

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

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Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

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

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

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

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

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

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

Dated this 28th day of February, 2018.

McDONALD CARANO LLP

By: /s/ Rory T. Kay
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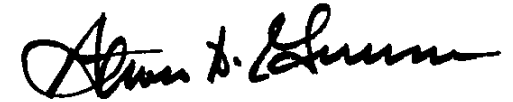
Attorneys for Appellant

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

NNOP

JIMMERSON HANSEN, P.C.
JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
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Attorneys for Plaintiffs

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,)

v.)

PARDEE HOMES OF NEVADA,)

Defendant.)

Case No.: A-10-632338-C

Dept. No. IV

Date of Hearing: 12/09/15

Time of Hearing: 9:00 a.m.

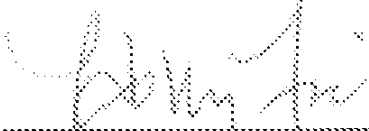
**NOTICE OF DEFENDANT PARDEE HOMES OF NEVADA'S NON-REPLY AND NON-
OPPOSITION TO "PLAINTIFFS' OPPOSITION TO PARDEE HOMES OF NEVADA'S
MOTION TO AMEND JUDGMENT AND COUNTERMOTION FOR ATTORNEY'S
FEES"**

Plaintiffs, JAMES WOLFRAM and ESTATE OF WALT WILKES, DECEASED, by and
through their counsel of record, JAMES J. JIMMERSON, ESQ., of the law firm of JIMMERSON
HANSEN, P.C. hereby submit their Notice of Non-Reply to Plaintiffs' Opposition and Non-
Opposition to Plaintiffs' Countermotion regarding Defendant Pardee Homes of Nevada's Motion

1 to Amend Judgment that is based on the pleadings and papers on file, the documents attached
2 hereto and arguments of counsel at the hearing of this matter. The Plaintiffs further request such
3 other and further relief as the Court deems proper in the premises.

4 DATED this 8th day of December, 2015.

JIMMERSON HANSEN, P.C.

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6 
7
8 JAMES J. JIMMERSON, ESQ. #264
9 HOLLY A. FIC, ESQ. #7699
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
Attorneys for Plaintiffs

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 I. FACTS

12
13 On July 2, 2015, Defendant filed and served Plaintiffs with "Pardee Homes of Nevada's
14 Motion to Amend Judgment."

15 On July 17, 2015, Plaintiffs timely filed and served "Plaintiff's Opposition to Pardee
16 Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees," a copy
17 of which, without exhibit attachments, is attached hereto as Exhibit "1."

18
19 To date, Defendant has failed to file any response thereto; that is, NO reply brief to
20 Plaintiffs' opposition and absolutely NO opposition to Plaintiffs' countermotion for attorney's
21 fees, which should be summarily granted. See Register of Actions for this case attached hereto as
22 Exhibit "2," pages 11-12.

23 II. LAW AND ARGUMENT

24 EDCR 2.20, provides as follows:

25
26 Motions; contents; responses and replies; calendaring a fully briefed matter.

27 (a) Unless otherwise ordered by the court, papers submitted in support of pretrial and
28 post-trial briefs shall be limited to 30 pages, excluding exhibits. Where the court enters an

1 order permitting a longer brief or points and authorities, the papers shall include a table of
2 contents and table of authorities.

3 (b) All motions must contain a notice of motion setting the same for hearing on a day
4 when the district judge to whom the case is assigned is hearing civil motions in the ordinary
5 course. The notice of motion must include the time, department, and location where the
6 hearing will occur.

7 (c) A party filing a motion must also serve and file with it a memorandum of points
8 and authorities in support of each ground thereof. The absence of such memorandum may
9 be construed as an admission that the motion is not meritorious, as cause for its denial or
10 as a waiver of all grounds not so supported.

11 (d) Within 5 days after service of the motion, a nonmoving party may file written
12 joinder thereto, together with a memorandum of points and authorities and any supporting
13 affidavits. If the motion becomes moot or is withdrawn by the movant, the joinder becomes
14 its own stand-alone motion and the court shall consider its points and authorities in
15 conjunction with those in the motion.

16 (e) **Within 10 days after the service of the motion**, and 5 days after service of any
17 joinder to the motion, the opposing party must serve and file written notice of
18 nonopposition or opposition thereto, together with a memorandum of points and
19 authorities and supporting affidavits, if any, stating facts showing why the motion
20 and/or joinder should be denied. Failure of the opposing party to serve and file
21 written opposition may be construed as an admission that the motion and/or joinder
22 is meritorious and a consent to granting the same.

23 (f) **An opposition to a motion which contains a motion related to the same subject**
24 **matter will be considered as a counter-motion.** A counter-motion will be heard and
25 decided at the same time set for the hearing of the original motion and no separate notice
26 of motion is required.

27 (g) Whenever a motion is contested, a courtesy copy shall be delivered by the movant
28 to the appropriate department at least 5 judicial days prior to the date of the hearing, along
with all related briefing, affidavits, and exhibits.

(h) **A moving party may file a reply memorandum of points and authorities not
later than 5 days before the matter is set for hearing. A reply memorandum must not
be filed within 5 days of the hearing or in open court unless court approval is first
obtained.**

(i) A memorandum of points and authorities which consists of bare citations to statutes,
rules, or case authority does not comply with this rule and the court may decline to consider
it. Supplemental briefs will only be permitted if filed within the original time limitations
of paragraphs (a), (b), or (d), or by order of the court.

(j) If all the civil trial judges in this district are disqualified from hearing a case, a
notice of motion must state: "Please take notice that the undersigned will bring the above
motion on for hearing before a visiting or senior judge at such time as shall be prescribed
by the court administrator."

(k) If a petition, writ, application or motion has been fully briefed but is not calendared
for argument and/or decision, the party seeking relief shall deliver to the chambers of the
assigned department a Notice of Readiness and Request for Setting together with an Order
Setting.
(emphasis added).

1 Defendant's Motion should be denied and Plaintiffs' countermotion for attorney's fees
2 should be summarily granted, as no opposition to the same exists.

3
4 Alternatively, if the Court does not summarily grant Plaintiffs' countermotion, the Court
5 must consider sanctioning Defendant pursuant to EDCR 7.60(b) which provides as follows:

6 (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or
7 a party any and all sanctions which may, under the facts of the case, be reasonable,
8 including the imposition of fines, costs or attorney's fees when an attorney or a party
9 without just cause:

- 10 (1) Presents to the court a motion or an opposition to a motion which is obviously
11 frivolous, unnecessary or unwarranted.
12 (2) Fails to prepare for a presentation.
13 (3) So multiplies the proceedings in a case as to increase costs unreasonably and
14 vexatiously.
15 (4) Fails or refuses to comply with these rules.
16 (5) Fails or refuses to comply with any order of a judge of the court.

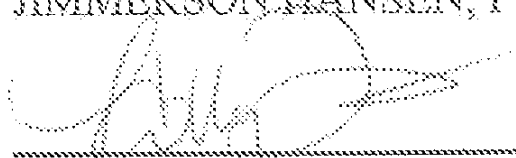
17
18 **III. CONCLUSION**

19 For the reasons stated herein, Plaintiffs respectfully request this Court to deny Defendant's
20 Motion to Amend Judgment and grant Plaintiffs an award of attorneys' fees and costs for having
21 to defend against a clearly frivolous motion that Defendant failed to even respond thereto, with no
22 reply brief and absolutely no opposition to Plaintiffs' countermotion.

23 DATED this 8th day of December, 2015.

24 Respectfully submitted,

25 JIMMERSON HANSEN, P.C.

26 
27 JAMES J. JIMMERSON, ESQ.
28 Nevada State Bar No. 000264
HOLLY A. FIC, ESQ.
Nevada State Bar No. 007699
415 So. Sixth St., Ste. 100
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Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy NOTICE OF NON-REPLY AND NON-OPPOSITION TO "PLAINTIFFS' OPPOSITION TO PARDEE HOMES OF NEVADA'S MOTION TO AMEND JUDGMENT AND COUNTERMOTION FOR ATTORNEY'S FEES" was made on the 8th day of December, 2015, as indicated below:

☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to Nevada State Welfare, Dept. of Human Resources;

☐ by electronic mail;

☒ by hand-delivery with signed Receipt of Copy.

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.

Exhibit “1”



CLERK OF THE COURT

OPP

JIMMERSON HANSEN, P.C.

JAMES J. JIMMERSON, ESQ.

Nevada State Bar No. 000264

HOLLY A. FIC, ESQ.

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Attorneys for Plaintiffs

JAMES WOLFRAM and WALTER D. WILKES

And ANGELA L. LIMBOCKER-WILKES LIVING TRUST,

ANGELA L. LIMBOCKER-WILKES, TRUSTEE

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES)

and ANGELA L. LIMBOCKER-WILKES LIVING)

TRUST, ANGELA L. LIMBOCKER-WILKES,)

TRUSTEE,)

Plaintiffs,)

v.)

PARDEE HOMES OF NEVADA,)

Defendant.)

Case No.: A-10-632338-C

Dept. No. IV

Date of Hearing: 08/05/15

Time of Hearing: 9:00 a.m.

**PLAINTIFFS' OPPOSITION TO PARDEE HOMES OF NEVADA'S MOTION TO
AMEND JUDGMENT AND COUNTERMOTION FOR ATTORNEY'S FEES**

Plaintiffs, JAMES WOLFRAM and ESTATE OF WALT WILKES, DECEASED, by and through their counsel of record, JAMES J. JIMMERSON, ESQ., of the law firm of JIMMERSON HANSEN, P.C. hereby submit their Opposition and Countermotion that is based on the pleadings and papers on file, the documents attached hereto and arguments of counsel at the hearing of this

///

1 Motion and Countermotion. The Plaintiffs further request such other and further relief as the
2 Court deems proper in the premises.

3 DATED this 17 day of July, 2015.

4 JIMMERSON HANSEN, P.C.

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7 
8 JAMES J. JIMMERSON, ESQ.
9 Nevada State Bar No. 000264
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
Attorney for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Pardee Homes of Nevada's ("Pardee") Motion to Amend Judgment regarding the June 15, 2015 Judgment filed by Defendant is untimely and should not be considered by this Court. Rather, Defendant's motion should be stricken for failure to comply with the ten (10) day time limits set forth in NRCP 52(b) and 59(e). While Plaintiffs believe this so-called June 15, 2015 Judgment is a fiction fabricated by Defendant and a fugitive document in which Plaintiffs timely filed a (1) Motion Pursuant to NRCP 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, et al. and (2) Motion to Strike "Judgment," Entered June 15, 2015 et al., on June 29, 2015, Defendant is untimely in its current motion procedurally and substantially regarding its amendment of the Court's Finding of Facts and Conclusions of Law, and Order filed June 25, 2014 ("FFCLO").

Defendant was the drafter of this alleged "Judgment," which they drafted during May, 2015 and submitted to the Court for signature. See Notice of Entry of Judgment, attached hereto as Exhibit "1," page 3 of Judgment, line 13. Said Judgment was signed by the Court on June 3, 2015, yet not filed for eight (8) judicial days. Notice of Entry thereupon was filed on June 15, 2015, with actual notice to both parties on June 15, 2015, and therefore, the ten (10) day time limitations for NRCP 52 and 59 began to toll. Thus, Defendant had more than sufficient and adequate time within which to contemplate and timely submit a motion to amend a judgment, by June 29, 2015.¹ By Defendant's own statements, claiming "[p]ursuant to NRCP 52(b) and 59(e),

¹ Plaintiffs timely filed their motion to amend this Judgment within ten (10) judicial days, having been served on June 15, 2015 with Notice of Entry of the Judgment- the ten (10) judicial days having passed on June 29, 2015. With the Notice of Entry of Judgment, both Plaintiffs and Defendant had only ten (10) judicial days to file any NRCP 52 or 59 motion, or by June 29, 2015 at the latest. Defendant's motion to amend was not filed until July 2, 2015, which is untimely. Since Defendant commenced the time in which the Judgment was entered and notice thereupon, Defendant no longer shall have three (3) days for mailing responsive pleading.

1 defendant...moves the Court to amend its findings and judgment awarding plaintiffs...certain
2 attorney's fees as special damages," this being their only basis to amend, Defendant acknowledges
3 their motion is frivolous as Defendant is beyond the ten (10) day time frames required by NRCPL
4 52(b) and 59(e). In fact they are vexatiously and wrongfully attempting to bootstrap this Court's
5 June 25, 2014 FFCLO, which Defendant FAILED to seek to amend or appeal. See June 27, 2014
6 Notice of Entry of Findings of Fact, Conclusions of Law and Order attached hereto as Exhibit "2."
7 The failure to seek to amend or appeal the Court's Order of June 25, 2014, or even the Court's
8 Order of May 13, 2015, render Defendant Pardee's Motion to Amend Judgment devoid of merit.

10 Moreover, a review of the history of this case will show that Defendant has filed four (4)
11 written briefs, opposed by Plaintiffs, regarding the very same arguments they now present, and
12 Defendant has orally argued the same. Thus, this Court has extensively addressed and considered
13 the very same arguments that Defendant's once again attempt to renew, under the guise that the
14 2014 *Liu* case somehow denies this Court the authority to award Plaintiffs their special damages.
15 Outrageously, Defendant does this in the face of this Court's specific findings of fact and
16 conclusion which include and address the Liu case. *Id.* at 14:24-27. See, Exhibit "2" attached
17 hereto. As such, Defendant's motion is vexatious, unwarranted and has unnecessarily multiplied
18 the proceedings, requiring sanctions, considering the parties have extensively argued and briefed
19 this matter, which the Court has addressed and decided thereupon in favor of Plaintiffs, and is
20 therefore, moot.

23 A review of the Court's June 25, 2014 FFCLO reveals that as to each of the Plaintiffs'
24 claims within its original Complaint and as amended through its Amended Complaint and
25 ultimately through its second Amended Complaint, this Court determined there was a breach by
26 the Defendant for each of the three (3) claims for relief that were properly pled by Plaintiffs from
27

1 the outset. This case was about gaining information and documents and was conservatively pled
2 by Plaintiffs, who were forced to file a lawsuit only because of the consistent and willful refusal
3 of Defendant to keep Plaintiffs reasonably informed as the Commission Agreement required
4 during the course of Pardee's development of their residential home construction at Coyote
5 Springs.

6
7 The Court will recall that the claims for relief never changed throughout the Complaint,
8 the Amended Complaint, and the Second Amended Complaint. The first count was seeking an
9 accounting by virtue of the superior relationship and knowledge that Pardee had over the Plaintiffs
10 and the information that it had and refused to provide to the Plaintiffs; the second count was for
11 breach of contract for Defendant's failure to provide this information, and the damages that flowed,
12 and within that contract, the breach of the implied covenant and good faith and fair dealing to treat
13 fairly the Plaintiffs with regard to the provision of information to keep them reasonably informed
14 as required by the Commission Agreement between the parties. The Commission Agreement was
15 Exhibit "1" at the time of trial.
16

17 Reading of the Amended Complaint and Second Amended Complaint reveals that this was
18 a case about gaining information and the refusal of the Defendant to keep Plaintiffs reasonably
19 informed which was their contractual obligation. The breach of contract was the failure to keep
20 Plaintiffs so informed. Only if, by virtue of the failure of the Defendant to keep Plaintiffs'
21 reasonably informed, it was discovered that Plaintiffs believed that Defendant had exercised its
22 option to acquire additional land outside of the boundaries of the original takedown of properties,
23 for which was additional commissions may be due. It was a breach of contract for the failure to
24 provide information to ascertain whether in fact additional monies, if any, were due by Defendant
25 to Plaintiffs. Defendant knew this sad reality: It foolishly rejected Plaintiffs' Offer of Judgment
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1 in the principal sum of \$133,761.25, which together with interest from the date of service of the
2 Amended Complaint, February 9, 2011, to the date of service of the Offer of Judgment, April 29,
3 2013, totaled \$149,000.00. By comparison, the Court's final Order granted final Judgment in
4 Plaintiffs' favor for \$141,500.00 plus applicable legal interest, totaling approximately
5 \$187,000.00. See Exhibit "2" attached hereto.

6 II. PROCEDURAL HISTORY AND STATEMENT OF FACTS

7 The case was commenced by Plaintiffs' Complaint filed December 29, 2010. An Amended
8 Complaint was filed on January 14, 2011. The Second Amended Complaint was filed, after
9 permission from the Court was received, on June 6, 2013, a copy of which is attached hereto as
10 Exhibit "3.". All three (3) Complaints were the same in alleging three (3) Claims for Relief as 1.
11 Request for An Accounting due to Defendant's failure to keep the Plaintiffs reasonably informed;
12 2. Defendant's Breach of Contract for failing to keep the Plaintiffs reasonably informed; and 3.
13 Defendant's Breach of the Implied Covenant of Good Faith and Fair Dealing for failing to keep
14 the Plaintiffs reasonably informed.

15 The Second Amended Complaint was filed by the Plaintiffs, after being approved by the
16 Court, to specifically identify a portion of Plaintiffs' attorney's fees as direct damages as result of
17 Defendant's failure to keep the Plaintiffs reasonably informed. With respect to said Complaint,
18 on March 21, 2013, Plaintiffs filed a Motion for Leave to File Second Amended Complaint to
19 include their prayer for special damages as follows:

20 25. As a direct, natural and proximate result of Defendant's breach of contract,
21 Plaintiffs have been forced to retain an attorney to prosecute this action to acquire the
22 documents owed to Plaintiffs. Plaintiffs have therefore been damaged in the amount of the
23 fees and costs expended to retain the services on their attorney and are entitled to an award
24 of reasonable attorney's fees as **special damages**.

25 26. As a direct, natural and proximate result of Defendant's breach of contract,
26 Plaintiffs have been forced to spend a significant amount of time and effort attempting to
27 get the information owed to them from alternative sources. Plaintiffs have therefore been
28

1 damaged in the amount of their fair hourly rate in attempting to acquire the information
2 and documents owed to them.

3 ***

4 31. As a direct, natural and proximate result of Defendant's breach of the implied
5 covenant of good faith and fair dealing, Plaintiffs have been forced to retain an attorney
6 to prosecute this action to acquire the documents owed to Plaintiffs. Plaintiffs have
7 therefore been damaged in the amount of the fees and costs expended to retain the services
8 on their attorney and are entitled to an award of reasonable attorney's fees as **special**
9 **damages**.

10 ***

11 WHEREFORE, Plaintiffs pray as follows:

- 12 1. For the documents promised to them including, but not limited to, an accurate
13 parcel map with Assessor's Parcel numbers, and an accounting of all transfers
14 or title or sales.
- 15 2. For general damages in a sum in excess of \$10,000.00.
- 16 3. For **special damages in a sum in excess of \$10,000.00**.

17 *Id.* (emphasis added).

18 On April 8, 2013, Defendant filed its Opposition to Plaintiffs' Motion for Leave to file a
19 Second Amended Complaint, a copy of which is attached hereto as Exhibit "4." Defendant argued
20 that Plaintiffs were not entitled to an award of attorney's fees as special damages because this was
21 a breach of contract case with a prevailing party attorneys' fees provision, and therefore this case
22 did not fall under the narrow exceptions set forth by *Sandy Valley* and *Horgan*. *Id.* at 6-9. *See also*,
23 *Sandy Valley*, 117 Nev. at 948, 35 P.3d at 964 and *Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982
24 (2007).

25 Further, on March 1, 2013, Defendant filed a Motion in Limine to Exclude Plaintiffs' Claim
26 for Attorneys' Fees as an Element of Damages (MIL#1), a copy of which is attached hereto as
27 Exhibit "5" and a Reply thereto that is attached hereto as Exhibit "6." Defendant's entire argument
28 was based on *Sandy Valley* and *Horgan*. *Id.*

Subsequently, on April 26, 2013, the parties presented "extensive oral argument"

1 addressing Plaintiff's request to plead attorney's fees as special damages. *See* April 26, 2013 Court
2 Minutes attached hereto as Exhibit "7" and May 16, 2013 Court Minutes attached hereto as Exhibit
3 "8." The Court Minutes specifically set forth that Plaintiffs argued "the facts as pled established
4 the necessity for attorney's fees under the provisions of *Sandy Valley*," while Defendant countered
5 that "the claims for attorney's fees were futile, as they were not recoverable." *See* Exhibit "7."
6 The Court ordered the motion be continued to Chamber's Calendar for written decision, following
7 supplemental briefing on the issue of futility and that discovery was reopened "for the limited
8 purpose of obtaining information as to whether the attorney's fees and costs incurred by James J.
9 Jimmerson's firm were special damages..." *Id.*

11 As a result of the April 16, 2013 hearing, the Court allowed the parties to file Supplemental
12 briefs due by May 10, 2013, which the parties complied therewith, and Defendant filed its
13 Supplemental Brief in Support of Its Opposition to Plaintiffs' Motion for Leave to File a Second
14 Amended Complaint, a copy of which is attached hereto as Exhibit "9." Once again, Defendant
15 argued that Plaintiffs were not entitled to award of attorney's fees as special damages under the
16 extremely limited circumstances set forth in *Sandy Valley* and *Horgan*. *Id.*

18 On May 16, 2013, this Court, after considering the extensive oral argument of counsel
19 presented on April 26, 2013, and the May 10, 2013 supplemental briefing by the parties, granted
20 Plaintiffs' motion for leave to file a Second Amended Complaint which included special damages.
21 *See* Exhibit "3" attached hereto. Consistent with the Court Minutes (Exhibit "8"), the Order
22 Granting Plaintiffs' Motion for Leave to File a Second Amended Complaint was filed on June 5,
23 2013, with Notice of Entry thereupon on June 6, 2013, a copy of which is attached hereto as Exhibit
24 "10," that specifically included the following findings:

26 ...The Court ordered at the hearing on April 26, 2013 that discovery is to be reopened for
27 the limited purpose of Defendant obtaining information regarding any alleged attorney's
28

1 fees as special damages....The Court granted Defendant the opportunity to conduct the
2 aforementioned discovery to avoid any prejudice to Defendant.

3 THE COURT FURTHER FINDS that the holding in *Sandy Valley Assoc. v. Sky Ranch*
4 *Estates Owners Assoc.*, 117 Nev. 948 (2001) governs the issue of whether attorney's
5 fees may be considered an element of special damages or as a cost of litigation.
6 Pursuant to *Sandy Valley*, attorney's fees may be considered an element of special
7 damages in those rare cases when they were reasonably foreseeable and the natural
8 and proximate consequence of the injurious conduct. 117 Nev. at 957. The above
9 referenced general criteria in *Sandy Valley* allows the Court to determine in a specific
10 case if a Plaintiff's claim for damages could include attorney's fees as special
11 damages.

12 THE COURT FURTHER FINDS that *Sandy Valley* and its progeny discuss specific
13 types of claims that allow attorney's fees as special damages. However, even if a
14 Plaintiff's claim does not fall under all of the specific types of claims cited in those
15 cases, the general criteria in *Sandy Valley* is still determinative of whether a case is
16 eligible for attorney's fees as special damages.

17 THE COURT DOES NOT FIND that Plaintiff's Motion for Leave to File a Second
18 Amended Complaint should not be denied on the basis that the amendment sought
19 is futile under Nevada law. Whether Plaintiffs during trial provide evidence to
20 fit the narrow circumstances of *Sandy Valley* and its progeny will be decided by the
21 Court at the appropriate time.

22 See Exhibit 7, page 2 (emphasis added).

23 The trial proceeded in this matter, and on December 13, 2013, Plaintiffs provided evidence
24 supporting their claim for an award of attorney's fees as special damages. See excerpt of the
25 December 13, 2013 Transcript of Trial Proceedings, Volume I attached hereto as Exhibit "11." In
26 addition to oral testimony, Plaintiffs provided Exhibit 31A (Exhibit "O" at trial), in which
27 Plaintiffs "were trying to present, as part of the plaintiff's case in chief, the damages that would
28 speak to a couple of elements..." *Id.* at 103:19-21. The Court requested clarification of the
highlighted portions of the exhibit in which James J. Jimmerson, Esq. provided testimony that said
highlights supported the first claim for relief for accounting, the second claim for relief for breach
of the implied covenant of good faith and fair dealing, and the third claim for breach of contract
for failure to keep Plaintiffs reasonably informed. *Id.* at 104:5-18. The Court admitted Plaintiffs'

1 Exhibit 31A, Trial Exhibit "O." *Id.* at 105. Mr. Jimmerson presented full testimony, proving
2 entitlement to the award of attorney's fees as special damages, which this Court addressed and
3 considered as relating to Plaintiffs' attorneys' fees totaling "a little over \$135,000." *Id.* at 105-
4 106:12 through 108.

5 Following a three (3) week trial commencing on October 23, 2013 and ending on December
6 13, 2013, the Court took the matter under submission. In the interim, while under submission, the
7 Nevada Supreme Court issued the *Liu vs. Christopher Holmes, LLC* decision. The Court read the
8 *Liu* decision, and concluded its holding that Plaintiff is entitled to include a portion of its attorney
9 fees as money damages. The Court read and understood the holding of *Liu* and found that it
10 supported the Court's decision for granting Plaintiffs' their money damages. The citation to this
11 is found within the Court's FFCLO filed June 25, 2014 at page 14, lines 26-27. *See* Exhibit 2. As
12 such, the citing of *Liu* by Defendant as somehow a "new" law is not correct, since the Court, on
13 its own, found *Liu* and considered it, and incorporated it within the Court's FFCLO, filed June 25,
14 2014. The Court can see the desperation and bad faith of Defendant Pardee in its meritless efforts
15 to fabricate a "Judgment" filed on June 15, 2015, and a phony Motion to Amend the Judgment
16 filed untimely upon grounds that lack any merit whatsoever.

17 On June 25, 2014 the Court's FFCLO was entered, with Notice of Entry thereupon having
18 been filed on November 27, 2014. *See* Exhibit "2" attached hereto. The Court found that Defendant
19 had breached its written Commission Letter Agreement of September 1, 2004, by failing to keep
20 the Plaintiffs reasonably informed. Specifically, the Court found that Defendant owed to Plaintiffs
21 an obligation and duty to keep the Plaintiffs reasonably informed with regard to Pardee's purchase
22 of real estate designated for single-family residential use, which the Defendant failed to do. As a
23 result of Defendant's breach of its contract with Plaintiffs, Defendant caused Plaintiffs damages

1 in the total sum of \$141,500.00, composed of \$6,000.00 in research time expended by Plaintiff,
2 James Wolfram, and \$135,500.00 in attorney's fees that the Court awarded as special damages.

3 Specifically included in the FFCLO, under "Conclusions of Law" was the following:

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

18 Mr. Jimmerson testified regarding the attorney's fees and costs to pursue the
19 Plaintiffs' claim for acquiring the information from Pardee related to the Plaintiffs'
20 commission amounts based on billings contained in exhibits 31A. The damages for
21 reasonable attorneys' fees and costs are \$135,500.00.

22 *Id.* at 14:14-28 and 15:1-3 (emphasis added).

23 As a result of the Court's conclusions of law, the Court's "Decision" set forth as follows:

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

26 1. The Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for
27 breach of contract, breach of the covenant of good faith and fair dealing, and its failure to
28 account to Plaintiffs regarding the information concerning the development of Coyote
Springs because it pertained to Plaintiffs' present and potential future commissions.
Damages are to be awarded to Plaintiffs from Defendant in an amount totaling
\$141,500.00.

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

3. The Court orders both parties to provide to the Court within 60 days after entry of
this order supplemental briefs detailing what information should be provided - and under
what circumstances — by Pardee to Plaintiffs consistent with this decision. The Court will
schedule after receiving the supplemental briefs further proceedings to determine what

1 information should be provided by Pardee to Plaintiffs, and their heirs when applicable, as
2 an accounting.

3 *Id.* at 17:23-28, 18:1-9.

4 The above award for \$141,500.00 included the award of special damages with respect to
5 reasonable attorneys' fees and costs in the amount of \$135,500.00, plus \$6,000.00 for Mr.
6 Wolfram's time, in which the Court specifically addressed oral and written evidence regarding the
7 same at trial. With respect to the Court's third Order above, an Order on Findings of Fact and
8 Conclusions of Law and Supplemental Briefing Re Future Accounting ("Supplemental Order"),
9 with Notice of Entry thereupon, was filed on May 13, 2015, a copy of which is attached hereto as
10 Exhibit "12." The Supplemental Order did not change, nor affect the award of special damages in
11 the amount of \$135,500.00. Defendant did not file a motion for reconsideration, nor to amend, or
12 appeal of the Court's final order regarding the June 25, 2014 FFCLO (Exhibit "3") and May 13,
13 2015 Supplemental Order (Exhibit "12").
14

15 **III. LEGAL ARGUMENT:**

16 **A. Defendant Filed Its Motion to Amend Beyond the Ten (10) Days**
17 **Allowed and Therefore Denial for Untimeliness is Proper.**

18 NRCP RULE 52, FINDINGS BY THE COURT; JUDGMENT ON PARTIAL
19 FINDINGS, provides in relevant part as follows:
20

21 (a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the
22 court shall find the facts specially and state separately its conclusions of law thereon and
23 judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory
24 injunctions the court shall similarly set forth the findings of fact and conclusions of law
25 which constitute the grounds of its action. Requests for findings are not necessary for
26 purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due
27 regard shall be given to the opportunity of the trial court to judge the credibility of the
28 witnesses. The findings of a master, to the extent that the court adopts them, shall be
considered as the findings of the court. It will be sufficient if the findings of fact and
conclusions of law are stated orally and recorded in open court following the close of the
evidence or appear in an opinion or memorandum of decision filed by the court. Findings
of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or

1 56 or any other motion except as provided in subdivision (c) of this rule. But an order
2 granting summary judgment shall set forth the undisputed material facts and legal
determinations on which the court granted summary judgment.

3 (b) Amendment. Upon a party's motion filed **not later than 10 days** after service of
4 written notice of entry of judgment, the court may amend its findings or make additional
5 findings and may amend the judgment accordingly. The motion may accompany a motion
6 for a new trial under Rule 59. When findings of fact are made in actions tried without a
7 jury, the sufficiency of the evidence supporting the findings may later be questioned
8 whether or not in the district court the party raising the question objected to the findings,
9 moved to amend them, or moved for partial findings.
10 (emphasis added).

11 NRCP 59, NEW TRIAL; AMENDMENTS OF JUDGMENTS, provides in relevant part
12 as follows:

13 (e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment
14 shall be filed **no later than 10 days** after service of written notice of entry of the judgment.
15 (emphasis added).

16 As set forth herein, the Court entered its FFCLO on June 25, 2014 and May 13, 2015 for
17 the Supplement Order. Defendant failed to file a request for reconsideration, nor to amend, nor an
18 appeal of the Court's final orders regarding this case. Defendant cannot, after over a year since
19 this Court determined to award Plaintiff special damages, now claim that this Court erroneously
20 awarded the same as it "is not within one of *Sandy Valley's* or *Liu's* three limited exceptions for
21 awarding fees as special damages." See Defendant's Motion, page 7, 9:8-10.

22 On June 15, 2015, Defendant filed a "Judgment" which Plaintiffs have contested as
23 fictitious and wrongful; however, should Defendant want to amend this "Judgment" they should
24 have done so by June 29, 2015. Upon the June 15, 2015 filing of the Notice of Entry of Judgment,
25 Plaintiffs received notice thereof while Defendant's already had notice thereof, and the time for
26 the ten (10) day filings of any motions to alter or amend, and/or reconsider began to toll on June
27 15, 2015, with June 29, 2015 being the expiration thereof.
28

1 Moreover, Defendant was well aware of the contents of the Judgment it drafted in May
2 2015, and therefore, should had ample time to easily comply with the ten (10) day requirement.
3 Defendant started that ten (10) judicial day rule by service of the Notice of Entry of Judgment
4 period and filing on June 15, 2015. The last day to file any Rule 52 or Rule 59 motion was June
5 29, 2015. Plaintiffs filed their motion timely on June 29, 2015, while Defendant Pardee did not.
6
7 It is that simple. See NRCP 54 and 58 and NRCP 6 as follows:

8 **NRCP 54, Judgments; Attorney Fees** provides in relevant part as follows:

9 (a) Definition; Form. "Judgment" as used in these rules includes a decree and any
10 order from which an appeal lies. A judgment shall not contain a recital of pleadings, the
report of a master, or the record of prior proceedings.

11 (b) Judgment Involving Multiple Parties. When multiple parties are involved, the court
12 may direct the entry of a final judgment as to one or more but fewer than all of the parties
13 only upon an express determination that there is no just reason for delay and upon an
14 express direction for the entry of judgment. In the absence of such determination and
15 direction, any order or other form of decision, however designated, which adjudicates the
rights and liabilities of fewer than all the parties shall not terminate the action as to any of
the parties, and the order or other form of decision is subject to revision at any time
before the entry of judgment adjudicating all the rights and liabilities of all the parties.

16 (c) Demand for Judgment. A judgment by default shall not be different in kind from or
17 exceed in amount that prayed for in the demand for judgment, except that where the
18 prayer is for damages in excess of \$10,000 the judgment shall be in such amount as the
19 court shall determine. Except as to a party against whom a judgment is entered by
default, every final judgment shall grant the relief to which the party in whose favor it is
rendered is entitled, even if the party has not demanded such relief in the party's
pleadings.

20 **NRCP 58, Entry of Judgment** provides as follows:

21 (a) Judgment. Subject to the provisions of Rule 54(b):

22 (1) upon a general verdict of a jury, or upon a decision by the court that a party shall
23 recover only a sum certain or costs or that all relief shall be denied, the court shall sign
the judgment and the judgment shall be filed by the clerk;

24 (2) upon a decision by the court granting other relief, or upon a special verdict or a
25 general verdict accompanied by answers to interrogatories, the court shall promptly
approve the form and sign the judgment, and the judgment shall be filed by the clerk.
The court shall designate a party to serve notice of entry of the judgment on the other
parties under subdivision (e).

26 (b) Judgment in Other Cases. Except as provided in subdivision (b)(1) of Rule 55, all
27 judgments shall be signed by the judge and filed with the clerk.

1 (c) When Judgment Entered. The filing with the clerk of a judgment, signed by the
2 judge, or by the clerk, as the case may be, constitutes the entry of such judgment, and no
3 judgment shall be effective for any purpose until the entry of the same, as hereinbefore
4 provided. The entry of the judgment shall not be delayed for the taxing of costs.

5 (d) Judgment Roll. The judgment, as signed and filed, shall constitute the judgment roll.

6 (e) Notice of Entry of Judgment. Within 10 days after entry of a judgment or an
7 order, the party designated by the court under subdivision (a) shall serve written
8 notice of such entry, together with a copy of the judgment or order, upon each party
9 who is not in default for failure to appear and shall file the notice of entry with the clerk
10 of the court. Any other party, or the court in family law cases, may in addition serve a
11 notice of such entry. Service shall be made in the manner provided in Rule 5(b) for the
12 service of papers. Failure to serve notice of entry does not affect the validity of the
13 judgment, but the judgment may not be executed upon until such notice is served.
14 (emphasis added)

15 Should Defendant disingenuously argue that it had three (3) additional days for mailing
16 under NRCP 6(e), the intent and purpose of NRCP 6(e), was to allow three (3) days mailing for
17 service upon the recipient (Plaintiffs herein), and not to allow additional time for the drafter, party
18 who is in possession and who has actual notice, such as the Defendant as of June 15, 2015,
19 especially considering the Judgment reflects it was drafted in May, 2015. See Exhibit "1," page 3
20 of Judgment, line 13.

21 NRCP 6(e) provides as follows:

22 Additional Time After Service by Mail or Electronic Means. Whenever a party has the
23 right or is required to do some act or take some proceedings within a prescribed period
24 **after the service** of a notice or other paper, other than process, **upon the party** and the
25 notice or paper is **served upon the party** by mail or by electronic means, 3 days shall be
26 added to the prescribed period.

27 Moreover, the counterpart for NRCP (6) for the federal rules is also rule 6 whereby courts
28 have considered the purpose of the three (3) day additional period accordingly as follows:

Further support for the Court's chosen construction of these rules can be found by
considering the **purpose of Rule 6(d)**. By adding three additional days to the response
period of a party required to act following the receipt of a paper served by mail, **Rule 6(e)**
amounts to a legislative presumption that the party is not in receipt of the paper and
lacks notice for three days following the mailing of the paper. His response period
should be computed, as it otherwise would be, from the point of presumed receipt. Thus,

1 the length of the party's ten day response period should be computed, applying the less-
2 than-eleven-day provision of Rule 6(a), separately from the three day period allowed by
3 Rule 6(e). The mailing rule should provide three extra days, in addition to whatever period
the party would otherwise have, to reflect the presumed lapse in notice because of service
by mail.

4 *Nalty v. Nalty Tree Farm*, 654 F. Supp 1315, 9 Fed. R. Serv.3d 839 (S.D. Alabama 1987)

5 **B. Regardless, Defendant's Arguments Have NO Merit, Considering this**
6 **Court Has Previously Extensively Heard These Very Same Arguments**
7 **from Defendant and Disposed of the Same in Favor of Plaintiffs.**

8 The entire basis for Defendant's current wrongful motion to amend is that this Court did
9 not have the opportunity to review and apply the law from a Nevada Supreme Court, to wit, *Liu v.*
10 *Christopher Homes, LLC*, 103, Nev. Adv. Op. 17, 321 P.3d, 875 (2014), that was decided after
11 the trial concluded in this matter. First and foremost, Defendant has provided no authority
12 regarding applicability of case law determined after the closure of trial on this matter; that is, that
13 a subsequent ruling applies retroactively to this matter. Regardless, however, a mere perusal of
14 the FFCLO reveals that this Court did actually address and include the *Liu* case, as the basis for
15 the award of attorney's fees as special damages to Plaintiffs. *See* Exhibit "2," 14:24-27

17 After Defendant had the opportunity to and extensively argued *Sandy Valley* (Exhibits 4-
18 10), the Court specifically set forth in its conclusions of law under the FFCLO that the award of
19 attorney's fees and costs in the amount of \$135,500.00 as special damages was being awarded
20 because "[t]he above-referenced facts allow this Court to award reasonable attorney's fees and
21 costs as special damages. *See Liu v. Christopher Homes, LLC*, 103, Nev. Adv. Op. 17, 321 P.3d,
22 875 (2014); *Sandy Valley Assoc. v. Sky Ranch Owners Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001)."
23 *Id.* (emphasis added). Thus, the Court considered all evidence, extensively litigated throughout
24 this case on the very issue of attorney's fees as special damages, and taking into account the legal
25 authority provided in **BOTH *Sandy Valley* and *Liu***, determined to award Plaintiffs these special
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1 damages. As *Liu* is specifically cited in the FFCLO, clearly the entire basis for Defendant's current
2 motion to amend is FALSE, frivolous, vexatious and has unnecessarily multiplied these
3 proceedings.

4 Moreover, as the parties extensively argued this very issue at pre-trial and trial stages (*See*
5 Exhibits 4-10), Defendant is wrongfully seeking another bite at the apple under the guise that the
6 2014 *Liu* decision somehow affects this Court's considerate determination to award special
7 damages to Plaintiffs. Knowing that the June 27, 2014 FFCLO specifically references BOTH the
8 *Liu* and *Sandy Valley* cases as a basis for the award of special damages, Defendant falsely claims
9 that this "Court could not benefit from *Liu*'s protracted discussion" regarding the circumstances
10 allowing an award of special damages, as *Liu* was not decided "until almost a year later, on March
11 27, 2014." *See* Defendant's Motion, page 7, footnote 2. Considering this Court's decision was
12 made after the *Liu* case and specifically cited the *Liu* case, Defendant's actions in filing this is
13 sanctionable.
14

15
16 Moreover, it is an entire waste of this Court's time and the parties' resources to have to
17 address this matter for the umpteenth time, when the *Liu* decision does NOTHING to undercut,
18 limit, nor change the *Sandy Valley* decision such that this Court should reconsider the award of
19 special damages to Plaintiffs. There is absolutely NO basis under *Liu* for this Court to amend its
20 decision to award special damages, especially considering this Court cited this very case in its
21 FFCLO and considering Defendant has unsuccessfully made this same argument in four (4)
22 previous court filings (Exhibits "4", "5", "6", "9") and upon oral argument (Exhibits "7" – "8"),
23 which makes Defendant's entire motion vexatious and unwarranted, justifying an award of
24 attorney's fees for Plaintiffs as set forth in their Countermotion below. There was no new evidence
25 brought forward by the Defendant Pardee in its meritless motion.
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1 The *Liu* decision confirmed the *Sandy Valley* decision and only clarified *Horgan*'s partial
2 abrogation of *Sandy Valley*. See *Liu v. Christopher Homes, LLC*, 321 P.3d 875, 130 Nev. Adv.
3 Op. 17 (2014), See also *Sandy Valley*, 117 Nev. at 948 and *Horgan*, 123 Nev. at 577, 170 P.3d at
4 982 (which had NO effect on the Court's award of special damages to Plaintiffs). In *Liu*, the trial
5 court, relying on *Horgan*, denied Liu's specially pleaded request to recover attorney fees,
6 concluding that because the breach of contract related to title to real property, and because Liu
7 failed to allege and prove slander of title, Liu could not recover the attorney fees sought as special
8 damages. *Liu* 321 P. 3d at 876. The Nevada Supreme Court reversed this decision and clarified
9 *Horgan* in conjunction with *Sandy Valley*.

11 The Nevada Supreme Court took the opportunity to explain that *Horgan* "must be read as
12 a whole, without particular portion read in isolation, [so]as to discern the parameters of its
13 holding." *Id.* at 878 (citations omitted). The Court further discussed that *Horgan* did not hold that
14 a party in any matter relating to real property must prevail on a slander of title claim in order to
15 recover attorney fees as special damages, and rather, that the court contemplated the ability to
16 recover attorney fees as special damages that were incurred in an action to clarify or remove a
17 cloud on a title. *Id.* at 878-879.

19 While Plaintiff Liu did not incur attorney fees by asserting equitable or declaratory relief
20 claims to clarify or remove a cloud on a title, Liu, was a third-party who pled to recover attorney
21 fees as special damages incurred in defending against a breach of contract action. Thus, the court
22 determined that "a party to a contract may recover from a breaching party the attorney fees that
23 arise from the breach that caused the former party to accrue attorney fees in defending himself or
24 herself against a third party's legal action." *Id.* at 880. Thus, the Nevada Supreme Court merely
25 clarified the *Sandy Valley* decision, by reconciling the same with the *Horgan* decision, as follows:
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1 In light of the above, *Sandy Valley* permits, and *Horgan* does not bar, Liu's claim to recover
2 attorney fees as special damages that were purportedly sustained in defending herself
3 against K&D's suit, which was allegedly caused by CHR's breach of the Agreement.
Accordingly we hold that the district court erred in relying on *Horgan* to conclude that Liu
cannot recover attorney fees as special damages.

4 *Id.*

5 The *Liu* Court, in reversing the trial court's decision to deny Liu's claim for attorney's fees
6 as special damages, asserted that "*Horgan* does not apply to preclude such recovery here." *Id.* at
7 876, 881. Further, the Nevada Supreme Court commented on the dissent, setting forth in footnote
8 3 as follows:
9

10 The dissent disagrees with our conclusions, relying on a concurrence in *Horgan* which
11 noted that there are claims, other than slander of title, under which a party can recover
12 attorney fees as special damages, such as "actions for malicious prosecution, abuse of
13 process, wrongful attachment, trademark infringement, false imprisonment or arrest." 123
14 Nev. at 587, 170 P.3d at 988-89 (Maupin, J., concurring). The dissent appears to
15 conclude that because the *Horgan* concurrence did not include a breach of contract
16 claim within its list, it is persuasive authority that attorney fees that arise from a
17 breach of contract cannot be recovered as special damages. We disagree. We do not
18 read the *Horgan* concurrence as conveying a comprehensive and exclusive list of
19 claims on which a party can recover attorney fees as special damages. Rather, the
20 *Horgan* concurrence stressed that the *Horgan* opinion did not preclude the recovery of
attorney fees as special damages in circumstances other than those presented in that appeal.
21 *Id.* In so doing, it offered **examples** of claims under which one may recover attorney fees.
22 *Id.* Thus, like the *Horgan* concurrence, we conclude that *Horgan* does not bar the recovery
of attorney fees in circumstances that are not addressed in *Horgan*, such as the
circumstances that are present in this appeal.

20 *Id.* at 881 (emphasis added).

21 Moreover, Defendant disingenuously misapplies the *Liu* discussions and falsely claims that
22 recovery of attorney fees as special damages in a breach of contract claim may "only" be recovered
23 when the breach causes the former party to incur fees in a legal dispute brought by a third party.
24 See Defendant's Motion at 8:1-12. Contrary to Defendant's false argument, in discussing the
25 *Horgan* court's decision, the *Liu* court noted that there was no "retreat from *Sandy Valley*'s
26 conclusion that a party to a contract may recover, as special damages, the attorney's fees that arise
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1 from another party's breach of contract when the breach causes the former party to incur attorney
2 fees in a legal dispute brought by a third party." *Id.* at 880, citing *Horgan v. Felton*, 123 Nev. 577,
3 579, 583-86, 170 P.3d 982, 983, 986-88 (omitting from its discussion Sandy Valley's language
4 that concerns the recovery of attorney fees as special damages that arise from a breach of contract).
5 How Defendant falsely transformed the above quote to claim this is a new basis for the Court to
6 now deny Plaintiffs their award of attorney's fees as special damages is absurd and legally
7 unsound. Clearly, the *Liu* decision only dealt with one example of a case that allowed such a
8 recovery and not the "only" case in which attorney's fees may be recovered as special damages.
9 Otherwise, if this was the holding, then Sandy Valley would have been abrogated. Rather, *Liu*
10 served to expand upon the limitations and abrogation that *Horgan* placed upon *Sandy Valley*.
11

12 The *Liu* decision served to expand upon, not limit the *Sandy Valley* decision, and
13 therefore, Defendant is disingenuously – and vexatiously, using this decision in its fifth (5th)
14 attempt to open the door for its failed arguments. See Exhibits (4, 5, 6, 9 and 7-8). The faulty basis
15 for Defendant's argument is that Plaintiff's award is erroneous as it does not allegedly fall under
16 one of the three limited circumstances set forth in *Sandy Valley* and *Liu*. See Defendant's Motion
17 at 1:26-27, 5:26-27, 6:1-7, 7:10-12. As set forth in the footnote above, there is no comprehensive
18 nor exclusive list of claims in which recovery of attorney fees as special damages. While *Sandy*
19 *Valley* provides that the mere fact that a party is forced to file suit is not enough to support
20 attorneys' fees as an element of damages and discusses three (3) specific scenarios where fees as
21 special damages would be appropriate, at no point in this discussion does the court suggest, much
22 less determine, that these are the only circumstances where an award of fees as special damages
23 would be allowed. *Sandy Valley*, 117 Nev. at 957-58, 35 P.3d at 970. The Court merely discussed
24 examples involving attorney fees as special damages where attorney fees may be an element of
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1 damages in cases when a plaintiff becomes involved in a third-party legal dispute due to breach of
2 conduct or tortious conduct by defendant; that they may also be awarded as damages where a party
3 incurring the fees in recovering real or personal property acquired through defendant's wrongful
4 conduct or in clarifying or removing a cloud upon title to property; or that actions for declaratory
5 or injunctive relief may involve claims for attorney fees as damages when the actions were
6 necessitated by the opposing party's bad faith conduct. *Id.* at 957-958, 970.

7
8 Nothing in *Sandy Valley* or its progeny suggests that the only actions qualifying for
9 attorney fee damages are limited to those specifically listed therein. In fact, *Works v. Kuhn*, 103
10 Nev. 65, 732 P.2d 1373 (1989), which was cited within the *Sandy Valley* decision, does not involve
11 the claims listed in *Sandy Valley* and thus, disproves the limitation argument. *Works v. Kuhn*, 103
12 Nev. 65, 732 P.2d 1373 (1989). In *Works*, the court granted fees "to defray the expenses and costs
13 that respondents have incurred in retaining counsel to represent them..." in an appeal concerning
14 claims for breach of accord and satisfaction and malicious prosecution. *Works*, 103 Nev. at 69.
15 If the *Sandy Valley* Court intended to restrict the causes of action qualifying for attorney fee
16 damages, it would not have cited *Works* with approval.

17
18 The circumstances in which Plaintiffs are entitled to an award of attorney's fees as special
19 damages under *Sandy Valley* has not changed since the parties extensively argued this very same
20 issue. *Liu*, citing *Sandy Valley*, confirmed that attorney fees may be recovered when they are pled
21 as such pursuant to NRCP 9(g) and are proven to be a "natural and proximate consequence of the
22 injurious conduct. *Liu* 321 P. 3d at 878. Under *Sandy Valley*, "When attorney fees are considered
23 an element of damages, they must be the natural and proximate consequence of the injurious
24 conduct." *Sandy Valley* 117 Nev. at 957, 35 P.3d at 969. As fully previously argued, Plaintiffs'
25 Second Amended Complaint adequately pled Plaintiffs' claim for attorney fees as special damages,
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1 which was subsequently proven at trial. *See* Exhibits “3, 11.”

2 Plaintiffs’ Complaint is replete with allegations demonstrating how Defendant’s injurious
3 conduct naturally and proximately caused Plaintiffs’ expenditure of attorney’s fees. Paragraphs 8
4 through 15 of the Complaint detail how over the course of twenty (20) months, Plaintiffs tried in
5 vain to retrieve the information and documents owed to them under the September 1, 2004
6 Commission Letter Agreement. *See* Exhibit 3 at ¶¶ 8-15. These efforts involved requests to
7 Defendant, third party title companies, and document searches at the Clark County Recorder’s
8 Office. *Id.* at ¶ 13. Defendant not only failed to provide the necessary records to Plaintiffs, but
9 the information Defendant did provide was intended to mislead Plaintiffs. *Id.* A comprehensive
10 review of Defendant’s actions towards Plaintiffs reveals that Defendant failed to uphold its duty
11 to act in good faith towards Plaintiffs. *Id.* at ¶ 30. After all of these events, Plaintiffs were left
12 with no option other than hiring an attorney to file suit and use the power of discovery and appeal
13 to the Court to compel an accounting and the production of the information owed to Plaintiffs. *Id.*
14 at ¶¶ 19, 25, 31.

17 Furthermore, Plaintiffs’ claims involves a breach of the implied covenant of good faith and
18 fair dealing, as well as equitable or injunctive relief regarding the accounting, all stemming from
19 Defendant’s bad faith. Under *Sandy Valley*, “actions for declaratory or injunctive relief may
20 involve claims for attorney fees as damages when the actions were necessitated by the opposing
21 party’s bad faith conduct.” *Sandy Valley*, 117 Nev. at 958. Nevada law is clear that claims for
22 breaches of the implied covenant of good faith and fair dealing are “bad faith” claims no matter if
23 they are claims founded on contract principles or tort principles. Plaintiffs fully briefed these
24 issues and hereby attaches these court filings as if fully incorporated herein. *See Plaintiffs’*
25 *Supplement to Motion For Leave to File A Second Amended Complaint Pursuant to the Court’s*
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1 *Order on Hearing on April 26, 2013* filed with the court on May 10, 2013, that is attached hereto
2 as Exhibit "13;" *Plaintiffs' Reply in Further Support of Their Motion for Leave to File a Second*
3 *Amended Complaint* filed with the court on April 23, 2013, that is attached hereto as Exhibit "14;"
4 and *Plaintiffs' Opposition to Defendant's Motion in Limine to Exclude Plaintiffs' Claim for*
5 *Attorneys' Fees As An Element of Damages (MIL #1)* filed with the court on March 20, 2013, that
6 is attached hereto as Exhibit "15." (Plaintiffs further incorporate by reference Plaintiffs' Motion
7 to Strike Judgment entered June 15, 2015 and filed June 29, 2015, Plaintiffs' Opposition to
8 Defendant's Motion for Attorney's Fees filed June 29, 2015, and Plaintiffs' Motion for Attorney's
9 Fees filed June 29, 2015, by reference as if fully stated herein).

11 Over the course of a three (3) week trial, in which the Court took the matter under
12 submission, Plaintiffs proved the above allegations, resulting in an award of \$135,500 in attorney's
13 fees as special damages as set forth in the Court's June 25, 2014 FFCLC. In the face of these
14 findings, the Court made a determination that Plaintiffs were owed a Judgment in the amount of
15 \$141,500, composed of \$6,000.00 of time that Mr. Wolfram expended at a reasonable rate of
16 \$75.00 per hour, for over eighty (80) hours that he spent to communicate with Pardee in an effort
17 to obtain information that Defendant was contractually obligated to provide, but failed to do so, as
18 the Court so found. In addition, the Court heard the testimony of Plaintiffs' counsel, Mr.
19 Jimmerson, who testified that the efforts directly associated with Mr. Jimmerson's law firm to
20 acquire the information from Pardee, and the Court found the sum of \$135,000 to be reasonable
21 and necessary. *See* Exhibit "11." The Court's specific findings were based on BOTH *Sandy Valley*
22 and *Liu*, and therefore, this Court has already considered and addressed the *Liu* decision when
23 awarded Plaintiffs' attorneys fees as special damages, making Defendant's entire motion to amend
24 in this regard vexatious and frivolous.
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1 IV. COUNTERMOTION FOR ATTORNEYS FEES IN THE AMOUNT OF \$10,975.

2 EDCR 7.60(b) provides in relevant part as follows:

3 The court may, after notice and an opportunity to be heard, impose upon an
4 attorney or a party any and all sanctions which may, under the facts of the
5 case, be reasonable, **including** the imposition of fines, costs or attorney's fees when
6 an attorney or a party **without just cause**:

7 (1) Presents to the court a motion or an opposition to a motion which is
8 **obviously frivolous, unnecessary or unwarranted.**

9 (2) Fails to prepare for a presentation.

10 (3) So **multiplies** the proceedings in a case as to increase costs
11 unreasonably and **vexatiously**.

12 (4) Fails or refuses to comply with these rules.

13 (5) Fails or refuses to comply with any order of a judge of the court.
14 (Emphasis added).

15 In addition, NRS 18.010 provides in relevant part as follows:

16 In addition to the cases where an allowance is authorized by specific
17 statute, the court may make an allowance of attorney's fees to a
18 prevailing party:

19 (a) When he has not recovered more than \$20,000; or

20 (b) Without regard to the recovery sought, when the court finds that the
21 claim, counterclaim, cross-claim or third-party complaint or defense of the
22 opposing party was brought or **maintained without reasonable ground or to**
23 **harass the prevailing party.** The court shall liberally construe the provisions
24 of this paragraph in **favor of awarding attorney's fees in all appropriate**
25 **situations.** It is the intent of the Legislature that the court award attorney's
26 fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the
27 Nevada Rules of Civil Procedure in **all appropriate situations to punish for**
28 **and deter frivolous or vexatious claims** and defenses because such
claims and defenses overburden limited judicial resources, hinder the
timely resolution of meritorious claims and increase the costs of engaging in
business and providing professional services to the public.

(Emphasis added)

29 Considering this Court has extensively heard, addressed and disposed of the very same
30 arguments that Defendant attempts to renew, with four (4) previous written court filings by

1 Defendant (Exhibits "4, 5, 6, and 9") and oral argument (Exhibits "7-8"), as well as this Court's
2 specific reference to the *Liu* case in the FFCLO as the basis for the special damages award (Exhibit
3 "2" at 14:24-27) – therefore makes Defendant's entire motion herein vexatious, frivolous and
4 unwarranted, such that Plaintiffs are deserving of attorneys' fees under EDCR 7.60 and NRS
5 18.010, to wit, attorney fees in the amount of \$10,975 as requested. *See* Affidavit of James J.
6 Jimmerson, Esq. attached hereto.
7

8 With respect to determining the reasonableness of counsel's services, certain factors must
9 be addressed, known as the *Brunzell* factors. *Brunzell v. Golden Gate National Bank*, 85 Nev.
10 345, 455 P.2d 31 (1969). As to the qualities of the advocate, respectfully, we suggest that the
11 supervising counsel is an AV rated, Preeminent Lawyer, with many further accolades. As to the
12 "character and quality of the work performed," we ask the Court to find our work in this matter to
13 have been adequate, both factually and legally, in which we have diligently reviewed the applicable
14 law, explored the relevant facts, and have properly applied one to the other. Finally, as to the result
15 reached, this remains to be determined when the Court rules on the present matter. With respect
16 to the character of the work to be done and work actually performed, the parties had a long history
17 of litigation that needed to be reviewed, such that the time and skill of counsel and staff, merit the
18 fees charged for those tasks, and billing statements can be provided to show counsel's time and
19 attention given to the work, denoted with proper investigation into the relevant facts, review of the
20 applicable law, and appropriate application of one to the other. The law was thoroughly researched
21 and briefed, the facts were thoughtfully presented, and ample substantiation was provided. Finally
22 as to the result reached, this remains to be determined when the Court rules on the present matter;
23 however, as set forth above, said fees are reasonable.
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1 V. CONCLUSION

2 For the reasons stated herein, Plaintiffs respectfully request this Court to deny Defendant's
3 Motion to Amend Judgment and grant Plaintiffs an award of attorneys' fees and costs for having
4 to defend against this clearly frivolous motion.

5 DATED this 7 day of July, 2015.

7 Respectfully submitted,

8 JIMMERSON HANSEN, P.C.

9
10  JAMES J. JIMMERSON, ESQ.
11 Nevada State Bar No. 000264
12 HOLLY A. FIC, ESQ.
13 Nevada State Bar No. 007699
14 415 So. Sixth St., Ste. 100
15 Las Vegas, NV 89101
16 (702) 388-7171
17 Attorneys for Plaintiffs
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1 CERTIFICATE OF SERVICE

2 I hereby certify that service of a true and correct copy PLAINTIFFS' OPPOSITION TO
3 PARDEE HOMES OF NEVADA'S MOTION TO AMEND JUDGMENT AND
4 COUNTERMOTION FOR ATTORNEY'S FEES was made on the 17 day of July, 2015, as
5 indicated below:
6

7 ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
8 Administrative Order 14-2 captioned "In the Administrative Matter of
9 Mandatory Electronic Service in the Eighth Judicial District Court," by
10 mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;

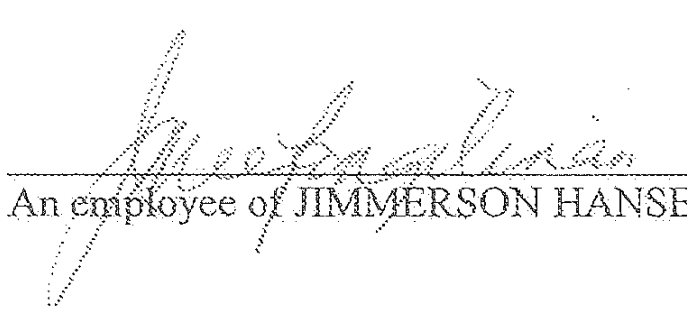
11 ☐ by placing same to be deposited for mailing in the United States Mail, in a
12 sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada to Nevada State Welfare, Dept. of Human Resources;

13 ☐ by electronic mail;

14 ☐ by hand-delivery with signed Receipt of Copy.
15

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

17 Pat Lundvall, Esq.
18 Rory T. Kay, Esq.
19 MCDONALD CARANO WILSON, LLP
20 2300 W. Sahara Ave., Suite 1000
Las Vegas, NV 89102
Attorneys for Defendant

21
22 
23 An employee of JIMMERSON HANSEN, P.C.
24
25
26
27
28

AFFIDAVIT OF JAMES J. JIMMERSON, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

2. I am lead counsel on the Wolfram case, for the Plaintiffs, and I know the amount of efforts that has been spent to prepare Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees, filed July 17, 2015.

3. Conservatively speaking, Holly A. Fic, a seasoned 14-year lawyer of our Firm spent an excess of 20 hours at \$400.00 per hour. In addition, the undersigned spent at least 5 hours at the rate of \$595.00 per hour, in reviewing and correcting and amending her work which is excellent, in addition to the amount of costs through the date and time of preparation of this Affidavit.

4. I incorporate the argument within the Plaintiffs' Opposition, specifically the law with regard to compensating counsels for services when warranted. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) and its progeny. These fees

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and costs are reasonable and are necessarily incurred.

FURTHER, AFFIANT SAYETH NAUGHT.


JAMES J. JIMMERSON, ESQ.

SUBSCRIBED AND SWORN to before me
this 17 day of July, 2015.


NOTARY PUBLIC in and for said
County and State

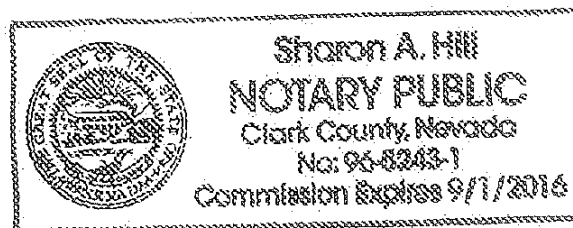


Exhibit “2”

REGISTER OF ACTIONS

CASE No. A-10-632338-C

James Wolfram, Plaintiff(s) vs. Pardee Homes of Nevada, Defendant(s) §
§
§
§
§
§

Case Type: Breach of Contract
Subtype: Other
Date Filed: 12/29/2010
Location: Department 4
Cross-Reference Case Number: A632338

PARTY INFORMATION		
Counter Claimant	Pardee Homes of Nevada	Lead Attorneys Patricia K. Lundvall Retained 702-873-4100(W)
Counter Defendant	Wilkes, Walt	James Joseph Jimmerson, ESQ Retained 702-388-7171(W)
Counter Defendant	Wolfram, James	James Joseph Jimmerson, ESQ Retained 702-388-7171(W)
Defendant	Pardee Homes of Nevada	Patricia K. Lundvall Retained 702-873-4100(W)
Plaintiff	Limbocker-Wilkes, Angela L.	James Joseph Jimmerson, ESQ Retained 702-388-7171(W)
Plaintiff	Wilkes, Walt	James Joseph Jimmerson, ESQ Retained 702-388-7171(W)
Plaintiff	Wolfram, James	James Joseph Jimmerson, ESQ Retained 702-388-7171(W)

EVENTS & ORDERS OF THE COURT	
DISPOSITIONS	
03/14/2013	Partial Summary Judgment (Judicial Officer: Earley, Kerry) Debtors: Pardee Homes of Nevada (Defendant) Creditors: James Wolfram (Plaintiff), Walt Wilkes (Plaintiff) Judgment: 03/14/2013, Docketed: 03/21/2013
06/25/2014	Order (Judicial Officer: Earley, Kerry) Debtors: Pardee Homes of Nevada (Defendant) Creditors: James Wolfram (Plaintiff), Walt Wilkes (Plaintiff) Judgment: 06/25/2014, Docketed: 07/02/2014 Total Judgment: 141,500.00
06/15/2015	Judgment (Judicial Officer: Earley, Kerry) Debtors: James Wolfram (Plaintiff), Walt Wilkes (Plaintiff), Angela L. Limbocker-Wilkes (Plaintiff) Creditors: Pardee Homes of Nevada (Defendant) Judgment: 06/15/2015, Docketed: 06/23/2015
06/15/2015	Judgment (Judicial Officer: Earley, Kerry) Debtors: Pardee Homes of Nevada (Defendant) Creditors: James Wolfram (Plaintiff), Walt Wilkes (Plaintiff), Angela L. Limbocker-Wilkes (Plaintiff) Judgment: 06/15/2015, Docketed: 06/23/2015 Total Judgment: 141,500.00

OTHER EVENTS AND HEARINGS

12/29/2010 **Complaint**
Complaint

01/02/2011 **Notice of Department Reassignment**

01/14/2011 **Amended Complaint**
Amended Complaint

01/31/2011 **Case Reassigned to Department 4**
Case reassigned from Judge Jerome Tao

02/11/2011 **Amended Summons**
Amended Summons

03/02/2011 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

03/02/2011 **Answer to Amended Complaint**
Answer to Amended Complaint

03/03/2011 **Notice of Intent to Take Default**
Notice of Intent to Take Default

06/01/2011 **Commissioners Decision on Request for Exemption - Granted**
Commissioner s Decision on Request for Exemption

06/09/2011 **Arbitration File**
Arbitration File

08/15/2011 **Early Case Conference**
Notice of 16.1 Early Case Conference

09/26/2011 **Joint Case Conference Report**
Joint Case Conference Report

10/03/2011 **Notice to Appear for Discovery Conference**
Notice to Appear for Discovery Conference

10/25/2011 **Discovery Conference (9:00 AM) (Judicial Officer Bulla, Bonnie)**
Parties Present
Minutes
Result: Matter Heard

11/02/2011 **Motion**
Motion for Preferential Trial Setting

11/02/2011 **Certificate of Service**
Certificate of Service

11/08/2011 **Scheduling Order**
Scheduling Order

11/23/2011 **Notice of Non Opposition**
Notice of Non Opposition to Motion for Preferential Trial Setting

11/29/2011 **Order Setting Civil Non-Jury Trial**
Order Setting Civil Non-Jury Trial And Calendar Call

12/05/2011 **Motion for Preferential Trial Setting (3:00 AM) (Judicial Officer Hardcastle, Kathy)**
Plaintiff's Motion for Preferential Trial Setting
Minutes
Result: Granted

12/15/2011 **Stipulation and Order**
Stipulated Confidentiality Agreement and Protective Order

12/16/2011 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulated Confidentiality Agreement and Protective Order

12/19/2011 **Certificate of Service**
Certificate of Service

08/15/2012 **Motion to Extend Discovery**
Plaintiffs James Wolfram and Walt Wilkes' Motion to Extend Discovery Deadlines on Order Shortening Time (First Request)

08/16/2012 **Receipt of Copy**
Receipt of Copy

08/27/2012 **Motion to Extend Discovery (1:30 PM) (Judicial Officer Beecroft, Chris A., Jr.)**
Plaintiffs James Wolfram and Walt Wilkes' Motion to Extend Discovery Deadlines on Order Shortening Time (First Request)
Parties Present
Minutes
Result: Off Calendar

08/29/2012 **Stipulation and Order to Extend Discovery Deadlines**
Stipulation and Order to Extend Discovery Deadlines (First Request)

08/30/2012 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (First Request)

09/04/2012 **Motion for Preferential Trial Setting**
Motion for Preferential Trial Setting

09/04/2012 **Notice of Hearing**
Notice of Hearing of Motion for Preferential Trial Setting

09/21/2012 **Amended Order Setting Civil Non-Jury Trial**
Amended Order Setting Civil Non-Jury Trial

10/16/2012 **Decision (9:00 AM) (Judicial Officer Earley, Kerry)**
Minutes
Result: Decision Made

10/16/2012 **Certificate of Service**
Certificate of Service

10/18/2012 **CANCELED Motion for Preferential Trial Setting (9:00 AM) (Judicial Officer Earley, Kerry)**
Vacated - per Clerk
Plaintiff's Motion for Preferential Trial Setting

10/19/2012 **Notice**
Notice Regarding Plaintiffs' Second Motion for Preferential Trial Setting

10/24/2012 **Motion for Summary Judgment**
Defendant's Motion for Summary Judgment

12/8/2015

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=8787301>

10/24/2012 **Motion to Seal/Redact Records**
Defendant's Motion to File Exhibits to Defendant's Motion For Summary Judgment Under Seal

10/24/2012 **Appendix**
Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment

10/24/2012 **Declaration**
Declaration of Aaron D. Shipley in Support of Defendant's Motion for Sumary Judgment

10/25/2012 **Appendix**
Appendix of exhibits in support of Defendants Motion for Summary Judgment

10/25/2012 **Notice of Hearing**
Notice of Hearing on Defendant's Motion for Summary Judgment

10/25/2012 **Notice of Hearing**
Notice of Hearing on Defendant's Motion to File Exhibits to Defendant's Motion for Summary Judgment Under Seal

10/25/2012 **Order Granting Motion**
Order Granting Plaintiffs' Motion for Preferential Trial Setting

10/29/2012 **Subpoena**
Subpoena

10/30/2012 **Notice**
Notice of Status Check

11/05/2012 **Application**
Ex Parte Application to Shorten Time For Hearing on Defendant's Motion for Summary Judgment

11/05/2012 **Amended Notice**
Amended Notice of Hearing on Defendant's Motion for Summary Judgment

11/07/2012 **CANCELED Calendar Call (10:00 AM) (Judicial Officer Earley, Kerry)**
Vacated - per Commissioner

11/07/2012 **Notice of Non Opposition**
Notice of Non-Opposition to Defendant's Motion to File Exhibits to Defendant's Motion for Summary Judgment Under Seal

11/07/2012 **Opposition to Motion For Summary Judgment**
Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment

11/08/2012 **Initial Appearance Fee Disclosure**
Plaintiff's Initial Appearance Fee Disclosrue - for purpose of Opposition to Defendant's Motion for Summary Judgment and Plaintiff's Counter Motion for Partial Summary Judgment

11/08/2012 **Notice of Non Opposition**
Notice of Nonopposition to Defendant's Motion to File Exhibits to Defendant's Motion for Summary Judgment Under Seal

11/09/2012 **Motion**
Plaintiffs' Motion to File Exhibits Under Seal

11/09/2012 **Affidavit**
Affidavit of James M. Jimmerson, Esq.

11/09/2012 **Filed Under Seal**
Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment

11/09/2012 **Certificate of Service**
Certificate of Service

11/13/2012 **CANCELED Bench Trial (1:30 PM) (Judicial Officer Earley, Kerry)**
Vacated - per Commissioner
11/13/2012 Reset by Court to 11/13/2012

11/13/2012 **Appendix**
Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Countermotion for Summary Judgment

11/13/2012 **Exhibits**
Exhibits to Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motiion for Summary Judgment

11/14/2012 **Notice of Entry of Order**
Notice of Entry of Order

11/29/2012 **Opposition to Motion**
Defendant's Opposition to Plaintiff's Counter Motion For Partial Summary Judgment Re: Real Parties In Interest

12/06/2012 **Status Check (8:30 AM) (Judicial Officer Earley, Kerry)**
Parties Present
Minutes
11/01/2012 Reset by Court to 12/21/2012
12/06/2012 Reset by Court to 12/21/2012
12/21/2012 Reset by Court to 12/06/2012
12/21/2012 Reset by Court to 12/06/2012

Result: Matter Heard

01/07/2013 **Reply in Support**
Reply Brief In Support of Defendant's Motion for Summary Judgment

01/11/2013 **CANCELED Motion (8:30 AM) (Judicial Officer Earley, Kerry)**
Vacated - Moot
Defendant's Motion to File Exhibits to Defendant's Motion For Summary Judgment Under Seal

01/17/2013 **Reply in Support**
Plaintiffs' Reply in Further Support of Their Counter Motion for Partial Summary Judgment

01/24/2013 **CANCELED Pretrial/Calendar Call (8:30 AM) (Judicial Officer Earley, Kerry)**
Vacated - per Judge

01/25/2013 **Order Granting Motion**
Order Granting Parties' Motions to File Exhibits Under Seal

01/28/2013 **Notice of Entry of Order**
Notice of Entry of Order Granting Parties' Motions to File Exhibits Under Seal

01/29/2013 **CANCELED Motion (8:30 AM) (Judicial Officer Earley, Kerry)**
Vacated - per Judge
Plaintiffs' Motion to File Exhibits Under Seal
01/25/2013 Reset by Court to 01/29/2013

02/04/2013 **CANCELED Jury Trial (8:30 AM) (Judicial Officer Earley, Kerry)**

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=8787301>

3/14

JA010934

Vacated - per Judge

02/25/2013 **Motion to Continue Trial**
Defendant's Motion to Enforce Order Shortening Time for Hearing on Defendant's Motion for Summary Judgment and to Continue Trial on Order Shortening Time

02/25/2013 **Notice of Hearing**
Notice of Hearing on Defendant's Motion to Enforce Order Shortening Time For Hearing on Defendant's Motion for Summary Judgment and to Continue Trial on Order Shortening Time

02/28/2013 **Opposition to Motion For Summary Judgment**
Plaintiffs Opposition to Defendants Motion to Enforce Order Shortening Time for Hearing on Defendants Motion for Summary Judgment and To Continue Trial on Order Shortening Time

03/01/2013 **Motion in Limine**
Defendant's Motion in Limine to Exclude Plaintiffs' Claim For Attorneys' Fees as an Element of Damages (MIL #1)

03/01/2013 **Motion in Limine**
Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2)

03/01/2013 **Motion in Limine**
Defendant's Motion in Limine to Exclude Parol Evidence (MIL #3)

03/01/2013 **Motion in Limine**
Defendant's Motion in Limine to Exclude All Documents and Witnesses Disclosed After the Close of Discovery (MIL #4)

03/05/2013 **Motion for Summary Judgment (8:30 AM) (Judicial Officer Earley, Kerry)**
03/05/2013, 03/13/2013
Defendant's Motion for Summary Judgment
Minutes
12/21/2012 Reset by Court to 01/24/2013
01/11/2013 Reset by Court to 12/21/2012
01/24/2013 Reset by Court to 02/08/2013
02/08/2013 Reset by Court to 03/05/2013
Result: Continued for Chambers Decision

03/05/2013 **Opposition and Countermotion (8:30 AM) (Judicial Officer Earley, Kerry)**
Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Plaintiffs's CounterMotion for Partial Summary Judgment
12/21/2012 Reset by Court to 01/24/2013
01/24/2013 Reset by Court to 02/08/2013
02/08/2013 Reset by Court to 03/05/2013
Result: Motion Granted

03/05/2013 **Motion to Continue Trial (8:30 AM) (Judicial Officer Earley, Kerry)**
Defendant's Motion to Enforce Order Shortening Time for Hearing on Defendant's Motion for Summary Judgment and to Continue Trial on Order Shortening Time
Result: Motion Granted

03/05/2013 **All Pending Motions (8:30 AM) (Judicial Officer Earley, Kerry)**
Parties Present
Minutes
Result: Matter Heard

03/06/2013 **Notice of Hearing**
Notice of Hearing on Defendant's Motion on Limine to Exclude Plaintiff's Claim for Attorneys' Fees as an Element of Damages (MIL#1)

03/06/2013 **Notice of Hearing**
Notice of Hearing on Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL#2)

03/06/2013 **Notice of Hearing**
Notice of Hearing on Defendant's Motion in Limine to Exclude Parol Evidence (MIL#3)

03/06/2013 **Notice of Hearing**
Notice of Hearing on Defendant's Motion in Limine to Exclude All Documents and Witnesses Disclosed After the Close of Discovery (MIL #4)

03/08/2013 **Certificate of Service**
Certificate of Service

03/14/2013 **Order Granting Summary Judgment**
Order Granting Plaintiffs Countermotion for Summary Judgment

03/15/2013 **Notice of Entry of Order**
Notice of Entry of Order

03/16/2013 **Transcript of Proceedings**
Reporter's Transcript Of Proceedings 3/5/2013

03/20/2013 **Opposition to Motion in Limine**
Plaintiffs Opposition to Defendant's Motion in Limine to Exclude Plaintiffs Claim for Attorneys Fees as an Element of Damages MIL 1

03/20/2013 **Opposition to Motion in Limine**
Plaintiffs Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the form of compensation for time MIL 2

03/20/2013 **Opposition to Motion in Limine**
Plaintiffs Opposition to Defendants Motion in Limine to Exclude Parol Evidence MIL 3

03/20/2013 **Opposition to Motion in Limine**
Plaintiffs' Opposition to Defendant's Motion in Limine to Exclude all Documents and Witnesses Disclosed After the Close of Discovery (MIL #4)

03/21/2013 **Motion to Amend Complaint**
Plaintiffs Motion for Leave to file a Second Amended Complaint

03/22/2013 **Notice of Hearing**
Notice of Hearing on Plaintiffs Motion for Leave to file a Second Amended Complaint

03/22/2013 **Amended Notice**
Amended Notice of Hearing on Defendant's Motion on Limine to Exclude Plaintiff's Claim for Attorneys' Fees as an Element of Damages (MIL#1)

03/22/2013 **Amended Notice**
Amended Notice of Hearing on Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL#2)

03/22/2013 **Amended Notice**
Amended Notice of Hearing on Defendant's Motion in Limine to Exclude Parol Evidence (MIL#3)

03/22/2013 **Amended Notice**
Amended Notice of Hearing on Defendant's Motion in Limine to Exclude all Documents and Witnesses Disclosed After Close of Discovery (MIL #4)

04/02/2013 **Order Denying Motion**

12/8/2015

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Order Denying Defendants Motion for Summary Judgment

04/03/2013 **Notice of Entry of Order**
Notice of Entry of Order

04/05/2013 **CANCELED Pretrial/Calendar Call** (8:30 AM) (Judicial Officer Gates, Lee A.)
Vacated - Moot
04/04/2013 Reset by Court to 04/05/2013

04/08/2013 **Opposition to Motion**
Defendant's Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint

04/10/2013 **Amended Notice**
Amended Notice of Hearing on Plaintiffs Motion for Leave to File a Second Amended Complaint

04/15/2013 **CANCELED Bench Trial** (8:30 AM) (Judicial Officer Earley, Kerry)
Vacated - per Judge

04/16/2013 **Amended Notice**
Second Amended Notice of Hearing on Defendant's Motion in Limine to exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time

04/16/2013 **Amended Notice**
Second Amended Notice of Hearing on Defendant's Motion in Limine to Exclude All Documents and Witnesses Disclosed After the Close of Discovery

04/16/2013 **Amended Notice**
Second Amended Notice of Hearing on Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages

04/16/2013 **Amended Notice**
Second Amended Notice of Hearing on Defendant's Motion in Limine to Exclude Parol Evidence

04/17/2013 **Amended Order Setting Civil Non-Jury Trial**
Second Amended Order Setting Civil Non-Jury Trial

04/23/2013 **Reply in Support**
Plaintiffs Reply in Support of Motion for Leave to File Second Amended Complaint

04/26/2013 **Motion for Leave** (8:30 AM) (Judicial Officer Earley, Kerry)
04/26/2013, 05/15/2013
Plaintiffs Motion for Leave to file a Second Amended Complaint
Parties Present
Minutes
04/26/2013 Reset by Court to 08/19/2013
05/23/2013 Reset by Court to 04/26/2013
08/19/2013 Reset by Court to 04/26/2013

Result: Continued for Chambers Decision

05/10/2013 **Supplement**
Plaintiffs Supplement to Motion for Leave to File a Second Amended Complaint Pursuant to the Courts order on Hearing on April 26, 2013

05/10/2013 **Supplemental Brief**
Defendant's Supplemental Brief in Support of Its Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint

05/13/2013 **CANCELED Bench Trial - FIRM** (10:00 AM) (Judicial Officer Earley, Kerry)
Vacated - per Judge

05/16/2013 **Minute Order** (3:00 AM) (Judicial Officer Earley, Kerry)
MINUTE ORDER RE: PLAINTIFFS' MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT
Minutes

Result: Minute Order - No Hearing Held

05/30/2013 **Order**
Order on Hearing on April 26, 2013

06/05/2013 **Order Granting Motion**
Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint

06/05/2013 **Notice of Entry of Order**
Notice of Entry of Order

06/06/2013 **Notice of Entry of Order**
Notice of Entry of Order

06/06/2013 **Second Amended Complaint**
Second Amended Complaint

06/27/2013 **Receipt of Copy**
Receipt of Copy

06/27/2013 **Motion for Leave to File**
Plaintiffs Motion for Leave to File Supplements to Their Oppositions to Defendants Motions in Limine on an Order Shortening Time

07/03/2013 **Answer to Amended Complaint**
Answer to Second Amended Complaint and Counterclaim

07/09/2013 **Motion for Leave** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs Motion for Leave to File Supplements to Their Oppositions to Defendants Motions in Limine on an Order Shortening Time
Parties Present
Minutes

Result: Motion Granted

07/15/2013 **Reply to Counterclaim**
Plaintiffs Reply to Defendants Counterclaim

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit the September 1, 2004 Commission Letter Agreement (MIL #1)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine To Admit The Option Agreement For The Purchase Of Real Property And Joint Escrow Instructions (MIL#2)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Amendment No. 2 of the option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #4)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #5)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Amendment No. 1 to the Amended and Restated Option Agreement for the Purchase of Real Property and

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Joint Escrow Instructions (MIL #6)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Amendment No. 2 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #7)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Amendment No. 3 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #8)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Amendment No. 4 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #9)

07/18/2013 **Motion in Limine**
Plaintiffs Motion in Limine to Admit Amendment No 5 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions MIL 10

07/18/2013 **Motion in Limine**
Plaintiffs Motion in Limine to Admit Amendment No 6 to the Amended and Restated Option Agreement for the Purchase of Real property and Joint Escrow Instructions MIL 11

07/18/2013 **Motion in Limine**
Plaintiffs Motion in Limine to Admit Amendment No 7 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions MIL 12

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Amendment No. 8 to the Amended and Restricted Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #13)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 98, Page 57 (MIL #14)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Plat Map Recorded in Clark County Recorder's Office in Book 140, Page 57 (MIL #18)

07/18/2013 **Motion in Limine**
Plaintiffs Motion in Limine to Admit Plat Map Recorded in the Clark County Recorders Office in Book 138 Page 51 MIL 15

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 113, Page 55 (MIL #19)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion In Limine To Admit The April 6, 2009 Letter From Jim Stringer Jr. To James Wolfram (MIL #20)

07/18/2013 **Motion in Limine**
Plaintiffs Motion in Limine to Admit Amendment to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions MIL 3

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 116, Page 35 (MIL #16)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion In Limine To Admit The November 24, 2009 Letter From Jon Lash to James Wolfram (MIL #21)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 117, Page 18 (MIL #17)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion in Limine to Admit the March 14, 2008 Letter from Jon Lash to James Wolfram and Walt Wilkes (MIL #24)

07/18/2013 **Motion in Limine**
Plaintiffs' Motion In Limine To Admit The August 23, 2007 Letter From Jon Lash To Walk Wilkes And James Wolfram (MIL #22)

07/18/2013 **Motion in Limine**
Plaintiffs Motion in Limine to Admit the July 10 2009 Letter from James J Jimmerson Esq MIL 23

07/18/2013 **Motion in Limine**
Plaintiffs' Motion In Limine To Permit James J. Jimmerson, Esq. To Testify Concerning Plaintiffs' Attorney's Fees And Costs (MIL #25)

07/18/2013 **Motion**
Plaintiffs Motion to File Exhibits Under Seal

07/22/2013 **Affidavit of Service**
Affidavit of Service

07/22/2013 **Motion to Compel**
Motion to Compel Production of Notes James Wolfram Reviewed in Preparation for His Deposition

07/22/2013 **Motion for Partial Summary Judgment**
Defendant's Motion for Partial Summary Judgment

07/22/2013 **Supplement to Opposition**
Plaintiffs Supplemental Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the Form of Compensation for Time MIL 2

07/23/2013 **Status Check (8:30 AM)** (Judicial Officer Earley, Kerry)
Status Check: Status of Case
Parties Present
Minutes
Result: Matter Heard

07/23/2013 **Order Granting Motion**
Order Granting Plaintiffs Motion for Leave to File Supplements to Their Oppositions to Defendants Motion in Limine

07/24/2013 **Notice of Entry of Order**
Notice of Entry of Order

07/24/2013 **Notice of Rescheduling**
Notice of Rescheduling of Hearing

07/31/2013 **Affidavit of Service**
Affidavit of Service

08/05/2013 **Opposition to Motion in Limine**
Defendant Pardee Homes of Nevada's Response to Plaintiffs' Motions in Limine #1-5; And #20-25

08/05/2013 **Opposition to Motion in Limine**
Defendant Pardee Homes of Nevada's Opposition to Plaintiffs' Motions in Limine #6-19

08/05/2013 **Notice of Non Opposition**
Notice of Nonopposition to Plaintiffs' Motion to File Exhibits Under Seal

08/06/2013 **Opposition to Motion to Compel**
Plaintiffs Opposition to Defendants Motion to Compel Production of Notes James Wolfram Review in Preparation for his Deposition

08/06/2013 **Opposition to Motion For Summary Judgment**
Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment

08/14/2013 **Minute Order (3:00 AM)** (Judicial Officer Earley, Kerry)
Plaintiffs Motion to File Exhibits Under Seal---GRANTED BY MINUTE ORDER 8/14/13

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Minutes

08/19/2013 Result: Minute Order - No Hearing Held
CANCELED Pretrial/Calendar Call (8:30 AM) (Judicial Officer Earley, Kerry)
Vacated - per Secretary

09/03/2013 **Stipulation and Order**
Stipulation and Order to Continue Hearing

09/04/2013 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Continue Hearing

09/09/2013 **CANCELED Bench Trial - FIRM** (9:00 AM) (Judicial Officer Earley, Kerry)
Vacated

09/16/2013 **Reply in Support**
Plaintiffs' Omnibus Reply in Further Support of Motions in Limine 6 through 19, and 21 through 22

09/16/2013 **Reply in Support**
Reply in Support of Defendant's Motion to Compel Production of Notes James Wolfram Reviewed in Preparation for His Deposition

09/16/2013 **Reply in Support**
Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Claim for Attorney's Fees As An Element of Damages

09/16/2013 **Reply in Support**
Reply in Support of Defendant's Motion in Limine to Exclude Parol Evidence

09/16/2013 **Reply in Support**
Reply in Support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim For Damages in the Form of Compensation for Time

09/16/2013 **Reply in Support**
Reply in Support of Defendant's Motion for Partial Summary Judgment

09/16/2013 **Notice of Withdrawal**
Notice of Withdrawal of Defendant's Motion in Limine to Exclude All Documents and Witnesses Disclosed After the Close of Discovery

09/16/2013 **Notice**
Plaintiffs' Omnibus Notice of Withdrawal of Motions in Limine 1 through 5, 20, and 23-25

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Defendant's Motion in Limine to Exclude Plaintiffs' Claim For Attorneys' Fees as an Element of Damages (MIL #1)
04/16/2013 Reset by Court to 04/26/2013
04/26/2013 Reset by Court to 08/19/2013
08/19/2013 Reset by Court to 09/23/2013

09/23/2013 Result: Deferred Ruling
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2)
04/16/2013 Reset by Court to 04/26/2013
04/26/2013 Reset by Court to 08/19/2013
08/19/2013 Reset by Court to 09/23/2013

09/23/2013 Result: Deferred Ruling
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Defendant's Motion in Limine to Exclude Parol Evidence (MIL #3)
04/23/2013 Reset by Court to 04/26/2013
04/26/2013 Reset by Court to 08/19/2013
08/19/2013 Reset by Court to 09/23/2013

09/23/2013 Result: Motion Granted
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Defendant's Motion in Limine to Exclude All Documents and Witnesses Disclosed After the Close of Discovery (MIL #4)
04/26/2013 Reset by Court to 08/19/2013
05/02/2013 Reset by Court to 04/26/2013
08/19/2013 Reset by Court to 09/23/2013

09/23/2013 Result: Withdrawn
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiff's Motion in Limine to Admit the September 1, 2004 Commission Letter Agreement (MIL#1)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013

09/23/2013 Result: Withdrawn
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine To Admit The Option Agreement For The Purchase Of Real Property And Joint Escrow Instructions (MIL#2)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013

09/23/2013 Result: Withdrawn
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Amendment No. 2 of the option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #4)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013

09/23/2013 Result: Withdrawn
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #5)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013

09/23/2013 Result: Withdrawn
Motion in Limine (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Amendment No. 1 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #6)
08/19/2013 Reset by Court to 09/23/2013

08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Amendment No. 2 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #7)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Amendment No. 3 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #8)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Amendment No. 4 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #9)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs Motion in Limine to Admit Amendment No 5 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions MIL 10
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs Motion in Limine to Admit Amendment No 6 to the Amended and Restated Option Agreement for the Purchase of Real property and Joint Escrow Instructions MIL 11
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs Motion in Limine to Admit Amendment No 7 to the Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions MIL 12
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Amendment No. 8 to the Amended and Restricted Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (MIL #13)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 98, Page 57 (MIL #14)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Plat Map Recorded in Clark County Recorder's Office in Book 140, Page 57 (MIL #18)
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs Motion in Limine to Admit Plat Map Recorded in the Clark County Records Office in Book 138 Page 51 MIL 15
08/19/2013 Reset by Court to 09/23/2013
08/27/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 113, Page 55 (MIL #19)
08/19/2013 Reset by Court to 09/23/2013
08/29/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion In Limine To Admit The April 6, 2009 Letter From Jim Stringer Jr. To James Wolfram (MIL #20)
08/19/2013 Reset by Court to 09/23/2013
08/29/2013 Reset by Court to 08/19/2013
Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs Motion in Limine to Admit Amendment to the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions MIL 3
08/19/2013 Reset by Court to 09/23/2013
08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 116, Page 35 (MIL #16)
 08/19/2013 Reset by Court to 09/23/2013
 08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion In Limine To Admit The November 24, 2009 Letter From Jon Lash to James Wolfram (MIL #21)
 08/19/2013 Reset by Court to 09/23/2013
 08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit Parcel Map Recorded in the Clark County Recorder's Office in File 117, Page 18 (MIL #17)
 08/19/2013 Reset by Court to 09/23/2013
 08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion in Limine to Admit the March 14, 2008 Letter from Jon Lash to James Wolfram and Walt Wilkes (MIL #24)
 08/19/2013 Reset by Court to 09/23/2013
 08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion In Limine To Admit The August 23, 2007 Letter From Jon Lash To Walk Wilkes And James Wolfram (MIL #22)
 08/19/2013 Reset by Court to 09/23/2013
 08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs Motion in Limine to Admit the July 10 2009 Letter from James J Jimmerson Esq MIL 23
 08/19/2013 Reset by Court to 09/23/2013
 08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **Motion in Limine** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion In Limine To Permit James J. Jimmerson, Esq. To Testify Concerning Plaintiffs' Attorney's Fees And Costs (MIL #25)
 08/19/2013 Reset by Court to 09/23/2013
 08/29/2013 Reset by Court to 08/19/2013

Result: Withdrawn

09/23/2013 **CANCELED Motion** (8:30 AM) (Judicial Officer Earley, Kerry)
Vacated - per Law Clerk
Plaintiffs Motion to File Exhibits Under Seal
 08/19/2013 Reset by Court to 09/23/2013
 08/22/2013 Reset by Court to 08/19/2013

09/23/2013 **Motion to Compel** (8:30 AM) (Judicial Officer Earley, Kerry)
Defendant's Motion to Compel Production of Notes James Wolfram Reviewed in Preparation for His Deposition
 08/27/2013 Reset by Court to 09/03/2013
 09/03/2013 Reset by Court to 09/23/2013

Result: Motion Denied

09/23/2013 **Motion for Partial Summary Judgment** (8:30 AM) (Judicial Officer Earley, Kerry)
09/23/2013, 10/07/2013
Defendant's Motion for Partial Summary Judgment
Minutes
 08/27/2013 Reset by Court to 09/03/2013
 09/03/2013 Reset by Court to 09/23/2013
 09/23/2013 Reset by Court to 09/23/2013
 10/09/2013 Reset by Court to 10/07/2013

Result: Continued for Chambers Decision

09/23/2013 **Pre-Trial Disclosure**
Defendant Pardee Homes of Nevada's Pretrial Disclosures Pursuant to NRCP 16.1(a)(3)

09/23/2013 **All Pending Motions** (8:30 AM) (Judicial Officer Earley, Kerry)
Parties Present
Minutes

Result: Matter Heard

09/26/2013 **Pre-Trial Disclosure**
Plaintiffs Pretrial Disclosures Pursuant to NRCP 16.1a3

09/27/2013 **Supplement to Opposition**
Plaintiffs Supplement to Their Opposition to Defendants Motion for Partial Summary Judgment

09/27/2013 **Supplemental Brief**
Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment

10/07/2013 **Objection**
Defendant Pardee Homes of Nevada's Objections to Plaintiffs' Pretrial Disclosures Pursuant to NRCP 16.1(a)(3)

10/08/2013 **Joint Pre-Trial Memorandum**
Joint Pre-Trial Memorandum Pursuant to EDCR 2.67

10/08/2013 **Order Granting Motion**
Order Granting Defendant's Motion in Limine to Exclude Parol Evidence (MIL #3)

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10/09/2013 **Notice of Entry of Order**
Notice of Entry of Order Granting Defendant's Motion in Limine to Exclude Parol Evidence (MIL #3)

10/23/2013 **Bench Trial - FIRM** (8:30 AM) (Judicial Officer Earley, Kerry)
10/23/2013, 10/24/2013, 10/28/2013, 10/29/2013, 10/30/2013, 12/09/2013, 12/10/2013, 12/12/2013, 12/13/2013
Parties Present
Minutes
10/21/2013 *Reset by Court to 10/23/2013*
Result: Trial Continues

10/23/2013 **Order Denying Motion**
Order Denying Defendants Motion to Compel Production of Notes James Wolfram Reviewed in Preparation for his Deposition

10/23/2013 **Order Denying Motion**
Order Denying Motion for Partial Summary Judgment

10/25/2013 **Brief**
Plaintiffs Trial Brief Pursuant to EDCR 7.27

10/25/2013 **Notice of Entry of Order**
Notice of Entry of Order

10/25/2013 **Notice of Entry of Order**
Notice of Entry of Order

12/11/2013 **Certificate of Service**
Certificate of Service

12/12/2013 **Trial Subpoena**
Trial Subpoena

12/12/2013 **Trial Subpoena**
Trial Subpoena for Rebuttal Testimony

12/12/2013 **Trial Subpoena**
Trial Subpoena for Rebuttal Testimony

03/20/2014 **Suggestion of Death**
Suggestion of Death on the Record

03/24/2014 **Amended Certificate of Service**
Amended Certificate of Service

06/12/2014 **Motion**
Motion for Substitution of Parties

06/24/2014 **Motion to Expunge Lis Pendens**
Motion to Expunge Lis Pendens and For Sanctions Regarding Plaintiffs' Violation Of The Court's Protective Order and Ex Parte Application for an Order Shortening Time

06/25/2014 **Findings of Fact, Conclusions of Law and Order**
Findings of Fact, Conclusions of Law and Order

06/27/2014 **Notice of Entry of Order**
Notice of Entry of Findings of Fact, Conclusions of Law and Order

06/30/2014 **Receipt of Copy**
Receipt of Copy

06/30/2014 **Opposition to Motion**
Defendant's Limited Opposition To Motion For Substitution of Parties

07/02/2014 **Affidavit**
Affidavit of Acceptance of Service

07/14/2014 **Opposition to Motion**
Plaintiffs' Opposition to Defendant's Motion to Expunge Lis Pendens and for Sanctions Regarding Plaintiffs' Violation of the Court's Protective Order

07/14/2014 **Receipt of Copy**
Receipt of Copy

07/15/2014 **Reply in Support**
Reply In Support of Motion to Expunge Lis Pendens; and For Sanctions Regarding Plaintiffs' Violation of the Court's Protective Order

07/17/2014 **Motion to Expunge Lis Pendens** (8:30 AM) (Judicial Officer McGee, Charles)
Defendant's Motion to Expunge Lis Pendens and For Sanctions Regarding Plaintiffs' Violation Of The Court's Protective Order and Ex Parte Application for an Order Shortening Time
Parties Present
Minutes
Result: Motion Granted

07/24/2014 **Reply in Support**
Reply in Support of Motion for Substitution of Parties and Angela L. Limbocker-Wilkes' Petition for Confirmation of Appointment as Trustee of the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

07/24/2014 **Order Granting Motion**
Order Granting Defendant's Motion to Expunge Lis Pendens

07/25/2014 **Notice of Appearance**
Notice of Appearance

07/25/2014 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

07/25/2014 **Notice of Entry of Order**
Notice of Entry of Order Granting Defendant's Motion to Expunge Lis Pendens

07/25/2014 **Certificate of Service**
Certificate of Service

07/30/2014 **Notice**
Notice of Thomas Wilkes' Waiver of Notice of Hearing of Angela L. Limbocker-Wilkes Petition for Confirmation of Appointment as Trustee of Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

07/31/2014 **Motion for Substitution** (8:30 AM) (Judicial Officer Earley, Kerry)
Plaintiff's Motion for Substitution of Parties
Parties Present
Minutes
Result: Motion Granted

08/14/2014 **Order**
Order Confirming Angela L. Limbocker-Wilkes' Appointment as Trustee of the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust and

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Order Substituting Angela L. Limbocker-Wilkes as Trustee of the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust in the Place of Plaintiff Walt Wilkes, Deceased

08/15/2014 **Notice of Entry of Order**
Notice of Entry of Order

08/18/2014 **Notice**
Notice of Angele L. Limbocker-Wilkes Petition for Confirmation of Appointment as Trustee of Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

08/18/2014 **Notice**
Notice of Angele L. Limbocker-Wilkes Petition for Confirmation of Appointment as Trustee of Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

08/18/2014 **Notice**
Notice of Angela L. Limbocker-Wilkes Petition for Confirmation of Appointment as Trustee of Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

08/18/2014 **Notice**
Notice of Angela L. Limbocker-Wilkes Petition for Confirmation of Appointment as Trustee of Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

08/18/2014 **Notice**
Notice of Angela L. Limbocker-Wilkes Petition for Confirmation of Appointment as Trustee of Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust

08/22/2014 **Order to Statistically Close Case**
Civil Order to Statistically Close Case

08/25/2014 **Brief**
Plaintiff's Accounting Brief Pursuant to the court's Order Entered on June 25, 2014

08/25/2014 **Supplemental**
Pardee Homes of Nevada's Supplemental Brief Regarding Future Accounting

09/12/2014 **Notice**
Pardee's Notice of Submission

02/10/2015 **Minute Order (3:00 AM) (Judicial Officer Earley, Kerry)**
Plaintiffs' Accounting Brief
Minutes

Result: Minute Order - No Hearing Held

05/13/2015 **Order**
Order On Findings Of Fact And Conclusions Of Law And Supplemental Briefing Re Future Accounting

05/13/2015 **Notice of Entry of Order**
Notice of Entry of Order On Findings Of Fact And Conclusions Of Law And Supplemental Briefing Re Future Accounting

05/14/2015 **Affidavit**
Affidavit of Conrad J. Smucker

05/28/2015 **Motion for Attorney Fees and Costs**
Pardee's Motion For Attorney's Fees and Costs

05/28/2015 **Appendix**
Appendix of Exhibits To Pardee's Motion For Attorney's Fees and Costs

06/15/2015 **Judgment**
Judgment

06/15/2015 **Notice of Entry of Judgment**
Notice of Entry of Judgment

06/19/2015 **Memorandum of Costs and Disbursements**
Plaintiffs, James Wolfram and Walt Wilkes' Memorandum of Costs and Disbursements

06/24/2015 **Motion to Retax**
Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015

06/29/2015 **Motion for Attorney Fees and Costs**
Plaintiffs' Motion for Attorney's Fees and Costs

06/29/2015 **Motion to Strike**
Motion To Strike "Judgment", Entered June 15, 2015 Pursuant To N.R.Cp. 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

06/29/2015 **Motion**
Plaintiffs' Motion Pursuant to Nrcp 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Releaf of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment

06/30/2015 **Opposition**
Plaintiffs' Opposition To Pardee's Motion For Attorney's Fees And Costs

06/30/2015 **Association of Counsel**
Association of Counsel

06/30/2015 **Supplement**
Supplement to Plaintiffs' Pending Motion for Attorney's Fees and Costs, Motion to Strike Judgment, Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment, and Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs

07/01/2015 **Receipt of Copy**
Receipt of Copy

07/02/2015 **Motion to Amend Judgment**
Pardee Homes of Nevada's Motion to Amend Judgment

07/04/2015 **Receipt of Copy**
Receipt of Copy

07/06/2015 **Notice of Motion**
Notice of Motion on Plaintiffs' Motion for Attorney's Fees and Costs

07/07/2015 **Motion**
Plaintiffs' Motion for Order Requiring Defendant, When Serving by Electronic Means, to Serve Three Specific Persons

07/07/2015 **Receipt of Copy**
Receipt of Copy

07/08/2015 **Errata**
Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=8787301>

11/14

JA010942

07/08/2015 **Errata**
Errata to Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/Conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page, 2, Lines 8 through 13 and the Judgment at Page 2, Lines 18 through 23 to Delete the Same or Amend the Same to Reflect the True Fact that Plaintiff Prevailed on their Entitlement to the First Claim for Relief for an Accounting, and Damages for their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and that Defendant Never Received a Judgment in its form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment"

07/08/2015 **Motion for Stay of Execution**
Pardee's Emergency Motion to Stay Execution of Judgment: and Ex Parte Order Shortening Time

07/08/2015 **Opposition**
Plaintiffs' Opposition to Pardee's Motion to Retax Costs

07/08/2015 **Receipt of Copy**
Receipt of Copy

07/08/2015 **Supplement**
Pardee's Supplemental Briefing in Support of its Emergency Motion to Stay Execution of Judgment

07/10/2015 **Motion for Stay of Execution** (9:00 AM) (Judicial Officer Earley, Kerry)
Pardee's Emergency Motion to Stay Execution of Judgment: and Ex Parte Order Shortening Time
Parties Present
Minutes
 Result: Granted

07/10/2015 **Receipt of Copy**
Receipt of Copy

07/10/2015 **Order**
Order On Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time

07/10/2015 **Notice of Entry of Order**
Notice of Entry of Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time

07/10/2015 **Order**
Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time

07/15/2015 **Appendix**
Appendix of Exhibits to Pardee Homes of Nevada's Consolidated Opposition to: (1) Plaintiff's Motion to Strike Judgment Entered on June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59; and Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015

07/15/2015 **Appendix**
Appendix of Exhibits to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs

07/15/2015 **Opposition to Motion**
Pardee Homes of Nevada's Consolidated Opposition To: (1) Plaintiff's Motion to Strike Judgment Entered On June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59; and (2) Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015

07/15/2015 **Opposition to Motion**
Pardee Homes of Nevada's Opposition to Plaintiff's Motion for Attorney's Fees and Costs

07/16/2015 **Errata**
Errata to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion For Attorney's Fees and Costs

07/17/2015 **Opposition**
Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees

07/20/2015 **Opposition to Motion**
Pardee's Opposition to Plaintiffs' Motion for Order Requiring Defendant, When Serving By Electronic Means, to Serve Three Specific Persons

07/20/2015 **Notice**
Notice of Filing

07/23/2015 **Minute Order** (3:00 AM) (Judicial Officer Earley, Kerry)
Resetting of pending Motions
Minutes
 Result: Minute Order - No Hearing Held

07/24/2015 **Motion**
Plaintiffs' Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution

07/24/2015 **Declaration**
Declaration of John W. Muije, Esq. In Support of Motion for Reconsideration

08/10/2015 **Opposition to Motion**
Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Reconsideration of the Order on Pardee's Emergency Motion to Stay Execution of Judgment

08/17/2015 **Reply Points and Authorities**
Reply Points and Authorities In Support of Motion for Reconsideration

08/24/2015 **Motion For Reconsideration** (3:00 AM) (Judicial Officer Earley, Kerry)
Plaintiffs' Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution
Minutes
 Result: Minute Order - No Hearing Held

09/11/2015 **Opposition**
Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment Entered on June 15, 2015

09/11/2015 **Opposition**
Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59

09/11/2015 **Opposition**
Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs

09/12/2015 **Reply**
Pardee Homes of Nevada's Consolidated Reply in Support of (1) Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015; and (2) Motion for Attorney's Fees and Costs

09/21/2015 **Notice of Rescheduling**
Notice of Rescheduling of Hearing

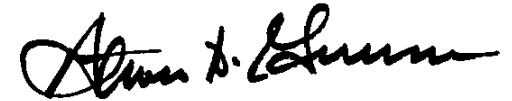
12/09/2015 **Motion for Attorney Fees and Costs** (9:00 AM) (Judicial Officer Earley, Kerry)
Pardee's Motion For Attorney's Fees and Costs
 07/15/2015 Reset by Court to 07/27/2015

	07/27/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015
12/09/2015	Motion to Retax (9:00 AM) (Judicial Officer Earley, Kerry) <i>Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015</i>	
	07/27/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015
12/09/2015	Motion to Strike (9:00 AM) (Judicial Officer Earley, Kerry) <i>Motion To Strike "Judgment", Entered June 15, 2015 Pursuant To N.R.Cp. 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</i>	
	08/05/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015
12/09/2015	Motion to Amend (9:00 AM) (Judicial Officer Earley, Kerry) <i>Plaintiffs' Motion Pursuant to Nrcp 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Releaf of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment</i>	
	08/03/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015
12/09/2015	Motion (9:00 AM) (Judicial Officer Earley, Kerry) <i>Pardee Homes of Nevada's Motion to Amend Judgment</i>	
	08/05/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015
12/09/2015	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer Earley, Kerry) <i>Notice of Motion on Plaintiff's Motion for Attorney's Fees and Costs</i>	
	08/10/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015
12/09/2015	Motion for Order (9:00 AM) (Judicial Officer Earley, Kerry) <i>Plaintiffs' Motion for Order Requiring Defendant, When Serving by Electronic Means, to Serve Three Specific Persons</i>	
	08/12/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015
12/09/2015	Opposition and Countermotion (9:00 AM) (Judicial Officer Earley, Kerry) <i>Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees</i>	
	08/05/2015	Reset by Court to 10/02/2015
	10/02/2015	Reset by Court to 12/09/2015

FINANCIAL INFORMATION

Counter Claimant Pardee Homes of Nevada			
	Total Financial Assessment		628.00
	Total Payments and Credits		628.00
	Balance Due as of 12/08/2015		0.00
03/03/2011	Transaction Assessment		223.00
03/03/2011	Wiznet	Receipt # 2011-20267-CCCLK	Pardee Homes of Nevada (223.00)
10/25/2012	Transaction Assessment		200.00
10/25/2012	Wiznet	Receipt # 2012-132527-CCCLK	Pardee Homes of Nevada (200.00)
07/23/2013	Transaction Assessment		200.00
07/23/2013	Wiznet	Receipt # 2013-88565-CCCLK	Pardee Homes of Nevada (200.00)
06/30/2015	Transaction Assessment		5.00
06/30/2015	Payment (Window)	Receipt # 2015-68194-CCCLK	John W. Muije & Associates (5.00)
Counter Defendant Wolfram, James			
	Total Financial Assessment		654.50
	Total Payments and Credits		654.50
	Balance Due as of 12/08/2015		0.00
12/29/2010	Transaction Assessment		30.00
12/29/2010	Transaction Assessment		270.00
12/29/2010	Wiznet	Receipt # 2010-73364-CCCLK	Wolfram, James (300.00)
11/08/2012	Transaction Assessment		200.00
11/08/2012	Wiznet	Receipt # 2012-138724-CCCLK	Wolfram, James (200.00)
04/11/2014	Transaction Assessment		4.50
04/11/2014	Payment (Window)	Receipt # 2014-43035-CCCLK	Jimmerson Hansen Attorney at L (4.50)
07/01/2015	Transaction Assessment		50.00
07/01/2015	Payment (Window)	Receipt # 2015-68798-CCCLK	John W Muije & Associates (50.00)
07/07/2015	Transaction Assessment		10.00
07/07/2015	Payment (Window)	Receipt # 2015-70755-CCCLK	John W Muije & Associates (10.00)
07/09/2015	Transaction Assessment		90.00
07/09/2015	Payment (Window)	Receipt # 2015-71818-CCCLK	John W Muije & Associates (90.00)

		Plaintiff Limbocker-Wilkes, Angela L.	
		Total Financial Assessment	30.00
		Total Payments and Credits	30.00
		Balance Due as of 12/08/2015	0.00
07/25/2014	Transaction Assessment		30.00
07/25/2014	Wiznet	Receipt # 2014-85488-CCCLK	Limbocker-Wilkes, Angela L. (30.00)



CLERK OF THE COURT

RSPN
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
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Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PARDEE HOMES OF NEVADA'S
CONSOLIDATED RESPONSE TO:**

**(1) PLAINTIFFS' NOTICE OF NON-
REPLY AND NON-OPPOSITION
TO PLAINTIFFS' OPPOSITION
TO PARDEE'S MOTION TO
AMEND JUDGMENT AND
COUNTERMOTION FOR
ATTORNEY'S FEES;**


AND

**(2) PLAINTIFFS' SUPPLEMENT TO
PLAINTIFFS' OPPOSITION TO
PARDEE'S MOTION FOR
ATTORNEY'S FEES AND
COSTS**

AND RELATED CLAIMS

I. ARGUMENT.

On the eve of the Court's scheduled hearing on all of the parties' post-judgment motions, Plaintiffs filed what they claim to be a Notice of Defendant Pardee Homes of Nevada's Non-Reply and Non-Opposition to Plaintiffs' Opposition to Pardee Homes of

 **McDONALD-CARANO-WILSON**
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1 Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees (the
2 "Notice") and a Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's
3 Fees and Costs (the "Supplement"). The dilatory nature of Plaintiffs filing these
4 documents less than 24 hours before the hearing is obvious. Beyond this
5 gamesmanship, and as with all other post-judgment documents that Plaintiffs have
6 filed, the Notice and Supplement are also ill-conceived and without support in either fact
7 or law.

8 **A. Plaintiffs' Notice Is Meritless.**

9 The gist of Plaintiffs' erroneous contentions in the Notice is that Pardee did not
10 file any reply brief in support of Pardee's Motion to Amend Judgment (the "Motion") and
11 therefore Pardee concedes the Motion has no merit. See Notice at 2:18-23.
12 Additionally, Plaintiffs also claim that the Court can summarily award attorney's fees
13 and costs to them because they filed a countermotion for sanctions against Pardee that
14 it did not oppose. See *id.*

15 Nonsense. First, although Plaintiffs cite EDCR 2.20, they misinterpret it to claim
16 that Pardee must file a reply in support of its motions or otherwise concede they have
17 no merit. This is plainly incorrect. EDCR 2.20(h) is permissive and states that a party
18 "may" file a reply memorandum, but that any such a reply is not mandatory. In this
19 matter, Pardee strategically chose not to file a reply brief because the Plaintiffs had
20 already bombarded the Court with several meritless post-judgment motions. Pardee
21 did not want to add to the Court's already considerable workload. Moreover, Pardee
22 had addressed Plaintiffs' similar arguments in multiple other filings by the Plaintiffs, and
23 it would have been both redundant and wasteful of the Court's time to address them
24 again. Thus, Pardee concedes nothing, and it stands behind the Motion's arguments.

25 Second, Plaintiffs violated EDCR 2.20(f) when they filed a purported
26 "countermotion" jointly with their opposition to Pardee's Motion. Pardee is not required
27 to oppose Plaintiffs' improperly filed countermotion. EDCR 2.20(f) permits a party
28 opposing a motion to file a countermotion only when the countermotion "relate[s] to the

1 same subject matter” as the original motion. Pardee’s Motion related solely to the very
2 narrow topic of the Court awarding Plaintiffs certain attorney’s fees as special damages.
3 On the other hand, Plaintiffs concede that their countermotion seeks attorney’s fees as
4 sanctions pursuant to EDCR 7.60 and NRS 18.010 and has nothing to do with
5 attorney’s fees as special damages or amending the Court’s judgment. See Notice at
6 4:3-12. Thus, Plaintiffs’ purported countermotion does not relate to the same subject
7 matter as Pardee’s Motion. Pursuant to EDCR 2.20(f), Plaintiffs were consequently
8 required to file the countermotion as a separate motion and serve Pardee with a notice
9 of hearing related to that motion. See *also* EDCR 2.20(b) (“All motions must contain a
10 notice of motion setting the same for hearing on a day when the district judge . . . is
11 hearing civil motions in the ordinary course.”). Because they did not, Pardee was not
12 required to oppose Plaintiffs’ incorrectly filed countermotion.

13 Third, by invoking EDCR 7.60(b) in the countermotion to claim Pardee should be
14 sanctioned for filing the Motion (which Plaintiffs argue is frivolous), Plaintiffs incorrectly
15 attempt to expand EDCR 7.60 beyond the scope of NRCP 11. The Nevada Supreme
16 Court has been resolute in stating that “district court rules must be consistent with the
17 Nevada Rules of Civil Procedure” and cannot exceed the scope of their NRCP
18 brethren. *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 643 at fn. 4, 837 P.2d
19 1354, 1358 (1992). Thus, the *Fluor Illinois* court held that EDCR 7.60 could not exceed
20 the scope of NRCP 37. For similar reasons, Plaintiffs cannot expand EDCR 7.60
21 beyond the scope of NRCP 11, which requires parties seeking sanctions for purportedly
22 frivolous filings to make a motion for sanctions “separately from other motions or
23 requests.” NRCP 11(c)(1)(A). NRCP 11 also provides a 21-day safe harbor for the
24 opposing litigant to withdraw or correct the purportedly frivolous filing. See *id.* Indeed,
25 even EDCR 7.60 itself requires “notice and an opportunity to be heard.” EDCR 7.60(b).
26 As discussed above, by jamming the countermotion into its opposition, Plaintiffs not
27 only violated NRCP 11(c)’s requirements that sanctions motions be brought “separately
28 from other motions” and that they include 21 days of safe harbor, but Plaintiffs also

1 failed to provide any notice as required by EDCR 7.60(b). Thus, the Court should
2 ignore Plaintiffs' counter-motion and its request for sanctions because Plaintiffs, not
3 Pardee, have blatantly violated NRCP 11 and EDCR 7.60(b).

4 Finally, Plaintiffs' argument that Pardee's Motion is frivolous because the Court
5 considered the case of *Liu v. Christopher Homes, LLC* in its Findings of Fact and
6 Conclusions of Law (the "Findings and Conclusions") is incorrect. See Plaintiffs'
7 Opposition at 16:17-17:15. Pardee readily admits that the Court cited *Liu* in its
8 Findings and Conclusions, which the Court then incorporated into the judgment in this
9 case. Indeed, Pardee's entire argument in the Motion as to why the judgment should
10 be amended is that the Court incorrectly awarded Plaintiffs' their attorney's fees as
11 special damages, which, although it cited *Liu*, the Court cannot do under that case.

12 To refresh the Court's recollection, the parties extensively briefed *Sandy Valley*
13 *Assoc. v. Sky Ranch Owners Assoc.* in March 2013 during pre-trial hearings on the
14 parties' various motions in limine. See, e.g., Defendant's Motion in Limine to Exclude
15 Plaintiffs' Claim for Attorneys' Fees as an Element of Damages at 6:1-7:18, on file with
16 the Court. In ruling on those motions, the Court determined that Plaintiffs could seek
17 attorney's fees as special damages pursuant to *Sandy Valley*. Between that
18 determination and when the Court entered the judgment in this matter, the Nevada
19 Supreme Court decided *Liu*, which modifies *Sandy Valley* and holds that special
20 damages are inappropriate in routine breach of contract cases (as this case is).¹ But
21

22
23 ¹ Characteristic of its rush to file all of its post-judgment motions and oppositions,
24 Plaintiffs mistakenly claim that Pardee has "provided no authority regarding applicability
25 of case law determined after the closure of trial on this matter; that is, that a subsequent
26 ruling applies retroactively to this matter." Notice at 16:11-14. But Plaintiffs' premise is
nonsensical because the Nevada Supreme Court decided *Liu* on March 27, 2014, and
the Court did not enter its final judgment in this case until June 15, 2015. See Notice of
Entry of Judgment, on file with the Court.

27 Moreover, the very fact that Plaintiffs admit the Court cited *Liu* in its Findings and
28 Conclusions shows that the Court did not "retroactively" apply *Liu* to this matter.
Instead, the Nevada Supreme Court decided *Liu* before the Court entered any final
determination in this matter, and the Court thus cited *Liu* in its Findings and

1 the parties never had a chance to formally brief *Liu* for the Court, and so the Court
2 incorrectly but understandably cited *Liu* in its Findings and Conclusions as supporting
3 its previous award of Plaintiffs' attorney's fees as special damages. The Court
4 incorporated the same in its judgment awarding Plaintiffs special damages, which is
5 plain error given *Liu*'s reasoning.

6 Thus, Plaintiffs' concession that the Court relied on *Liu* in the Findings and
7 Conclusions to grant them special damages does not invalidate Pardee's Motion.
8 Instead, it strengthens the Motion and shows why amending the judgment is necessary
9 to rectify the Court's error in relying on *Liu* to grant Plaintiffs' special damages in this
10 routine breach of contract matter.

11 **B. Plaintiffs' Supplement Is Similarly Defective.**

12 Amusingly, after accusing Pardee of delayed filings, Plaintiffs filed their
13 "supplement" to their Opposition to Pardee's Motion for Attorney's Fees and Costs less
14 than 24 hours before the Court's hearing on the post-judgment motions. In doing so,
15 Plaintiffs blatantly violated EDCR 2.20(i), which states that "[s]upplemental briefs will
16 only be permitted if filed within the original time limitations" for filing motions,
17 oppositions, and reply briefs "or by order of the court." Pardee filed its Motion for
18 Attorney's Fees and Costs on May 28, 2015, which means Plaintiffs' opposition and any
19 "supplement" under EDCR 2.20(i) was due no later June 15, 2015 absent a court order.
20 The Court entered no such order extending Plaintiffs' time to file a supplemental brief.
21 Accordingly, because Plaintiffs filed their "supplement" on December 8, 2015, it is
22 nearly six months past EDCR 2.20's deadlines, and the rule requires the Court to strike
23 it.

24 Yet even if the Court considered it, the Supplement adds nothing to the record.
25 In claiming a "gotcha" moment, Plaintiffs attach Pardee's Proposed Findings of Fact
26 and Conclusions of Law ("Proposed Findings and Conclusions") to their Supplement

27
28 Conclusions. Consequently, it is entirely appropriate, and indeed shows considerable
judicial diligence, for the Court to ensure that its judgment does not conflict with *Liu*.


1 and argue that Pardee “makes no specific reference to any request by Plaintiffs for a
2 finding or judgment in the amount of \$1.8 million or any derivation therefrom.” See
3 Supplement at 2:3-8. This is untrue. Initially, Pardee argued from the case’s beginning
4 that it did not owe Plaintiffs any additional commissions, and numerous paragraphs in
5 Pardee’s Proposed Findings and Conclusions confirm this approach. For example,
6 Pardee’s Proposed Conclusion 11 states that “Pardee paid Plaintiffs in full and timely
7 commissions.” See Exh. 1 to Supplement at 10:26-26. Proposed Conclusion 17 states
8 that “[T]he change in boundaries had absolutely no impact on the amount or due date
9 of Plaintiffs’ commissions.”² See *id.* at 12:6-8. Proposed Conclusion 35 explicitly
10 shows Pardee wanted the Court to deny Plaintiffs’ claims to additional commissions:

11 The evidence in this case shows that **Pardee fully performed under the**
12 **terms of the Commission Agreement by paying a total of all required**
13 **commissions to Plaintiffs** related to Pardee’s purchase of single-family
14 **production residential property from CSI. This amount constitutes all**
15 **commissions owed to Plaintiffs since Pardee has not acquired any**
16 **Option Property pursuant to paragraph 2 of the Option Agreement.**

17 See *id.* at 15:10-14 (emphasis added). Thus, contrary to Plaintiffs’ claims that Pardee’s
18 Proposed Findings and Conclusions were silent regarding Plaintiffs’ additional
19 commissions, they were in fact carefully drafted by Pardee’s counsel to include
20 numerous proposed findings and conclusions denying Plaintiffs’ claims to additional
21 commissions. See *generally id.*

22 Moreover, in submitting the Proposed Findings and Conclusions, Pardee was
23 not required to do Plaintiffs’ work for them by raising the issue of Plaintiffs’ affirmative
24 claims to additional commissions. The Court itself requested competing findings and
25 conclusions so that it could weigh them against the evidence the parties presented at
26 trial. Inherent in that method of submission is that each party would present its

27 ² Given the multiple post-judgment filings, the Court is no doubt aware that
28 Plaintiffs’ argument for seeking additional commissions was that Pardee re-designated
land and allegedly changed boundaries on the project, thereby purportedly “robbing”
Plaintiffs of an additional \$1.8 million in lost commissions.

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strongest claims and defenses, not those of the other party. Thus, Plaintiffs' contention that Pardee did not specifically refer to \$1.8 million in Plaintiffs' claimed lost commissions is not a "gotcha" moment at all, but rather exactly what the Court asked the parties to do. Plaintiffs' attempt to argue otherwise is disingenuous and in bad faith.

II. CONCLUSION.


The Notice has no merit because Pardee was not required to file a reply in support of its Motion, and Plaintiffs were not permitted under EDCR 2.20 to bring their "countermotion" for sanctions without complying with the procedural safeguards in NRCP 11. They did not, and so the Court should strike the countermotion. Moreover, the Supplement is untimely and violates EDCR 2.20. It also adds nothing to the record and has no basis in fact. Accordingly, Pardee respectfully request that the Court strike the Notice and Supplement.

DATED this 30th day of December, 2015.

MCDONALD CARANO WILSON LLP

/s/ Rory T. Kay
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 30th day of December, 2015, I served a true and correct copy of the foregoing **PARDEE HOMES OF NEVADA’S CONSOLIDATED RESPONSE TO: (1) PLAINTIFFS’ NOTICE OF NON-REPLY AND NON-OPPOSITION TO PLAINTIFFS’ OPPOSITION TO PARDEE’S MOTION TO AMEND JUDGMENT AND COUNTERMOTION FOR ATTORNEY’S FEES; AND (2) PLAINTIFFS’ SUPPLEMENT TO PLAINTIFFS’ OPPOSITION TO PARDEE’S MOTION FOR ATTORNEY’S FEES AND COSTS**, via e-service through Wiznet as utilized in the 8th Judicial District on the following:

James J. Jimmerson
Holly A. Fic
Kim Stewart
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101

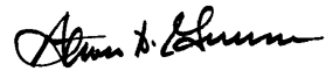
Attorney for Plaintiffs

and

John W. Muije
John W. Muije & Assoc.
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Las Vegas, NV 89104

Co-counsel for Plaintiffs

/s/ Marianne Carter
An Employee of McDonald Carano Wilson LLP



CLERK OF THE COURT

RPLY

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

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

Hearing Date: January 15, 2016
Hearing Time: 10:00 a.m.


PLAINTIFFS' REPLY TO DEFENDANT'S CONSOLIDATED RESPONSE TO (1)
PLAINTIFFS' NOTICE OF NON-REPLY AND NON-OPPOSITION TO PLAINTIFFS'
OPPOSITION TO PARDEE'S MOTION TO AMEND JUDGMENT AND
COUNTERMOTION FOR ATTORNEY'S FEES AND (2) PLAINTIFFS' SUPPLEMENT
TO PLAINTIFFS' OPPOSITION TO PARDEE'S MOTION FOR ATTORNEY'S FEES
AND COSTS

COME NOW, Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-
WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-
WILKES LIVING TRUST, by and through their counsel of record, James J. Jimmerson,
Esq. and Michael C. Flaxman, Esq., of THE JIMMERSON LAW FIRM, P.C., and

1 hereby files Plaintiffs' Reply to Defendant's Consolidated Response to (1) Plaintiffs'
2 Notice of Non-Reply and Non-Opposition to Plaintiffs' Opposition to Pardee's Motion to
3 Amend Judgment and Countermotion for Attorney's Fees and (2) Plaintiffs'
4 Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs.
5 This Reply is based upon the papers and pleadings on file in this case, the exhibits
6 attached to the original moving brief and the Memorandum of Points and Authorities
7 attached hereto, and any argument adduced at the time of hearing on this matter.

8 DATED this 11th day of January, 2016.

9 THE JIMMERSON LAW FIRM, P.C.

10 
11 JAMES J. JIMMERSON, ESQ.
12 Nevada State Bar No. 000264
13 MICHAEL C. FLAXMAN, ESQ.
14 Nevada State Bar No. 12963
15 415 South Sixth Street, Suite 100
16 Las Vegas, Nevada 89101
17 Attorneys for Plaintiffs

18 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION AND BRIEF STATEMENT OF FACTS**

20 Defendant's, Pardee Homes of Nevada (hereinafter "Pardee") contention that
21 Plaintiffs' Notice of Non-Opposition and/or Supplement filing, which consisted simply of
22 Pardee's proposed Findings of Facts and Conclusions of Law which were previously
23 provided to this Court by Pardee's prior to the commencement of Trial in the instant
24 matter in or about October 2013, is an act of gamesmanship, ill-conceived or without
25 support in fact or law is wholly without merit.

26 The facts surrounding Plaintiffs' recent filings are rudimentary. On or about July
27 17, 2015, in response to Pardee's filing of their Motion to Amend Judgment, Plaintiffs
28 timely filed and served their Opposition to said Motion upon Pardee, which included and
incorporated a Countermotion for an award of attorney's fees. Plaintiffs'

1 Countermotion thoroughly related to Pardee's Motion to Amend Judgment and Plaintiffs'
2 Opposition thereto. Simply, Pardee never intended to fail to respond to Plaintiffs'
3 Opposition for an award of attorney's fees; however, upon receipt of Plaintiffs' Notice of
4 Non-Opposition prior to the previously scheduled December 9, 2015 hearing date,
5 Pardee now attempts to revise the history of this case, *once again*, and again
6 misinterprets applicable statutory authority and applicable Court rules.

7 Furthermore, Plaintiffs' Supplement merely contained a document which had
8 previously been provided to this Court by Pardee prior to the Trial in the matter, namely
9 Pardee's proposed Findings of Fact and Conclusions of Law, which reiterate Plaintiffs'
10 position that Plaintiffs never sought, claimed and/or requested an award of attorney's
11 fees from Pardee, particularly any specific sum of monies.

12 II. LEGAL ARGUMENT

13 A. Plaintiffs' Notice of Non-Opposition related to its Countermotion for an 14 Award of Attorney's Fees

15 As discussed *inter alia*, in conjunction and contemporaneous to Plaintiffs'
16 Opposition to Pardee's Motion to Amend Judgment properly included Plaintiffs'
17 Countermotion against Pardee, seeking an award of attorney's fees and costs for
18 having to defend such a meritless and vexatious pleading.
19

20 Pardee now avers that Plaintiffs have violated EDCR 2.20 by the filing of a
21 separate and distinct Countermotion which was wholly unrelated to Pardee's Motion to
22 Amend Judgment.

23 EDCR 2.20 provides in pertinent part:

24 (f) An opposition to a motion which contains a motion related to the same
25 subject matter will be considered as a counter-motion. A counter-motion
26 will be heard and decided at the same time set for the hearing of the
27 original motion and no separate notice of motion is required.

28 [Emphasis added].

1 The entire basis for Plaintiffs' opposition to Pardee's Motion to Amend Judgment
2 was predicated upon the contention that Pardee's pleading was completely without
3 merit, was frivolous, unwarranted and so multiplied the instant proceedings
4 unnecessarily. Plaintiffs' Countermotion addressed these issues, by way of a request
5 for an award of attorney's fees, by seeking redress pursuant to NRS 18.010 and EDCR
6 7.60. Plaintiffs' Countermotion was absolutely and unmistakably related to Pardee's
7 Motion to Amend Judgment. While Plaintiffs will spare the Court a retread of
8 Plaintiffs' valid and justifiable arguments contained within its Opposition, it is
9 undeniable that Plaintiffs' request for an award of fees is directly related to Pardee's
10 Motion and the merits, or lack thereof, of the same.
11

12 Additionally, EDCR 2.20(e) provides:

13
14 Within 10 days after the service of the motion, and 5 days after service of
15 any joinder to the motion, the opposing party must serve and file written
16 notice of nonopposition or opposition thereto, together with a
17 memorandum of points and authorities and supporting affidavits, if any,
18 stating facts showing why the motion and/or joinder should be denied.
Failure of the opposing party to serve and file written opposition may be
construed as an admission that the motion and/or joinder is meritorious
and a consent to granting the same.

19 Pardee had ten (10) days from the service of Plaintiffs' Countermotion, which
20 was electronically served upon Pardee on or about July 15, 2015, in which to oppose
21 the same. To date, Pardee has willfully and knowingly failed to file an Opposition.
22 Pardee likely forgot to file its Opposition in consideration of the tangled web of filings
23 they themselves unnecessarily created in this matter. Now Pardee attempts to have
24 this Court believe somehow that Plaintiffs' Countermotion was itself unrelated to
25 Pardee's Motion to Amend Judgment and necessitated the filing of an independent and
26 separate Motion, containing its own Notice of Motion. Any interpretation of EDCR 2.20
27
28

1 would lend itself to the conclusion that Pardee was affirmatively obligated to respond to
2 Plaintiffs' Countermotion for an award of attorney's fees. To confirm Pardee's
3 improper interpretation of EDCR 2.20, if they truly believed that Plaintiffs'
4 Countermotion was improper and was violated of the rule, why did not Pardee file *any*
5 objection to Plaintiffs' Countermotion? Rather than filing an appropriate objection or a
6 proper Opposition, Pardee did nothing. However, Pardee now spends significant time
7 in its consolidated response addressing Plaintiffs' Countermotion, which they allege is
8 improper and without merit. It is abundantly clear from Pardee's desperate attempt to
9 convince this Court that Plaintiffs' Countermotion violates EDCR 2.20, while providing
10 an opposition to the same in its response, that Pardee is sufficiently aware it dropped
11 the ball in its response, or lack thereof.

12
13 Moreover, Pardee's alleges that Plaintiffs' Countermotion attempts to expand
14 EDCR 7.60 beyond the scope of NRCP 11.

15 EDCR 7.60(b) provides:

16
17 (b) The court may, after notice and an opportunity to be heard, impose
18 upon an attorney or a party any and all sanctions which may, under the
19 facts of the case, be reasonable, including the imposition of fines, costs or
20 attorney's fees when an attorney or a party without just cause:

- 21 (1) Presents to the court a motion or an opposition to a motion
22 which is obviously frivolous, unnecessary or unwarranted.
23 (2) Fails to prepare for a presentation.
24 (3) So multiplies the proceedings in a case as to increase costs
25 unreasonably and vexatiously.
26 (4) Fails or refuses to comply with these rules.
27 (5) Fails or refuses to comply with any order of a judge of the court.
28

25 EDCR 7.60(b)(3) is wholly distinct from NRCP 11. Plaintiffs seek an award of
26 attorney's fees and costs pursuant to EDCR 7.60, along with NRS 18.010, for Pardee
27 having multiplied the proceedings in this case, so as to increase Plaintiffs' litigation
28

1 costs unreasonably and vexatiously for having to defend a meritless Motion which
2 contained issues that had previously been adjudicated by this Court on several
3 occasions. EDCR 7.60 provides an avenue for the imposition of sanctions for such
4 willful behavior, absent NRCP 11. As such, Plaintiffs' Supplement, which never
5 references NRCP 11, was proper and not violative of any Court rule or rule of civil
6 procedure.

7
8 ***B. Plaintiffs' Supplemental Filing***

9
10 Secondly, Pardee avers that Plaintiffs' Supplemental filing of Pardee's proposed
11 Findings of Fact and Conclusions of Law is defective as well. Pardee states that
12 "Plaintiffs blatantly violated EDCR 2.20(i)".

13 EDCR 2.20(i) provides:

14
15 A memorandum of points and authorities which consists of bare citations
16 to statutes, rules, or case authority does not comply with this rule and the
17 court may decline to consider it. Supplemental briefs will only be
18 permitted if filed within the original time limitations of paragraphs (a), (b),
19 or (d), or by order of the court.

20 This rule clearly is applicable to supplemental briefs filed in support of a Motion
21 and/or Countermotion. Plaintiffs' supplemental filing simply consisted of a document
22 which was previously provided to the Court, and Plaintiffs', prior to the commencement of
23 Trial in this matter, nothing more. Plaintiffs' Supplement included no factual statement or
24 legal argument. Plaintiffs' merely desired to ensure the Court was provided with
25 important and applicable information related to the numerous claims made by Pardee with
26 respect to Plaintiffs' alleged requests and demands for an award of specific monies as and
27 for unpaid commissions by Pardee to Plaintiffs. Pardee has alleged that Plaintiffs sought
28 reimbursement for unpaid commissions, more specifically \$1.8 million. The document
attached to Plaintiffs' Supplement is further indicia of the falsity of Pardee's statements

1 related to commission payments. Pardee's own document fails to confirm that Plaintiffs'
2 sought \$1.8 million in unpaid commissions, or any derivation therefrom.

3 **III. CONCLUSION**

4 Based on the foregoing, Plaintiffs respectfully request that this Court summarily
5 award Plaintiffs attorney's fees as requested in their Countermotion to Pardee's Motion to
6 Amend Judgment, based upon Pardee's willful failure to file a responsive pleading to the
7 same and find that Plaintiffs' Supplement was just and proper.

8 DATED this 11th day of January, 2016.

10 THE JIMMERSON LAW FIRM, P.C.

11 

12 JAMES J. JIMMERSON, ESQ.

13 Nevada State Bar No. 000264

14 MICHAEL C. FLAXMAN, ESQ.

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18 Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' REPLY TO
DEFENDANT'S CONSOLIDATED RESPONSE TO (1) PLAINTIFFS' NOTICE OF
NON-REPLY AND NON-OPPOSITION TO PLAINTIFFS' OPPOSITION TO PARDEE'S
MOTION TO AMEND JUDGMENT AND COUNTERMOTION FOR ATTORNEY'S
FEES AND (2) PLAINTIFFS' SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO
PARDEE'S MOTION FOR ATTORNEY'S FEES AND COSTS was made on the 14th
day of January, 2016, as indicated below:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
Administrative Order 14-2 captioned "In the Administrative Matter of
Mandatory Electronic Service in the Eighth Judicial District Court,"
by mandatory electronic service through the Eighth Judicial District
Court's electronic filing system upon each party in this case who is
registered as an electronic case filing user with the Clerk;
- ☐ by placing same to be deposited for mailing *via Certified Mail* in the United
States Mail, in a sealed envelope upon which first class postage
was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed
consent for service by electronic means;
- ☐ by hand-delivery with signed Receipt of Copy.

To the parties listed below at the address, email address, and/or facsimile number
indicated below:

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