: Holly Fic from Jimmerson Hansen.

16 THE COURT: This is your motion.

17 MS. LUNDVALL: Thank you, Your Honor.

18 THE COURT: Pardee's motion to stay execution.
19 Is there a problem here? Is there an opposition to
20 this?

21 MR. MUIJE: There certainly is, Judge, but we
22 were served with this after hours Wednesday night, less
23 than one judicial day, though I have various statutes,
24 rulings, cases, that the Court would consider, but I'm
25 ready to do it in oral argument.

1 THE COURT: You are actually considering
2 opposing this?

3 MR. MUIJE: Absolutely, Judge.

4 THE COURT: All right. Go ahead.

5 MS. LUNDVALL: Thank you, Your Honor. Our
6 motion is a procedural motion, Your Honor. It's simple,
7 it's straightforward, and what it seeks to do is to
8 preserve the status quo during the pendency then of the
9 post-judgment motions that are currently pending before
10 Judge Earley.

11 All we're seeking to do is to stay execution
12 during this period of time beginning from today until
13 the Court then has the opportunity to hear our
14 post-judgment motions.

15 THE COURT: So both parties are filing various
16 motions to amend. Is that right?

17 MS. LUNDVALL: Absolutely, Your Honor. And --

18 THE COURT: This has been going on for a year,
19 and all of a sudden a year later, they want to execute
20 on it.

21 MS. LUNDVALL: We tried the case at the end of
22 2013, spent about six weeks in a bench trial before
23 Judge Earley. She issued her decision, her findings of
24 fact and conclusions in 2014. She asked for some
25 additional briefing on an issue. We gave her that

1 briefing, and she issued a minute order then in 2015.

2 After that minute order was issued, all issues
3 had been resolved. We put together a judgment. We sent
4 it to the Court, and she entered that judgment, and that
5 judgment was entered on June 15th of 2015, this year.

6 And before expiration of the ten-day automatic
7 stay that is under Rule 62(a), the plaintiffs sought to
8 execute on this judgment. And so what we're here to do
9 is ask the Court's stay during this standard pendency
10 that is very typical within our jurisdiction is to stay
11 execution until the Court then can sort out any of the
12 issues associated then with these post-judgment motions.

13 Thank you, Your Honor.

14 THE COURT: Mr. Muije?

15 MR. MUIJE: Certainly, Judge. Court's
16 indulgence one second.

17 The Court is aware this is a five-year-old
18 case. It's been kicking around for a long time with a
19 lot of time and energy spent. Now I am recently
20 involved, but co-counsel advises me that they've
21 attempted on multiple times to challenge the attorneys'
22 fee award that Judge Earley awarded to the plaintiff
23 here, Mr. Jimmerson. The bulk of this judgment derives
24 from the attorneys' fee award. There's some liquidated
25 damages, some attorneys' fees.

1 But I need to correct a couple of
2 misconceptions in Ms. Lundvall's statement. The
3 judgment was entered on June 15th, but it was signed by
4 Judge Earley on June 3rd. So as we stand here today on
5 July 10th, this judgment has been out there for five
6 weeks.

7 The Court will recall 20 years ago, 25 years
8 ago when a judgment was entered, you were allowed to
9 execute immediately. You didn't have to wait. There
10 was no stay, no problem.

11 Ms. Lundvall complains that quote/unquote we
12 executed early. Not true, Judge. The notice of entry
13 of judgment done by Ms. Lundvall's office went out on
14 June 15th. Ten working days takes us to two weeks.
15 That's June 29th.

16 They're saying, But you gotta add three days
17 for mailing. Well, they had the judgment in their
18 possession. The purpose of the additional three days
19 for service is when you are receiving the judgment, not
20 when you are sending it out. So we executed on the
21 first statutorily allowable day.

22 But more importantly, Judge, they make
23 arguments, Well, gee, you know, the judgment is not
24 filed. Everybody is moving to amend and alter and add
25 and subtract. There's a statute that has been on the

1 books since 1911, Judge. NRS 15.040.

2 May I approach?

3 THE COURT: Just read it.

4 MR. MUIJE: Okay. Enforcement of an order for
5 the payment of money: Whenever an order for the payment
6 of a sum of money is made by a court, it may be enforced
7 by execution in the same manner as if it were a
8 judgment.

9 That's been there for over a hundred years,
10 Judge. This order, looking at it on its face, there's
11 no doubt it's an order for the payment of \$141,500.

12 The problem here is the defendant wants to have
13 their cake and eat it too. They want to litigate for
14 five years. They want to argue every little minutia
15 motion. They've known about this judgment for five
16 weeks.

17 NRCP 62 was amended to provide for an automatic
18 two-week stay of enforcement so that a defendant could
19 go out and get a supersedeas bond. What have they done
20 since June 3rd? Nothing that I know of other than try
21 to challenge the judgment.

22 Your Honor, this judgment is prima facie valid
23 on its face. The writ of execution was proper and was
24 duly issued in accordance with the law. It was served,
25 the bank has honored it, and there's no reason to stay

1 it. It's like unringing a bell. How do you go back and
2 stay something that's already happened?

3 So we were totally within our rights to do
4 this. If they want to stay activity going forward, let
5 them post a bond, and we can argue about the sufficiency
6 of the bond, but that is an NRAP 8 and NRCP 62 issue.

7 Let's not put the cart before the horse here.
8 If they want to stay the execution, let them post an
9 adequate bond. If they don't want to post an adequate
10 bond, we're entitled to proceed by the case law, the
11 precedent, the statutes, and all the facts I've cited.

12 THE COURT: Thank you, Mr. Muije.

13 MR. MUIJE: Thank you, Judge.

14 MS. LUNDVALL: Let me make a first comment,
15 Your Honor, concerning this law that Mr. Muije brought
16 to your attention. If, in fact, they're going to rely
17 upon this law, then they could have done something as
18 far back as when the Court entered its findings of fact
19 and conclusions of law, which was in early 2014, but
20 they didn't. They waited until the Court entered a
21 judgment as that they were required to do. Point number
22 one.

23 Point number two is this, that the statutory
24 obligation not only to give notice, but also the time
25 frames for calendaring this aren't specific as to whose

1 benefit that they're for. They apply to everybody.

2 So, in other words, when you start counting the
3 days by which something becomes effective, it doesn't
4 say, Well, who served it or who entered the notice of
5 entry? It applies to everybody.

6 So to the extent that what we had set forth
7 within our supplemental motion that we've provided to
8 the Court, once we had received a copy of the writ of
9 execution and the writ of garnishment that they served
10 upon the bank, what we realized is that they had jumped
11 the gun, and that's why we brought this to the Court's
12 attention.

13 But equally important is once we received a
14 copy of the writ of execution and the writ of
15 garnishment, because we couldn't figure out where these
16 numbers were coming from that they were seeking to
17 execute upon from the bank, they had a judgment that
18 entitled them to \$141,000, but they were seeking to
19 execute on something in excess of 230,000. So we
20 couldn't figure that out.

21 Well, when we finally got copies of the
22 documents from the bank -- we never were served with
23 those by the sheriff, as the sheriff is obligated to do
24 pursuant to statute, nor were we served with those by
25 either Mr. Jimmerson's office or Mr. Muije's office, as

1 they're required to do pursuant to rules of procedure --
2 what we realized is that what they were trying to do is
3 get an additional \$85,000 for which that they had never
4 been issued an award or a judgment upon.

5 And some of those monies, in particular the
6 50,000 that they put in for costs, is part of the
7 post-judgment motions that are currently pending before
8 Judge Earley.

9 And so to the extent that what they've tried to
10 do is to pad the judgment with additional sums that are
11 the very subject of the motions going to be decided by
12 Judge Earley in August, those provide additional reasons
13 why we should be entitled to a stay.

14 Now the only real issue here is whether or not
15 that there should be some type of condition placed upon
16 this stay. The Court is well aware of Rule 62(b) that
17 allows me to come in here and ask for a stay, and the
18 only issue is whether or not that there should be some
19 type of condition placed upon that.

20 And within this jurisdiction, it's very
21 standard and it's very customary not to require any form
22 of a bond because of the short time frame associated
23 with the pendencies of the motions to amend the
24 judgment, the post-judgment motions. Usually those are
25 for a very short period of time in our jurisdiction,

1 usually about 30-some-odd days, because of the fact that
2 we hear motions and we get decisions fairly quickly, and
3 it's real tough to get a bond for that short period of
4 time.

5 If this were a stay pending appeal, different
6 story and different entire argument, but all we're
7 asking for is this stay during this period of time
8 without having to post any form of a bond, as is
9 customary within our jurisdiction, from today until the
10 Court then has the opportunity to decide the
11 post-judgment motions.

12 THE COURT: All right.

13 MR. MUIJE: May I respond to these new
14 arguments, Judge?

15 THE COURT: Yes.

16 MR. MUIJE: In my experience, and the Court has
17 known me for I think 30-plus years, it's not customary
18 to stay execution without posting a bond. In fact, the
19 case of McCulloch versus Jeakins, the landmark case
20 decided in 1983, says you have to post a bond in order
21 to obtain a stay.

22 What the Supreme Court did when they amended
23 Rule 62 was provide for this ten-day window, two weeks,
24 and says, Defendants, if you want to play games, if you
25 want to challenge the judgment, if you want to appeal,

1 if you want to do all these things, you can do it, but
2 you've got two weeks to go out there and get a bond.
3 They've had five weeks and they haven't lifted a finger
4 to do so.

5 But even more importantly, Counsel complains
6 about, Hey, we're executing for too much money.
7 NRS 17.130 is very, very, very specific. It couldn't be
8 more specifically written, and it says, "When no rate of
9 interest is provided by contract or law or specified in
10 the judgment" -- there was no interest rate specified in
11 the judgment -- "the judgment draws interest from the
12 time of service of the summons and complaint until
13 satisfied." So, by law, NRS 17.130, prejudgment
14 interest is added on.

15 I also have to correct an erroneous statement
16 in defendant's points and authorities on that. They
17 claim the interest rate is 3.25. NRS 17.130 sets the
18 interest rate at two percent over the prime rate
19 determined semiannually. It's been 5.25 percent for
20 approximately six years, Judge. So I personally did the
21 interest calculations; the interest calculations are
22 accurate and correct.

23 They also complain about the memorandum of
24 costs. The prevailing party is entitled to costs as a
25 matter of law. The memo of costs was timely filed.

1 They're arguing about this, that, and the other. It may
2 very well be adjusted. But I will tell you this, Judge,
3 we have already received answers from Bank of America.
4 We locked up \$34,000. We didn't lock up
5 200-some-thousand dollars. We're entitled to
6 200-some-thousand dollars, but we didn't lock it up. We
7 locked up \$34,000.

8 They want a stay. They're legally entitled to
9 one once they post an adequate bond. Until then, we're
10 legally entitled to execute and enforce our judgment.

11 Thank you, judge.

12 MS. LUNDVALL: Your Honor, one last point as
13 far as if the Court needs on this issue and just on the
14 new argument that was presented by Counsel. He claimed
15 that he was entitled to interest and costs and
16 attorneys' fees and, therefore, that's why he included
17 it in his writ of execution.

18 Judge Earley expressly provided in her judgment
19 that -- and I'm going to quote now -- "This judgment may
20 be amended upon entry of further awards of interest,
21 costs, and/or attorneys' fees." Those issues are the
22 subject of these post-judgment motions, for which that
23 we're seeking the stay across that period of time.

24 Counsel is not entitled to unilaterally decide
25 to award his client those sums. Only the Court, as

1 expressed in her judgment, is entitled to make those
2 awards. And, therefore, that's the additional argument
3 that we have for the Court.

4 THE COURT: Very well. The defendant Pardee
5 filed this emergency motion to stay execution of
6 judgment. I looked at it. The motion is granted.

7 I think the plaintiffs' premature execution
8 upon the writ is, I think it violates some notice
9 statutes, NRS 21.075, 21.076. It includes amounts not
10 awarded to plaintiff. It violates, perhaps, a ten-day
11 stay required by NRCP 62(a).

12 I'm going to -- the execution upon the judgment
13 is stayed until such time as Judge Earley can hear and
14 rule on these motions challenging the judgment. They're
15 already pending. We need to preserve the status quo by
16 staying the execution of these judgments until the Court
17 can hear the parties' motions to amend the judgments.

18 No posting of a security is required, as there
19 is no doubt as to the defendant's financial solvency and
20 ability to pay the judgment. So that's the order.

21 You prepare the order. All right. Thank you
22 very much.

23 MR. MUIJE: Your Honor, may I clarify one point
24 on the record, because the Court made a ruling that I
25 don't think was really adequately addressed in the

1 record.

2 The points and authorities said that they did
3 not receive proper notice. I have a copy of the exact
4 instructions we sent to the sheriff, which included both
5 notice addresses. I've worked with the sheriff's office
6 for 30-plus years.

7 THE COURT: I know you're good at that, the
8 collections.

9 MR. MUIJE: And I will tell you their custom,
10 practice, and procedure is they mail the notices out the
11 day they serve the writ. Now, where those ended up, I
12 don't know, but I know we instructed the sheriff to
13 follow --

14 THE COURT: All right. You made your record,
15 but that's the order of the Court.

16 You prepare the order.

17 MS. LUNDVALL: Your Honor, we have prepared an
18 order in anticipation.

19 MR. MUIJE: May I see it?

20 MS. LUNDVALL: We have a copy for you, and I'm
21 going to hand a copy as far as to counsel for
22 Mr. Jimmerson's office as well.

23 May I approach, Your Honor?

24 THE COURT: Sure.

25 MS. LUNDVALL: Thank you.

1 Part of the reason, what we tried to do was to
2 anticipate what hopefully the Court may do because the
3 banks were demanding from us then some type of an order
4 before they could -- so they can determine what to do.

5 MR. MUIJE: Your Honor, I would object to the
6 third full paragraph on this. The Court has ordered a
7 stay. It has not -- it was never briefed, it was never
8 argued to withdraw or release any writs, Your Honor.
9 What's done is done and should not be undone. I can see
10 the stay going forward.

11 MS. LUNDVALL: Well, from this perspective what
12 Counsel is arguing is that he should be permitted to go
13 forward then with the current writ that he's already
14 issued. That's the whole purpose.

15 THE COURT: This order is fine. The Court is
16 going to sign it and everything is stayed.

17 Thank you so much. Have a nice day.

18 MS. LUNDVALL: Thank you, Your Honor.

19 -oOo-

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

22
23 */s/ Jennifer D. Church*

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

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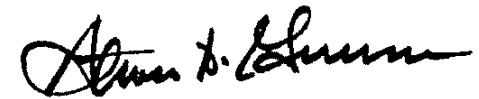
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ORIGINAL



CLERK OF THE COURT

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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JAMES WOLFRAM,
16 WALT WILKES

17 Plaintiffs,

18 vs.

19 PARDEE HOMES OF NEVADA,

20 Defendant.

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

**ORDER ON PARDEE'S EMERGENCY
MOTION TO STAY EXECUTION OF
JUDGMENT; AND EX PARTE ORDER
SHORTENING TIME**

21 **AND RELATED CLAIMS**

22 The Honorable Judge Bonaventure, sitting in place of the Honorable Judge Kerry
23 Earley, heard Pardee's Emergency Motion to Stay Execution of Judgment; and Ex
24 Parte Order Shortening Time on July 11, 2015 at 9:00 a.m. James J. Jimmerson and
25 _____, of the law firm JIMMERSON HANSEN P.C., appeared on behalf of Plaintiffs.
26 Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP, appeared
27 on behalf of Defendant Pardee Homes of Nevada ("Pardee"). The Court reviewed the
28 papers and pleadings on file, and heard the arguments of counsel presented at the
hearing.

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

1 The parties should be temporarily stayed from executing upon the Judgment
2 dated June 15, 2015 until 10 days after written notice of entry of orders resolving all
3 parties' motions to alter or amend the Judgment and the motions resolving the
4 competing claims to attorneys' fees and recoverable costs.

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

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pardee's
9 Emergency Motion to Stay Execution is GRANTED.

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall
11 withdraw any writs seeking to execute upon the June 15, 2015 Judgment.

12 IT IS FURTHER ORDERED, ADJUGED AND DECREED that the parties are
13 stayed from executing upon the Judgment dated June 15, 2015 until 10 days after
14 written notice of entry of orders resolving all parties' motions to alter or amend the
15 judgment and the motions resolving the competing claims to attorneys' fees and
16 recoverable costs.

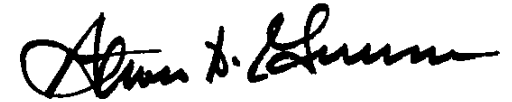
17
18 DATED this 10TH day of July, 2015.

19
20 
21 SENIOR DISTRICT COURT JUDGE

22 Submitted by:

23 McDONALD CARANO WILSON LLP

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



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6 *Attorneys for Defendant*
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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 JAMES WOLFRAM,
10 WALT WILKES

11 Plaintiffs,

12 vs.

13 PARDEE HOMES OF NEVADA,

14 Defendant.

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

**NOTICE OF ENTRY OF
ORDER ON PARDEE'S
EMERGENCY MOTION TO
STAY EXECUTION OF
JUDGMENT; AND EX PARTE
ORDER SHORTENING TIME**

15
16 PLEASE TAKE NOTICE that an **ORDER ON PARDEE'S EMERGENCY**
17 **MOTION TO STAY EXECUTION OF JUDGMENT; AND EX PARTE ORDER**
18 **SHORTENING TIME** was entered in the above-referenced case on the 10h day of
19 July, 2015, a copy of which is attached hereto.

20
21 DATED this 10th day of July, 2015.

22 McDONALD CARANO WILSON LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 10th day of July, 2015, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER ON PARDEE'S EMERGENCY MOTION TO STAY EXECUTION OF JUDGMENT AND EX PARTE ORDER SHORTENING TIME** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

James J. Jimmerson, Esq.
Holly Fic, Esq.
Kim Stewart
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
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And

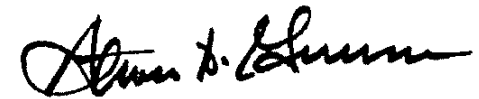
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Attorney for Plaintiffs

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

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ORIGINAL



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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**ORDER ON PARDEE'S EMERGENCY
MOTION TO STAY EXECUTION OF
JUDGMENT; AND EX PARTE ORDER
SHORTENING TIME**

17 **AND RELATED CLAIMS**

19 The Honorable Judge Bonaventure, sitting in place of the Honorable Judge Kerry
20 Earley, heard Pardee's Emergency Motion to Stay Execution of Judgment; and Ex
21 Parte Order Shortening Time on July 11, 2015 at 9:00 a.m. James J. Jimmerson and
22 _____, of the law firm JIMMERSON HANSEN P.C., appeared on behalf of Plaintiffs.
23 Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP, appeared
24 on behalf of Defendant Pardee Homes of Nevada ("Pardee"). The Court reviewed the
25 papers and pleadings on file, and heard the arguments of counsel presented at the
26 hearing.

27 For good cause appearing, the Court hereby finds as follows:
28

1 The parties should be temporarily stayed from executing upon the Judgment
2 dated June 15, 2015 until 10 days after written notice of entry of orders resolving all
3 parties' motions to alter or amend the Judgment and the motions resolving the
4 competing claims to attorneys' fees and recoverable costs.

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

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pardee's
9 Emergency Motion to Stay Execution is GRANTED.

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall
11 withdraw any writs seeking to execute upon the June 15, 2015 Judgment.

12 IT IS FURTHER ORDERED, ADJUGED AND DECREED that the parties are
13 stayed from executing upon the Judgment dated June 15, 2015 until 10 days after
14 written notice of entry of orders resolving all parties' motions to alter or amend the
15 judgment and the motions resolving the competing claims to attorneys' fees and
16 recoverable costs.

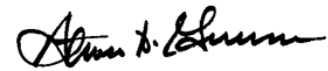
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18 DATED this 10TH day of July, 2015.

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21 SENIOR DISTRICT COURT JUDGE

22 Submitted by:

23 McDONALD CARANO WILSON LLP

24
25 /s/ Pat Lundvall
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DISTRICT COURT
CLARK COUNTY, NEVADA

10 JAMES WOLFRAM,
11 WALT WILKES

Plaintiffs,

12 vs.

13 PARDEE HOMES OF NEVADA,
14 Defendant.

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

**PARDEE HOMES OF NEVADA'S
OPPOSITION TO PLAINTIFFS' MOTION
FOR ATTORNEY'S FEES AND COSTS**

**Hearing Date: August 10, 2015
Hearing Time: 9:00 a.m.**

15 AND RELATED CLAIMS
16

17 I. INTRODUCTION
18

19 While a mish-mash, it appears that Plaintiffs' Motion for Attorney's Fees and
20 Costs (the "Motion") is based on their oft-repeated but baseless assertion that they
21 never sought \$1.8 million in allegedly lost commissions during this litigation. By
22 claiming that this issue never existed, Plaintiffs suggest they were the prevailing party in
23 the lawsuit and are therefore entitled to their attorney's fees and costs based upon the
24 contractual provision found in the parties' Commission Agreement. Notably absent
25 from the Motion's "statement of facts," however, is any citation to the actual filings,
26 transcripts and arguments the Court considered during this case.
27
28

1 This absence is for good reason because the entire record shows that Plaintiffs
2 consistently and continually claimed \$1.8 million in damages from before they filed the
3 lawsuit up until its conclusion, and reaffirmed that claim in their recent Motion to Strike
4 Judgment. Specifically, Plaintiffs claimed they were owed additional commission
5 payments in the following ways, all of which are verifiable by specific reference to the
6 record:

- 7 • Pre-litigation demand letters from Plaintiffs' counsel to Pardee;
- 8 • Nine different NRCP 16.1 damages disclosures claiming \$1.9 million in
9 damages;
- 10 • Plaintiffs' pre-trial brief;
- 11 • Plaintiffs' opening statement;
- 12 • Plaintiffs' direct and cross-examinations of witnesses;
- 13 • Plaintiffs' closing argument;
- 14 • Plaintiffs' proposed findings of fact and conclusions of law; and
- 15 • Plaintiffs recent Motion to Strike Judgment.

16
17 In each of these, Plaintiffs' core theory was that Pardee had purchased Option Property
18 that translated into additional commissions due under subparagraph (iii) of the
19 Commission Agreement, and that Pardee had re-designated certain land on the Coyote
20 Springs Project. Plaintiffs claimed that when Pardee purchased Option Property and
21 re-designated the land, Pardee owed additional commissions to Plaintiffs under
22 subparagraph (iii) and had failed to pay the same. Plaintiffs also argued that Pardee
23 failed to provide information about the Project, but only because Plaintiffs' believed
24 such information was needed to calculate their purportedly unpaid commissions. Thus,
25 the end in this litigation was always Plaintiffs' claim to \$1.8 million in additional
26 commissions, and the information Plaintiffs demanded was simply the specific
27 information to calculate those commissions.

1 When the Court rejected Plaintiffs' contentions of Option Property purchases or
2 re-designation, and therefore Plaintiffs' claims to any additional commissions in its
3 Findings of Fact and Conclusions of Law, the Court also ended any credible argument
4 that the Plaintiffs were the prevailing party in this litigation. Plaintiffs lost on the most
5 substantial and important issue in the case. Under Nevada law they are not entitled to
6 their attorney's fees and costs pursuant to the attorney fee provision found in the
7 Commission Agreement.

8 Plaintiffs also premise their request for attorneys' fees and costs upon an Offer
9 of Judgment they served pre-trial. Small problem: the Offer of Judgment is invalid
10 because it contains an impermissible condition. Nevada law clearly prohibits a
11 conditional offer of judgment. And most important, compliance with that condition
12 would have subjected Pardee to the \$1.8 million in additional commissions sought by
13 Plaintiffs, but rejected by this Court.

14 II. ARGUMENT.¹

15 A. Legal Standard For Recovery of Attorneys Fees.

16 NRS 18.010(1) states that the fees of an attorney for his or her services are
17 governed by agreement, express or implied, which is not restrained by law. Thus, a
18 district court may award attorney's fees only if authorized to do so by statute, rule or
19 contract, and parties "are free to provide for attorney fees by express contractual
20

21 ¹ Plaintiffs' advance their erroneous claims about the \$1.8 million in lost
22 commissions in five separately filed documents: (1) Motion to Strike, (2) Motion to
23 Amend, (3) Opposition to Pardee's Motion for Attorney's Fees, (4) Opposition to
24 Pardee's Motion to Retax Plaintiffs' Memorandum of Costs, and (5) Plaintiffs' Motion for
Attorney's Fees and Costs. Rather than consolidate some of these filings to ease the
Court's burden, Plaintiffs instead repeat the identical statement of facts, cite and attach
the same exhibits, and make the same legal arguments in each of these filings.

25 Mindful of the Court's busy schedule, Pardee hereby incorporates the statement
26 of facts sections from its Motion for Attorney's Fees and Costs and its separately filed
27 Consolidated Opposition to Plaintiffs' Motion to Amend and Motion to Strike, both of
28 which are attached as Exhibits F and G. Because these filings thoroughly discuss the
facts proving that Plaintiffs continually claimed \$1.8 million in damages during the
litigation, Pardee does not encumber the Court with having to read them again in this
current opposition.

1 provision.” See *Davis v. Beling*, 128 Nev. Adv. Op. 28, 278 P. 3d 501, 515 (2012). The
2 goal in “interpreting an attorney fees provision, as with all contracts, is to discern the
3 intent of the contracting parties.” *Id.*

4 In considering which party is the prevailing party under contract analysis, the trial
5 judge should always be mindful that “[c]ontract provisions for the payment of attorney’s
6 fees by the losing party provide an incentive to settle and reduce litigation.” *Dimick v.*
7 *Dimick*, 112 Nev. 402, 405, 915 P.2d 254, 256 (1996). Thus if the contract at issue
8 “does not define ‘prevailing party’ . . . , [then] a court may base its attorney fees decision
9 on a pragmatic definition of the extent to which each party has realized its litigation
10 objective.” *Santisas v. Goodin*, 17 Cal. 4th 599, 622 (1998). Such analysis reinforces
11 the settlement objectives of attorney’s fees provisions.

12 The term “prevailing party” is “broadly construed so as to encompass plaintiffs,
13 counterclaimants, and defendants.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106
14 P.3d 1198, 1200 (2005). A party prevails if “it succeeds on any significant issue in
15 litigation. . . .” *Cole-Monahan v. Salvo*, No. 62849, 2014 WL 5686290, at *2 (Nev. Nov.
16 3, 2014); see also *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807, 810 (Fla. 1992)
17 (“[T]he party prevailing on the significant issue in the litigation is the party that should be
18 considered the prevailing party for attorney’s fees.”). This standard requires the trial
19 court to take into account the practical realities of the case. See *Wohlgemuth v.*
20 *Caterpillar Inc.*, 207 Cal. App. 4th 1252, 1264 (2012) (“[T]he trial court should take a
21 pragmatic approach to determine which party has prevailed. That is, the trial court
22 would determine which party succeeded on a practical level, by considering the extent
23 to which each party realized its litigation objectives.”).

24 In determining how to apportion attorney’s fees and costs in cases where neither
25 party was entirely victorious, the trial court has discretion to award fees and costs using
26 its sound judgment. See *Gunderson v. D.R. Horton, Inc.*, 130 Nev. Op. 9, 319 P.3d
27 606, 616 (noting a trial court’s discretion “includes the power to determine questions to
28 which no strict rule of law is applicable but which, from their nature, and the

1 circumstances of the case, are controlled by the personal judgment of the court.”); see
2 also *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 594, 879 P.2d 1180, 1188 (1994)
3 (stating “a trial court must award a reasonable fee, however the method upon which a
4 reasonable fee is determined is subject to the direction of the court.”). The Court is free
5 to consider “unsuccessful claims” by the plaintiff and apportion attorney’s fees to the
6 defendant on such claims. See *Tarkanian*, 110 Nev. at 596, 879 P.2d at 1189
7 (“Tarkanian’s unsuccessful claims have been considered at various points throughout
8 this litigation, and the fees were accordingly reduced to arrive at a reasonable fee
9 award.”).

10 B. Plaintiffs Cannot Recover Their Attorney’s Fees and Costs Under Either
11 the Contract Provision Or Their Offer Of Judgment.

- 12 1. Plaintiffs did not prevail in this litigation under the Commission
13 Agreement, the Court’s Findings of Fact and Conclusions of Law,
14 or the Judgment.

15 Plaintiffs contend that the Court can “simply” look at the Court’s Findings of Fact
16 and Conclusions of Law to see it is “clear” that Plaintiffs are the prevailing party. See
17 Motion at 10:3-6. Given Plaintiffs’ previous attempts to rewrite history in this case, it is
18 understandable why Plaintiffs wish to mis-direct the Court’s field of view. But Plaintiffs’
19 actions throughout the entirety of this case make it clear that they sought \$1.8 million in
20 lost commissions in this litigation and failed to prove them at trial.

21 As one of many examples, Plaintiffs’ trial brief repeatedly discusses Plaintiffs’
22 claims to additional unpaid commissions from Pardee. The Plaintiffs clearly argue that
23 Pardee purchased Option Property on the Project, thereby entitling the Plaintiffs to
24 additional commissions. See Plaintiffs’ Trial Brief at 6:4-6 (“With these facts at the
25 Court’s disposal, the Court will quickly conclude that the land purchased by Pardee is
26 Option Property.”), attached as Exhibit A. The Plaintiffs claimed the Court would “learn
27 that Plaintiffs were not paid their commissions according to the appropriate formulas
28 and that only Pardee [had] the information necessary to properly calculate Plaintiffs’
commissions.” See *id.* at 3:21-23. The Plaintiffs promised “evidence of how Pardee

1 acquired land for which a commission would be owed to Plaintiffs, but that Pardee
2 executed other agreements to avoid paying these commissions.” *Id.* at 3:23-25.
3 Finally, the Plaintiffs argued that they were “entitled to commissions as specified by
4 subparagraph (iii)” of the Commission Agreement.” *Id.* at 13:5. This was because
5 “Pardee still insisted that it had not purchased Option Property and that [the Plaintiffs’]
6 commissions were appropriately calculated and paid,” statements the Plaintiffs argued
7 “were false” and purportedly showed that “Pardee [was] in breach of the Commission
8 Letter Agreement.” *Id.* at 9:16-19.

9 Once trial began, Plaintiffs served Pardee with their Thirteenth Supplemental
10 NRCP 16.1 disclosures between the seventh and eighth day of trial. See Plaintiffs’
11 Thirteenth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents,
12 attached as Exhibit B. In these mid-trial damages disclosures, Plaintiffs were
13 unequivocal in the damages they were seeking: **“Plaintiffs calculate their damages to**
14 **be in excess of \$1,930,000.00 associated with the Defendant’s breach of contract**
15 **and the Defendant’s failure to faithfully meet their obligations to the Plaintiffs.”**
16 See *id.* at 10:17-19 (emphasis added).

17 Plaintiffs’ counsel also told CSI’s former principal during direct examination that
18 counsel was at trial “to talk to [him] about my clients’ entitlement to information and
19 **whether or not that translates to dollars.**” See October 24, 2013 Reporter’s
20 Transcript of Bench Trial Before the Honorable Judge Kerry L. Earley, District Court
21 Judge at 4:19-21 (emphasis added), attached as Exhibit C. Thus, Plaintiffs were only
22 asking for information because they believed it was evidence to the ultimate end,
23 additional commissions from Pardee.

24 At the conclusion of trial, the Plaintiffs’ Proposed Findings of Fact and
25 Conclusions of Law asked the Court to conclude that “Defendant materially breached
26 its obligations under the Commission Letter Agreement by purchasing Option Property
27 and failing to appropriately calculate and pay to Plaintiffs the commission owed under
28 the Option Property Formula . . . [and] [p]urchasing Production Residential Property and

1 failing to appropriately pay and inform Plaintiffs of the purchases.” See Plaintiffs’
2 Proposed Findings of Fact and Conclusion of Law and Decision at 15:25-16:8, attached
3 as Exhibit D. In each of these instances, among others, Plaintiffs were resolute that
4 they were seeking \$1.8 million in additional commissions as damages from Pardee.

5 But the Court entirely denied Plaintiffs’ claims to \$1.8 million in additional
6 commissions. Specifically, the Court found that “the complete documentation . . . in this
7 litigation verified that Plaintiffs were not due any further commissions at this time for the
8 additional purchases of land by Pardee” Findings of Fact and Conclusions of Law
9 at 10:25-27, attached as Exhibit E. The Court further found that Pardee had not
10 purchased any Option Property, and although “Plaintiffs have also contended that they
11 are entitled to a commission if Pardee re-designates any of its land purchases from CSI
12 to single family production residential property[,] Plaintiffs are not entitled to
13 commissions on any re-designations of lands by Pardee pursuant to the Commission
14 Agreement.” *Id.* at 11:4-7. The Court also concluded that “No commission to Plaintiffs
15 is payable under clause (iii) of the Commission Agreement unless the property
16 purchased fell within the definition of Option Property purchased pursuant to paragraph
17 2 of the Option Agreement. Pardee as of the present time has not exercised any
18 options to purchase single family production residential property pursuant to paragraph
19 2 of the Option Agreement.” *Id.* at 8:25-9:4. Thus the Court concluded that “Pardee
20 paid Plaintiffs in full and timely commissions” on the entirety of the land on the Project.
21 *Id.* at 12:11-13.

22 Accordingly, by stepping back and viewing the entirety of the documents and
23 arguments both parties presented in this case, **it is Pardee and not Plaintiffs who**
24 **prevailed on the main issue in the litigation.** Pardee successfully defeated Plaintiffs’
25
26
27
28

1 claims to \$1.8 million, which was the most substantial and heavily litigated issue in the
2 case.²

- 3 2. Plaintiffs cannot recover their attorney's fees pursuant to NRCP 68
4 or NRS 17.115 because their Offer of Judgment was invalid and
the Judgment did not exceed their Offer of Judgment.

5 a. *The Offer of Judgment was conditional and therefore invalid.*

6 "An offer of judgment must be unconditional and for a definite amount in order to
7 be valid for the purposes of NRCP 68." *Pombo v. Nevada Apartment Ass'n*, 113 Nev.
8 559, 562 938 P.2d 725, 727 (1997). Here, the Plaintiffs' Offer of Judgment was hardly
9 unconditional. In Paragraphs 1 and 3, Plaintiffs' Offer of Judgment was expressly
10 conditioned upon the parties deeming certain land as "Option Property," which under
11 the Offer's plain terms would have entitled Plaintiffs to the substantial additional
12 commissions they claimed Pardee owed. *See generally* Offer of Judgment at 2:7-4:9,
13 attached as Exhibit H. Specifically, the Plaintiffs noted that, as "part and parcel of this
14 Offer of Judgment," Pardee must accept "the following conditions:"

- 15 1. . All purchases of real property designated for detached production
16 residential use, which includes, without limitation, all single-family
17 detached production residential lots (which shall include lots of which
18 custom homes are constructed), all land for roadways, utilities,
19 government facilities, including schools and parks (which school and
20 park sites are subject to the provisions of paragraph 7(c) of the Option
21 Agreement for the Purchase of Real Property and Joint Escrow
22 Instructions); open space required or designated for the benefit of the
23 residential development pursuant to the master plan, a habitat
24 conservation plan, or development agreement, drainage ways or any
25 other use associated with or resulting from the development of the
26 Purchase Property and each Option Parcel of the Option Property
made in the future, shall be deemed Option Property under the terms
of the Option Agreement for the Purchase of Real Property and Joint
Escrow Instructions executed May, 2004, Bates stamp numbers
PLTF0001-00800; and Pardee shall provide advanced notice of the
pendency of an escrow, fourteen (14) days prior to close of escrow, to
advise James Wolfram or Walter Wilkes, their heirs, successors or
assigns, of the impending purchase, of the date of close of escrow,

27 ² As discussed in Pardee's Motion for Attorney's Fees, this \$1.8 million
28 represented over 92% of Plaintiffs' total claimed damages.

1 and then to further advise them as to their entitlement to commissions
2 under the terms of the Option Agreement . Notices to Mr. Wilkes and
3 Mr. Wolfram, during their life shall be to them directly, with copies to
4 their counsel, Jimmerson Hansen, P.C., James J. Jimmerson, Esq.
5 and James M. Jimmerson, Esq., and following the passing of either
6 one of the Plaintiffs, to their heirs and assigns to be designated at the
7 appropriate time. Upon request by Mr. Wolfram, Mr. Wilkes, their
8 counsel, or their future designees, Pardee shall provide true and
9 complete copies of executed agreements or contracts concerning the
10 purchase of real property between Pardee Homes of Nevada and
11 Coyote Springs Investment, LLC (or affiliated entities). Mr. Wolfram
12 and Mr. Wilkes and their counsel understand that receipt of the
13 requested documents may require consent to certain confidentiality
14 agreements. Mr. Wolfram, Mr. Wilkes and their counsel agree to be
15 bound by the necessary confidentiality agreements.

16

- 17 3. With respect to any portion of Option Property purchased by Pardee
18 pursuant to this offer of Judgment, Pardee shall pay to Plaintiffs one
19 and one-half percent (1 ½%) of the amount derived by multiplying the
20 number of acres purchased by [Pardee] by Forty Thousand Dollars
21 (\$40,000.00).

22 See Exhibit H, Offer of Judgment at 2:7-4:9. By accepting Plaintiffs' offer, Pardee
23 would not only be agreeing to pay the express \$149,000, but also the implied \$1.8
24 million in additional commissions under Plaintiffs' theory that Plaintiffs claimed as lost
25 commissions. Plaintiffs' offer was accordingly conditional and invalid under *Pombo* for
26 the purposes of NRCP 68.

27 In *Pombo*, the Nevada Supreme Court cited to *Stockton Kenworth v. Mentzer*
28 *Detroit Diesel*, 101 Nev. 400, 404, 705 P.2d 145, 148 (1985) as support for the legal
principle that an offer of judgment must be "unconditional." In *Stockton*, Stockton sued
Mentzer to recover possession of a truck that Mentzer was repairing. 101 Nev. at 401,
705 P.2d at 147. Mentzer issued an offer of judgment offering to buy good title to the
truck for \$10,000. 101 Nev. at 402, 705 P.2d at 147. The Court found that the condition
requiring Stockton to obtain good title to the truck following acceptance of the offer of
judgment was impermissible. 101 Nev. at 404, 705 P.2d at 148. As in *Pombo*, the
condition in Stockton meant that Stockton could not resolve this litigation by accepting

1 the offer of judgment. As in both *Pombo* and *Stockton*, the conditions 1 and 3 from
2 Plaintiffs' Offer of Judgment meant that Pardee could not resolve the litigation simply by
3 accepting the Offer of Judgment.

4 Additionally, *Beattie v. Thomas* counsels that "while the purpose of NRCP 68 is
5 to encourage settlement, it is not to force [parties] unfairly to forego legitimate claims [or
6 defenses]." 99 Nev. 579, 588, 668 P.2d 268, 274 (1983). Pardee had a legitimate
7 defense to Plaintiffs' claims to these additional commissions related to Option Property,
8 and in fact the Court corroborated this defense at the trial's conclusion when it found
9 that "the complete documentation . . . in this litigation verified that Plaintiffs were not
10 due any further commissions at this time for the additional purchases of land by Pardee
11" Exhibit E, Findings and Conclusions at 10:25-27. Thus, Plaintiffs' conditional
12 Offer of Judgment was nothing more than an attempt to force Pardee to unfairly forego
13 a valid defense. After Pardee rejected this unfair offer, Plaintiffs cannot now punish it
14 for the defense ultimately succeeding at trial, and so Plaintiffs are not entitled to any
15 attorney's fees under NRCP 68.

16 *b. The Judgment did not exceed the Offer of Judgment.*

17 Plaintiffs play a shell game with their Offer of Judgment as they attempt to argue
18 they beat their \$149,000 Offer of Judgment at trial, when they clearly did not. Plaintiffs
19 falsely inflate the value of the Judgment such that it exceeds their Offer of Judgment,
20 therefore purportedly entitling them to their attorney's fees under NRCP 68. See
21 *generally* Motion at 11:19-12:6. Specifically, they make this leap by increasing their
22 calculation of the Judgment over \$33,000 in purportedly due and owing prejudgment
23 interest, and also by discounting their Offer of Judgment by \$15,741.20, an amount
24 allegedly reflecting the interest included in the Offer of Judgment. See Motion at 11:6-9
25 ("The final judgment was exclusive of legal interest, and Plaintiffs are entitled to
26 prejudgment interest on that figure, raising the award to a sum in excess of \$175,000 . .
27 . ."); see *also* Exhibit 5 to Plaintiffs' Motion.

1 But again, the record reveals that such calculations are disingenuous at best. To
2 begin, the Judgment expressly excluded any “awards of interest, costs and/or
3 attorney’s fees.” See Judgment at 3:11-12, attached as Exhibit E. Contrary to the
4 Plaintiffs’ unbridled assumption of \$33,000 or more in prejudgment interest, the Court
5 has yet to award them such interest and so they cannot include it in the Judgment’s
6 total for the purposes of NRCP 68 analysis.

7 Moreover, the sum of \$33,000 is premised upon an interest calculation beginning
8 when the complaint was filed. But Plaintiffs’ financial award was based almost
9 exclusively on sums incurred after the complaint was filed, so they are not entitled to
10 pre-judgment interest even if requested.

11 Second, the Plaintiffs have provided no basis in law or fact to discount the value
12 of their Offer of Judgment by the amount of interest they hope the Court may eventually
13 award them. Instead, Plaintiffs’ Offer of Judgment is for exactly what it says: \$149,000.
14 With the Judgment being only \$141,500, their recovery did not exceed their offer of
15 \$149,000, and so they have no entitlement to attorney’s fees under NRCP 68.

16 III. CONCLUSION.

17 Plainly, Plaintiffs have not shown that they are entitled to any attorney’s fees or
18 costs in this matter beyond what the Court already granted them as special damages.
19 Plaintiffs were not the prevailing party in the case’s most significant issue, cannot use
20 their unfair and conditional Offer of Judgment to recover the same, and did not provide
21 the substantial evidence necessary to justify another award of attorney’s fees.

1 Accordingly, Pardee respectfully requests that the Court deny Plaintiffs' Motion and
2 instead grant Pardee's Motion for Attorney's Fees and Costs.

3 DATED this 15th day of July, 2015.

4 MCDONALD CARANO WILSON LLP

5
6 /s/ Pat Lundvall

7 Pat Lundvall (NSBN 3761)
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13 *Attorneys for Defendant Pardee Homes of*
14 *Nevada*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 15th day of July, 2015, I served a true and correct copy of the foregoing **PARDEE HOMES OF NEVADA'S OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS**, via e-service through Wiznet as utilized in the 8th Judicial District on the following:

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LLP

338184

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 12:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

JOINT APPENDIX – VOLUME 62 OF 88

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10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
12/09/2013	Transcript re Trial – filed under seal	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530
12/12/2013	Transcript re Trial – filed under seal	44-45	JA006533- JA006878
12/13/2013	Transcript re Trial - Part 1	46	JA006953- JA007107
12/13/2013	Transcript re Trial - Part 2	47-48	JA007108- JA007384
10/23/2013	Trial Exhibit A	23	JA003404- JA003544
10/23/2013	Trial Exhibit B – filed under seal	23	JA003545- JA003625
10/23/2013	Trial Exhibit C	23	JA003626- JA003628
10/23/2013	Trial Exhibit D	23	JA003629- JA003631
10/23/2013	Trial Exhibit E – filed under seal	23	JA003632- JA003634

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

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

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

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

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

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

Dated this 28th day of February, 2018.

McDONALD CARANO LLP

By: /s/ Rory T. Kay
Pat Lundvall (NSBN 3761)
Rory T. Kay (NSBN 12416)
2300 W. Sahara Ave., 12th Floor
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com

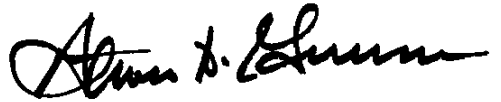
Attorneys for Appellant

CERTIFICATE OF SERVICE

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

/s/ Beau Nelson

An Employee of McDonald Carano LLP



CLERK OF THE COURT

ERR

JIMMERSON HANSEN, P.C.
JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6406
jjj@jimmersonhansen.com
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

ERRATA TO MOTION TO STRIKE "JUDGMENT", ENTERED JUNE 15, 2015
PURSUANT TO N.R.C.P. 52 (b) AND N.R.C.P. 59, AS UNNECESSARY AND
DUPLICATIVE ORDERS OF FINAL ORDERS ENTERED ON JUNE 25, 2014
AND MAY 13, 2015, AND AS SUCH, IS A FUGITIVE DOCUMENT

Comes now Plaintiffs, JAMES WOLFRAM and WALTER D. WILKES and ANGELA
LIMBOCKER-WILKES LIVING TRUST, ANGELA L. LIMBOCKER-WILKES TRUSTEE,
by and through their counsel of record, JAMES J. JIMMERSON, ESQ., of JIMMERSON
HANSEN, P.C., and hereby submits his Errata to PLAINTIFFS' MOTION TO STRIKE
"JUDGMENT", ENTERED JUNE 15, 2015 PURSUANT TO N.R.C.P. 52 (b) AND

1 N.R.C.P. 59, AS UNNECESSARY AND DUPLICATIVE ORDERS OF FINAL ORDERS
2 ENTERED ON JUNE 25, 2014 AND MAY 13, 2015, AND AS SUCH, IS A FUGITIVE
3 DOCUMENT as follows:

4 Page 13, Paragraph 19 of the above Motion reads in part:


5
6 "....input from the Plaintiffs, submitted to the Court on or about May
7 28, 2015, the so-called Judgment" which the Court signed and filed on or
8 about June 15, 2015..."

9 The correct date of the of the letter from Defendant's counsel to the Court is May
10 29, 2015, not May 28, 2015, as stated in the above-referenced Motion.

11 Dated this 29th day of July, 2015.

12 Respectfully Submitted,

13 JIMMERSON HANSEN, P.C.

14
15
16  JAMES J. JIMMERSON, ESQ.
17 Nevada State Bar No. 000264
18 415 So. Sixth St., Ste. 100
19 Las Vegas, NV 89101
20 Attorneys for Plaintiffs
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of a true and correct copy **ERRATA TO PLAINTIFFS'**
3 **MOTION TO STRIKE "JUDGMENT", ENTERED JUNE 15, 2015 PURSUANT TO**
4 **N.R.CP. 52 (b) AND N.R.C.P. 59, AS UNNECESSARY AND DUPLICATIVE ORDERS**
5 **OF FINAL ORDERS ENTERED ON JUNE 25, 2014 AND MAY 13, 2015, AND AS**
6 **SUCH, IS A FUGITIVE DOCUMENT** was made on the 24th day of June, 2015, as
7 indicated below:
8

- 9
- 10 ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
11 Administrative Order 14-2 captioned "In the Administrative Matter of
12 Mandatory Electronic Service in the Eighth Judicial District Court," by
13 mandatory electronic service through the Eighth Judicial District Court's
14 electronic filing system;
15 ☒ by placing same to be deposited for mailing in the United States Mail, in a
16 sealed envelope upon which first class postage was prepaid in Las Vegas,
17 Nevada to Nevada State Welfare, Dept. of Human Resources;
18 ☐ by electronic mail;
19 ☐ by hand-delivery with signed Receipt of Copy.

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

22 Pat Lundvall, Esq.
23 Rory T. Kay, Esq.
24 MCDONALD CARANO WILSON, LLP
25 2300 W. Sahara Ave., Suite 1000
26 Las Vegas, NV 89102
27 Attorneys for Defendant
28

25 
26 An employee of JIMMERSON HANSEN, P.C.
27
28

Kim Stewart

From: Sally Wexler <swexler@mcdonaldcarano.com>
Sent: Monday, June 01, 2015 5:36 PM
To: James J. Jimmerson, Esq.
Subject: Pardee/Wolfram
Attachments: LVDOCS-#335375-v1-Ltr_to_Judge_Earley_re_proposed_Judgment.PDF; LVDOCS-#335374-v1-Proposed_Judgment.PDF

Attached please find one letter and one document we have sent to Judge Earley's chambers.

Sally Wexler|Executive Assistant to
Pat Lundvall| assistant to Rory T. Kay

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



WEBSITE

PERSONAL AND CONFIDENTIAL: This message originates from the law firm of McDonald Carano Wilson LLP. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, protected by the attorney work product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and delete the original message. Personal messages express only the view of the sender and are not attributable to McDonald Carano Wilson LLP.

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Phish/Fraud
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Forget previous vote



McDONALD·CARANO·WILSON^{LLP}

Rory T. Kay

Reply to Las Vegas

May 29, 2015

Via Hand Delivery

The Honorable Kerry Earley
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: ***Pardee Homes of Nevada adv. James Wolfram, et al.:***
Proposed Judgment

Dear Judge Earley:

Attached hereto is Pardee Homes of Nevada's ("Pardee") proposed judgment for the Court's consideration. The judgment incorporates the Court's Findings of Fact and Conclusions of Law dated June 25, 2014, the Minute Order dated February 10, 2015, and the Order on Findings of Fact and Conclusions of Law and Supplemental Briefing Re Future Accounting dated April 20, 2015 (the "Final Order").

Given that the Court's Findings, Minute Order, and Final Order resolved all of the outstanding issues in the case, Pardee believes it appropriate for the Court to now enter judgment in this matter.

Sincerely,


Rory T. Kay

cc: James J. Jimmerson, Esq. (via e-mail)

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

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

ATTORNEYS AT LAW



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JA009649

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

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

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

JUDGMENT

16 AND RELATED CLAIMS
17

18 On October 23, 2013, the above-referenced matter came on for bench trial
19 before the Honorable Judge Kerry Earley. The Court, having reviewed the record,
20 testimony of witnesses, the documentary evidence, stipulations of counsel, the papers
21 submitted by the respective parties, and considered the arguments of counsel at trial in
22 this matter, entered Findings of Fact and Conclusions of Law on June 25, 2014.

23 In the Findings of Fact and Conclusions of Law, the Court ordered the parties to
24 provide supplemental briefing within 60 days detailing what future information
25 Defendant Pardee Homes of Nevada ("Pardee") and its successors and/or assigns
26 should provide Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") and their
27 successors and/or assigns consistent with the Court's decision on the accounting cause
28 of action.

1 After reviewing the parties' supplemental briefing, the Court then entered an
2 order on April 20, 2015 reflecting its decision on the supplemental briefing (the
3 "Accounting Order") The Notice of Entry of the Accounting Order was filed on May 13,
4 2015.

5 In accordance with the Findings of Fact and Conclusions of Law entered on June
6 25, 2014 and the Accounting Order entered on May 13, 2015, the Court finds the
7 following:

8 Plaintiffs claimed \$1,952,000 in total damages related to their causes of action.
9 Specifically, Plaintiffs claimed \$1,800,000 in damages related to lost future
10 commissions from Pardee's purported breach of the Commission Agreement, \$146,500
11 in attorney's fees incurred as special damages in prosecuting the action, and \$6,000 in
12 consequential damages for time and effort expended searching for information
13 regarding what Pardee purportedly owed them under the Commission Agreement.

14 Having considered the entire record, including testimony of witnesses, the
15 documentary evidence, stipulations of counsel, the papers submitted by the respective
16 parties, and the arguments of counsel at trial in this matter, the Court enters judgment
17 as follows:

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
19 **ENTERED** against Plaintiffs and for Pardee as to Plaintiffs' claim for \$1,800,000 in
20 damages related to lost future commissions under the Commission Agreement. Pardee
21 has not breached the Commission Agreement in such a way as to deny Plaintiffs any
22 future commissions, and Pardee has paid all commissions due and owing under the
23 Commission Agreement.

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
25 **ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for
26 breach of contract and breach of the implied covenant of good faith and fair dealing.
27 Plaintiffs are entitled to damages from Pardee in an amount totaling \$141,500.00, of
28 which \$6,000 are consequential damages from Pardee's breach of the Commission

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100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
PO. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

1 Agreement and the remaining \$135,500.00 are special damages in the form of
2 attorney's fees and costs.

3 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
4 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' cause
5 of action for accounting. Pardee shall provide Plaintiffs with future accountings related
6 to the Commission Agreement consistent with the Accounting Order entered by the
7 Court on May 13, 2015.

8 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
9 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Pardee's cause
10 of action for breach of the implied covenant of good faith and fair dealing.


11 This Judgment may be amended upon entry of any further awards of interest,
12 costs and/or attorney's fees.

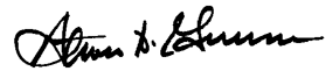
13 DATED this ____ day of May, 2015.

14
15
16 _____
DISTRICT COURT JUDGE

17 Submitted by:

18 McDONALD CARANO WILSON LLP

19
20 
21 PAT LUNDVALL (NSB #3761)
22 RORY T. KAY (NSB #12416)
23 2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Attorneys for Pardee Homes of Nevada



CLERK OF THE COURT

1 **ERR**

2 JIMMERSON HANSEN, P.C.
3 JAMES J. JIMMERSON, ESQ.
4 Nevada State Bar No. 000264
5 415 South Sixth Street, Suite 100
6 Las Vegas, Nevada 89101
7 Telephone: (702) 388-7171
8 Facsimile: (702) 380-6406
9 jjj@jimmersonhansen.com

10 Attorneys for Plaintiffs

11 JAMES WOLFRAM and WALTER D. WILKES
12 And ANGELA L. LIMBOCKER-WILKES LIVING TRUST,
13 ANGELA L. LIMBOCKER-WILKES, TRUSTEE

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

20 Plaintiffs,)

21 v.)

22 PARDEE HOMES OF NEVADA,)

23 Defendant.)

Case No.: A-10-632338-C

Dept. No. IV

24 **ERRATA TO PLAINTIFFS' MOTION PURSUANT TO NRCP 52(b) AND 59 TO**
25 **AMEND THE COURT'S JUDGMENT ENTERED ON JUNE 15, 2015, TO AMEND THE**
26 **FINDINGS OF FACT/CONCLUSIONS OF LAW AND JUDGMENT CONTAINED**
27 **THEREIN, SPECIFICALLY REFERRED TO IN THE LANGUAGE INCLUDED IN THE**
28 **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"

1 Comes now Plaintiffs, JAMES WOLFRAM and WALTER D. WIKES and ANGELA
2 . LIMBOCKER-WILKES LIVING TRUST, ANGELA L. LIMBOCKER-WILKES TRUSTEE,
3 by and through their counsel of record, JAMES J. JIMMERSON, ESQ., of JIMMERSON
4 HANSEN, P.C., and hereby submits his Errata to PLAINTIFFS' MOTION PURSUANT
5 TO NRCP 52(b) AND 59 TO AMEND THE COURT'S JUDGMENT ENTERED ON JUNE
6 15, 2015, TO AMEND THE FINDINGS OF FACT/CONCLUSIONS OF LAW AND
7 JUDGMENT CONTAINED THEREIN, SPECIFICALLY REFERRED TO IN THE
8 LANGUAGE INCLUDED IN THE JUDGMENT AT PAGE 2, LINES 8 THROUGH 13 AND
9 THE JUDGMENT AT PAGE 2, LINES 18 THROUGH 23 TO DELETE THE SAME OR
10 AMEND THE SAME TO REFLECT THE TRUE FACT THAT PLAINTIFF PREVAILED
11 ON THEIR ENTITLEMENT TO THE FIRST CLAIM FOR RELIEF FOR AN
12 ACCOUNTING, AND DAMAGES FOR THEIR SECOND CLAIM FOR RELEAF OF
13 BREACH OF CONTRACT, AND THEIR THIRD CLAIM FOR RELIEF FOR BREACH OF
14 THE IMPLIED COVENANT FOR GOOD FAITH AND FAIR DEALING AND THAT
15 DEFENDANT NEVER RECEIVED A JUDGMENT IN ITS FORM AND AGAINST
16 PLAINTIFFS WHATSOEVER AS MISTAKENLY STATED WITHIN THE COURT'S
17 LATEST "JUDGMENT" as follows:

18 Page 10 of the above Motion reads in part:

19
20 "....Defendants, intentionally, failed to communicate with these
21 individuals, failed to send any documents by regular mail, but instead
22 communicated only with Mr. Jimmerson by email and submitted the Court's
Judgment entered on June 15, 2015, to Mr. Jimmerson on or about May 28,
2015,..."

23 ///

24 ///

25 ///

26 ///

27

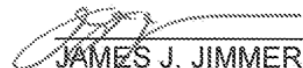
28

1 The correct date of the of the email from Defendant's counsel to Plaintiffs' counsel
2 James J. Jimmerson, Esq. only, and no one else, attaching the proposed Judgment
3 entered on June 15, 2015, is June 1, 2015, not May 28, 2015, as stated in the above-
4 referenced Motion, not on May 29, 2015, as stated by Defendant's counsel. See
5 attached email from Sally Wexler, Executive Assistant to Pat Lundvall, dated June 1,
6 2015.
7

8 Dated this 1 day of July, 2015.

9 Respectfully Submitted,

10 JIMMERSON HANSEN, P.C.

11
12 
13 JAMES J. JIMMERSON, ESQ.
14 Nevada State Bar No. 000264
15 415 So. Sixth St., Ste. 100
16 Las Vegas, NV 89101
17 Attorneys for Plaintiffs
18
19
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25
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28

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that service of a true and correct copy **ERRATA TO PLAINTIFFS'**
4 **MOTION PURSUANT TO NRCP 52(b) AND 59 TO AMEND THE COURT'S JUDGMENT**
5 **ENTERED ON JUNE 15, 2015, TO AMEND THE FINDINGS OF FACT/CONCLUSIONS**
6 **OF LAW AND JUDGMENT CONTAINED THEREIN, SPECIFICALLY REFERRED TO**
7 **IN THE LANGUAGE INCLUDED IN THE JUDGMENT AT PAGE 2, LINES 8 THROUGH**
8 **13 AND THE JUDGMENT AT PAGE 2, LINES 18 THROUGH 23 TO DELETE THE**
9 **SAME OR AMEND THE SAME TO REFLECT THE TRUE FACT THAT PLAINTIFF**
10 **PREVAILED ON THEIR ENTITLEMENT TO THE FIRST CLAIM FOR RELIEF FOR AN**
11 **ACCOUNTING, AND DAMAGES FOR THEIR SECOND CLAIM FOR RELEAF OF**
12 **BREACH OF CONTRACT, AND THEIR THIRD CLAIM FOR RELIEF FOR BREACH OF**
13 **THE IMPLIED COVENANT FOR GOOD FAITH AND FAIR DEALING AND THAT**
14 **DEFENDANT NEVER RECEIVED A JUDGMENT IN ITS FORM AND AGAINST**
15 **PLAINTIFFS WHATSOEVER AS MISTAKENLY STATED WITHIN THE COURT'S**
16 **LATEST "JUDGMENT"** was made on the 8th day of June, 2015, as indicated below:

- 17
18
19 ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
20 Administrative Order 14-2 captioned "In the Administrative Matter of
21 Mandatory Electronic Service in the Eighth Judicial District Court," by
22 mandatory electronic service through the Eighth Judicial District Court's
23 electronic filing system;
24 ☒ by placing same to be deposited for mailing in the United States Mail, in a
25 sealed envelope upon which first class postage was prepaid in Las Vegas,
26 Nevada to Nevada State Welfare, Dept. of Human Resources;
27 ☐ by electronic mail;
28 ☐ by hand-delivery with signed Receipt of Copy.

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

Pat Lundvall, Esq.
Rory T. Kay, 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.

Kim Stewart

From: Sally Wexler <swexler@mcdonaldcarano.com>
Sent: Monday, June 01, 2015 5:36 PM
To: James J. Jimmerson, Esq.
Subject: Pardee/Wolfram
Attachments: LVDOCS-#335375-v1-Ltr_to_Judge_Earley_re_proposed_Judgment.PDF; LVDOCS-#335374-v1-Proposed_Judgment.PDF

Attached please find one letter and one document we have sent to Judge Earley's chambers.

Sally Wexler|Executive Assistant to
Pat Lundvall| assistant to Rory T. Kay

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Rory T. Kay

Reply to Las Vegas

May 29, 2015

Via Hand Delivery

The Honorable Kerry Earley
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

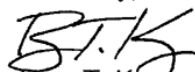
Re: ***Pardee Homes of Nevada adv. James Wolfram, et al.:***
Proposed Judgment

Dear Judge Earley:

Attached hereto is Pardee Homes of Nevada's ("Pardee") proposed judgment for the Court's consideration. The judgment incorporates the Court's Findings of Fact and Conclusions of Law dated June 25, 2014, the Minute Order dated February 10, 2015, and the Order on Findings of Fact and Conclusions of Law and Supplemental Briefing Re Future Accounting dated April 20, 2015 (the "Final Order").

Given that the Court's Findings, Minute Order, and Final Order resolved all of the outstanding issues in the case, Pardee believes it appropriate for the Court to now enter judgment in this matter.

Sincerely,


Rory T. Kay

cc: James J. Jimmerson, Esq. (via e-mail)

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JUDG

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Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

JUDGMENT

AND RELATED CLAIMS

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

In the Findings of Fact and Conclusions of Law, the Court ordered the parties to provide supplemental briefing within 60 days detailing what future information Defendant Pardee Homes of Nevada ("Pardee") and its successors and/or assigns should provide Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") and their successors and/or assigns consistent with the Court's decision on the accounting cause of action.

1 After reviewing the parties' supplemental briefing, the Court then entered an
2 order on April 20, 2015 reflecting its decision on the supplemental briefing (the
3 "Accounting Order") The Notice of Entry of the Accounting Order was filed on May 13,
4 2015.

5 In accordance with the Findings of Fact and Conclusions of Law entered on June
6 25, 2014 and the Accounting Order entered on May 13, 2015, the Court finds the
7 following:

8 Plaintiffs claimed \$1,952,000 in total damages related to their causes of action.
9 Specifically, Plaintiffs claimed \$1,800,000 in damages related to lost future
10 commissions from Pardee's purported breach of the Commission Agreement, \$146,500
11 in attorney's fees incurred as special damages in prosecuting the action, and \$6,000 in
12 consequential damages for time and effort expended searching for information
13 regarding what Pardee purportedly owed them under the Commission Agreement.

14 Having considered the entire record, including testimony of witnesses, the
15 documentary evidence, stipulations of counsel, the papers submitted by the respective
16 parties, and the arguments of counsel at trial in this matter, the Court enters judgment
17 as follows:

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
19 **ENTERED** against Plaintiffs and for Pardee as to Plaintiffs' claim for \$1,800,000 in
20 damages related to lost future commissions under the Commission Agreement. Pardee
21 has not breached the Commission Agreement in such a way as to deny Plaintiffs any
22 future commissions, and Pardee has paid all commissions due and owing under the
23 Commission Agreement.

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
25 **ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for
26 breach of contract and breach of the implied covenant of good faith and fair dealing.
27 Plaintiffs are entitled to damages from Pardee in an amount totaling \$141,500.00, of
28 which \$6,000 are consequential damages from Pardee's breach of the Commission

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1 Agreement and the remaining \$135,500.00 are special damages in the form of
2 attorney's fees and costs.

3 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
4 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' cause
5 of action for accounting. Pardee shall provide Plaintiffs with future accountings related
6 to the Commission Agreement consistent with the Accounting Order entered by the
7 Court on May 13, 2015.

8 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
9 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Pardee's cause
10 of action for breach of the implied covenant of good faith and fair dealing.

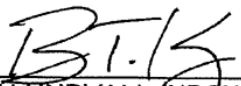
11 This Judgment may be amended upon entry of any further awards of interest,
12 costs and/or attorney's fees.

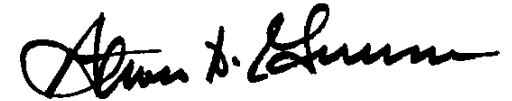
13 DATED this ____ day of May, 2015.

14
15 _____
16 DISTRICT COURT JUDGE

17 Submitted by:

18 McDONALD CARANO WILSON LLP

19
20 
21 PAT LUNDVALL (NSB #3761)
22 RORY T. KAY (NSB #12416)
23 2300 West Sahara Avenue, Suite 1200
24 Las Vegas, Nevada 89102
25 *Attorneys for Pardee Homes of Nevada*
26
27
28



CLERK OF THE COURT

MSTE
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RORY T. KAY (NSBN 12416)
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Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PARDEE'S EMERGENCY MOTION TO
STAY EXECUTION OF JUDGMENT;**

AND

EX PARTE ORDER SHORTENING TIME

Hearing Date:

Time: HEARING REQUIRED

DATE: 07-10-2015

TIME: 9:00 am

AND RELATED CLAIMS

Pursuant to Rule 62 of the Nevada Rules of Civil Procedure, defendant Pardee Homes of Nevada ("Pardee") moves the Court for an Order staying plaintiffs James Wolfram and Walt Wilkes' premature attempts to execute on the Judgment this Court entered on June 15, 2015. Plaintiffs' disingenuous execution on this Judgment is not only inappropriate because Pardee has a pending motion to amend the judgment, but also because Plaintiffs themselves have filed two motions that would fundamentally change the judgment (a motion to strike and a motion to amend), including one that argues the judgment is invalid and a "fugitive" document. Until the Court can hear each



1 of these motions and determine the legal justifications for the judgment, Plaintiffs'
2 attempted execution is improper.

3 This Motion is based on NRCP 62(b), the pleadings and papers on file, the
4 attached Memorandum of Points and Authorities, and any oral argument the Court may
5 entertain at the hearing of this Motion.

6 DATED this 8th day of July, 2015.

7 McDONALD CARANO WILSON LLP

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

15 **ORDER SHORTENING TIME**

16 Upon good cause shown, please take notice that the hearing before the above-
17 entitled court on Pardee's Motion to Stay Execution of Judgment is shortened to the
18 10th day of July, 2015, at 9:00 (a.m.)/p.m. or as soon thereafter as counsel can
19 be heard. This Order Shortening Time shall be served on the parties by e-service, by
20 hand, facsimile or email no later than 8th day of July, 2015.

21 DATED this 8th day of July, 2015.

22 
23 DISTRICT COURT JUDGE
24 *upk*

25 Submitted by:

26 MCDONALD CARANO WILSON LLP

27 /s/ Rory T. Kay
28 PAT LUNDVALL (NSBN 3761)
RORY KAY (NSBN 12416)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Pardee Homes of Nevada

**DECLARATION OF RORY T. KAY, ESQ. IN SUPPORT OF PARDEE'S MOTION TO
STAY EXECUTION OF JUDGMENT**

I, RORY T. KAY, declare under penalty of perjury as follows:

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

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

3. On June 3, 2015, the Court entered judgment in the Lawsuit and awarded Plaintiffs "damages from Pardee in an amount totaling \$141,500," consisting of \$6,000 in consequential damages and \$135,500 as special damages in the form of attorney's fees.

4. Upon receiving a copy of the Court's signed judgment, as required by rule, Pardee both electronically filed the judgment and noticed Plaintiffs of entry of the same on June 15, 2015.

5. On June 29, 2015, Plaintiffs filed two motions seeking to materially alter the Court's judgment, the first a motion to amend and the second a motion to strike. In the latter, the Plaintiffs ask that the Court strike the judgment "in its entirety" because it is a "fugitive" document and therefore invalid. The Court set hearing for these motions on August 3, 2015.

6. On July 2, 2015, Pardee also filed a motion to amend the Court's judgment. Pardee's motion focused on the Court's award of Plaintiffs' attorney's fees as special damages, which make up the overwhelming majority of Plaintiffs' damages award. Specifically, Pardee argues that recent Nevada Supreme Court precedent prevents the Court from awarding Plaintiffs' attorney's fees as special damages. If granted, the Plaintiffs' recovery would be reduced from \$141,500 to \$6,000. The Court set hearing for this motion on August 5, 2015.

1 7. On July 7, 2015, Bank of America notified Pardee that the Plaintiffs were
2 attempting a garnishment in the amount of \$226,345.27 plus a \$100.00 processing fee.
3 Bank of America notified Pardee that, absent court relief, it would freeze any funds
4 belonging to Pardee up to the amount claimed by Plaintiffs' garnishment.

5 8. Although Bank of America has not provided Pardee with Plaintiffs'
6 purported writ of garnishment or any other supporting documentation, Pardee believes
7 that Plaintiffs are attempting to execute on the Court's June 15, 2015 Judgment with full
8 knowledge that Pardee filed a motion to amend that judgment. This is also the same
9 Judgment that the Plaintiffs have moved the Court to strike in its entirety because they
10 believe it is invalid.

11 9. Pardee has not received any notification from Plaintiffs regarding this
12 purported garnishment, nor does Pardee have any indication as to how Plaintiffs now
13 claim \$226,345.27 when the Court entered judgment only weeks ago in the amount of
14 \$141,500.

15 10. Moreover, given that both parties have moved the Court to amend or alter
16 the judgment that Plaintiffs are now urgently attempting to execute on, Plaintiffs'
17 garnishment attempts are reckless, premature, and seek nothing more than to divest
18 the Court of its inherent power to amend the judgment before execution.

19 11. Because of these reasons, among others, good cause exists pursuant to
20 EDCR 2.26 for hearing this Motion on an Order Shortening Time to ensure that the
21 Court may appropriately review the parties' pending motions before Plaintiffs' erroneous
22 execution makes it difficult, if not impossible, for the Court to amend its judgment.

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

25 Executed this 8th day of July, 2015.

26 /s/ Rory T. Kay
27 Rory T. Kay
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS.

A. After Plaintiffs Delay in Finalizing Judgment, Pardee Moves the Court to Enter Judgment and the Court Does So.

Although the Court entered its Findings of Fact and Conclusion of Law on June 25, 2014 (the “Findings”), in which the Court awarded Plaintiffs monetary damages, they did nothing to move for entry of judgment for almost a full year, nor did they take any steps to collect these monetary damages. See Findings of Fact, Conclusions of Law, and Order, attached as Exhibit A. Instead, after Plaintiffs’ delay, it was Pardee that moved the case towards finality by submitting a proposed judgment to the Court on May 29, 2015.¹ See Letter from Pardee’s Counsel to the Honorable Kerry Earley

¹ In their separately filed Motion to Strike Judgment, Plaintiffs attempt to excuse their delay by arguing that the Court had already entered final judgment when it entered the Findings on June 25, 2014, and thus there was no need to move the Court for a final judgment. See Plaintiffs’ Motion to Strike Judgment at 1:25-27 (moving to strike the June 15, 2015 judgment “in its entirety” as being “duplicative” of the Court’s Findings). But both the facts and law belie Plaintiffs’ deceitful argument.

Factually, the Court’s Findings could not have been a final judgment under NRCP 58 or NRAP 3A(b)(1) because the Court expressly requested additional briefing on the supplemental accounting due from Pardee to Plaintiffs. See Findings, Exhibit A at 18:5-9. Thus, the Findings were not a final judgment because they did not resolve all of the case’s issues regarding the parties’ rights and obligations. See *Moran v. Bonneville Square Assoc’s*, 117 Nev. 525, 530, 25 P.3d 898, 900 (2001) (“A final written judgment adjudicates all the rights and liabilities of all the parties.”).

Additionally, the Nevada Rules of Civil Procedure have long recognized that a Court’s findings of fact and conclusions of law are not a final judgment, but rather separate and distinct predicates to the Court’s eventual entry of a final judgment. For example, NRCP 52(a) recognizes that, in a bench trial, the court must “find the facts specially and state its conclusions of law thereon,” but that it must then enter judgment “pursuant to [NRCP] 58.” NRCP 58 confirms the distinction between findings of fact/conclusions of law and a final judgment in noting that “upon a decision by the court . . . the court shall promptly approve the form and sign the judgment,” which the clerk should then file.

Additionally, parties must move to amend findings of fact and conclusions of law under NRCP 52(a) (“the court may amend its findings or make additional findings”) while moving to amend a judgment under NRCP 59(e) (discussing a “Motion to Alter or Amend a Judgment”), again confirming they are separate acts by the Court. Thus, the Plaintiffs’ claim that the Court’s Findings were a final judgment is entirely incorrect and nothing more than an attempt to excuse Plaintiffs’ delay in bringing finality to this case.

1 Enclosing a Proposed Judgment, dated May 29, 2015, attached as Exhibit B. The
2 language of Pardee's proposed judgment tracked the Court's Findings and also a
3 separate minute order the Court entered regarding supplemental accounting in the
4 case. See Minute Order dated February 10, 2015, attached as Exhibit C.

5 After appropriate review, the Court entered the judgment on June 3, 2015, and
6 Pardee noticed Plaintiffs of the Court's entry of judgment on June 15, 2015. See Notice
7 of Entry of Judgment, attached as Exhibit D. The judgment awarded Plaintiffs \$141,500
8 in damages, while also noting that Pardee had paid Plaintiffs all commissions due and
9 owing under the Commission Agreement between the parties. See *generally id.* The
10 Court's award of \$141,500 in total damages consisted of \$6,000 in compensatory
11 damages and \$135,500 in special damages in the form of attorney's fees.

12 B. Both Parties Move the Court to Amend Its Judgment.

13 Once Pardee noticed the entry of judgment on June 15, 2015, Plaintiffs almost
14 immediately moved the Court to strike the judgment, or in the alternative, to amend it
15 significantly. Specifically, in their Motion to Strike filed June 29, 2015, Plaintiffs argue
16 that the Court should strike the judgment "in its entirety" because it was duplicative of
17 the Court's Findings and previous minute order regarding special accounting. See
18 Plaintiff's Motion to Strike at 1:25-28. Plaintiffs also argue in their Motion to Amend the
19 Court's Judgment, filed on the same day, that the Court should amend the judgment by
20 striking out or altering significantly certain language within the judgment. See *generally*
21 Plaintiff's Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment.

22 Pardee took a much more circumspect approach in filing its own motion to
23 amend the judgment, focusing solely on the Court's award of \$135,500 of Plaintiffs'
24 attorney's fees as special damages. Specifically, Pardee argues that the Court did not
25 have the benefit of certain case law from the Nevada Supreme Court when it awarded
26 Plaintiffs their attorney's fees as special damages, and that given this new case law, the
27 award of those fees as special damages is incorrect.
28

1 C. Despite Having Full Knowledge of Both Parties' Outstanding Motions to
2 Strike or Alter the Judgment, Plaintiffs Seek To Execute on the Judgment
3 Before the Court Can Reach the Merits of the Parties' Motions.

4 Although the Court promptly scheduled hearings on the parties' motions for
5 August 3 and 5, 2015, Plaintiffs attempted an *ex parte* midnight run on execution
6 without any notice to Pardee or its counsel. Specifically, on July 7, 2015, Bank of
7 America notified Pardee that it was in receipt of a purported garnishment under Nevada
8 law from Plaintiffs' counsel in the amount of \$226,345.27, and that the bank was
9 obligated to freeze any funds belonging to Pardee absent court-ordered relief. As of
10 this date, Bank of America has not given Pardee any supporting documentation for
11 Plaintiffs' attempted garnishment, nor have Plaintiffs otherwise justified their attempt to
12 garnish \$226,345 from Pardee when the Court's judgment was only for \$141,500.

13 II. ARGUMENT.

14 A. Legal Standard.

15 NRCP 62(b) permits the Court in its discretion to "stay the execution of or any
16 proceedings to enforce a judgment pending the disposition of a motion for a new trial or
17 to alter or amend a judgment made pursuant to Rule 59." Although the rule generally
18 calls for certain conditions to protect the judgment creditor, the Nevada Supreme Court
19 has recognized that such conditions are only necessary if the prevailing party needs
20 protection from loss resulting from a stay of execution of the judgment. *See McCulloch*
21 *v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 330 (1983) Even where execution may be
22 stayed pending a lengthy appeal, the trial court should consider five factors before
23 imposing conditions upon the party moving for the stay:

- 24 (1) The complexity of the collection process;
- 25 (2) The amount of time required to obtain a judgment after it is affirmed on
26 appeal;
- 27 (3) The degree of confidence that the district court has in the availability of funds
28 to pay the judgment;
- (4) Whether the defendant's ability to pay the judgment is so plain that the loss of
the bond would be a waste of money; and

1 (5) Whether the defendant is in such a precarious financial situation that the
2 requirement to post a bond would place other conditions of the defendant in
an insecure position.

3 *Nelson v. Heer*, 121 Nev. 832. 836. 122 P.3d 1252, 1254 (2005).

4 B. Pardee is Entitled to a Stay of Execution Without Any Conditions or
5 Supersedeas Bond Until Such Time as the Court Can Hear Both Parties'
6 Motions to Amend or Strike the Judgment.

- 7 1. Plaintiffs' attempted execution is a naked effort to deprive the Court
8 of the power to amend its judgment.

9 Plaintiffs' attempts to execute on a judgment that they say the Court should
10 strike in its entirety would be bizarre if not for the context provided by Pardee's motion
11 to amend the judgment. In the judgment, the Court awarded Plaintiffs total damages in
12 the amount of \$141,500, of which \$135,500 are Plaintiffs' attorney's fees as special
13 damages. Pardee's Motion to Amend focuses on these special damages, and argues
14 that the Court should strike that award because it is incorrect under recent Nevada
15 Supreme Court precedent. And should the Court grant Pardee's Motion to Amend and
16 thereby strike the \$135,000 in attorney's fees, Plaintiffs' total recovery would be
reduced to \$6,000.

17 But rather than waiting for the Court to rule on the merits of Pardee's motion and
18 thereby risk a reduced recovery, the Plaintiffs endeavor to skirt this recent Nevada
19 precedent by executing before the Court can rule on Pardee's motion.² The Plaintiffs'
20 approach captures the axiom that it is better to beg for forgiveness than to ask for
21 permission. By preemptively executing on an incorrect award of attorney's fees,
22 Plaintiffs would deprive the Court of the practical ability to amend its judgment because
23 Plaintiffs would already have the money to which they would no longer be entitled under
24 an amended judgment. In essence, the Plaintiffs would be forcing the Court to unwind

25
26 ² In fact, Plaintiffs show even less restraint in the amount upon which they are
27 trying to execute. The Court awarded them \$141,500 in total damages, and yet they
28 are attempting to execute on \$226,345, fully 1.67 times the Court's total award.
Plaintiffs have not provided any justification as to why they are entitled to such a grossly
inflated amount.

1 Plaintiffs' execution by ordering Plaintiffs to return Pardee's money, and yet there is no
2 guarantee that the Plaintiffs would hold such money by the time the Court ruled on the
3 parties' motions. This would impose additional costs on the Court, as it would now
4 have to supervise the Plaintiffs' return of the money it wrongfully executed upon.

5 Rather than this game of judicial keep away that the Plaintiffs propose, the more
6 prudent and judicially efficient approach is to stay the execution of the judgment until
7 such time as the Court rules on Pardee's motion. This will ensure that the Plaintiffs
8 only execute on a legally justifiable damages award, and it would remove any
9 difficulties arising from Plaintiffs' wrongful execution on money the Court later found
10 Plaintiffs were not entitled to receive under an amended judgment.

- 11 2. Plaintiffs cannot attempt to execute on a judgment that they say the
12 Court should strike in its entirety because it is invalid.

13 Underscoring Plaintiffs' gamesmanship is the fact that they are now duplicitously
14 dealing with the Court by taking self-serving and contrary positions regarding the
15 Court's judgment. On the one hand, the Plaintiffs argue in their Motion to Strike that the
16 Court's judgment is a "fugitive" and "duplicative" document with no legal effect, and
17 therefore invalid as a final judgment. See Plaintiff's Motion to Strike "Judgment," on file
18 with the Court. On the other hand, Plaintiffs have attempted to force Bank of America
19 to garnish Pardee's account based on this very same "invalid" judgment, claimed to be
20 fugitive and of no effect. The Court should not award such two-facedness by permitting
21 the Plaintiffs to execute upon a judgment that they call "fugitive."³ Instead, the Court
22 should hold Plaintiffs to their argument that the judgment is invalid by staying any
23 execution until the Court can hear their Motion to Strike. Only then, once the Court has

24
25 ³ Given that Plaintiffs bizarrely chose to execute on a judgment that they
26 purportedly dispute, the Court should find that, by attempting such execution, Plaintiffs
27 have waived or are estopped from asserting the substantive arguments in their motion
28 to strike and separate motion to amend. The Court cannot allow Plaintiffs to pick and
choose which parts of the judgment they will enforce. Instead, by moving to execute,
Plaintiffs have implicitly claimed that the judgment is correct and their motions are
meritless. And so the Court should deny Plaintiffs' motions in their entirety.

1 denied Plaintiffs' motion and affirmed the judgment's validity, should the Court permit
2 the Plaintiffs to execute on it.

3 3. Plaintiffs cannot garnish an amount well in excess of the Court's
4 judgment.

5 As discussed in Footnote 2, Plaintiffs have provided no justification as to why
6 they are attempting to execute in the amount of \$226,345 when the Court, even if it
7 affirms the special damages, awarded Plaintiffs only \$141,500 in total damages. See
8 Email from John L. Humphries of Bank of America to Chris Martin, attached as Exhibit
9 E. Moreover, because the Court has not yet heard either party's motion for attorney's
10 fees, the exorbitant difference cannot be explained away by fees and costs. Nor can
11 prejudgment or postjudgment interest, both of which have been at a statutory rate of
12 3.25% since Plaintiffs filed their Complaint, close the nearly \$85,000 gap. Instead,
13 Plaintiffs have provided no true up to support the amount they are claiming for
14 execution, and the Court should stay execution on this basis alone because the bare
15 facts show Plaintiffs' attempted execution to be nothing more than yet another money
16 grab.

17 4. No supersedeas bond or other condition is necessary to protect
18 Plaintiffs during a stay.

19 Unlike the stay on a lengthy appeal at issue in *Nelson v. Heer*, which required
20 some protection for the judgment creditor, the stay in this matter would last not more
21 than a month, thereby precluding the need for any bond or other condition because
22 there is no risk Pardee will become insolvent in the intervening month. There is no
23 doubt that Pardee has the ability to pay the judgment, and the collection process for the
24 Plaintiffs, as indicated by their attempts to immediately execute, is straightforward and
25 simple. Finally, not only should the district court have great confidence in Pardee's
26 ability to pay the judgment, but Plaintiffs' own motions to strike the judgment and/or
27 amend it weigh against any claims to prejudice from a stay of execution. If Plaintiffs
28 were truly concerned about immediate collection or Pardee's financial health, they
would not have moved to amend the judgment or have it stricken, knowing that those

1 motions could trigger stay relief under NRCP 62(b). In sum, there is no prejudice to
2 Plaintiffs by staying execution for a mere month while the Court considers the parties'
3 motions to amend or strike the judgment.

4 III. CONCLUSION.

5 Because Pardee has filed a motion to amend asking the Court to strike its
6 \$135,500 award of Plaintiffs' attorney's fees as special damages, and because the
7 Plaintiffs believe that the Court's judgment is "fugitive" and therefore invalid, Pardee
8 respectfully asks the Court to preserve the status quo by staying execution of that
9 judgment until the Court can hear the parties' motions to amend the judgment. Such a
10 stay will ensure that the Plaintiffs only collect on a legally justifiable damages award,
11 and it will also prevent Plaintiffs' attempt to collect far more than they are due under the
12 Court's judgment. Moreover, given the limited timeframe of such a stay, the Court
13 should not impose any conditions upon Pardee or otherwise require a supersedeas
14 bond under *Nelson v. Heer*.

15 DATED this 8th day of July, 2015.

16
17 MCDONALD CARANO WILSON LLP

18
19 /s/ Rory T. Kay
20 Pat Lundvall (NSBN 3761)
21 Rory T. Kay (NSBN 12416)
22 2300 West Sahara Avenue, Suite 1200
23 Las Vegas, Nevada 89102
24 (702) 873-4100
25 (702) 873-9966 Facsimile

26
27 *Attorneys for Defendant Pardee Homes of*
28 *Nevada*

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
3 and that on the 8th day of July, 2015, I e-served and e-filed a true and correct copy of
4 the foregoing **PARDEE HOMES OF NEVADA'S MOTION TO STAY EXECUTION OF**
5 **JUDGMENT** via Wiznet, as utilized in the Eighth Judicial District in Clark County,
6 Nevada, on the following:

7 James J. Jimmerson
8 Holly Fic
9 Kim Stewart
10 JIMMERSON HANSEN, P.C.
415 S. Sixth Street, Suite 100
Las Vegas, Nevada 89101

11 And by U.S. Mail:

12 John W. Muije
13 John W. Muije & Associates
1840 E. Sahara Avenue #106
14 Las Vegas, Nevada 89104

15 *Attorney for Plaintiffs*

16 /s/ Sally Wexler
17 An Employee of McDonald Carano Wilson
18 LLP

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21 337850
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27
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EXHIBIT A


CLERK OF THE COURT

1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 JAMES WOLFRAM and
5 WALT WILKES,

6 Plaintiffs,

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

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

Trial Date: October 23, 2013

10 AND RELATED CLAIMS

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

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

24 **I. FINDINGS OF FACT**

25 **A. THE PARTIES**

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

10 8. Pardee has never exercised any such option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 DECISION

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

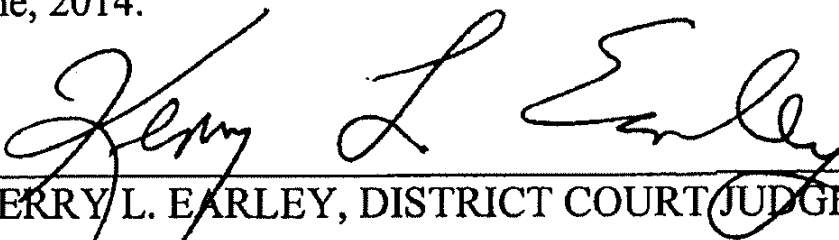
25 1. The Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for
26 breach of contract, breach of the covenant of good faith and fair dealing, and its failure to account to
27 Plaintiffs regarding the information concerning the development of Coyote Springs because it
28

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

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

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

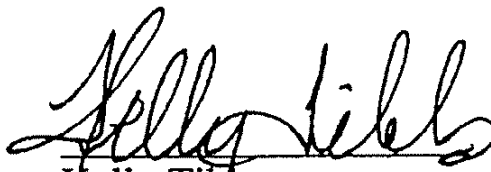
10
11 DATED this 25 day of June, 2014.

12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15
16 **CERTIFICATE OF SERVICE**

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

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

21
22 
23 Kelly Tibbs
24 Judicial Executive Assistant

25
26
27
28
KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

EXHIBIT B



McDONALD·CARANO·WILSON[®]

Rory T. Kay

Reply to Las Vegas

May 29, 2015

Via Hand Delivery

The Honorable Kerry Earley
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

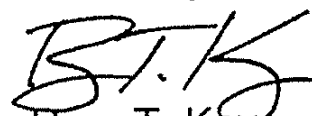
Re: ***Pardee Homes of Nevada adv. James Wolfram, et al.:***
Proposed Judgment

Dear Judge Earley:

Attached hereto is Pardee Homes of Nevada's ("Pardee") proposed judgment for the Court's consideration. The judgment incorporates the Court's Findings of Fact and Conclusions of Law dated June 25, 2014, the Minute Order dated February 10, 2015, and the Order on Findings of Fact and Conclusions of Law and Supplemental Briefing Re Future Accounting dated April 20, 2015 (the "Final Order").

Given that the Court's Findings, Minute Order, and Final Order resolved all of the outstanding issues in the case, Pardee believes it appropriate for the Court to now enter judgment in this matter.

Sincerely,


Rory T. Kay

cc: James J. Jimmerson, Esq. (via e-mail)

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

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

ATTORNEYS AT LAW



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JA009695

JUDG
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
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(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

JUDGMENT

AND RELATED CLAIMS

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

In the Findings of Fact and Conclusions of Law, the Court ordered the parties to provide supplemental briefing within 60 days detailing what future information Defendant Pardee Homes of Nevada ("Pardee") and its successors and/or assigns should provide Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") and their successors and/or assigns consistent with the Court's decision on the accounting cause of action.

1 After reviewing the parties' supplemental briefing, the Court then entered an
2 order on April 20, 2015 reflecting its decision on the supplemental briefing (the
3 "Accounting Order") The Notice of Entry of the Accounting Order was filed on May 13,
4 2015.

5 In accordance with the Findings of Fact and Conclusions of Law entered on June
6 25, 2014 and the Accounting Order entered on May 13, 2015, the Court finds the
7 following:

8 Plaintiffs claimed \$1,952,000 in total damages related to their causes of action.
9 Specifically, Plaintiffs claimed \$1,800,000 in damages related to lost future
10 commissions from Pardee's purported breach of the Commission Agreement, \$146,500
11 in attorney's fees incurred as special damages in prosecuting the action, and \$6,000 in
12 consequential damages for time and effort expended searching for information
13 regarding what Pardee purportedly owed them under the Commission Agreement.

14 Having considered the entire record, including testimony of witnesses, the
15 documentary evidence, stipulations of counsel, the papers submitted by the respective
16 parties, and the arguments of counsel at trial in this matter, the Court enters judgment
17 as follows:

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
19 **ENTERED** against Plaintiffs and for Pardee as to Plaintiffs' claim for \$1,800,000 in
20 damages related to lost future commissions under the Commission Agreement. Pardee
21 has not breached the Commission Agreement in such a way as to deny Plaintiffs any
22 future commissions, and Pardee has paid all commissions due and owing under the
23 Commission Agreement.

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
25 **ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for
26 breach of contract and breach of the implied covenant of good faith and fair dealing.
27 Plaintiffs are entitled to damages from Pardee in an amount totaling \$141,500.00, of
28 which \$6,000 are consequential damages from Pardee's breach of the Commission

1 Agreement and the remaining \$135,500.00 are special damages in the form of
2 attorney's fees and costs.

3 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
4 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' cause
5 of action for accounting. Pardee shall provide Plaintiffs with future accountings related
6 to the Commission Agreement consistent with the Accounting Order entered by the
7 Court on May 13, 2015.

8 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
9 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Pardee's cause
10 of action for breach of the implied covenant of good faith and fair dealing.

11 This Judgment may be amended upon entry of any further awards of interest,
12 costs and/or attorney's fees.

13 DATED this ____ day of May, 2015.

14
15 _____
16 DISTRICT COURT JUDGE

17 Submitted by:

18 McDONALD CARANO WILSON LLP
19

20
21 _____
22 PAT LUNDVALL (NBSN #3761)
23 RORY T. KAY (NSB #12416)
24 2300 West Sahara Avenue, Suite 1200
25 Las Vegas, Nevada 89102
26 *Attorneys for Pardee Homes of Nevada*
27
28

EXHIBIT C

A-10-632338-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

February 10, 2015

A-10-632338-C	James Wolfram, Plaintiff(s)
	vs.
	Pardee Homes of Nevada, Defendant(s)

February 10, 2015 3:00 AM Minute Order

HEARD BY: Earley, Kerry

COURTROOM:

COURT CLERK: Kristin Duncan

JOURNAL ENTRIES

- After reviewing Plaintiffs' Accounting Brief pursuant to the Court's Order, Pardee Homes of Nevada's Supplemental Brief regarding future accounting, and Pardee's Notice of Submission, the Court rules as follows:

1. Defendant to provide to Plaintiffs an Affidavit or an unsworn declaration in lieu thereof pursuant to NRS 53.045 executed under penalty of perjury by a corporate representative from Weyerhaeuser Company NR (WNR) acknowledging and confirming the representations contained in Ms. Lundvall's letter dated August 5, 2014, regarding the transactions which resulted in Pardee's rights and obligations under the Commission Agreement being assigned/transferred to WNR.
2. All future amendments, if any, to the Amended and Restated Option Agreement dated March 28, 2005, be provided to Plaintiffs and their successors and/or assigns (hereinafter referred to as Plaintiffs). These documents will be designated CONFIDENTIAL pursuant to the protective order in this case.
3. This COURT ORDERS, in compliance with its Decision in this matter, that Pardee or its successor in interest and/or assigns (hereinafter referred to as Pardee) provide the following to Plaintiffs in the future to keep Plaintiffs reasonably informed pursuant to the Commission Agreement:
 - (1) Within fourteen (14) days of the relevant event described below, Pardee shall provide Plaintiffs with courtesy copies of the following:
 - (a) All publicly-recorded documents related to any transaction involving Pardee's purchase of Option Property from CSI;
 - (b) Each written option exercise notice given pursuant to paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date;
 - (c) A parcel map which reflects the exact location of the related Option Property, if one is available; and
 - (d) Documents that reflect the purchase price of the Option Property, along

PRINT DATE: 02/11/2015

Page 1 of 2

Minutes Date: February 10, 2015

JA009700

A-10-632338-C

with a breakdown of the calculation of commission owed pursuant to paragraph (iii) of the Commission Agreement.

(e) Pardee shall notify Plaintiffs which escrow company will handle any Option Property purchases

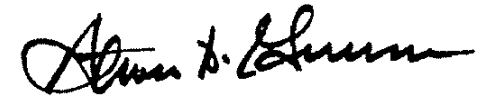
(2) In the event there is a purchase of Option Property, Pardee shall pay into escrow any commissions owed to Plaintiffs concurrently with Pardee's deposit of the Option Property Price.

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

(4) Plaintiffs shall notify Pardee of the name and address of the person or entity that should receive notice of the foregoing information and documents. Ms. Lundvall to prepare the order and Mr. Jimmerson to sign off as to form and content.

CLERK'S NOTE: A copy of this minute order was e-mailed to: Patricia Lundvall, Esq. [lundvall@mcdonaldcarano.com] and James J. Jimmerson, Esq. [jjj@jimmersonhansen.com] (KD 2/11/15)

EXHIBIT D



CLERK OF THE COURT

NJUD
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
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Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**NOTICE OF ENTRY OF
JUDGMENT**

PLEASE TAKE NOTICE that a **JUDGMENT** was entered in the above-referenced case on the 3rd day of June, 2015, a copy of which is attached hereto.

DATED this 15th day of June, 2015.

McDONALD CARANO WILSON LLP

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

 **McDONALD-CARANO-WILSON**
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P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

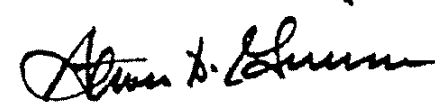
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 15th day of June, 2015, I served a true and correct copy of the **NOTICE OF ENTRY JUDGMENT** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

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

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

336337.1



CLERK OF THE COURT

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

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

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,
15 Defendant.

16 AND RELATED CLAIMS

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

JUDGMENT

18 On October 23, 2013, the above-referenced matter came on for bench trial
19 before the Honorable Judge Kerry Earley. The Court, having reviewed the record,
20 testimony of witnesses, the documentary evidence, stipulations of counsel, the papers
21 submitted by the respective parties, and considered the arguments of counsel at trial in
22 this matter, entered Findings of Fact and Conclusions of Law on June 25, 2014.

23 In the Findings of Fact and Conclusions of Law, the Court ordered the parties to
24 provide supplemental briefing within 60 days detailing what future information
25 Defendant Pardee Homes of Nevada ("Pardee") and its successors and/or assigns
26 should provide Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") and their
27 successors and/or assigns consistent with the Court's decision on the accounting cause
28 of action.

1 After reviewing the parties' supplemental briefing, the Court then entered an
2 order on April 20, 2015 reflecting its decision on the supplemental briefing (the
3 "Accounting Order") The Notice of Entry of the Accounting Order was filed on May 13,
4 2015.

5 In accordance with the Findings of Fact and Conclusions of Law entered on June
6 25, 2014 and the Accounting Order entered on May 13, 2015, the Court finds the
7 following:

8 Plaintiffs claimed \$1,952,000 in total damages related to their causes of action.
9 Specifically, Plaintiffs claimed \$1,800,000 in damages related to lost future
10 commissions from Pardee's purported breach of the Commission Agreement, \$146,500
11 in attorney's fees incurred as special damages in prosecuting the action, and \$6,000 in
12 consequential damages for time and effort expended searching for information
13 regarding what Pardee purportedly owed them under the Commission Agreement.

14 Having considered the entire record, including testimony of witnesses, the
15 documentary evidence, stipulations of counsel, the papers submitted by the respective
16 parties, and the arguments of counsel at trial in this matter, the Court enters judgment
17 as follows:

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
19 **ENTERED** against Plaintiffs and for Pardee as to Plaintiffs' claim for \$1,800,000 in
20 damages related to lost future commissions under the Commission Agreement. Pardee
21 has not breached the Commission Agreement in such a way as to deny Plaintiffs any
22 future commissions, and Pardee has paid all commissions due and owing under the
23 Commission Agreement.

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
25 **ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for
26 breach of contract and breach of the implied covenant of good faith and fair dealing.
27 Plaintiffs are entitled to damages from Pardee in an amount totaling \$141,500.00, of
28 which \$6,000 are consequential damages from Pardee's breach of the Commission

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1 Agreement and the remaining \$135,500.00 are special damages in the form of
2 attorney's fees and costs.

3 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT
4 JUDGMENT IS ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' cause
5 of action for accounting. Pardee shall provide Plaintiffs with future accountings related
6 to the Commission Agreement consistent with the Accounting Order entered by the
7 Court on May 13, 2015.

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT
9 JUDGMENT IS ENTERED in favor of Plaintiffs and against Pardee on Pardee's cause
10 of action for breach of the implied covenant of good faith and fair dealing.

11 This Judgment may be amended upon entry of any further awards of interest,
12 costs and/or attorney's fees.

13 DATED this 3rd day of June, 2015.

14
15 
16 DISTRICT COURT JUDGE

17 Submitted by:

18 McDONALD CARANO WILSON LLP

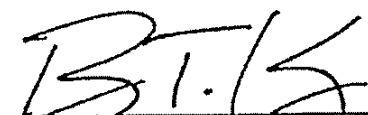
19
20 
21 PAT LUNDVALL (NSB #3761)
22 RORY T. KAY (NSB #12416)
23 2300 West Sahara Avenue, Suite 1200
24 Las Vegas, Nevada 89102
25 Attorneys for Pardee Homes of Nevada
26
27
28

EXHIBIT E

Redacted to protect attorney-client privileged communications

Rory Kay

From: Pat Lundvall
Sent: Tuesday, July 07, 2015 3:53 PM
To: Chris Hallman
Cc: Pat Lundvall; Conrad Smucker; Allison Renz; Rory Kay
Subject: Re: URGENT: NV Garnishment for Pardee Homes of Nevada

[REDACTED]

[REDACTED]

On Jul 7, 2015, at 3:50 PM, Chris Hallman <Chris.Hallman@TriPointeGroup.com> wrote:

[REDACTED]

[REDACTED]

Begin forwarded message:

From: Chris Martin <Chris.Martin@TriPointeGroup.com>
Date: July 7, 2015 at 3:29:39 PM PDT
To: Brad Blank <Brad.Blank@TriPointeGroup.com>, Chris Hallman <Chris.Hallman@TriPointeGroup.com>
Subject: FW: URGENT: NV Garnishment for Pardee Homes of Nevada

[REDACTED]

From: Dedicated_SWOne [<mailto:dedicatedswone@bankofamerica.com>]
Sent: Tuesday, July 07, 2015 3:23 PM
To: Chris Martin
Subject: URGENT: NV Garnishment for Pardee Homes of Nevada

Hi Chris,

I'm reaching out to you on behalf of Judy Stickley as she is out on vacation. We have been contacted by our Legal team regarding a NV Garnishment they received and they have stated the following:

Please be advised that we are in receipt of a NV Garnishment styled James Wolfram & Walt Wilkes vs. Pardee Homes of Nevada TIN 95-2509383 in the amount of \$226,345.27 plus our \$100.00 processing fee. The bank is legally obligated to comply with this NV Garnishment and to freeze any funds belonging to the Judgment Debtor/Defendant that are in the Bank's possession and control, up to the amount of the judgment. Due to the laws in some states, the amount to be held could be up to twice the amount of the judgment and additional deposits may need to be held until the full amount of the judgment is captured.

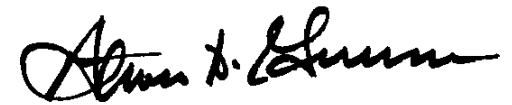
Please advise us which account should be debited as soon as possible so we can ensure the correct account is debited.

Thank you in advance,

John L. Humphries
Service Specialist
Global Client Fulfillment & Service
Bank of America Merrill Lynch
Bank of America, NA
Office: 888.715.1000 ext. 20602 | Fax: 415.343.8083
dedicatedswone@bankofamerica.com

Management Contact: Roberta Lee
Office: 657.216.5451
Email: roberta.lee@baml.com

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, please be advised that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used or relied upon, and cannot be used or relied upon, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.



CLERK OF THE COURT

SUPPL
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
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Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PARDEE'S SUPPLEMENTAL
BRIEFING IN SUPPORT OF ITS
EMERGENCY MOTION TO STAY
EXECUTION OF JUDGMENT;**

Hearing Date: July 10, 2015

Time: 9:00 a.m.

AND RELATED CLAIMS

On July 8, 2015, Pardee sent an Emergency Motion to Stay Execution of Judgment (the "Motion") together with an Order Shortening Time down to the Court's chambers for its signature. In the Motion, Pardee notes that Plaintiffs James Wolfram and Walt Wilkes and Pardee have filed certain motions to amend or strike the Court's final judgment entered on June 15, 2015 (the "Judgment"), and that while those motions are still pending, Plaintiffs are attempting to improperly execute on the Judgment before the Court can consider the motions' merits. Pardee also discusses in the Motion that Bank of America rather than the Plaintiffs themselves notified Pardee of the Plaintiffs' imminent execution, and that Pardee had accordingly not received a copy of the writ of

1 execution from either Bank of America or the Plaintiffs to evaluate its legitimacy.
2 Finally, Pardee notes that the attempted execution amount of \$226,345.27 far exceeds
3 the Judgment's \$141,500 award that was entered only weeks ago, presumptively
4 making the writ of execution invalid.

5 Now, however, after scrambling to protect its assets and further converse with
6 Bank of America, Pardee has obtained a copy of Plaintiffs' purported writ of execution,
7 and the writ's invalid and inaccurate contents indicate even more reasons why the
8 Court should issue an Order staying execution. See Plaintiffs' Writ of Execution,
9 attached as Exhibit F.

10 I. Neither Plaintiffs Nor Anyone Else Has Noticed Pardee of the Purported Writ of
11 Execution.

12 NRS 21.076 makes clear that a putative judgment debtor "must be served by the
13 sheriff . . . by regular mail at the debtor's last known interest, or, **if the debtor is**
14 **represented by an attorney, at the attorney's office.**" (emphasis added). NRS
15 21.075 affirms that "[e]xecution on the writ of execution by levying on the property of the
16 judgment debtor may occur only if the sheriff serves the judgment debtor with a notice
17 of the writ of execution pursuant to NRS 21.076 and a copy of the writ." This common
18 sense notice requirement ensures that the judgment debtor may challenge any
19 erroneous writ of execution before the sheriff or other government actor levies upon the
20 property.

21 In this matter, neither Pardee nor its counsel has received any notice, from either
22 the sheriff or the Plaintiffs, regarding the writ of execution. This absence of notice is
23 entirely consistent with Plaintiffs' attempts to execute under the deception provided by
24 filing their motions to amend or strike the judgment. But NRS 21.075 ensures that
25 execution cannot happen without basic notice, and thus, the sheriff may not execute on
26 the writ of execution because it has not provided notice to Pardee or its counsel.

1 II. Plaintiffs' Writ of Execution Seeks to Collect Upon Sums that the Court Did Not
2 Award Them in the Judgment.

3 Plaintiffs' Writ of Execution seeks to recover \$226,345.27, an amount far in
4 excess of the Court's judgment for \$141,500. This difference is explained by Plaintiffs'
5 incorrect claims to their full costs (\$50,897.03) and pre-judgment interest (\$32,279.44),
6 neither of which they are entitled to under the Judgment. See Exhibit F.

7 The Judgment clearly awards Plaintiffs \$141,500, of which \$6,000 is
8 compensatory damages and \$135,500 is attorney's fees as special damages incurred
9 in prosecuting the action. See Exhibit D to Pardee's Motion at 2:24-3:2. The Judgment
10 clearly excludes costs and interests by indicating that it "may be amended upon entry of
11 further awards of interest, costs, and/or attorney's fees." See *id.* at 3:11-12. Moreover,
12 Pardee has filed a motion to retax Plaintiffs' costs, thereby precluding any automatic
13 award of Plaintiffs' full costs. See Pardee's Motion to Retax Plaintiffs' Memorandum of
14 Costs Filed June 19, 2015, attached as Exhibit G. Finally, almost the entirety of the
15 Judgment's award (\$135,500 of the total \$141,500) is Plaintiffs' attorney's fees, which
16 they began incurring well after filing their Complaint. Thus, their attempts to recover
17 prejudgment interest on the entirety of their attorney's fees from the moment they filed
18 the Complaint grossly overstates any prejudgment interest they might be entitled to
19 receive. Instead, even if they were currently entitled to prejudgment interest (which
20 they are not for the reason above), Plaintiffs would only be entitled to prejudgment
21 interest from the date in which they accrued their attorney's fees, a date which by
22 definition is after the filing of the Complaint.

23 Accordingly, contrary to the position Plaintiffs must have represented to obtain
24 their writ of execution, they are not entitled at this time to any pre-judgment interest or
25 costs, and so their writ of execution overstates their recoverable amount by \$83,176.47
26 (the sum of their incorrectly claimed costs and prejudgment interest). And this drastic
27 error illustrates the danger of Plaintiffs' midnight attempts to execute on this judgment.
28 To prevent this error, the Court should stay execution.

Rule 62(a) of the Nevada Rules of Civil Procedure states that “no execution shall issue upon a judgment **nor shall a proceeding be taken for its enforcement until the expiration of 10 days after service of written notice of its entry.**” (emphasis added). Under NRCP 6 and EDCR 1.14, the two computation-of-time rules applicable in this matter, any time period prescribed that is less than 11 days shall not include “intermediate Saturdays, Sundays and non-judicial days.” Moreover, the same rules state that electronic service shall add 3 additional days to the prescribed period. Thus, because the Notice of Entry of Judgment was electronically served on June 15, 2015, the earliest the Plaintiffs could begin enforcement proceedings was on July 2nd. However, the writ of garnishment clearly indicates that Deputy Clerk Michelle McCarthy signed it on June 30, 2015, two full days before the automatic 10-day stay expired. Given Plaintiffs’ flagrant violation of NRS 62(a), the Court should stay execution on the Judgment.¹

4

1 IV. CONCLUSION.

2 Using the strategic cover of their filed motions to amend or strike the Judgment,
3 Plaintiffs shrewdly but incorrectly attempted to execute upon the Judgment without any
4 notification whatsoever to Pardee. Yet Plaintiffs not only began these execution
5 proceedings too soon, but they also claimed far more than they were entitled to receive.
6 Thus, the Court must stay Plaintiffs' attempted execution both because the writ of
7 execution is invalid and for an incorrect sum, and also because the Court must hear the
8 parties' motions to amend or strike the Judgment before permitting execution on the
9 same. Thus, Pardee respectfully requests an Order staying execution until after the
10 August hearing(s) on the parties' motions.

11 DATED this 8th day of July, 2015.

12
13 MCDONALD CARANO WILSON LLP

14
15 /s/ Rory T. Kay
16 Pat Lundvall (NSBN 3761)
17 Rory T. Kay (NSBN 12416)
18 2300 West Sahara Avenue, Suite 1200
19 Las Vegas, Nevada 89102
20 (702) 873-4100
21 (702) 873-9966 Facsimile

22
23 *Attorneys for Defendant Pardee Homes of*
24 *Nevada*
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
3 and that on the 8th day of July, 2015, I e-served and e-filed a true and correct copy of
4 the foregoing **PARDEE HOMES OF NEVADA'S SUPPLEMENTAL BRIEFING IN**
5 **SUPPORT OF ITS MOTION TO STAY EXECUTION OF JUDGMENT** via Wiznet, as
6 utilized in the Eighth Judicial District in Clark County, Nevada, on the following:

7 James J. Jimmerson
8 Holly Fic
9 Kim Stewart
10 JIMMERSON HANSEN, P.C.
415 S. Sixth Street, Suite 100
Las Vegas, Nevada 89101

11 And by U.S. Mail:

12 John W. Muije
13 John W. Muije & Associates
1840 E. Sahara Avenue #106
14 Las Vegas, Nevada 89104

15 *Attorney for Plaintiffs*

16 /s/ Sally Wexler
17 An Employee of McDonald Carano Wilson
18 LLP

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21 337897.1
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23
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25
26
27
28

EXHIBIT F

WRT

District Court
CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALT WILKES,
Plaintiff,
vs.
PARDEE HOMES OF NEVADA; DOES I through III, and
ROE CORPORATIONS I through III, inclusive,
Defendants.

Case No. A-10-632338-C
Dept. No. IV
Docket No. _____

WRIT OF EXECUTION

☐ Earnings ☒ Other Property
☐ Earnings, Order of Support
Date: 7/1/15 Time: 11:15
Delivery Method: Hand

THE STATE OF NEVADA TO THE SHERIFF OF CLARK COUNTY, GREETINGS:

On June 15, 2015, a judgment, upon which there is due in United States Currency in the following amounts, was entered in this action in favor of James Wolfram and Walt Wilkes as judgment creditor and against Pardee Homes of Nevada as judgment debtor. Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first against total accrued interest and costs leaving the following net balance which sum bears interest at 5.25% per annum, \$32.32 per day, from issuance of this writ to date of levy and to which sum must be added all commissions and costs of executing this Writ.

JUDGMENT BALANCE

Principal	\$135,500.00
Pre-judgment Interest	\$ 32,279.44
Attorney's fee	\$ 6,000.00
Costs	\$ 50,897.03
JUDGMENT TOTAL	\$224,676.47
Accrued Costs	\$.00
Accrued Interest	\$455.46
Less Satisfaction	\$.00
NET BALANCE	\$225,131.93

AMOUNTS TO BE COLLECTED BY LEVY

NET BALANCE	\$225,131.93
Fee this Writ	10.00
Garnishment fee	5.00
Mileage	<u>2</u>
Levy fee	<u>18</u>
Advertising	
Storage	
Interest from Date of Issuance	
SUB-TOTAL	\$ <u>225,160.93</u>
Commission	<u>1,178.34</u>
TOTAL LEVY	\$ <u>226,339.27</u>

NOW, THEREFORE, you are commanded to satisfy the judgment for the total amount due out of the following described personal property and if sufficient personal property cannot be found, then out of the following described real property:

Please execute upon any and all accounts under the name of defendant Pardee Homes of Nevada, and or any cert. of deposit, X-mas club accts, trust accts, joint accts with other non-party defendants, any other monies in any way owed to defs, or in which said defendant has a beneficial interest and/or in which any of the aforesaid defendant is designated signatory located at: Bank of America, 300 S. 4th Street, Las Vegas, Nevada 89101

Social Security Numbers prohibited by statute. See NRS 239B.030 Garnishee may call 702-386-7002, ext 101 for verification of numbers

(See reverse side for exemptions which may apply)

EXEMPTION WHICH APPLY TO THIS LEVY
(Check appropriate paragraph and complete as necessary)

- ☒ Property Other Than Wages. The exemption set forth in NRS 21.090 or in other applicable Federal Statutes may apply. Consult an attorney.
- ☐ Earnings
The amount subject to garnishment and this writ shall not exceed for any one pay period the lesser of:
A. 25% of the disposable earnings due the judgment debtor for the pay period, or
B. the difference between the disposable earnings for the period and \$100.50 per week for each week of the pay period.
- ☐ Earnings (Judgment or Order for Support)
A Judgment was entered for amounts due under a decree or other order entered on _____, 19____, by the _____ for the support of _____, for the period from _____, 19____, through _____, 19____, in _____ installments of \$_____.

The amount of disposable earnings subject to garnishment and this writ shall not exceed for any one pay period (check appropriate box):

- ☐ a maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or dependent child other than the dependent named above;
- ☐ a maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse or dependent child other than the dependent named above;
- ☐ plus an additional 5 percent of the disposable earnings of such judgment debtor if and to the extent that the judgment is for support due for a period of time more than 12 weeks prior to the beginning of the work period of the judgment debtor during which the levy is made upon the disposable earnings.

NOTE: Disposable earnings are defined as gross earnings less deductions for Federal Income Tax Withholding, Federal Social Security Tax and Withholding for any State, County or City Taxes.

You are required to return this Writ from date of issuance not less than 10 days or more than 60 days with the results of your levy endorsed thereon.

Issued at direction of:

JOHN W. MUIJE & ASSOC.

By _____
John W. Muje, Esq. (Bar #2419)
1840 E. Sahara Ave. #106
Las Vegas, NV 89104
Attorneys for Plaintiff

CLARK COUNTY CONSTABLE

By _____ Date _____
DEPUTY

STEVEN D. GRIERSON
CLERK OF THE COURT

CLERK OF COURT

JUN 30 2015

By MICHELLE MCCARTHY
DEPUTY CLERK

Date



RETURN

_____	not satisfied	
_____	satisfied in sum of	\$ _____
_____	costs retained	\$ _____
_____	commission retained	\$ _____
_____	costs incurred	\$ _____
_____	commission incurred	\$ _____
_____	costs received	\$ _____
REMITTED TO JUDGMENT CREDITOR		\$ _____

(See reverse side for exemptions which may apply)

"Pursuant to N.R.S. Chapter 31, you are specifically directed to levy upon, attach and deliver to the Sheriff any and all funds held for or in any way related to the Defendants, including all bank accounts upon which defendants have signing authority.

Plaintiff is informed and believes and therefore alleges that one or more judgment debtor(s) is funneling money through accounts at your institution or has a substantial beneficial interest in such account(s). Obviously, should your depositor(s) disagree, they have statutory remedies under Chapter 31 of which they may avail themselves. Should you disagree and/or in any way ignore the express directions on this Writ of Garnishment, your alternative is to interplead the funds, or face liability for failure to properly answer a lawful writ of this court.

Under appropriate circumstances, failure to comply fully and completely and deliver all available funds in the referenced account to the Sheriff will lead to Plaintiff's seeking a full award of attorney's fees, costs, and sanctions against the aforesaid financial institution and possibly result in a judgment against said financial institution for the full amount sought under Plaintiff's Writ of Execution submitted herewith."

R:\Currie\forms\BKINSBRT.2.wpd

WRTG

**District Court
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and WALT WILKES

Plaintiff,

vs.

PARDEE HOMES OF NEVADA

Defendants.

Case No. A-10-632338-C

Depl. No. IV

Docket No. _____

WRIT OF GARNISHMENT

THE STATE OF NEVADA TO:

Bank of America, 300 S. 4th Street, Las Vegas, Nevada 89101 Serve Branch Manager, Garnishee

YOU ARE HEREBY NOTIFIED that you are attached as garnishee in the above-entitled action and you are commanded not to pay any debt due from yourself to PARDEE HOMES OF NEVADA, defendant(s), and that you must retain possession and control of all personal property, money, credits, debts, effects and choses in action of said defendant(s), not exceeding \$ 225,131.93 in amount or value, in order that the same may be dealt with according to law. IF YOU AS GARNISHEE INDICATE IN YOUR ANSWERS TO THESE INTERROGATORIES SET FORTH IN THIS GARNISHMENT THAT YOU ARE AN EMPLOYER OF THE DEFENDANT(S), THEN THIS GARNISHMENT IS DEEMED TO BE CONTINUING FOR 120 DAYS OR UNTIL THE AMOUNT DEMANDED IS SATISFIED OR THE EMPLOYEE IS TERMINATED, WHICHEVER OCCURS EARLIER. For each pay period after the first deduction you are entitled to deduct from the withheld amount \$3.00 for each pay period to a maximum of \$12.00 per month. IF THE DEFENDANT EMPLOYEE IS TERMINATED BEFORE THE WRIT OF GARNISHMENT IS SATISFIED, YOU THE GARNISHEE SHALL PROVIDE THE PLAINTIFF OR PLAINTIFF'S ATTORNEY WITH THE LAST KNOWN ADDRESS OF THE DEFENDANT AND, IF KNOWN, THE NAME OF ANY NEW EMPLOYER OF THE DEFENDANT(S). Where property consists of wages, salaries, commissions or bonuses the amount you shall retain shall be in accordance with 15 U. S. Code 1673 and Nevada Revised Statutes 31.295; Plaintiff believes that you have property, money, credits, debts, effects and choses in action in your hands and under your custody and control belonging to said defendant(s) described as: This writ shall include: Any and all bank accounts in the name of Defendant - or with regard to any accounts upon which said defendant is a signatory

Social Security Numbers prohibited by statute. See NRS 239B.030 Garnishee may call 702-386-7002 ext. 101 for verification of numbers

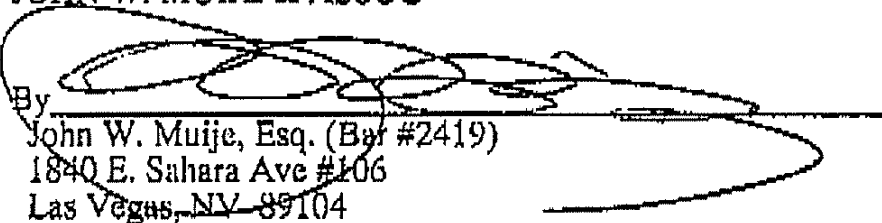
****See back of Writ

YOU AS GARNISHEE ARE REQUIRED within 20 days from the date of service of this Writ of Garnishment to answer the interrogatories set forth herein and to return your answers to the office of the Sheriff or Constable which has issued this Writ of Garnishment. If you fail to answer the interrogatories within 20 days, a judgment by default will be rendered against you for the amount demanded or the value of the property described in this Writ. If you as an employer, without legal justification, refuse to withhold the Defendant's earnings or knowingly misrepresent the earnings of the Defendant, the Court may order you as the employer to pay to the Plaintiff the amount of any funds not withheld. In addition, the Court may assess punitive damages against you in an amount not to exceed \$1,000.00.

YOU ARE FURTHER REQUIRED to serve a copy of your answers to the Writ of Garnishment on Plaintiff's attorney whose address appears below.

Issued at direction of:

JOHN W. MUIJE & ASSOC

By 
John W. Muje, Esq. (Bar #2419)
1840 E. Sahara Ave #106
Las Vegas, NV 89104
Attorneys for Plaintiff

CLARK COUNTY /CONSTABLE

By J. HAMMACK P#9572

DEPUTY
302 E. Carson #5th Fl
Las Vegas, NV 89101

Date _____

NOTICE: It is unlawful to discharge or discipline an employee exclusively because the employer is required to withhold earnings pursuant to a Writ of Garnishment.