

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 02:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

JOINT APPENDIX – VOLUME 70 OF 88

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Chronological Index to Joint Appendix

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date	Document Description	Volume	Labeled
06/30/2015	Supplement to Plaintiffs' Pending Motion for Attorney's Fees and Costs, Motion to Strike Judgment, Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment, and Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	59	JA009110- JA009206
07/02/2015	Pardee Homes of Nevada's Motion to Amend Judgment	59	JA009207- JA009283
07/08/2015	Plaintiffs' Opposition to Pardee's Motion to Retax Costs	60-61	JA009284- JA009644
07/08/2015	Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document	62	JA009645- JA009652

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

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

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

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

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

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

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

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

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

Alphabetical Index to Joint Appendix

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date	Document Description	Volume	Labeled
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time	17	JA002870- JA002874
07/15/2014	Reply in Support of Pardee's Motion to Expunge Lis Pendens	48	JA007560- JA007570
08/17/2015	Reply Points and Authorities in Support of Motion for Reconsideration	67	JA010670- JA010678
11/08/2011	Scheduling Order	1	JA000028- JA000030
06/06/2013	Second Amended Complaint	16	JA002670- JA002677
04/17/2013	Second Amended Order Setting Civil Non-Jury Trial	16	JA002501- JA002502
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
08/29/2012	Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000051- JA000054
06/30/2015	Supplement to Plaintiffs' Pending Motion for Attorney's Fees and Costs, Motion to Strike Judgment, Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment, and Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	59	JA009110- JA009206
09/27/2013	Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment	21	JA003204- JA003209
07/12/2007	Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014106- JA014110

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

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

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

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

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

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

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

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

Dated this 28th day of February, 2018.

McDONALD CARANO LLP

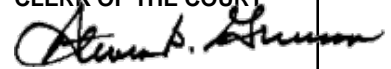
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CERTIFICATE OF SERVICE

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

/s/ Beau Nelson
An Employee of McDonald Carano LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,)
)
 PLAINTIFF,)
)
 vs.) CASE NO. A632338
)
 PARDEE HOMES OF NEVADA,)
)
 DEFENDANT.)

ORIGINAL

REPORTER'S TRANSCRIPT

OF

PROCEEDINGS

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE

HELD ON FRIDAY, JANUARY 15, 2016

AT 10:00 A.M.

LAS VEGAS, NEVADA

APPEARANCES:

For the Plaintiff: JAMES J. JIMMERSON, ESQ.
MICHAEL C. FLAXMAN, ESQ.

For the Defendant: PATRICIA K. LUNDVALL, ESQ.
RORY T. KAY, ESQ.

Reported by: Loree Murray, CCR No. 426

Loree Murray, CCR #426
District Court IV

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 15, 2016

2 10:00 A.M.

3
4 * * * * *

5 THE COURT: Good morning, counsel.

6 MR. JIMMERSON: Good morning.

7 MS. LUNDVALL: Good morning, your Honor.

8 THE COURT: Thank you very much for letting
9 me do this session today. I was in the middle of a
10 triple kidnapping. I thought it was unfair to you and
11 kind of unfair to the Court because I had worked on all
12 this, but I just could not give you the time in the
13 middle of that, so thank you for letting me reset it.

14 MS. LUNDVALL: I'm hoping it wasn't you that
15 was being kidnapped.

16 THE COURT: Not at all. We were in the trial
17 for a while, three weeks, but it was one of those cases
18 we were trying to complete before Christmas. We made
19 it, whatever, so we were just out of time. And typical
20 in criminal, you did not know it was going to go
21 forward but it did.

22 Okay, here's what I've done, I have put these
23 motions in the order that I think they should go in.
24 Bear with me and make sure.

25 I've gone through them all, but I have broken

1 them up. I have no idea what the calendar says. I
2 quit looking at it, it was so confusing to me, counsel,
3 so I will start with how I've done the orders so you
4 can kind of follow what the Court's doing.

5 The first one I have, since some of them were
6 duplicates, I have plaintiffs' motion to strike
7 judgment entered June 15th, 2015, pursuant to NRCP
8 52(b) and NRCP 59 as unnecessary and duplicative orders
9 of final orders entered on June 25th, 2 thousand -- I
10 don't know if that's the right date -- June 25th, 2014,
11 and May 13th, and such that the, that judgment that was
12 entered on the 6/15/2015 was punitive -- no, fugitive.

13 I'm starting with that, because that's a
14 procedural one. To me, that was a little bit easier,
15 so if we want to start with that, and I did look at
16 NRCP 58(a), Mr. Jimmerson.

17 MR. JIMMERSON: Yes, your Honor.

18 THE COURT: And I, I will tell you I do agree
19 that we do need a judgment. It does require the entry
20 of a judgment in this case. Convince me otherwise,
21 because I read through all the motions, and I did
22 extensive research as best I could on my own to see,
23 you know, when it came up, Hey, was the, was my order,
24 my findings of fact, conclusions of law order that was
25 entered on 6/25/2014, plus, as we know, the

1 supplemental one which was required because I had asked
2 for that on the supplemental briefing regarding the
3 future accounting, and that was entered on 5/13/2015,
4 and had this judgment was subsequent, but you tell me.

5 I do believe under NRCP 58(a) that a judgment
6 was required.

7 MR. JIMMERSON: Right.

8 THE COURT: Do you agree with me? Or if I'm
9 off, tell me why.

10 MR. JIMMERSON: Thank you, Judge.

11 THE COURT: Yes. I want to start there.

12 MR. JIMMERSON: I do not agree with you, but
13 thank you very much.

14 THE COURT: So I'm not doing substance. We
15 don't go to the substance yet. I really want to --

16 MR. JIMMERSON: I read you loud and clear.

17 THE COURT: I worked very hard to do issue by
18 issue, and I'm sure you feel the same way, because we
19 could be here -- okay, so I want to be very clear on
20 the record I'm not going to the substance, I'm strictly
21 doing it as whether it is, a judgment, would be a
22 fugitive document under NRCP 58(a).

23 MR. JIMMERSON: Thank you, Judge.

24 THE COURT: Okay. I'm not trying to be --
25 loud and clear I guess is good.

1 MR. JIMMERSON: Yes, your Honor, and I
2 appreciate the direction, and I will speak to that, as
3 you say, and not to the substance.

4 THE COURT: Right. I'm not there yet.

5 MR. JIMMERSON: I will comply with the
6 Court's orders.

7 We had this trial submitted to you December
8 of 2013. You issued your first order, I believe it was
9 June 25 --

10 THE COURT: 2014, yes, my findings of fact,
11 conclusions of law and order.

12 MR. JIMMERSON: Right. Now, you, you would
13 know what you intended.

14 THE COURT: Absolutely.

15 MR. JIMMERSON: I don't, I don't have, you
16 know, the opportunity to go inside your mind what you
17 were thinking, but I know what you produced, and I
18 think the work product that you did evidenced you spent
19 really a lot of time and effort and concern, and, you
20 know, every effort to be fair to both parties and a
21 very good effort to interpret the evidence as you
22 understood it, and you made your findings.

23 So what you did procedurally is you issued
24 your ruling on June 25, 2013.

25 THE COURT: And order.

1 MR. JIMMERSON: And you addressed all of the
2 issues that were presented by both sides at trial on
3 seven days between October and December 2013. And then
4 we also followed our request, plaintiffs' request for
5 an accounting, which the Court granted as part of its
6 findings of fact and conclusions of law of June 25.

7 THE COURT: Right.

8 MR. JIMMERSON: So what we had at that point,
9 in my judgment, was, and my interpretation of what you
10 had done is a final order and judgment. You didn't use
11 the word "judgment."

12 THE COURT: I did not.

13 MR. JIMMERSON: Okay. But you used the word
14 "order" where you have findings of fact, conclusions of
15 law and order that resolves all matters with regards to
16 our breach of contract, our breach of the implied
17 covenant of good faith and fair dealing and our need
18 for accounting, and you then granted our request which
19 we had made to you in our opening statement and
20 throughout the trial and our closing statements that
21 there be a second proceeding of some sort.

22 THE COURT: Right. I wanted supplemental
23 briefing on how we were going to decide, since I
24 granted the accounting, how we can agree this should be
25 done based on the evidence.

1 MR. JIMMERSON: Exactly.

2 THE COURT: Absolutely, and that was very
3 explicit --

4 MR. JIMMERSON: Right.

5 THE COURT: -- in my order, because I did not
6 have information at trial on how we could do that --

7 MR. JIMMERSON: Correct.

8 THE COURT: -- when I looked through all the
9 evidence. That's very true.

10 MR. JIMMERSON: But then say I can't read
11 your mind, you would need to tell us whether you
12 intended that to be a final judgment on the monetary
13 issues and the --

14 THE COURT: I will tell you I did not. I
15 envisioned, and I'm very honest and up front, I
16 envisioned after we did the second one, I expected,
17 after we did the supplemental and we got all that
18 worked out, and that was my second order, I envisioned
19 a final judgment.

20 MR. JIMMERSON: Okay.

21 THE COURT: And the reason I wanted that is
22 so both parties would know here's where we're at, and
23 here's, you know, especially in a case like this, and
24 everybody is a very zealous advocate, as we know, and
25 there were a lot of issues. That's why I worked so

1 hard, you know, I'm not asking for -- I worked so hard.

2 MR. JIMMERSON: I understand.

3 THE COURT: I'm just saying that's why I
4 tried to be as explicit as I could in this one, and I
5 envisioned that going into a judgment.

6 MR. JIMMERSON: All right.

7 THE COURT: So I did, and that's why I did
8 not put "judgment."

9 MR. JIMMERSON: Okay.

10 THE COURT: I'll be honest, I thought about
11 it until I realized I need the supplemental briefing on
12 what we were gonna do on the accounting, and I wanted a
13 judgment under 58(a) to have no questions.

14 MR. JIMMERSON: Right.

15 THE COURT: And where each party, especially
16 in a case like this, I will tell both of you, since
17 there are future duties based on what Pardee may do in
18 the future, that's why, that's why I did what I did.

19 And if I would have found enough facts and
20 evidence in what was given at the trial to have done
21 the accounting thing, I would have, but until I ruled
22 on the accounting, I, I looked for -- there was not
23 enough evidence for me to feel comfortable in saying
24 what Pardee should do to comply with that future.

25 I felt like, and I'll be -- I, I wanted more

1 information to be able to then complete that part of
2 the order.

3 MR. JIMMERSON: And we agree, because --

4 THE COURT: Okay. And that's why. In fact,
5 you agreed because you all worked on it for me very
6 hard.

7 MR. JIMMERSON: And in the fall of --

8 THE COURT: I agree both of you worked very
9 hard to get me that --

10 MR. JIMMERSON: Okay.

11 THE COURT: -- supplemental order, and that's
12 why I also didn't put "judgment" on that when it was
13 given to me, can I be very honest, on the one, and you
14 want me to be, 5/13/2015.

15 MR. JIMMERSON: May 13, yes, your Honor.

16 THE COURT: I'm telling you in my head that's
17 why when I had these two, then I did envision a final
18 judgment.

19 MR. JIMMERSON: Okay.

20 THE COURT: So we would have one document so
21 both parties would know where we're at, what was owed
22 and what was then -- and then I envisioned after the
23 judgment that we then would have the costs and the
24 attorney's fees and all the post-judgment, so I did, I
25 will be honest.

1 MR. JIMMERSON: Okay. Well, then you have
2 resolved the matter.

3 THE COURT: Okay, so that's, that's why. So
4 that was when I --

5 MR. JIMMERSON: The purpose for our, the
6 purpose for our motion, just so I can complete my
7 statement, was when you did issue your what is called
8 your amendment to findings of fact and conclusions of
9 law, your May 13th, 2015 supplemental order --

10 THE COURT: Correct.

11 MR. JIMMERSON: -- that in our judgment
12 completed --

13 THE COURT: No.

14 MR. JIMMERSON: -- your decision making
15 relative to facts and law and final order. No one took
16 an appeal from either order, June of '14 or May of
17 2015, so that became a final order. That is why I did
18 not belief it appropriate for Pardee to submit a
19 judgment as it did in the middle of June.

20 THE COURT: Right, and why you might not have
21 been looking for it.

22 MR. JIMMERSON: Well, I wasn't, correct.

23 THE COURT: I, I have put this all together.

24 MR. JIMMERSON: Okay.

25 THE COURT: It's like anything else, I

1 figured out what happened.

2 MR. JIMMERSON: If you, as you've been very
3 clear now to say that no, you did not intend, even with
4 the supplemental amendment of findings of fact,
5 conclusions of law in May of 2015 to have served as the
6 final order of the Court.

7 THE COURT: Final judgment.

8 MR. JIMMERSON: Final judgment then.

9 THE COURT: And that is why did I not put the
10 word "judgment." I thought about it, I mean I did, I
11 addressed it, but I did not for those reasons.

12 MR. JIMMERSON: Okay.

13 THE COURT: Because I wanted to have what
14 needed to be done with accounting, and I wanted one
15 document, a judgment, so that both the plaintiffs,
16 especially with these future issues, and Defendant
17 Pardee would know, especially on a case like this,
18 here's the document, here's what it means, especially
19 after this case, when --

20 MR. JIMMERSON: Right.

21 THE COURT: -- I wanted to make sure what was
22 done here was explicit for both parties so hopefully
23 you would understand so we don't have any more
24 litigation over this commission agreement.

25 MR. JIMMERSON: Let me just finish.

1 THE COURT: That's why I did it that way.
2 That's why when I got a judgment, I was not, I was
3 expecting it.

4 MR. JIMMERSON: Got it.

5 THE COURT: Does that makes sense?

6 MR. JIMMERSON: It does.

7 THE COURT: If I hadn't, I would have called
8 both parties and said, I don't expect a judgment.

9 MR. JIMMERSON: Let me just say that over
10 many years of litigation, as you have seen as well and
11 opposing counsel, I'm sure, that orders can be
12 interpreted --

13 THE COURT: Absolutely.

14 MR. JIMMERSON: -- as a judgment and as
15 final --

16 THE COURT: Absolutely.

17 MR. JIMMERSON: -- and appealable within the
18 Nevada rules of appellate procedure.

19 THE COURT: I agree with you.

20 MR. JIMMERSON: But nonetheless, if this was
21 your intent, then so be it.

22 THE COURT: I agree with you. That's why --
23 but that was my intent.

24 And I want you to understand my thought
25 process, so that's why I did that, and my once again my

1 thought process, I want one judgment so both parties
2 will know here's where we're at, I mean, and make it as
3 explicit -- and that's why I went into as much detail
4 on the findings of fact from my order of 6/25/2014, and
5 that's why I worked diligently with you, as you know,
6 to come up with a supplemental.

7 And you worked together, I commend both of
8 you, so we could actually resolve that supplemental
9 issue on the accounting, so that's why I wanted a
10 supplemental, and you did, order on findings of fact,
11 okay?

12 MR. JIMMERSON: Very good.

13 THE COURT: So based on that, I hope I did it
14 right, I'm doing them in order here, I'm denying that
15 just pursuant to NRCP 58(a), that I did envision, I did
16 want a judgment, and that was this Court's intent on
17 this case, okay?

18 MR. JIMMERSON: Okay.

19 THE COURT: And I'm not -- okay. So that
20 takes -- I'm gonna put them here in order.

21 Okay. Then number two, this is plaintiffs'
22 motion pursuant to NRCP 52(b) and 59(a) to amend the
23 Court's judgment entered on June 15th, 2015, to amend
24 the findings of fact, conclusions of law and judgment
25 contained therein, specifically referring to the

1 language included in the judgment at Page 2, Lines 8
2 through 13 of the judgment, at Page 2, Lines 18 through
3 23, to delete the same or amend the same to reflect the
4 true fact that plaintiff prevailed on their entitlement
5 to the first claim for relief for an accounting and
6 damages for their second claim for relief of breach of
7 contract, and their third claim for relief for breach
8 of the implied covenant of good faith and fair dealing,
9 and that that defendant never received a judgment in
10 its form and against plaintiffs whatsoever as it
11 mistakenly stated within the Court's latest judgment,
12 and you were referring to the June 15th, 2015, okay.

13 This is the nuts and bolts. This is where
14 we're going now.

15 MR. JIMMERSON: Right.

16 THE COURT: Okay.

17 MR. JIMMERSON: All right, Judge. Thank you.

18 THE COURT: You're welcome. That's the place
19 to start.

20 MR. JIMMERSON: As the Court has properly
21 noted, we did not anticipate the need for a third
22 document called "Judgment," which the Court has already
23 discussed with us, and the Court's indicated otherwise
24 that it did want this judgment.

25 Now, as you saw from the history of this

1 case, whether it be a good practice or a poor practice,
2 I, personally, do not review many of my emails or any
3 of my emails on a daily basis. I have staff helping
4 me. This became an issue in this case prior to June of
5 2015.

6 In the fall of 2014, the defendant, Pardee,
7 through counsel, submitted a document to me by email
8 only and to myself addressed only and to no other staff
9 which I did not read.

10 By virtue that we had hearings and I
11 communicated my objection to that to the Court and my
12 custom and practice of not reviewing email, I wrote
13 correspondence to opposing counsel of Pardee,
14 explaining that and that I wanted to make sure that
15 they added my secretary, who still remains my
16 secretary, Kim Stewart, and the associate assigned to
17 the case at the time, which was Burak Ahmed, and so the
18 defendant clearly knew that sending me an email had a
19 fair chance of not being read based upon its prior
20 experience.

21 This repeated itself in June of 2015, as the
22 Court sees. The judgment as proposed by defendant was
23 submitted to me by an email, copied to no one, despite
24 my prior request that it be sent to my secretary, who
25 remained the same, and to the associate on the file.

1 That was not complied with.

2 You then received the judgment, and you, like
3 many other fine jurists, pause when you receive a
4 document like that. You don't immediately sign it the
5 next day, not only because you might have many other
6 things to do at that moment, but as a matter of good
7 practice.

8 THE COURT: Uh-huh.

9 MR. JIMMERSON: You want to make sure that
10 both side have some opportunity to object, to
11 communicate between themselves, you know, to take some
12 action to advise the Court with regard to the propriety
13 of entering such a document.

14 THE COURT: Well, it's not just, I will tell
15 you right now it's not just good practice, it's the
16 rules of this Court, the rules of this Court from the
17 beginning on this. And I actually have spent a long
18 time, the rules of Department IV have always been, from
19 the beginning, and they were complied with, I looked
20 back in the history, that when there is an order for a
21 -- and I consider a judgment an order, that it is to be
22 signed as to form and content and approved, whoever
23 drafted it, approved by the other, or then my rule is
24 if not, then if someone submits one that has not had
25 the approved to form and content, I am to receive

1 either a letter or information why, what efforts they
2 made, and if the other side wants to do it, they are to
3 either send me a letter to explain here's why we don't
4 approve it, or send me another proposed.

5 MR. JIMMERSON: Agreed.

6 THE COURT: I don't sign orders -- and I
7 looked back through this case, because that has been my
8 practice since I've been on the bench, since July of
9 2012, and I looked back, and this case did exactly
10 that, whether it was Ms. Lundvall's firm or whether
11 your firm, gave me the orders, and I looked back all
12 the way from 10/23/2013 it was done that way,
13 1/25/2013, 3/14/2013, 4/12/2013, 5/30/2013, 6/5/2013,
14 7/23/2013, 10/8/2013, 8/14/2014 and 5/13/2015.

15 The only order other than this judgment of
16 6/15/2015 that was not approved for form and content is
17 one done by Judge Bonaventure when I was, I think I was
18 at the judicial college that week, but whenever it was,
19 when there was a collection issue that I wasn't here, I
20 did not sign that.

21 My other ruling is when a senior judge or
22 someone else sits in here, I will not sign their orders
23 unless they either give me a letter or -- because I
24 can't always tell by minutes what exactly happened.
25 That is the only one.

1 So for the record, this judgment of
2 6/15/2015, it's not my good practice that I would
3 pause, it didn't comply with the known practice and the
4 standard order of this Court that both of you are aware
5 of and you complied with until this one on 6/15.

6 MR. JIMMERSON: This order --

7 THE COURT: So I wanted that in the record.
8 And I looked back to make sure if for some reason I had
9 made a waiver in this case, and I certainly had not.

10 MR. JIMMERSON: And the Court should --

11 THE COURT: I wanted that on the record.

12 MR. JIMMERSON: Thank you.

13 And the Court should note, of course, that I
14 was not given that opportunity to sign off on this
15 document.

16 THE COURT: It's my understanding from your
17 affidavit you were not.

18 MR. JIMMERSON: Correct. They sent me an
19 email that included this document. They knew that I
20 don't read my emails as a matter of course. They then
21 submitted it to you in a day or two following that and
22 you signed it, but on the face of the document the
23 judgment is very clear that I did not sign off on that,
24 and just the face of the document evidences the same.

25 THE COURT: It does.

1 MR. JIMMERSON: And what's deeply offensive
2 by Pardee here is that they knew that I don't read this
3 and I had requested them to have them sent to my staff
4 by virtue of there had been an issue in the fall of
5 2013 in a court hearing we had here in which
6 communication I had directly with Pardee's lead counsel
7 that they include in my staff, which they did not do in
8 the following June.

9 THE COURT: Okay.

10 MR. JIMMERSON: Now, when I say I can't look
11 into your mind, I want to say that again, but one thing
12 we can say is that this Court worked very hard and made
13 rulings in the findings of fact and conclusions of law
14 and order that you would recall, you know as your
15 findings --

16 THE COURT: Absolutely.

17 MR. JIMMERSON: And let me say that if you,
18 and I have done this, if you compare your order to the
19 proposed findings of fact, conclusions of law of the
20 plaintiff and as the defendant, you drew upon both as
21 well as making your own independent findings within
22 this judgment, so it is very clear to me --

23 THE COURT: I did not adopt your findings.

24 MR. JIMMERSON: Correct.

25 THE COURT: And did I not adopt --

1 MR. JIMMERSON: Correct.

2 THE COURT: I literally spent a week of my
3 time off, I'm paid a lot, I'm supposed to do that, to
4 do that for you.

5 MR. JIMMERSON: Exactly.

6 THE COURT: So don't -- all you have to do is
7 look at your two proposed and you will see that's not
8 what I did.

9 MR. JIMMERSON: Absolutely right.

10 THE COURT: And I reviewed all the testimony
11 again, because as you recall, unfortunately after your
12 next week of trial, I had to start the Actos trial.

13 MR. JIMMERSON: Right.

14 THE COURT: Hopefully I never have to do that
15 again, I've learned if I do a bench trial I'm not gonna
16 let them back me up, but you learn when things happens.

17 So I will tell you for the record I read
18 every transcript again. I, wherever I sat, at home, I
19 read every -- because honestly, it's like the trier of
20 fact, I can't remember all of the testimony and it was
21 extensive. And we had that break also, remember,
22 Mr. Jimmerson?

23 MR. JIMMERSON: Yes, your Honor, I do.

24 THE COURT: Okay. So that is true.

25 MR. JIMMERSON: The point being that you well

1 know more than opposing counsel or myself your intent
2 and --

3 THE COURT: I do.

4 MR. JIMMERSON: -- your convictions with
5 regard to the entry of findings, conclusions, and the
6 final order that you entered on June 25th of 2014 as
7 supplemented by your amended findings of May 13th of
8 2015.

9 Speaking to your findings of fact and
10 conclusions of law and order of June of 2014, you know,
11 having listened to all the testimony, from opening
12 statements to closing remarks and all the testimony in
13 between, that there was never a claim by the plaintiff
14 for \$1.9 million in damages that you have found in the
15 judgment that was asserted improperly by Pardee as part
16 of this judgment submitted to you in June and that you
17 signed on that date.

18 Here specifically what the finding says that
19 we ask pursuant to this motion be stricken or deleted,
20 and as you properly noted, Judge, it's at Page 2,
21 Lines 8 through 17, and again at Page 2 at Lines 18
22 through 23.

23 THE COURT: I marked it up. I got it.

24 MR. JIMMERSON: Plaintiffs' claimed
25 \$1,952,000 in total damages related to their causes of

1 action. Specifically, Plaintiffs' claim \$1,800,000 in
2 damages related to lost future commissions from
3 Pardee's purported breach of the commission agreement,
4 \$146,500 in attorney's fees incurred as special damages
5 and for prosecuting the action, and \$6,000 in
6 consequential damages for time and effort expended
7 searching for information regarding what Pardee
8 purportedly owed them under the commission agreement.

9 And you make the order based on that Lines 18
10 through 22, It is hereby ordered, adjudged, and decreed
11 that judgment is entered against the plaintiffs and for
12 Pardee as to plaintiffs' claim for \$1,800,000 in
13 damages related to lost future commissions under the
14 commission agreement.

15 Pardee has not breached the commission
16 agreement in such way, any way in which as to deny
17 plaintiffs any future commissions, and Pardee has paid
18 all commissions due and owing under the commission
19 agreement.

20 This is a phony assertion of words that are
21 not supported by your findings of fact, conclusions of
22 law, and it's an attempt by them which followed
23 immediately after this for this ridiculous claim for
24 attorney's fees, that somehow they were the prevailing
25 party. You see the dominoes that fall.

1 THE COURT: Absolutely, I saw the dominoes.

2 MR. JIMMERSON: So I'm speaking to this --

3 THE COURT: I worked on it.

4 MR. JIMMERSON: This is the central issue in
5 all seven motions, and once you resolve this, it will
6 help resolve every other issue.

7 THE COURT: I'm aware of that. I analyzed
8 it. I'm very aware of that, Mr. Jimmerson. Believe
9 me, I'm aware of that.

10 MR. JIMMERSON: All right. Judge, I think
11 that Pardee is really acting in bad faith by making
12 this type of a finding and making this kind of order,
13 which would never have been approved by me had I seen
14 it. Let's go through it.

15 The deposition of James Wolfram that was
16 taken in 2013 just before trial, at page -- it was also
17 taken in 2011. It was two volumes of the deposition of
18 James Wolfram, but reading from the deposition of
19 November 8th, 2011, Page 102, Ms. Lundvall, on behalf
20 of Pardee, asked Mr. Wolfram, on behalf of the
21 plaintiffs, she said this:

22 All right. Can you tell me -- I'm reading
23 from Lines 7 through 9 of his deposition.

24 All right. Can you tell me how much that you
25 believe you've been damaged, sir, and that

1 you're seeking to recover from Pardee?

2 Mr. Wolfram: I can't. I don't know enough
3 about what I'm talking about. I don't know
4 enough about what I'm talking about. That's
5 the reason this whole thing has come about.
6 I can't tell you that. I don't have enough
7 information, end of quote.

8 That's during discovery, and that's Pardee's
9 direct inquiry. It is the only inquiry that Pardee
10 makes with regard to plaintiffs' damages. They never
11 serve any interrogatories, they never serve any
12 requests for production of documents that speak to
13 damages. They never inquire about that.

14 Nowhere in the opening statement does the
15 defendant speak to \$1.8 million. Nowhere does the
16 plaintiff speak to \$1.8 million. The \$1.8 million only
17 appeared as a number in two places, and I will tell you
18 exactly where they are, and none of them are part of
19 the court record in terms of the trial.

20 The first reference to \$1.8 million is filed
21 as a 16.1 supplemental disclosure by plaintiff in
22 2 thousand -- is it '11 -- 2013, that said that if the
23 30,000 acres were all designated single-family
24 production residential property as defined under the
25 option agreement, and if you were to take a \$40,000 per

1 acre, and multiply that over the number of acres that
2 are being built out over the next 40 years, and you
3 multiply that by 1.5 percent, our clients could be
4 entitled to up to \$1.8 million in damages, period.
5 That's it.

6 The second time that that number was raised
7 was in our opposition to the plaintiffs' motion for
8 summary judgment that was argued and briefed in 2013,
9 which was denied by the Court in denying the defense's
10 motion for summary judgment, where we stated that up to
11 30,000 acres could lead to future commissions of
12 \$1.8 million.

13 Neither one of those references were ever
14 introduced into evidence or spoken to you, and I say to
15 you more than anything, and we can talk for seven hours
16 today, but in the next three minutes, you can answer
17 this question.

18 Did you hear any testimony by the plaintiff
19 or by the defendant or any rebuttal or opposition by
20 the defendant or the plaintiff of any claim of
21 \$1.8 million? The answer is no. How do we know that?
22 Because you start with the opening statement of
23 plaintiff, Mr. Jimmerson, the opening statement of
24 Pardee, Ms. Lundvall. There's not one reference to a
25 claim for future commissions of \$1.8 million that is

1 due now. Not anything.

2 What is said, in fact, to you in our opening
3 statement by myself is we don't know. We're looking
4 for whether or not future commissions are owed. We
5 need the information.

6 THE COURT: And by "future commissions," you
7 mean if I had agreed that when they change, where --
8 the option property, and if I had agreed with that,
9 that your claim was that they had already, Pardee had
10 already sold to -- bought from CSI, what property that
11 was option property, and that would have been due and
12 owing.

13 MR. JIMMERSON: Correct.

14 THE COURT: Under the commission.

15 MR. JIMMERSON: Right.

16 THE COURT: So when you say "future," that's
17 not really -- that's, that's -- I don't understand that
18 one, because not future, not for future if they were
19 selling in the future, but may have been owed if, once
20 you got all those documents and all those amendments
21 and we had discussion, I understand it completely, I
22 went through it, you felt like your position was that
23 they had already sold property under that option
24 agreement.

25 MR. JIMMERSON: Right.

1 THE COURT: The Court disagreed.

2 MR. JIMMERSON: Agreed.

3 THE COURT: I looked at the evidence, but
4 that's what you were talking about.

5 MR. JIMMERSON: That's exactly --

6 THE COURT: Not future, as in future that I
7 would have thought of by this accounting.

8 MR. JIMMERSON: Correct.

9 THE COURT: So it wasn't future, so that was
10 very unclear until I --

11 MR. JIMMERSON: Right.

12 THE COURT: That was not what it really was,
13 it was potentially past commissions --

14 MR. JIMMERSON: You got it.

15 THE COURT: -- under the commission agreement
16 letter, which I'm, I almost know word for word right
17 now, the commission agreement based on your
18 interpretation, what your interpretation was. I
19 understood it. I read the testimony.

20 MR. JIMMERSON: Right.

21 THE COURT: Which I admit, during trial I did
22 not, I did not find that I thought any would be due and
23 owing.

24 MR. JIMMERSON: I understand.

25 THE COURT: There was never anything that I

1 -- I don't even remember if I had gone that way how I
2 would have figured an amount out. In fact, when I was
3 looking at it, I'm not gonna go through it, I didn't.

4 MR. JIMMERSON: Right.

5 THE COURT: I didn't go there, because I
6 found that I did not the feel that what I said --

7 MR. JIMMERSON: Right.

8 THE COURT: It's in my findings.

9 MR. JIMMERSON: Right.

10 THE COURT: I told you my reasoning. I did
11 not feel that there was anything more due and owing.

12 MR. JIMMERSON: You're correct.

13 THE COURT: And I felt that they -- that was
14 my choice. I was the trier of fact. I felt that the
15 changes that were done did not make it option property
16 and did not make it something that commissions were --
17 I was very clear, and that was obviously --

18 MR. JIMMERSON: I'm really glad, I'm really
19 glad that you prepared for today's hearing. You are a
20 hot bench right now. You really know this stuff.

21 THE COURT: Well, this --

22 MR. JIMMERSON: So thank you.

23 THE COURT: I invested so much time for both
24 of you, I felt in my heart. I wanted this right, you
25 know.

1 This, this is the most distressful thing I've
2 ever gone through, I'll be honest, because, you know,
3 you work so hard, and, you know.

4 MR. JIMMERSON: Right. So I can explain to
5 you --

6 THE COURT: It's a tough job. You work so
7 hard because I, as any judge would do, this was so
8 important --

9 MR. JIMMERSON: So you understand.

10 THE COURT: -- that this be done right for
11 both of you, very much so. Whether you agree how I do
12 it or not, I certainly have put the time in and am
13 trying very hard to do what's fair for both of you, as
14 I'm supposed to. That's my job.

15 MR. JIMMERSON: You bet.

16 THE COURT: I'm not asking that you say, Good
17 Job, Earley, you're doing your job. That is my job.
18 But right or wrong, I will tell you I have invested the
19 time that I know was required, not only for all the
20 motions prior for the trial, but for all of this.

21 MR. JIMMERSON: Well, this motion certainly
22 is --

23 THE COURT: You're not having a judge that
24 doesn't get it. I get.

25 MR. JIMMERSON: This motion is aimed at the

1 improper insertion of a finding that was not
2 appropriate. Certainly it was not something the Court
3 did. The Court found actually otherwise, the reverse
4 of that, in your order.

5 Just so you understand, the \$1.8 million is
6 based upon a theoretical purchase of all the remaining
7 property and assuming that all of it's designated by
8 Pardee as single family over the next 30 years. That's
9 how you got the \$1.8 million. This case wasn't about
10 \$1.8 million. It was exactly what you said.

11 We believed, which you found differently, but
12 we believed they only had the right to build within
13 Parcel 1, and if they went east of Parcel 1 it would be
14 the exercise of option property.

15 THE COURT: And that would have been past
16 damages.

17 MR. JIMMERSON: Exactly. And the amount of
18 those acres was unknown to us, because we didn't know
19 how much was to the east of the line on the east side
20 of Parcel 1, and that's why we were asking for the
21 accounting.

22 Now, you resolved that against the
23 plaintiffs --

24 THE COURT: I did.

25 MR. JIMMERSON: -- and said that there was

1 enough evidence within the option agreement and its
2 amendments to evidence that Pardee had the right to go
3 horizontally to the east and not vertically to the
4 north within Parcel 1. That's something we obviously
5 didn't agree with, but that was your findings.

6 THE COURT: That was my findings from looking
7 at the evidence, absolutely.

8 MR. JIMMERSON: But the important, the
9 pertinent part as a result of that is, as you correctly
10 characterized and analyzed what the issues were, there
11 was never a claim by Jim Wolfram or Walt Wilkes at
12 trial or in their depositions that they had an existing
13 obligation owed to them by Pardee of \$1.8 million or
14 any number that even resembled such a number.

15 His only claim for damages when he was asked
16 about that by Pardee's counsel, Ms. Lundvall was, I
17 spent, you know, hours trying to find information. I
18 used \$80 an hour. The Court awarded \$75 an hour, and
19 so I'm entitled to \$7,200. The Court awarded \$6,000,
20 and then the Court --

21 THE COURT: That was based on the evidence.

22 MR. JIMMERSON: Right. And the Court looked
23 upon the testimony that I offered, as provided by the
24 Supreme Court rules, of approximately \$146,500. The
25 Court awarded \$135,500, combined for a judgment of

1 \$141,500. That's what the Court did. The Court found
2 that there were no further commissions due and owing
3 because the Court found they had the right to build
4 east horizontally. I'm with you.

5 THE COURT: I was very detailed in my
6 findings of fact and conclusions of law and order.

7 MR. JIMMERSON: And the last part of that
8 was, as you know, during the course of the trial and
9 having listened to the testimony of Lash, Andrews, and
10 Whittemore, we double checked the County Commission
11 records and found that they had redesignated a
12 multi-family parcel, Res. 5, if you remember the map.

13 THE COURT: To single.

14 MR. JIMMERSON: To single-family production
15 real estate, and you ruled against us again there.

16 THE COURT: I did.

17 MR. JIMMERSON: Where you said --

18 THE COURT: Based on the evidence.

19 MR. JIMMERSON: -- that the redesignation
20 would not entitle the plaintiffs to those damages.

21 THE COURT: Right.

22 MR. JIMMERSON: And as you've seen in both
23 the proposed findings that the plaintiffs submitted as
24 well as the testimony that Res. 5 was in the ballpark
25 of a 50 acre parcel which you could you multiply times

1 40,000 times 1/2 would be about a \$30,000 commission.
2 And we didn't know what that would be, that would be
3 something you would take up in the second part of the
4 trial, accounting trial, which was obviated by the
5 Court's ruling that they could redesignate.

6 THE COURT: I agree with that. I agree with
7 that in the record, yes, I do.

8 MR. JIMMERSON: So what I have to say to you
9 is sort of like this: If you stick to your guns with
10 regard to your findings of fact and conclusions of law
11 and order, then you can clearly see how Defendant
12 Pardee has misled the Court and has inserted a finding
13 that led to an order that somehow they prevailed in
14 this case is completely a mischaracterization and
15 distortion of this trial.

16 I want to go further, because there's just
17 nothing -- again, it's just a preposterous suggestion.
18 Judge, in the opening statement by either party, no one
19 raises the \$1.8 million. Number two, nobody ever
20 claims that that's been done, because the \$1.8 million
21 on its face is a hypothetical calculation of if 30,000
22 acres of option property in the next 35 years from the
23 time of trial were exercised, that would be a possible
24 commission due to the plaintiff.

25 THE COURT: Right.

1 MR. JIMMERSON: That's all, but everybody
2 understood that that wasn't the case. The case here
3 was for information. The breach of contract was
4 failure to give information. The first claim was for
5 an accounting. The second claim was for breach of
6 contract, not for money damages due and owing, but for
7 information, and the third is the breach of implied
8 covenant of good faith and fair dealing.

9 So all I'm gonna try to say to you is this,
10 You have the affidavit of plaintiffs' lead counsel who
11 says 90 percent of our time was devoted to defeating
12 their claim for \$1.8 million. Well, first of all, if
13 you just calculate the amount of time that they charged
14 their client, as evidenced by their bills through the
15 time in 2013 when this fifth disclosure was made, they
16 already had 20 percent of their time already expended,
17 so it couldn't be 90 percent, but beyond that, when you
18 look at the entries of their, the specific entries
19 within their billings, you don't see any reference to
20 \$1.8 million. It's just a phony claim.

21 What they won in your finding was that there
22 was no present commissions due to the plaintiffs beyond
23 what had been paid because the Court found that it had
24 the right, Pardee had the right to build east
25 horizontally and to, and that, at least in the first

1 Parcel Map 1, would have been option property. I got
2 it.

3 THE COURT: You can disagree, but --

4 MR. JIMMERSON: Right. But that certainly
5 does not obviate the need and the obligation of Pardee
6 to pay a future commission in the event they, in the
7 future, by additional property, designate it
8 single-family production residential property, and that
9 would entitle the plaintiffs to additional commission.

10 In fact, you remember the testimony of
11 Jon Lash was that the next purchase by Pardee of option
12 property will be a commissionable event owed to the
13 plaintiffs.

14 THE COURT: And that's why we have the
15 supplement.

16 MR. JIMMERSON: Exactly.

17 THE COURT: To say if they do it, you'll have
18 the information, you'll be on the same page, and you'll
19 know that it was option property that was pursuant to
20 the commission agreement.

21 MR. JIMMERSON: The findings --

22 THE COURT: I understand that.

23 MR. JIMMERSON: The findings of fact,
24 conclusions of law of yourself that was entered in
25 June --

1 THE COURT: June 25th, 2014, right.

2 MR. JIMMERSON: It makes no reference to a
3 \$1.8 million and makes no reference to the defendant
4 Pardee prevailing at all. I know you have but I did it
5 again, of course in preparation, read every single
6 finding of fact and conclusions of law of your findings
7 of fact, conclusions of law order, and you will find
8 the following:

9 One, that an accounting is warranted. The
10 first claim for relief by the plaintiffs is warranted,
11 and there will be an accounting that we will determine
12 how to do that by briefs 60 days from then, and that
13 there was an entitlement to accounting because of the
14 special relationship that existed between the
15 plaintiffs and Defendant Pardee because of the reliance
16 and the need, you know, and control that the plaintiffs
17 needed of the defendants and the defendant's control of
18 all the information that would be able to be and was
19 required by contract to be provided the plaintiffs that
20 hadn't been provided.

21 And third, that there had been an intentional
22 bad faith withholding of information, particularly as
23 it related to designation of property that the
24 defendant owed to the plaintiffs, and therefore, the
25 plaintiffs were entitled to accounting and we will do

1 so by supplemental brief.

2 That's your findings with regard to the first
3 claim.

4 You have to understand from this case, and I
5 know you do, this was never a case of plaintiffs are
6 entitled to commissions in the amount of blank dollars.
7 Read the complaint, read the second -- first amended
8 complaint and the second amended complaint, they all
9 say the same thing, the breach of contract is the
10 failure to provide the information that this special
11 relationship and superior knowledge that Pardee had,
12 and we don't know whether or not there's additional
13 monies due and owing, and if there is we want them to
14 be paid to us but we need that information. And that
15 was consistent throughout the case. You couldn't have
16 found a more conservative complaint by any plaintiff
17 against any defendant.

18 These plaintiffs are taking on the behemoth
19 of Pardee. They filed a complaint because they had
20 written four or five letters beforehand requesting the
21 information and they were not provided it.

22 Mr. Lash independently tells Chicago Title
23 not to give information to Mr. Wolfram, and the Court
24 makes that finding within its orders. So when you look
25 at that, you have your Court's specific findings,

1 plaintiff prevails as to the accounting.

2 Second claim for relief, breach of
3 contracted, granted. I find that there was a contract,
4 I find that the duties of the plaintiffs have been
5 fully satisfied, I find the duties of the defendant
6 were not satisfied and that they did not provide the
7 information required to do so, and I find in favor of
8 the plaintiffs.

9 What damages do I award? I award the special
10 damages pursuant to Sandy Valley of the time and effort
11 of Mr. Wolfram pursuant to decisional law both in
12 California and elsewhere that allows for that in the
13 modest amount of \$6,000, and I allow \$135,500 in
14 attorneys fees out of I think we requested about
15 \$146,000 in attorney's fees, that I'm satisfied is
16 directly and devoted and required only as the result of
17 the failure of the defendant to provide the information
18 it was obliged to do, and that's the judgment, \$141,500
19 plus interest as we go forward.

20 That's your findings on breach of contract,
21 and you were very specific to find there was a breach,
22 and you find the bad faith of the defendant with regard
23 to the failure to provide this information.

24 The third claim for relief, breach of the
25 implied covenant of good faith and fair dealing, you

1 find breach of that. There was certainly a covenant
2 that ran with this contract, and the covenant of good
3 faith and fair dealing was not complied with by Pardee,
4 I find a breach and I find the same damages of
5 \$141,500, and you have entered the order that says so,
6 and then you have the accounting in 60 days.

7 So I want you to know how preposterous, it's
8 the only word I thought of it can be, you know. I
9 could be melodramatic. I don't want to do that. I
10 want to be as professional as we all can be, but it's a
11 preposterous claim this be inserted into a complaint.
12 You don't make any findings, any findings that the
13 defendant prevailed. You don't make any findings
14 that's in this judgment that says that the Court has
15 ordered judgment in favor of defendant and against the
16 plaintiff on this issue at all. It's not referenced
17 anywhere. Why? Because it was not an issue tried at
18 trial.

19 I have gone back and have provided to you in
20 this record the proposed --, the opening statements --
21 well, I've given you the entire transcript. We have
22 the entire transcript. It's part of the record, the
23 entire transcript. There's not one word of
24 \$1.8 million or the plaintiffs' claim for \$1.8 million.
25 and therefore, your Honor, you should enter a judgment

1 in favor of us to say that we defeated them on that
2 issue.

3 In the opening statement of Pat Lundvall
4 doesn't reference one thing about, you know, your
5 Honor, the plaintiffs are making a claim of
6 \$1.8 million, and you need to make a finding against
7 them. That wasn't an issue, because it was a
8 theoretical mathematical calculation of all the rest of
9 the 30,000 acres, all of it being designated as
10 single-family production real estate, and all of it
11 being built out for the next 35 years at the time of
12 trial. Everybody understood that, and the testimony of
13 Jim Wolfram from his deposition first given in 2011
14 right through the present evidenced that.

15 My opening statement is recorded in our
16 briefs. It simply states, Judge, this is a case about
17 a need for information and the damages that followed
18 therefor.

19 The trial, at the trial Mr. Wolfram took the
20 witness stand on two different occasions, Mr. Wilkes
21 went one time, and the Court may remember the
22 difficulty that Mr. Wolfram had on the first day in
23 terms of some of the questions that were asked, but he
24 was on the stand for many, many hours. At no time did
25 plaintiffs' counsel -- excuse me, defendant's counsel,

1 let alone plaintiffs' counsel, but certainly at no time
2 did defendant's counsel ask a single question about
3 \$1.8 million. At no time was Mr. Wolfram asked a
4 question like: Are you claiming today that you were
5 entitled to lost commissions of \$1.8 million? That was
6 not asked. It's not part of this case. It was simply
7 a theoretical calculation of what could be owed in the
8 event of all this happening in the next 35 years, not
9 what's going on in 2013 when this case was tried, not
10 one question about that by Pardee's counsel, not one
11 question of Mr. Wilkes with regard to that.

12 There is no evidence, there is no exhibit
13 that references \$1.8 million. There is no entry of
14 time by Jimmerson Hansen by McDonald's Carano that
15 references \$1.8 million.

16 This case was about whether or not the
17 defendant had breached its duty to provide information
18 and whether or not it owed to the plaintiff an
19 accounting for that information. That's what this case
20 is. And it was hotly contested, as the Court
21 indicated, and there was a lot of, you know, intense
22 work, and it was very, the best way to describe it, a
23 hotly contested case, but at no time did the defendant
24 at any time make reference to plaintiffs' alleged claim
25 of \$1.8 million, because plaintiff never made that

1 claim in any complaint, any amendment to that complaint
2 and any document. There's not one piece of information
3 introduced in evidence or argued to you orally that
4 references that.

5 THE COURT: Right.

6 MR. JIMMERSON: So when I saw this judgment
7 here in June of 2015, having not been given the
8 opportunity to sign off on it as the Court's standard
9 rule would require, I moved to strike this document
10 specifically, as it found your finding plaintiffs'
11 claim \$1,950,000 in total damages.

12 Judge, none of the findings of fact and
13 conclusions of law of either side, plaintiff or
14 defendant, makes any reference to this, nor, as I
15 mentioned before, was there any interrogatories or
16 requests for production of documents or requests for
17 admissions or any use of depositions, Rules 30, 33, 34,
18 36 ever promulgated by the defendant on this issue of
19 alleged entitlement to \$1.8 million.

20 And you have your own recollection, which is
21 the most important. Did the plaintiff ever make a
22 claim during the course of this trial for
23 \$1.952 million? The plaintiffs claim \$1,952,000 in
24 total damages, that was a lie. That's untrue. And you
25 heard the trial.

1 THE COURT: I did.

2 MR. JIMMERSON: That has no basis to be part
3 of this judgment.

4 And then what they say is: It is hereby
5 ordered, adjudged, and decreed that judgment is entered
6 against plaintiffs and for Pardee. Read your findings
7 of fact and conclusions of law.

8 THE COURT: I did.

9 MR. JIMMERSON: Is there any entry of any
10 judgment against the plaintiffs in those findings? No.
11 It is concocted. Why is that? Because there's an
12 ulterior motive by Pardee. Pardee is trying to find a
13 way to get their attorney's fees back.

14 They expended an extraordinary amount of
15 money, \$550,000 they claim in this case, and they want
16 90 percent of it returned to them because they
17 prevailed on a claim that didn't exist, that you never
18 heard, that they introduced no evidence on somehow so
19 they would have the basis to make this claim. And then
20 what happens after this judgment is entered? They
21 filed a motion for attorney's fees which you will rule
22 upon today or in the future.

23 And then based upon this alleged finding that
24 plaintiffs claim \$1,952,000 or \$1.8 million in damages
25 related to lost future damages, and therefore a

1 judgment is entered, it is hereby ordered, adjudged and
2 decreed that judgment is entered against the plaintiffs
3 and for Pardee as to plaintiffs' claim for \$1,800,000
4 in damages related to lost future commissions under the
5 commission agreement, that can't possibly be, because
6 as you properly stated, we don't know what purchases
7 Pardee is going to make from CSI in the future for the
8 next 35 years, so how could we possibly have won a
9 claim that's going to be over the next 35 years when
10 everyone in this courtroom will be dead?

11 Please understand that was the whole purpose
12 of this judgment, because how is Sharon or Jim's
13 children going to follow what's going on in the next 35
14 years?

15 Now, we had no idea about the transfer of
16 Weyerhaeuser and all the other things and the
17 litigation with the Seeno brothers that may have
18 affected the future events, but as we tried this case,
19 nobody was asking for \$1.8 million or the like.

20 So then they enter order is against
21 plaintiffs for Pardee as to plaintiffs' claim for
22 \$1,800,000 in damages. We never made that claim.
23 There's not a document to support that. There is not
24 one piece of testimony about it. What can I say? The
25 words \$1.8 million or a claim for anything like that, a

1 million dollars, 1.3, 1.5 was never referenced in this
2 trial.

3 I reviewed the trial transcript. It's not
4 there. I reviewed the opening statements by both
5 parties. It's not there. I reviewed the findings of
6 fact proposed by both of parties. It's not there.

7 So you tried this case. You know it was not
8 there, and so your, you know, your entry of this
9 judgment based upon, as I understand, your receiving
10 this judgment from the defense counsel for Pardee,
11 waiting some time to hear from the Jimmerson Law Firm,
12 having heard nothing you entered the judgment.

13 THE COURT: I will clear up the record on
14 exactly what happened there.

15 MR. JIMMERSON: I don't know.

16 THE COURT: I know, so I will put everything
17 on the record.

18 MR. JIMMERSON: That's fine.

19 THE COURT: The record for you is you did not
20 approve this and you did not see it, and that's what
21 you're saying as a matter of law.

22 MR. JIMMERSON: That's exactly right.

23 THE COURT: I mean as an officer of the
24 Court, and that's fine, and I --

25 MR. JIMMERSON: Regardless, regardless of

1 that, Judge, is it an improper finding.

2 THE COURT: I understand we went the next
3 step, which is substance-wise, does that judgment
4 actually reflect my findings of fact and conclusions of
5 law --

6 MR. JIMMERSON: You got it.

7 THE COURT: -- and order that was entered on
8 6/25/2014 and the subsequent one on 5/13/2015, I
9 understand.

10 MR. JIMMERSON: And I would submit that it
11 does not.

12 THE COURT: Okay.

13 MR. JIMMERSON: Now, the balance of the
14 judgment, although it wouldn't be how I would have
15 written it, but it does say that judgment in favor of
16 the plaintiffs against Pardee on causes of action
17 breach of contract, breach of implied covenant of good
18 faith and fair dealing, and the accounting. Listen,
19 Judge, there was never a claim for \$1.8 million.
20 That's my point.

21 THE COURT: I understand your position
22 exactly.

23 MR. JIMMERSON: I don't want to repeat
24 myself.

25 THE COURT: You don't have to.

1 MR. JIMMERSON: In your own findings you
2 granted plaintiffs as the prevailing parties and
3 against the defendant, 141,500. That's fine.

4 Let me turn to the next page of the judgment.

5 THE COURT: I got it.

6 MR. JIMMERSON: And it concludes -- I guess
7 that's it, right?

8 THE COURT: Uh-huh.

9 MR. JIMMERSON: Am I missing a page?

10 THE COURT: It's three pages. I've got it
11 here.

12 MR. JIMMERSON: All right. And then you
13 referenced the need for the accounting and going
14 forward.

15 THE COURT: And it incorporated, I mean
16 incorporated my order of May 13th, 2015.

17 MR. JIMMERSON: Exactly. Exactly. So that's
18 that.

19 THE COURT: I'm very familiar with this
20 judgment.

21 MR. JIMMERSON: Now, because you really have
22 prepared for this, I'm so grateful for that, because
23 two years have passed and it's easy to miss some of the
24 nuances and minor details, which is understandable, but
25 having gone back, you will understand, you know,

1 otherwise I was prepared, am prepared, I'm sure counsel
2 will do the same on behalf of the defendant, I can walk
3 you through every single trial exhibit. Your Honor
4 remembers the --

5 THE COURT: I am very aware of the trial
6 exhibits.

7 MR. JIMMERSON: There's no reference to it.
8 There's no evidence of plaintiffs claiming
9 \$1.8 million.

10 THE COURT: I understand.

11 MR. JIMMERSON: There's no ability, there was
12 never an ability of plaintiff to make that claim
13 because first of all, they didn't have the information.
14 Didn't know what they were entitled to, and more
15 importantly, we knew that they had only built out on
16 511 acres. You'll remember the first one was 1,500
17 acres. The second amendment in March of 2005 was 511
18 acres, everything else being option property, so my
19 point is we knew that they hadn't built out, you know,
20 10,000 acres, you know, you can drive out there and
21 know that, but we were claiming that they had built
22 east beyond where they were entitled to exercise option
23 property.

24 THE COURT: Right. I understand what you
25 were claiming.

1 MR. JIMMERSON: But because you understand
2 what we were claiming, you know that judgment was never
3 entered by you in favor of Pardee and against the
4 plaintiffs. It's just a fiction. And what's so
5 unhappy and unfortunate about it is what happens then
6 is that then becomes the basis for the request for
7 attorney's fees which should be denied as well, as
8 we'll discuss today.

9 With that deletion, you have from your own
10 findings a very clear point: Plaintiffs prevailed on
11 its claim for accounting, plaintiffs prevailed on its
12 claim for breach of contract for information and the
13 damages and the special damages under Sandy Valley, and
14 by the way, and Liu, which you had read. They make a
15 motion to set aside, claiming you didn't read Liu. You
16 cited Liu in your conclusions of law.

17 THE COURT: I'm very aware of that,
18 Mr. Jimmerson. I read that case. I found it on my own
19 in between the trial and when -- because there was the
20 delay of the Actos trial.

21 MR. JIMMERSON: And you make reference to it
22 in your findings, and when you read Liu, it clarifies,
23 and the Morgan case and it makes it clear that there
24 are other situations in which attorney's fees can serve
25 as special damages and reversed the trial Court's

1 denial of that in the Liu case, and my point is that
2 you were very much aware of that issue.

3 So when you have no evidence, no claim of the
4 plaintiffs for \$1.8 million, there's not a document --
5 one thing that the defendant didn't do, as an example,
6 in the only two references to \$1.8 million, they didn't
7 introduce that into evidence. They didn't introduce
8 our disclosures. They didn't introduce the opposition
9 for the motion for summary judgment. They didn't
10 introduce any of that. That's not part of this record.
11 All that is is a theoretical calculation about what
12 might happen in the next 35 years if Pardee were to
13 complete its purchase and its rights under this option
14 agreement to buy the last 30,000 acres less what was
15 being taken down.

16 I don't know what to say to you, Judge. This
17 was wrongly-filed judgment. It should be stricken as
18 to those points. And when it comes to the issue of who
19 prevailed in this case, it's just not close.

20 When you have these arguments, it's just, you
21 know, it's disappointing that Pardee would put the
22 plaintiffs under the knife to have to respond to this
23 stuff, all these motions, when you know what happened
24 in this trial more than anyone, and I call upon you to
25 recall that, and I know plaintiffs will be served well

1 by that recollection.

2 Thank you, ma'am.

3 THE COURT: All right, Ms. Lundvall?

4 MS. LUNDVALL: Your Honor, let me start with
5 a preface, and it is based upon the argument and the
6 exchange you just had with Mr. Jimmerson.

7 THE COURT: Okay, because I would like to
8 start with the first argument on this, on what happened
9 with this judgment and why the standing order of
10 Department IV was not complied with, because I had
11 pieced it together, but maybe you can give -- what I
12 think happened based on me speaking and understanding
13 from staff members, but I would like an explanation.
14 Why was the standing order of Department IV not
15 complied with as far as the judgment that was entered
16 6/15/2015, because you agree it was not approved by
17 Mr. Jimmerson as to form and contented, correct?

18 MS. LUNDVALL: I would.

19 THE COURT: So please, I really do want to
20 know this. Why did you not follow that?

21 MS. LUNDVALL: All right, so let me, as far
22 as --

23 THE COURT: Let's do that before we get to
24 substance, because that is very, very critical to this
25 Court.

1 MS. LUNDVALL: All right. You entered your
2 findings of fact and conclusions of law first on
3 June 25th of 2015.

4 THE COURT: I got that.

5 MS. LUNDVALL: All right, so in that --

6 MR. JIMMERSON: I think it was 2014,
7 Ms. Lundvall.

8 THE COURT: It's 2014. 6/25/2014.

9 MS. LUNDVALL: If that's not what I said, I
10 misspoke and my apologies.

11 All right. In that findings, you requested
12 supplemental briefing.

13 THE COURT: Absolutely.

14 MS. LUNDVALL: Okay. So we did the
15 supplemental briefing.

16 THE COURT: Uh-huh.

17 MS. LUNDVALL: And in your supplemental
18 briefing you issued a minute order, and that minute
19 order found exactly in the briefing that Pardee had
20 submitted to you, incidentally.

21 THE COURT: Right. You submitted, I agree
22 you submitted the order 5/13. Well, I filed it
23 5/13/2015, and it was signed according to Department
24 IV's -- correct?

25 MS. LUNDVALL: Correct.

1 THE COURT: I mean do you agree with me on
2 the record, you prepared it and it does have
3 Mr. Jimmerson's reviewed and approved as to form and
4 content, correct?

5 MS. LUNDVALL: In your minute order, you
6 expressly informed us to work with Mr. Jimmerson.

7 THE COURT: Okay.

8 MS. LUNDVALL: So as to submit an order.

9 THE COURT: Okay.

10 MS. LUNDVALL: That was both approved as to
11 form and content by --

12 THE COURT: Right.

13 MS. LUNDVALL: By Mr. Jimmerson.

14 THE COURT: And that is part of my standing
15 order, all right.

16 MS. LUNDVALL: And that's what we did.

17 THE COURT: No problem.

18 Then what happened on the June 15th, 2015
19 judgment? Why did you not comply? Why was it not -- I
20 mean why was it not either -- there's a section for
21 approved, and if you -- you either get his approval, or
22 the second thing that happens in this department, send
23 a cover letter saying you sent an email to
24 Mr. Jimmerson on this date, it has been so many days,
25 he has not responded, and so we're submitting it, you

1 know, without his form and content because he has not
2 responded? That was not done, correct?

3 MS. LUNDVALL: Your Honor, from our
4 perspective --

5 THE COURT: Uh-huh.

6 MS. LUNDVALL: -- your standing order applies
7 to, and as I read it, it applies to orders.

8 THE COURT: Oh, my goodness, are you gonna
9 say to me -- oh, Ms. Lundvall, are you gonna literally
10 stand there to me and say, Judge, it doesn't apply to
11 judgments?

12 MS. LUNDVALL: Your Honor?

13 THE COURT: Is that your, is that your
14 position?

15 MS. LUNDVALL: What my understanding of your
16 standing order is, is that when we come before the
17 Court and we have contested hearings, and, in fact,
18 that you instructed Pardee by which then to prepare the
19 order.

20 THE COURT: No, no, no. I had a standing
21 order to do that and you know it.

22 Are you saying it's your understanding that
23 every time if I don't do the order, that you don't do
24 it?

25 MS. LUNDVALL: No. I'm saying --

1 THE COURT: Because I'm consistent on that
2 because it's a standing order. I usually try to put it
3 in the minutes. If not, I will tell you that is a
4 standing order, has been from day one.

5 MS. LUNDVALL: And --

6 THE COURT: So I want -- so you did not --
7 well, you did email it to him.

8 MS. LUNDVALL: I --

9 THE COURT: Correct?

10 MS. LUNDVALL: I sent a letter to the Court,
11 the copy of the judgment, and we copied Mr. Jimmerson
12 on that letter, and so to the extent that we had no
13 ex parte communication with the Court, we weren't
14 trying to slide something under his nose.

15 THE COURT: Oh.

16 MS. LUNDVALL: Moreover, this Court would
17 have called me on something that, in fact, if I had
18 prepared an order that was not reflective of your
19 findings of fact.

20 THE COURT: And I would have done it on a
21 judgment too if -- and let me tell you what happened
22 then, because I have a recollection of this.

23 MS. LUNDVALL: Uh-huh.

24 THE COURT: Because --

25 MS. LUNDVALL: And so do I.

1 THE COURT: I'm sure you do.

2 MS. LUNDVALL: What I'm trying to do is try
3 to explain to the Court what it is that we had did.

4 THE COURT: Done.

5 My understanding, okay, you submitted it. I
6 did not see the letter, but sometimes it goes to my law
7 clerk.

8 MS. LUNDVALL: We have a copy of the letter
9 that was appended as one of the exhibits then to our
10 opposition to his motion, and that letter was
11 transmitted to you, and it was copied to Mr. Jimmerson,
12 and so there should be no question about the fact that
13 he was aware of what we were submitting to the Court.

14 THE COURT: Okay.

15 MS. LUNDVALL: And so from that perspective,
16 the accusation that I somehow had ex parte
17 communications with the Court, that somehow I was gonna
18 try to pull the wool over your eyes, and that,
19 moreover, somehow you allowed yourself to have the wool
20 pulled over your eyes --

21 THE COURT: Oh, no, I did not, I was not
22 asleep at the trigger. I love that expression, I was
23 not, but I will tell you what I was asleep at, I was
24 asleep at I -- I would never -- a judgment is the same
25 as an order. I have a standing order here, and I want

1 to put in the record what exactly occurred.

2 This was given to me by my law clerk at the
3 time. I said, Where's the approval for form and
4 content, I'm not even looking at it without approval to
5 form and content. It was given back. This is why
6 there was a time delay.

7 Then I said not only do you -- I want
8 approval as to form and content, I also want to make
9 sure that it is in compliance with my orders of
10 5/13/2015 and my findings of fact of 6/25/2014, because
11 that's my standing order.

12 I will tell you it came back to me, and I
13 don't know, and I will tell you exactly what happened.
14 It did not have that. I said, No, I will not sign
15 this. In fact, I actually, and I will tell you for the
16 record, was very uncomfortable with some of these
17 sections on Page 2, because I thought, Wait a minute,
18 and I, I'm gonna be very honest here, that's why I want
19 it to form and content, to make sure, because I, I
20 looked at the some of this, I go, Wait a minute, and I
21 was -- and I don't know if my staff person either
22 misunderstood, because it was -- misunderstood a
23 communication or was misinformed, I don't know
24 Ms. Lundvall, and I was told before I signed it, No,
25 Mr. Jimmerson was aware, and maybe it was my fault, I

1 didn't cross-examine and do the next question and say,
2 And does he have any objection?

3 Because I, for the record, once -- once
4 again, if he's aware, and my idea of "aware" is he has
5 reviewed it and gotten back with the person who's
6 proposing it and has no objections. That's how I
7 understood it, because that's how -- I mean the
8 frustration is I so, I so go by that rule,
9 Ms. Lundvall.

10 And the one time I didn't, you know, I fell
11 asleep at my own procedure and not saying, You know
12 what, I want this in writing, but I usually, if it is
13 done this way, I want it in writing.

14 I'll be honest, because it was you and
15 Mr. Jimmerson and I have such high respect, I felt like
16 it must have been, he must have been aware of it and
17 said to you, I'm fine, or I would not have signed it.

18 And I'm telling you, as a judge, I take
19 responsibility that I did not enforce my procedure and
20 get it in writing. I took oral information from my
21 staff. I have to own that, and I own that, and I, I
22 will tell from my -- I'm not perfect. I'm obviously
23 not perfect. I try to have procedures, and you know
24 why, so things like this will not happen.

25 I mean the repercussions from this, I own

1 that. I accepted information that it had been
2 approved, and I will tell you never again. I have a
3 new standing -- I will not even look at orders. They
4 are not even given to me, after this incident, unless I
5 have it approved to form and content or I have either
6 competing orders or a letter from both sides saying,
7 Here's what we disagree with, so that I can put it
8 together, because this is exactly what happens.

9 So I don't know what happened. I will tell
10 you I never got the cover letter, which can happen, you
11 know. What's given to me is the order, and I don't
12 even know what's in the cover letter. What's given to
13 me is the order.

14 What my distress is about and I own, I did
15 not enforce my procedure. My frustration thing is that
16 I do rely on people to comply with the standing order,
17 and I'm very frustrated. I'm very, I don't know, I
18 don't know what happened, but I will tell you I don't
19 make a distinction on something like a judgment.

20 To me this is so critical, Ms. Lundvall,
21 after all the work we did on this trial, all the work
22 we did on all those motions, and I'll be honest, all
23 the work this Court did to really do what I felt was
24 fair on the findings of fact, conclusions of law and
25 order and the supplemental envisioning -- and I agree

1 with you, it should be in a judgment. That's why
2 seeing a judgment did not surprise me, it's the content
3 that this would have happened, you know.

4 So your thought was I didn't -- you felt like
5 if a cover letter came to me that you sent it to him,
6 then it was up to the Court to call and see if he had,
7 and also Mr. Jimmerson to call us, right, or call you?

8 MS. LUNDVALL: Precisely, your Honor.

9 THE COURT: All right.

10 MS. LUNDVALL: We had taken your orders and
11 we had reduced them then to a judgment.

12 THE COURT: No, your version of the judgment,
13 I can see that very much.

14 MS. LUNDVALL: And so from that perspective,
15 and we sent those then along with the cover letter to
16 the Court explaining what it was that we had done.

17 THE COURT: Okay.

18 MS. LUNDVALL: And we, and we had copied that
19 letter to Mr. Jimmerson, so to the extent that there's
20 an accusation that somehow, that we did something in
21 bad faith, that we were trying to have --

22 THE COURT: I don't find that at all, that's
23 why I said I own the responsibility. I can see very
24 well why I had those standing orders, and let me tell
25 you, nobody in Department IV is gonna get an order

1 after what happened here that does not have -- which
2 has been my standing order from day one.

3 I guess I, I'm a little distressed that you
4 would think somehow a judgment, which to me has even
5 more final implications than an order, would not, I
6 will be honest. And I was a practicing lawyer out
7 there like you are, and to me this is a more, I don't
8 want to say critical, but this has --

9 MR. JIMMERSON: Sacred.

10 THE COURT: I'm thinking of my word.

11 This to me is even more, I'll say critical
12 that I have an agreement between the parties, or if
13 not, then I pull on -- because especially this kind of
14 case of what should be in the judgment, because this is
15 what both of you are gonna go to in the future when
16 this case hopefully is off my docket, and I'll miss you
17 two, come back, when this case is gone and these people
18 have finality and this client has finality, what you're
19 gonna be -- what the critical thing I think I started
20 this whole thing about is the judgment much more than
21 -- that's why I didn't look at these as -- so to me
22 this is even more critical that I have my rule of
23 findings of facts, conclusions of law approved to form
24 and content.

25 No, I will tell you, Ms. Lundvall, I don't

1 think you did anything devious. I truly believe you
2 have -- I read all your stuff. You truly believe and
3 you have a right, I mean, to believe that. You think
4 this was appropriate. You have a legal -- I'm not
5 saying you don't, okay? I worked on this a long time,
6 and I want both people to understand that.

7 I feel like you felt and you defended this,
8 that you felt you did have a legal basis.

9 I, you know, I agree.

10 MS. LUNDVALL: All right.

11 THE COURT: I'm not saying you were in bad
12 faith. What I'm saying is my frustration is that I
13 felt like my -- and I don't know how I got the
14 misinformation, because I did not fall asleep at the
15 switch, I was concerned that this judgment was approved
16 by both of you. That's what -- and the reason I do
17 that then is then once I have your approval, and that's
18 why I do it, then I can make sure that I'm comfortable
19 with it.

20 Does that makes sense? And so --

21 MS. LUNDVALL: Then let's move on to the next
22 point.

23 THE COURT: I want you to know that was
24 distressful to me, I will tell you that, and I'm gonna
25 make it very clear to your firm and to any firm that

1 comes in here that a judgment, to me, is anything that
2 you want me to sign, whether it's an order, and I
3 consider a judgment an order, it has to be approved to
4 form and content.

5 And I can tell you now, I won't -- my law
6 clerk will not even give them to me now, because, you
7 know, they go through it all before for me to do it
8 easier with that, or I have to have competing orders or
9 letters explaining it, so that was distressful.

10 So I understand you felt like -- okay, I just
11 wanted that for my own edification, because I'll be
12 honest, I was distressed. And I own that I didn't
13 enforce my policy, and I accepted an oral, which, you
14 know, I own that responsibility.

15 So I don't feel like you did it devious, I'm
16 just angry that I did not enforce my own rules, and I,
17 I let something that I -- I got a misunderstanding, and
18 I don't know where it came from, and I'm not -- I don't
19 know, so I'm certainly not going to go after that.

20 So, okay, that explains to me, at least
21 somewhat, why it wasn't to form and content, okay.

22 MS. LUNDVALL: All right.

23 THE COURT: So now let's go to the substance,
24 right, of why you feel this is appropriate.

25 MS. LUNDVALL: So let's go to the next point

1 though as far as even before we get to the substance.

2 THE COURT: Okay.

3 MS. LUNDVALL: And that would be this, as the
4 Court is well advised: That even if the attorneys
5 bring an order to you, and even if there is approved to
6 form and content --

7 THE COURT: I don't have to sign it.

8 MS. LUNDVALL: That's right, you don't have
9 to sign it.

10 THE COURT: Heck no.

11 MS. LUNDVALL: You've got to do your own job,
12 and you've already said you've done your job and that
13 you reviewed this judgment and that you signed it, and
14 that, in fact, you made it yours, no matter who drafted
15 it and no matter who approved it and who --

16 THE COURT: Oh, I understand I had the
17 judgment. I understand I signed it, if that's what
18 you're saying to me, yes.

19 MS. LUNDVALL: And so from that perspective,
20 we respectfully submit that you did not fall asleep on
21 the job, as it was suggested by Mr. Jimmerson, so let's
22 look then at the substance.

23 MR. JIMMERSON: I never said that.

24 MS. LUNDVALL: And I want to start by the
25 very comment and the exchange that you had with

1 Mr. Jimmerson.

2 THE COURT: Okay.

3 MS. LUNDVALL: You exchanged with him the
4 fact that if you had agreed with his theory about the
5 purchases of option property, then there would have
6 been monies that would have been due and owing.

7 THE COURT: If I had had the testimony.

8 MS. LUNDVALL: If you --

9 THE COURT: If I'd had the testimony, which I
10 didn't.

11 MS. LUNDVALL: And it was --

12 THE COURT: And you know what I was gonna do,
13 Ms. Lundvall, I was gonna then have to do an accounting
14 for it because I had absolutely no-- I didn't get to
15 there, because I had no information on what it would
16 have been.

17 MS. LUNDVALL: Precisely. He set up his case
18 in a two-part step. He set up his case alleging two
19 different forms of breach of contract. The first --

20 THE COURT: I agree, two different theories
21 of liability.

22 MS. LUNDVALL: Yes.

23 THE COURT: For the breach.

24 MS. LUNDVALL: Two different theories of
25 liability. One is that there were purchases of option

1 property, and therefore, that there would be
2 commissions that were due and owing.

3 His second theory was that there was
4 insufficient information that was given to the
5 plaintiffs.

6 THE COURT: Okay, I would reverse that.

7 MS. LUNDVALL: All right.

8 THE COURT: In fairness, the first theory,
9 when you look at the first, he didn't even have -- and
10 let's be fair here, his first claim was to get
11 information because of those amendments that were
12 missing, as we know. We all went through them. Was it
13 eight of them?

14 MR. JIMMERSON: It was eight.

15 THE COURT: Okay. And you had given, this is
16 my recollection of the testimony, one and two but not
17 -- some of them but not all of them prior to the case,
18 so when you look at the case, he did the accounting and
19 he did the original claim for breach because they
20 didn't have information to find out if any more was due
21 and owing. Once through discovery the amendments came
22 and the different information came, only through
23 discovery in this case, then he looked at the
24 amendments and then said, Wow, I feel I have another --
25 there may be in his mind, if I had done what his theory

1 was on what options, because there were facts that they
2 were not aware of. He was not aware of any of that
3 before he filed the lawsuit, don't you agree,
4 Ms. Lundvall? He was not aware of the facts on moving
5 easterly on the option, that theory, or he wasn't aware
6 that they had sold, you know, first was it multi-family
7 and then changed them -- well, yes, it was, remember,
8 to multi and then single family, but I didn't find them
9 single-family detached residential property, as you
10 know.

11 So I look at the case, I'll be honest, it was
12 definitely a claim to get information, and then once he
13 got the information, whether, based on that commission
14 agreement, he had any other claims. I truly believe
15 that, that this how it happened.

16 MS. LUNDVALL: And you, as far as discussed
17 with him in the course of this very hearing that if I
18 had agreed with your theory concerning the purchases of
19 option property, then, in fact, there would have been
20 additional commissions that were due and owing.

21 THE COURT: Past ones. Not future, past
22 ones.

23 MS. LUNDVALL: And he acknowledged that and
24 he admitted that.

25 THE COURT: Okay.

1 MS. LUNDVALL: And so to the extent though,
2 the point being made here is he lost on that.

3 THE COURT: He lost on a theory of liability,
4 but he didn't lose on a claim. That doesn't -- and
5 you're trying to say that because he lost on that, that
6 makes you the prevailing party?

7 MS. LUNDVALL: Let me as far as see if I can
8 as far as initially, because one, just because one of
9 the things that I wanted to do then is to be able to
10 walk the Court then through the history then of this
11 case, so the Court --

12 THE COURT: Oh, okay. I'm aware of it, but I
13 would be glad to be walked again.

14 MS. LUNDVALL: Well, what I want to do is to
15 make sure that you understand that his theory and he
16 was asking for money damages from the very beginning
17 until all the way to the end, and he lost on that
18 theory, your Honor. And the point that we had tried to
19 make is that that loss on that theory, the flip side of
20 that is a win to Pardee.

21 THE COURT: No. You have to say the win
22 makes you the prevailing party over him being the
23 prevailing party over the other claims.

24 MS. LUNDVALL: So what I'm trying to do is to
25 stick as far as to this motion to amend.

1 THE COURT: Okay. So you're abandoning this
2 \$1.8 million case?

3 MS. LUNDVALL: Absolutely not, your Honor,
4 because one of the things you're gonna see as far as
5 all the way through is they asked for money damages,
6 they quantified that amount at 1.8, and --

7 THE COURT: Okay. No, I agree, if you're
8 saying, -- so you feel the quantify of what they wanted
9 for damages was 1.8 million, and you're gonna show me
10 where the evidence came in in trial and how that was
11 argued at trial, right?

12 MS. LUNDVALL: So, in fact, let's start with
13 their complaint.

14 THE COURT: Okay.

15 MS. LUNDVALL: Their complaint alleged that
16 there was a financial relationship, that pursuant to
17 the commission letter that they were to be paid a
18 commission, and they prayed for compensatory damages in
19 excess of \$10,000.

20 THE COURT: We all know that's true.

21 MS. LUNDVALL: The second amended complaint
22 then made the same allegations. It was the same basic
23 allegations. In other words, they asked for money
24 damages once again.

25 We get to their first 16.1 disclosure. In

1 Their first 16.1 disclosure, Mr. Jimmerson makes a big
2 deal out of the fact that they didn't serve me with any
3 interrogatories, they didn't send any requests for
4 production. I don't have to. Rule 16.1 obligates them
5 to set forth their damage theory and the amount of
6 their damages.

7 THE COURT: Right.

8 MS. LUNDVALL: So we relied upon that, and
9 that's what they, that's what they said to us.

10 THE COURT: I understand NRCP 16.1.

11 MS. LUNDVALL: Their first four disclosures
12 under rule 16.1, they just made the broad claim that
13 they were entitled to all damages that flowed from the
14 breach of the commission agreement, okay?

15 THE COURT: Okay.

16 MS. LUNDVALL: So then what we did is we
17 filed a motion for summary judgment. If you go back
18 and take a look at our motion for summary judgment, we
19 break out their case into the two theories that they
20 had advanced at that point in time during discovery,
21 number one is that we owed them more money in
22 commissions, and that number two, we had breached, and
23 that we had breached the agreement then by not paying
24 them those additional monies, and number two, that, in
25 fact, that we had not given them sufficient

1 information. Our motion for summary judgment is broken
2 into those two particular sections, all right?

3 THE COURT: Right.

4 MS. LUNDVALL: They opposed our motion for
5 summary judgment, and in opposing our motion for
6 summary judgment, they highlighted this theory that
7 they, that they advanced all the way through trial, is
8 it all depends upon what you call option property.

9 THE COURT: Uh-huh.

10 MS. LUNDVALL: They went on to say that we
11 had made a significant purchase of option property,
12 that we had purchased option property, and, in fact,
13 they went on to say that the damages that flowed from
14 our purchases of option property were being, that they
15 were being denied \$1.8 million in commissions. This is
16 their opposition.

17 So it's not something that I fabricated, it's
18 not something that I made up, it's not something that I
19 pulled out of thin air, it's not something that I have
20 deceptively tried to put before the Court. This is
21 their theory. That's what we defended against.

22 THE COURT: Okay. And when was that said? I
23 looked in the -- continue your presentation.

24 MS. LUNDVALL: All right. We filed a motion
25 for summary --

1 THE COURT: I remember that.

2 MR. JIMMERSON: It was never part of the
3 trial.

4 MS. LUNDVALL: Our motion for summary
5 judgment --

6 THE COURT: Mr. Jimmerson, in fairness,
7 Ms. Lundvall has her chance to make her record too,
8 all right? That's not fair.

9 MS. LUNDVALL: We filed our motion in October
10 of 2012. My prediction is, is that the opposition that
11 they failed would have been then in November of 2012.

12 THE COURT: Okay.

13 MS. LUNDVALL: And my recollection is that
14 the Court issued an order on that in February of 2013,
15 something along that line.

16 So if, in fact, if you want --

17 THE COURT: I have one in March. Well, I
18 have 10/23. That wouldn't have been it, so probably my
19 March 14th of 2013. I went through all the orders.

20 MS. LUNDVALL: And so as I indicated, my
21 prediction is that opposition could be found then in
22 the November of 2012 time frame.

23 THE COURT: Okay.

24 MS. LUNDVALL: And I'm quoting --

25 THE COURT: I'm sure that's true.

1 MS. LUNDVALL: And I'm quoting from their
2 opposition, and maybe it might make it easier for the
3 Court to have a paper copy of our powerpoint.

4 THE COURT: Sure, so I can follow it instead
5 of looking up.

6 MS. LUNDVALL: And I have a copy for
7 Mr. Jimmerson as well.

8 So anyway, so they opposed then our motion
9 for summary judgment. They say this whole case is
10 about what you call option property. They claimed that
11 we had made purchases of option property, and the
12 quantification of those purchases then yielded 1.8 in
13 -- 1.8 million in commissions that we had not paid to
14 them. That was their theory. That's what we defended
15 against, that's what we prevailed upon at the time of
16 the trial.

17 All right, so let's go on then. What did we
18 get nearly immediately after filing our motion for
19 summary judgment? And part of our motion for summary
20 judgment, very noticeably, had indicated that they had
21 not quantified their damages in compliance with Rule
22 16.1.

23 THE COURT: Right.

24 MS. LUNDVALL: Therefore, under the
25 sanctioning provisions under 16.1, they should not be

1 able to advance any quantification of their damages.
2 And what did they do? They filed then their Rule 16.1
3 disclosure, and for the first time then, after we filed
4 our motion for summary judgment, they indicated that
5 they calculate their damages to be in excess of 1.9.

6 Now, I don't know about you, but any attorney
7 that I know that gets a disclosure, a Rule 16.1
8 disclosure of what the opposing side's damages are, we
9 know that's what you're defending against.

10 THE COURT: Okay.

11 MS. LUNDVALL: That's what the case is about.
12 That's what we're defending against, all right?

13 So they made their disclosure and they
14 identified how they calculated it. And it tracked the
15 two calculations on the two theories that they were
16 advancing.

17 The first one was the loss of the
18 commissions, and they gave calculations on that. And
19 they go on and they talk about how we reclassified the
20 lands as purchase property and option property, and we
21 divested then the plaintiffs of any opportunity then to
22 recover this \$1.8 million in commissions. That's what
23 their theory holds. That's the theory they tried, and
24 that's the theory, your Honor, that they lost, that you
25 ruled against them upon.

1 All right. So then what we do is we get then
2 to what they actually tried. Their supplement then
3 gave us plenty of information as to what they were
4 going to try at the time of trial. So let's get into
5 then we talked -- I have a number of slides in here
6 about how every single one of their Rule 16.1
7 disclosures.

8 Even disclosures that were given to us during
9 the course of trial included this figure of
10 \$1.8 million. It made it abundantly clear that they
11 were seeking money damages in addition to additional
12 information.

13 And if you think about --

14 THE COURT: Once they got the additional
15 information, which started the lawsuit. They got it.

16 MS. LUNDVALL: That's correct.

17 THE COURT: Once they got it.

18 MS. LUNDVALL: And so --

19 THE COURT: I didn't see any of this, as you
20 know, that's not evidence at trial. I only review the
21 evidence at trial, but yes, okay.

22 MS. LUNDVALL: But this is all part of the
23 record then before the Court as to what the parties
24 were doing as it relates then to this motion to amend
25 as it relates to the prevailing party. We put all this

1 information before you.

2 THE COURT: You put all this information
3 before me at trial?

4 MS. LUNDVALL: No, no, no, I'm not suggesting
5 that.

6 THE COURT: No, no.

7 MS. LUNDVALL: What I'm suggesting is --

8 THE COURT: This is discovery. This is to
9 put people on notice, you're right, as to what they may
10 or what may happen at trial. There's things in 16.1
11 that never come up at trial. You and I both know we
12 could have this theory initially, and after discovery,
13 we go, whoops, that's not the way we're going, so this
14 is discovery, I understand that, so I just want to make
15 sure -- I don't remember, and I went -- you didn't ask
16 me to review 16.1.

17 Did you put into evidence 16.1?

18 MS. LUNDVALL: Absolutely. All of this is in
19 as far in our oppositions to their various motion to
20 strike.

21 THE COURT: No, no, not for this, but at
22 trial. Believe me, I read everything, but at trial did
23 you have an exhibit of 16.1?

24 MS. LUNDVALL: Absolutely not.

25 THE COURT: All right. I just wanted to make

1 sure I didn't miss it, because that would concern me.

2 MS. LUNDVALL: As a defendant, I'm not going
3 to put in evidence --

4 THE COURT: Of course not.

5 MS. LUNDVALL: -- of what a plaintiff claims
6 is their damages.

7 THE COURT: Okay. Right, but at trial is
8 what you're defending. You take what the burden of
9 proof is and what they put on, and you do your defense
10 according to the testimony of the plaintiffs and their
11 exhibits. That's your burden, I understand completely,
12 of what's done at trial.

13 Okay, I'm on the same -- I'm following your
14 reasoning.

15 MS. LUNDVALL: All right. But I guess let me
16 step back from this to make sure the Court understands
17 the arguments that I'm making is --

18 THE COURT: Yes.

19 MS. LUNDVALL: Is that they told us what
20 their theory was and what they were seeking to recover.
21 For the attorney's fees we incurred in defending this
22 case, it was based upon what they had disclosed to us,
23 and those disclosures are all before the Court.

24 And I'm gonna get to the trial where you're
25 gonna see that, in fact, they continued in this, the

1 same theory that they'd advanced.

2 THE COURT: Okay.

3 MS. LUNDVALL: Their theory was all the way
4 back to their motion for summary judgment that said it
5 all depends on what you call option property.

6 THE COURT: Uh-huh.

7 MS. LUNDVALL: Their theory that they tried
8 to you was we had purchased option property. The
9 theory we defended against was we didn't purchase any
10 option property, and you agreed with us. And their
11 quantification of that purchase was the \$1.9 million --
12 it was actually 1.8. They add the additional component
13 then for the attorney's fees that they incurred on the
14 second portion of their theory.

15 But going back then to what happened then at
16 the time of the trial, all right, so we get to the
17 witnesses. Mr. Wolfram gave nearly three days full of
18 testimony, and Mr. Wilkes was there for about a half
19 day, Mr. Whittemore. And these are the key witnesses,
20 what I tried to highlight as to who the Court heard
21 with the greatest frequency and the most information,
22 and Mr. Whittemore had nearly three full days.

23 And during the course of the trial, there was
24 numerous questions about lost commissions and this
25 theory about how we had reclassified option property

1 and that reclassification was really what they termed
2 purchase property, and therefore they were entitled to
3 a commission upon them.

4 THE COURT: Wouldn't you agree with me, I
5 just want to ask wouldn't you agree with me that a lot
6 of questions was educating the Court and themselves on
7 how, especially Mr. Whittemore, how did you treat
8 Pardee, because they were not privy to this, and as you
9 know, how this was done, how you decided to do the
10 redesignation, how you decided to treat it, why you
11 moved the boundaries, wouldn't you agree with me a lot
12 of that information you're now basically saying to this
13 Court, Oh, that was all to defeat their \$1.8 million
14 claim, the damages they put in discovery, but a lot of
15 it was to figure out, I felt, whether they were
16 entitled to option property, not what the amount was
17 yet, but to find out whether they were actually
18 entitled based on third party, you know, that they
19 weren't a part of, you know, that's a whole different
20 thing to incorporate into a commission agreement.

21 I'm sure this may not happen again, because
22 they were not part of CSI, Coyote Springs and Pardee.
23 A lot of questions, because I spent a long time on it,
24 was trying to figure out whether they even have that
25 theory.

1 And that's why, I'll be honest, a lot of the
2 questions -- because I'm being very -- I looked through
3 it, and in honesty, a lot of it was just Mr. Jimmerson
4 was trying to figure out how it was treated and what
5 they did to see if it could go under his under the
6 commission agreement.

7 Do you agree with me or not, or do you think
8 it was all I'm just, I'm gonna make them -- you know,
9 because the questions were trying to understand,
10 especially Whittemore, how did this work; Jon Lash, how
11 did you do this, why did you do this, what happened on
12 these amendments, you know, it was substantive to see.

13 And I look at it and I did at the time, you
14 know, I looked at it as the time of them trying to
15 figure out whether -- which was the basis, whether they
16 did owe anything, whether they did owe any under, I was
17 gonna use the word "option," whether that actually,
18 when they changed the boundaries and whether that
19 actually was option. A lot of that was done, to me,
20 when it was done at trial was questions to really find
21 substance.

22 And I see what you're saying, well, then, if
23 it went the way they wanted, they would have had
24 substance for their, they could have had evidence to
25 this Court that they had \$1.8 million in damages,

1 correct?

2 Do you guys agree would me on my questions?

3 MS. LUNDVALL: Yeah, you've got two questions
4 there, two principle questions there, and you say,
5 Well, wasn't the trial about this.

6 THE COURT: Yes.

7 MS. LUNDVALL: But what I want you to think
8 about is this: All the discovery was about that as
9 well, all of the discovery that we went through with
10 all the different witnesses, and they took Harvey
11 Whittemore's deposition, they took Jon Lash's
12 deposition, they took many depositions, no different
13 than we did. All the way through discovery, we learned
14 all this information.

15 But what is a trial? Is a trial is --

16 THE COURT: To prove.

17 MS. LUNDVALL: Take it to the finder of fact.

18 THE COURT: Correct.

19 MS. LUNDVALL: And to convince --

20 THE COURT: Convince me.

21 MS. LUNDVALL: That's right, and to convince
22 the finder of fact, so they weren't using trial as a
23 discovery device. The weren't --

24 THE COURT: I have to -- when they came up
25 with that one, oh, my gosh, what was the one that they

1 hadn't seen before?

2 MR. JIMMERSON: Res. 5.

3 THE COURT: Let me think it through --
4 I'm sorry, Mr. Jimmerson -- on when they had bought it
5 as multi -- I will tell you some of the information
6 when I read it back, I felt, was -- and you can do
7 discovery in trial. It's dangerous.

8 MS. LUNDVALL: That's correct.

9 THE COURT: It's a dangerous proposition, but
10 I understand your argument.

11 MS. LUNDVALL: But at the same token, your
12 Honor, think about it from this perspective, that's
13 what we were defending against, and that is what we
14 were defending against and we prevailed on that. I
15 want to go back to the fact we prevailed on that.

16 MS. LUNDVALL: To go back and try to
17 underscore Jim Wolfram's testimony. He was questioned
18 very clearly about how he earned commissions, and it
19 was his testimony that Pardee was obligated to pay him
20 commissions on option property.

21 And he went through all kinds of questions
22 then through Mr. Jimmerson about the definitions from
23 the documents on this purchase property price and
24 option property. He testified that it wasn't fair that
25 Pardee had executed amendments that affected his

1 commission agreement, and in his theory, had changed
2 then as to whether or not they should get a commission
3 based upon Pardee's purchases.

4 He went on to say, talk about the three
5 different provisions then of the commission agreement
6 himself. He testified that the location and the
7 boundaries of the parcels would determine what type of
8 property was being purchased, and therefore, whether or
9 not they were entitled to additional commissions.

10 And then he went on then and talked about
11 parcel maps as demonstrative evidence and how there was
12 definite boundaries, in his opinion, to the purchase
13 property and how if we went outside of certain
14 boundaries, then, in fact, we were obligated to pay him
15 commissions upon that.

16 The Court will probably recall, I can
17 visualize it as far as in your courtroom, we were here.
18 He had huge maps with overlays. He talked about how we
19 had purchased property that should be vertical, but we
20 had developed in a horizontal fashion.

21 THE COURT: Correct.

22 MS. LUNDVALL: That, that, you know, should
23 ring a bell as far as with the Court.

24 THE COURT: I remember. I remember it all
25 very well, the entire theory.

1 MS. LUNDVALL: Their entire theory was if we
2 went outside somewhat what they --

3 THE COURT: What they labeled as option.

4 MS. LUNDVALL: They wanted that all as option
5 property.

6 THE COURT: They said they defined it as
7 option property under the agreement.

8 MS. LUNDVALL: And that they thought they
9 should get a commission then upon those purchases.

10 THE COURT: If it had been deemed option, I
11 understand.

12 MS. LUNDVALL: All right.

13 THE COURT: I understood the theory of the
14 case.

15 MS. LUNDVALL: And he said he believed he was
16 entitled to additional commissions also on the custom
17 lots. If you recall, there was an issue regarding the
18 custom lots.

19 THE COURT: Yes.

20 MS. LUNDVALL: All right.

21 THE COURT: Whether those would be
22 single-family detached residential property, since they
23 are single family, and the question is based on the
24 agreement whether that could -- I agree.

25 MS. LUNDVALL: All right. So he said he was

1 most certainly entitled to additional commissions.
2 That's what we tried. He said he was most certainly
3 entitled to additional commissions.

4 All right, then we get to Walt Wilkes.
5 Walt Wilkes, he too testified, and he also said, I do
6 think we're entitled to other and more commissions. He
7 says his understanding was they were gonna get
8 commissions on the whole of all of the transactions,
9 and he thought that the plaintiffs were owed additional
10 commissions for the custom lots as well.

11 And so then we get to he theorized and
12 characterized it that this is Pardee trying to take
13 money from us, and he, too, echoed this boundary theory
14 about if we purchased property outside of certain
15 boundaries, then they should be entitled then to
16 additional commissions. That's what his testimony was.

17 Harvey Whittemore, the other key witness --
18 even though you heard many other witnesses, I'm trying
19 to focus on what the keys were.

20 THE COURT: Well, this issue was focused on
21 Harvey Whittemore and a little Jon Lash.

22 MS. LUNDVALL: And so the extent then he was
23 on the witness stand for three days, and he talked
24 about his original conception and the negotiations and
25 what, in fact, the contracts provided. He also

1 testified that Pardee had not purchased any option
2 property, if the Court would recall.

3 And when asked about what he understood this
4 case was about, he says, Who gave you the idea that the
5 focus of this case was past due brokerage commissions?
6 He says, I took that impression from my deposition.
7 Why? Because all of those questions were asked of him
8 in his deposition. He spent nearly an entire day
9 asking questions also about the redesignation issue.

10 So not only did they want money for the
11 custom lots, but they also wanted additional
12 commissions on the redesignations.

13 All right. He said that we talked about and
14 highlighted, continuing as far as Mr. Whittemore's
15 testimony, and how he went on and talked about how they
16 could not have anticipated what the specific boundaries
17 were and why it is that they had crafted their
18 agreement in the form that it was.

19 THE COURT: Okay.

20 MS. LUNDVALL: And then when we got to
21 Jon Lash, Jon Lash echoed the same thing, and he said
22 that's why they had crafted the commission agreement.
23 It wasn't based upon boundaries or specific parcels of
24 purchase, it was based upon the purchase property price
25 that was set forth, and that was unambiguous --

1 THE COURT: I remember this.

2 MS. LUNDVALL: -- in the commission
3 agreement, all right?

4 THE COURT: I painfully remember all of this,
5 and I mean that nicely.

6 MS. LUNDVALL: And so to the extent that
7 Mr. Whittemore talked about the principle reason was
8 that they needed this flexibility so as to be able to
9 do a development that was going to go across many
10 years.

11 This continues on to highlight then, your
12 Honor, how that the \$84 million that Pardee had paid to
13 CSI was this purchase property price, and if you go all
14 the way back to the commission, as the Court -- the
15 commission agreement, the Court will recall it was the
16 purchase property price upon which one part of their
17 commissions was based.

18 THE COURT: Correct.

19 MS. LUNDVALL: And it was option property
20 then --

21 THE COURT: Was the second.

22 MS. LUNDVALL: -- that was the second part.
23 And so all of this was to demonstrate then that Pardee
24 had not made any purchases of option property, and if
25 we did not make any purchases of option property, then

1 they weren't entitled to any additional commissions
2 other than what they had already been paid.

3 So then we get to opening and closing
4 arguments. Let me as far as see if I can't highlight
5 then a couple of points that were made in the
6 plaintiffs' opening and closing arguments, because I
7 want you to think about that his basic position is,
8 your Honor, is that they were never seeking money
9 damages. That's their basic position.

10 And he further puts a fine point on it, as he
11 said, If we were never seeking money damages, and
12 moreover, we were never seeking 1.8, well, we know from
13 their rule 16.1 disclosures is that that's what they
14 had quantified.

15 THE COURT: I think what he was saying,
16 Ms. Lundvall, the basis of this suit was to get an
17 accounting and see what the information was, and then
18 once they got it, to see if they have money damages.
19 That's why there's this disconnect.

20 And I understand why they had to do, because
21 you did, you did a motion you didn't comply with 16.1,
22 you didn't give us a damage figure, and then guess
23 what, and they had to.

24 MS. LUNDVALL: So --

25 THE COURT: Do you see where I'm --

1 MS. LUNDVALL: I understand the point, but
2 that -- what we have here, your Honor, is there were
3 two theories of breach.

4 THE COURT: There was theories of breach of
5 the contract.

6 MS. LUNDVALL: And we prevailed on one, they
7 prevailed on the other.

8 THE COURT: On the other.

9 MS. LUNDVALL: Okay. So to the extent that
10 Mr. Jimmerson, in his motion to amend, says that we
11 didn't prevail on anything, that we didn't, that they
12 never, number one, asked for any money damages, let
13 alone we didn't prevail on it, that is the point that
14 I'm trying to make.

15 THE COURT: And here's my thought process, so
16 help me. I broke it down. I get that, but here's my
17 thought process: You can sue for breach of contract,
18 you may have five different things where the trier of
19 fact can say you breached here, you breached here, you
20 breached here, you breached here, but those are
21 theories of breach.

22 If the trier of fact, which I did in this
23 case, found a breach, just because you were able to
24 defend the other breaches, why did they not, were they
25 the prevailing party in their claim?

1 Do you see what I'm saying?

2 I agree their theories of liability, and
3 that's my thought process, if you -- that's my thought
4 process, you're right, but they, they had a breach.
5 There was a breach. I found a breach to that
6 commission. I didn't find a second breach as far as
7 more commissions. I mean my findings are my findings.
8 They're very clear. They're very clear what I did.

9 And so what your point to me is, Well, they
10 may have prevailed on one breach but we prevailed on
11 the other, so we're really the more prevailing party,
12 is --

13 MS. LUNDVALL: Well, and see --

14 THE COURT: Is there such a thing as a --

15 MS. LUNDVALL: Absolutely.

16 THE COURT: -- more prevailing party?

17 MS. LUNDVALL: Absolutely.

18 THE COURT: That's basically what you're
19 arguing to me.

20 MS. LUNDVALL: Absolutely, your Honor.

21 THE COURT: Okay. I just wanted to put in
22 terms what you were saying, okay.

23 MS. LUNDVALL: Absolutely, your Honor.

24 THE COURT: Because they prevailed on one
25 theory but they didn't prevail on the second and

1 because we won on the second, we think that was a
2 bigger theory or makes us more the prevailing party?
3 Okay, That makes -- at least I put together what I
4 thought you were saying, okay. That's good, all right?
5 Not "good," but I want to make sure I'm following very
6 well, okay.

7 MS. LUNDVALL: What I'm trying do is continue
8 to focus then on the motion to amend, and on the motion
9 to amend they keep saying we didn't prevail on
10 anything.

11 THE COURT: You didn't prevail on their claim
12 for money damages is how they say it. I agree that,
13 and I'm gonna say I agree it's in my findings of fact
14 and conclusions. You prevailed on their theory of
15 breach of whether they were owed any unpaid past
16 commissions. There's no way you can't read this to say
17 that they did, but in all honesty, this doesn't say
18 that.

19 MS. LUNDVALL: Yes, it does.

20 THE COURT: Well, you and I have a -- this
21 does not say it, say it that way, but go ahead. I'm
22 not disagreeing with you, my findings of fact and order
23 says exactly that. It's a theory of liability, I agree
24 with you there, so go on.

25 MS. LUNDVALL: All right. So let me as far

1 as to step back as far as from this for just a second,
2 because if, in fact, that there is a perception that we
3 are claiming that we prevailed on everything --

4 THE COURT: Oh, no.

5 MS. LUNDVALL: -- that perception is wrong.

6 THE COURT: No, absolutely. I even said you
7 lost your claim. You had a, you actually had a claim
8 against the plaintiffs for that same commission, breach
9 of the implied covenant of good faith and fair dealing,
10 and you did not --

11 MS. LUNDVALL: That was not the portion, that
12 was not the foundation for our good faith and fair
13 dealing.

14 THE COURT: I understand that, but I'm
15 saying --

16 MR. JIMMERSON: Excuse me.

17 THE COURT: No, that's okay.

18 MR. JIMMERSON: Let me just mention that
19 claim was withdrawn by Ms. Lundvall as part of her
20 closing arguments before submitting it to you. That's
21 the part I was clarifying.

22 THE COURT: Okay.

23 MS. LUNDVALL: So let me, I want to start --

24 THE COURT: I get what you're saying.

25 MS. LUNDVALL: I want to start from ground

1 zero to make sure that there's no misunderstanding as
2 to our position. There were two theories. They
3 prevailed on one, we prevailed on the other one.

4 THE COURT: For the breach of contract.

5 MS. LUNDVALL: The case law, the case law,
6 when we get to the motions for summary judgment, I will
7 identify the specific case law says what the Court
8 needs to do is identify then and quantify then what did
9 the parties focus upon and what did they prevail on.

10 THE COURT: No, I read that. I get that.
11 Same with the accounting. I understand I'm to look at
12 the totality of the circumstance.

13 MS. LUNDVALL: Precisely.

14 THE COURT: I read every single case. I
15 understand that, including their accounting one, I am
16 to focus on all of that. Yes, I understand that.

17 MS. LUNDVALL: So what we end up with then at
18 the end of the day is that they prevailed on something,
19 we prevailed on something, and it's the Court's job
20 then by which to try to quantify where was the bulk of
21 this trial upon, what was the bulk of the trial on?
22 Was the bulk of the trial on trying to demonstrate that
23 we had purchased option property through all of those
24 witnesses and all of those theories and the additional
25 argument about the custom lots and that they were

1 entitled to commissions upon those as well as the
2 redesignation, that's what the bulk of the trial was
3 about, your Honor.

4 THE COURT: But I also have to consider the
5 accounting claim, and the only way they got all their
6 documents to even go to their theory that they were on
7 the option property was because you had to produce --
8 not you, the defendant, only through this lawsuit
9 actually produced the documents that then they could
10 come up with a second theory.

11 There's no question they did not have enough
12 information until the option agreement and everything
13 was produced to them, so I have to balance that the
14 reason for the lawsuit, and it's very clear in the
15 record, was to get an accounting and to get the rest of
16 those option agreements and to try to find out, because
17 they tried to do it and I remember it all, they tried
18 to get Mr. Whittemore, and he goes, No, I can't.

19 I remember they were confidential, although a
20 couple of amendments had gone and the rest of them
21 didn't, but I also have to balance in that the impetus
22 was, the only reason for the first lawsuit was an
23 accounting to get the information so they could
24 determine if there was anything.

25 MS. LUNDVALL: All right, your Honor.

1 THE COURT: And so that, I just wanted to be
2 very clear on the record. You agree with that, right?
3 I have to consider the accounting claims.

4 MS. LUNDVALL: One of the things I think that
5 you have to consider as a result of that is what the
6 consequence is once they received that information.

7 THE COURT: Oh, absolutely.

8 MS. LUNDVALL: Okay.

9 THE COURT: What would their consequence be,
10 once they get the information they just drop the
11 lawsuit?

12 MS. LUNDVALL: If you would allow me as far
13 as to finish what my thought is?

14 THE COURT: I apologize, I do that to you all
15 the time because I go one ahead of you, I'm sorry, the
16 consequence of what they did.

17 MS. LUNDVALL: Okay. So during the
18 discovery, they got all the information --

19 THE COURT: They did.

20 MS. LUNDVALL: -- to which they claimed that
21 they were entitled to. They had all that information.
22 And what did they do as a result of that? Did they
23 say, We were paid everything that we were entitled to?
24 We got everything that we were entitled to? No. What
25 they did is they advanced the theory that they talked

1 about in their letters before they started the case,
2 that they set forth in their complaint, that they set
3 forth in depositions, that they set forth in the
4 opposition for the motion for summary judgment, that
5 even though we have all this information from Pardee,
6 we still think our interpretation is right and that
7 we're entitled to money damages.

8 If they, in fact, had gotten all this
9 information and stopped and said that Pardee is right,
10 they haven't purchased any option property, then -- and
11 they would have gone forward with their breach of
12 contract at the time of the trial, then maybe their
13 argument may have merit, but they did not, and that is
14 the point that I'm trying to underscore here.

15 They argued in both opening and closing
16 arguments how the case was going to hinge upon these
17 purchases, and they continued to advance their theory
18 that we had purchased option property.

19 They talked about how it was a breach of
20 contract that affected their clients' rights to a
21 commission by making these later deals, once again
22 continuing to try to underscore the fact that they were
23 adversely affected by our conduct, and as a result of
24 that, they should have been entitled to more money.

25 Their actions -- one of the things I wanted

1 to get to at this point in time is this: If there is
2 any question whatsoever that the plaintiffs sought
3 money damages as a result of the trial, I would ask the
4 Court to look at one document and one document only,
5 and I'm gonna offer a copy of what I want you to take a
6 look at.

7 THE COURT: Uh-huh.

8 MS. LUNDVALL: This was the very last
9 submission that the Court had before you prepared your
10 findings of fact and conclusions of law. This is what
11 they gave you. This is what they said that they
12 thought they --

13 THE COURT: No, this is their proposed, like
14 you gave me a proposed.

15 MS. LUNDVALL: And I want, and I want to
16 underscore it.

17 THE COURT: Okay.

18 MS. LUNDVALL: And I want you to think back
19 to everything you've read in all these motions that
20 Mr. Jimmerson has brought before you.

21 THE COURT: Uh-huh.

22 MS. LUNDVALL: He said that he never asked
23 for money damages.

24 MR. JIMMERSON: I never said that.

25 MS. LUNDVALL: He said, I've never asked for

1 money damages and specifically we never asked for 1.8,
2 all right? So let's look to see whether or not they
3 did ask for money damages.

4 So go to Page 4. Page 4 sets forth their
5 entire theory about this option property and how we had
6 purchased option property. That's what their Finding
7 17, 18, 19, 21, 22, and 23 all track.

8 They go on and they talk about on Page 7 the
9 non-circumvention clause within the commission
10 agreement, Paragraphs 34, 35, and 36, and they claim
11 then that Pardee and CSI had circumvented their
12 opportunity to receive commissions by entering into
13 these subsequent agreements.

14 They then go on at Page 9, at 48, 49 and 50,
15 and they talk about specifically what they had proven
16 at trial were the actual purchases, and they go on at
17 Page 10 on line -- at their Finding 58 and talk about
18 the geography and specifically where the Court can find
19 that.

20 They go on then at Paragraph 60 that's on 11,
21 and that says that under the multi-family agreement.
22 In addition to the custom lot agreement arguments --

23 THE COURT: I'm sorry, where are you now,
24 Page --

25 MS. LUNDVALL: Page 11.

1 THE COURT: I just didn't hear your
2 paragraph.

3 MS. LUNDVALL: And they talk about under the
4 multi-family agreement that we had purchased 225 acres
5 of that residential property.

6 THE COURT: Uh-huh.

7 MS. LUNDVALL: And they talk about at 62, 63,
8 64, and 65 how the Court could calculate what they were
9 then due.

10 THE COURT: For that Res. 5 property, I
11 remember that.

12 MS. LUNDVALL: That's correct.

13 And if you go to Page 12 then, they also talk
14 about what that amount was that they should be paid as
15 a result of that. They ask for money damages, based
16 upon the information that they had provided at the time
17 of the trial, of \$134,000 --

18 THE COURT: 134,964.

19 MS. LUNDVALL: That had nothing do with their
20 attorney's fees, because their attorney fee provisions
21 come in at other places in this proposed findings of
22 fact and conclusions of law.

23 They then go on in the entirety of the
24 findings of fact and conclusions of law and say, Your
25 Honor, we think that we should be entitled additional

1 monies that only can be accounted for once you adopt
2 our theory, and if you adopt our theory, then we are
3 going to be entitled to even more money than this.
4 That's what they gave to you in their findings of fact
5 and conclusions of law.

6 And so to the extent that this case, yes, it
7 was about money damages in part.

8 THE COURT: In part.

9 MS. LUNDVALL: And the "in part" is what we
10 prevailed upon.

11 And so to the extent that once we get --
12 let's start limiting it then to the motion that the
13 Court has in front of it right now.

14 THE COURT: Uh-huh.

15 MS. LUNDVALL: The motion to amend, were
16 we --

17 THE COURT: This judgment.

18 MS. LUNDVALL: The judgment.

19 THE COURT: Okay.

20 MS. LUNDVALL: Were we accurate and were you
21 accurate then in saying that Pardee prevailed on the
22 portion of the case by which that they sought money
23 damages and that they were not entitled to
24 additional --

25 THE COURT: It doesn't say that here. It

1 doesn't say that wording, Ms. Lundvall. I mean that's
2 different wording than what you put in here.

3 MS. LUNDVALL: It puts in there the
4 quantification as to what they had articulated.

5 THE COURT: 1.8 million, 1,8000,000.

6 MS. LUNDVALL: That's what they --

7 THE COURT: That's, nowhere was that put into
8 evidence. Even their proposed was, you just gave me
9 30,000 plus 134, and the second, which is exactly what
10 I said with Mr. Jimmerson, that if they did prevail on
11 the other, they're gonna have to then later do
12 something on that, and I'm not sure if it's even
13 accounting, and my thought process was if they
14 prevailed on the other, then I don't know if they have
15 to do another suit or what, because that really wasn't
16 damages that were put into the lawsuit.

17 MS. LUNDVALL: Well --

18 THE COURT: The damages were the 30,134,
19 which I did buy the Res. -- not "buy," I did not agree
20 on the Res. 5 property, so, you know, so I just have a
21 hard time with this 1.8, but give me your explanation
22 again, all right.

23 MS. LUNDVALL: Well then as far as, your
24 Honor, let me as far as to offer it very simply then,
25 as we have, I've tried to do --

1 THE COURT: Very simply.

2 MS. LUNDVALL: -- that they had two theories.

3 THE COURT: I have that. You don't have to
4 be that simple, believe me.

5 MS. LUNDVALL: They, they quantified their
6 first theory at \$1.8 million. That's not mine, I don't
7 have to --

8 THE COURT: And they quantified that at trial
9 as 1.8 million?

10 MS. LUNDVALL: Hold on.

11 THE COURT: They did not. They did not.

12 MS. LUNDVALL: This is what we did -- well,
13 your Honor --

14 THE COURT: They didn't say 1.8. I looked
15 for it.

16 MS. LUNDVALL: You know, let me as far as see
17 if can't --

18 THE COURT: I understand they wanted damages,
19 I, believe me, I understand that completely.

20 MS. LUNDVALL: Let's see.

21 THE COURT: I got the -- I looked through all
22 your supplements.

23 MS. LUNDVALL: Let me see if I can find what
24 I'm looking for here.

25 Here we go.

1 THE COURT: This is the summary judgment.

2 MS. LUNDVALL: Let me make this point, and
3 that is this: As a defendant, I am never ever going to
4 put into evidence what, in fact, the plaintiffs are
5 contending are their damages.

6 THE COURT: Of course not.

7 MS. LUNDVALL: That is the plaintiffs' burden
8 of proof.

9 THE COURT: Okay.

10 MS. LUNDVALL: If you recall -- hold on. If
11 you recall during my closing argument, even though it
12 was pretty late at night, both you and I and everybody
13 else in the courtroom were pretty tired, if you recall.

14 THE COURT: No, I --

15 MS. LUNDVALL: One of the arguments that we
16 made is that they could not prevail on their money
17 damages claims because they did not put evidence in of
18 what their money damages were. That was part of our
19 theory. But the fact that they failed in their burden
20 of proof does not mean that we did not prevail in
21 defending against that or does it mean that they did
22 not quantify what that theory was that they had lost
23 upon.

24 I can't as far as imagine any defense
25 attorney putting evidence in the record --

1 THE COURT: You don't have to do that again.
2 I get that. My only question to you is: What did they
3 quantify at trial?

4 So let me make it simple for you,
5 Ms. Lundvall, because you keep saying "simple."

6 MS. LUNDVALL: What were we defending
7 against?

8 THE COURT: Okay, so then I see your
9 semantics, what were you defending against, you're
10 saying the 1.8, that you were defending that at trial
11 because they told you they were gonna prove 1.8. They
12 didn't put in 1.8, but when you went there, you thought
13 you were gonna defend 1.8.

14 That what you're saying?

15 MS. LUNDVALL: Absolutely.

16 THE COURT: Okay, perfect. I just want to
17 make sure I'm following you. You don't have to
18 simplify it any more. I just asked you the simple
19 question what did they quantify at trial, okay? I got
20 you.

21 MS. LUNDVALL: It's not what I believe their
22 claim was, it is what the plaintiffs believed.

23 THE COURT: So it's what the plaintiffs have
24 the burden of proof to convince this trier of fact. I
25 don't look at the supplementals. It's what their

1 burden of proof was and what they put in to me, to this
2 trier of fact, as to what they thought their damages
3 were. I agree with you there, okay.

4 MS. LUNDVALL: And so from this --

5 THE COURT: I got that.

6 MS. LUNDVALL: From this perspective, your
7 Honor, throughout the entirety of this motion practice
8 is that the plaintiffs had contended that this case was
9 never about money damages.

10 We have walked you through that not only as
11 far as what their theory was and how they claimed if
12 they were successful on that theory, that they were
13 gonna get money damage. It would come in a two-step
14 process. They had a little two step going on.

15 THE COURT: I got that.

16 MS. LUNDVALL: They wanted, as far as they
17 wanted first as far as a finding from you, and then
18 they wanted as far as to come in for a subsequent
19 evidentiary hearing.

20 So to the extent then that they were the ones
21 that identified and quantified, they identified first
22 their theory was in two parts, they quantified the
23 values they put on their theory, and that's what we
24 defended against, your Honor.

25 THE COURT: Okay.

1 MS. LUNDVALL: And we successfully defended
2 against that. And so when we get into the portion of
3 the motion practice dealing with the prevailing party
4 analysis --

5 THE COURT: Uh-huh.

6 MS. LUNDVALL: -- we will bring you the cases
7 and identify and underscore the cases where, in fact,
8 other judges sitting in your situation have found where
9 a party has prevailed on one issue and what it cost
10 them by which to litigate that issue, whereas the
11 adverse party then had prevailed on others and what it
12 cost by which to prevail on that, and what the Court is
13 supposed to do in that circumstance, it has been upheld
14 by the Nevada Supreme Court, and so the point --

15 THE COURT: I think you already provided me
16 -- I read that. Didn't you give me those cases?

17 MS. LUNDVALL: There's one additional case.

18 THE COURT: Oh, because I read every case
19 that you give me on that. I understood prevailing
20 party. That's down here somewhere.

21 MS. LUNDVALL: And the other, I guess the one
22 thing that I guess that I still want to try --

23 THE COURT: But what we're really addressing
24 right here, can I be honest, is whether this is a
25 proper -- you're saying this is proper from my findings

1 of fact. I thought that's what we were addressing.

2 MS. LUNDVALL: That is what we were
3 addressing.

4 THE COURT: And I see what you're saying.
5 You're saying that there was a plaintiffs' claim for
6 1.8 million, and this is appropriate, for lost future
7 commissions and that's appropriate. That's where we
8 were at.

9 MS. LUNDVALL: Your Honor, what we, as
10 defendants, are obligated to do, and think about this,
11 when you get a case in your office, you look at it and
12 you try to quantify it, because that quantification
13 depends upon how much resources you throw at it and the
14 type of resources that you throw at it and the energy
15 that you throw at it, and let me tell you, when the
16 plaintiffs identified that this case was about lost
17 commissions, and we pushed and we pushed to try to get
18 them to quantify how much are we talking about, they
19 told us how much we were talking about, and what they
20 told us is that this case was worth \$1.8 million in
21 lost commissions.

22 And they told you in their opposition to the
23 motion for summary judgment that this case was worth
24 1.8 in lost commissions.

25 THE COURT: We've been through this. I get

1 it.

2 MS. LUNDVALL: That's what drove it. That's
3 what drove our defense.

4 THE COURT: I understand.

5 MS. LUNDVALL: And the fact they did not meet
6 their burden of proving that at the time of trial
7 doesn't mean that they didn't try on their theory of
8 liability. They did try on their theory of liability.
9 They asked for a smaller number as a result. They
10 asked for the opportunity to do the two step to get to
11 the bigger number as a result, but you ruled against
12 them, but that does not mean that we didn't defend
13 against that.

14 Our entire defense was driven by what they
15 informed us their case was about. We prevailed on the
16 most important component of their case. They prevailed
17 on another piece of it, and we have the ability and can
18 and will provide the Court then with the quantification
19 of those two so that you can determine an offset, but
20 it does not negate the fact that we prevailed on their
21 claim that they quantified at \$1.8 million.

22 And so therefore, to suggest that somehow I
23 was deceptive, that I was fraudulent, that I had
24 fabricated a claim, when, in fact, it was their
25 information to us that defined not only the fact of the

1 claim, but the amount of the claim, that's what we put
2 in the judgment.

3 THE COURT: No, I saw where you got it from.
4 Just as the trial attorney listening to it, that is,
5 that is not what I saw at trial, and I went by the
6 evidence, but -- and you're making -- and this is to
7 say what I found at trial.

8 So what you're saying to me is you want me to
9 make, by what you put here, you want me to determine
10 that the claim was for 1.8 million, not by what was
11 shown at trial, because that was not shown at trial?
12 You realize this is judgment from trial --

13 MS. LUNDVALL: Your Honor?

14 THE COURT: -- not from discovery.

15 MS. LUNDVALL: From this perspective, what
16 the Court has a hard time with --

17 THE COURT: Yes, very big difficulty --

18 MS. LUNDVALL: Well, hold on.

19 THE COURT: -- with the 1.8.

20 MS. LUNDVALL: With the quantification --

21 THE COURT: Uh-huh.

22 MS. LUNDVALL: With the quantification, what
23 that suggests is that you think that I'm fabricating
24 the quantification was that the plaintiffs put on then.

25 THE COURT: No, no, that's not what I said.

1 What I said is you want me to make the determination
2 that their claim was 1.8 million from what I heard at
3 trial. That's what you're saying in this. That's what
4 a judgment is.

5 Now, that's different than if you want me to
6 do post-judgment and come up with who's the prevailing
7 party and factor in the 1.8 and everything else, that's
8 a different analysis, is what I'm saying to you.

9 This is a judgment based on what I heard and
10 saw at trial.

11 Do you agree with that?

12 MS. LUNDVALL: No, I don't.

13 THE COURT: Okay.

14 MS. LUNDVALL: I agree that a judgment comes
15 at the conclusion of a case, and it ends the work, but
16 for the post-trial or the post-judgment motions that
17 the district Court is obligated to do.

18 THE COURT: I agree.

19 MS. LUNDVALL: But does that mean that, in
20 fact, that the Court looks as far as only at a prism?
21 And let me as far as let me offer this observation.

22 THE COURT: Okay.

23 MS. LUNDVALL: If the Court's concern is the
24 quantification portion that was put into the judgment,
25 and I've now explained where we got the quantification,

1 that quantification came from the plaintiffs
2 themselves.

3 THE COURT: Oh, I got it. You have told me
4 nothing different than what you put in your motions. I
5 know exactly where you got it.

6 MS. LUNDVALL: If the Court --

7 THE COURT: I looked at all the discovery. I
8 know where you got it.

9 MS. LUNDVALL: If the Court has a problem as
10 far as with the quantification, it still does not
11 negate the fact that we prevailed on that portion of
12 their claim, no matter what value they placed on it.

13 THE COURT: You just said that perfectly,
14 Ms. Lundvall. You just said you prevailed on that
15 portion of their claim, the plaintiffs' claim.

16 Here's what you wrote in, that you, that
17 judgment is against as to plaintiffs' claim for, and
18 then you put that you won -- where was it, let's see,
19 there was a section here that was, that -- hold on.

20 It's a word, they're saying "their claim,"
21 and here's my concern: Is a claim, how do you define
22 that, as different -- I look at claims as causes of
23 action, okay? I'm just gonna be very -- I worked, you
24 know, and this didn't really -- claims are causes of
25 action, and that's why I very distinctly said to you

1 theory of liability, and you agreed with theory of
2 liability, but you used -- that's why I -- you used the
3 word "claim" in here. When you do a complaint, you can
4 say "claim" or "cause of action," and that was one of
5 my concerns when I looked at that.

6 And we're on the same page. I understand
7 there were two theories of liability for the breach of
8 contract. I could not have sat through this -- I got
9 that completely. What I don't understand is you're
10 saying so a theory of liability is the same as a cause
11 of action or a claim? Because that's what you're
12 saying here.

13 MS. LUNDVALL: Well, what --

14 THE COURT: Because really what you prevailed
15 on is defeating one theory of liability.

16 MS. LUNDVALL: And what I'm trying --

17 THE COURT: Right? Do you agree with me
18 there?

19 MS. LUNDVALL: What I am going to explain as
20 far as to the Court, you and I may have a difference in
21 semantics.

22 THE COURT: Well, it seems that we do.

23 MS. LUNDVALL: But I think we are talking
24 about the same thing.

25 THE COURT: All right. As long as you --

1 MS. LUNDVALL: So Rule 8 obligates you as far
2 as to give a fair statement to the defense of what the
3 nature of your claims are. They said to us that you
4 breached the contract.

5 THE COURT: Right.

6 MS. LUNDVALL: They said that you breached
7 the contract by not paying us the commissions and we're
8 entitled to additional information.

9 THE COURT: Right.

10 MS. LUNDVALL: We defended on both alleged
11 breaches.

12 Now, if the Court has issue then once again
13 with the idea that somehow that a claim is different
14 than a theory, I don't have any problem with that
15 either.

16 THE COURT: See --

17 MS. LUNDVALL: I disagree with the semantics,
18 but it does not change the result that we prevailed on
19 the predominant theory that they were advancing at the
20 time of the trial. That's the point I guess that I'm
21 trying to make.

22 THE COURT: I get that. I get that. I
23 absolutely get that, but that was part of my problem
24 with this, was not just the quantification, but the
25 claim, because that was a theory of liability. Maybe

1 it's semantics, but it's really not. When I looked at
2 the cases, to me it does make a distinction, so that's,
3 that's -- I did look at this.

4 MS. LUNDVALL: One of the things, and I don't
5 know if you wanted us to continue or --

6 THE COURT: Let's keep going. Do you want to
7 go eat? Can we finish at least this?

8 MS. LUNDVALL: All right. So I guess what I
9 want to make sure that as far as the Court understands,
10 I'm only addressing at this point in time the motion to
11 amend.

12 THE COURT: Correct.

13 MS. LUNDVALL: I believe, I believe that the
14 Court has an understanding then --

15 THE COURT: Right.

16 MS. LUNDVALL: -- of how it is that we got to
17 the language in there.

18 THE COURT: Right.

19 MS. LUNDVALL: And where it is that the
20 quantification came from.

21 THE COURT: I do.

22 MS. LUNDVALL: And why it is based upon the
23 Court's own findings and what the claims were that had
24 been alleged and what we were defending against, why it
25 is that we believe that we prevailed on part of it and

1 why they prevailed on another part of it.

2 THE COURT: I understand that.

3 MS. LUNDVALL: All right. And so from that
4 perspective, your Honor, respectfully, we submit that
5 the judgment that you entered does not need to be
6 amended, and moreover -- but if the Court quibbles with
7 the language that we had used, what we were, what we
8 would ask the Court to do is to ensure that the theory
9 of liability that the plaintiffs advanced that they did
10 not prevail upon is memorialized into the judgment.
11 That's what our simple request is, your Honor.

12 THE COURT: What you want is this to reflect
13 that as far as the theory of liability, that language
14 as opposed to all that's included in here, all right.

15 MS. LUNDVALL: And all that's included in
16 there is simply a description then of the claim and the
17 quantification of the claim that was given to us by the
18 plaintiff.

19 THE COURT: Okay. All right.

20 I will tell you that I do not agree, that
21 this judgment entered June 15, 2015, I do feel is an
22 erroneous judgment. I do not feel it is in compliance
23 with my orders, my previous orders, and that's what
24 it's supposed to do.

25 Now, based on that, I understand there's

1 issues. I will not, I do not -- I feel this is
2 erroneous, I feel, the way it is. I understand that
3 you have the theory of liability, but this, I am going
4 to strike this. I don't feel it is.

5 I started to -- what I would like to do,
6 based on that, and I, I understand where you're coming
7 from on the theory of liability. I could obviously
8 have all these other motions and then we can get to it,
9 but until I really agree with the language here,
10 whether you agree with it or not, I think it's more
11 than quibbling. I think it's more than semantics. I
12 want to know what's in here to apply those cases on
13 prevailing party, I'm very honest, because I looked. I
14 think it's more than a quibble, so I am going to strike
15 this.

16 Once again, I apologize. I, I thought there
17 was an agreement on the language. It became very
18 obvious there wasn't, and I want, I want to do my
19 procedure of an agreement of the language in the
20 judgment, and if you can't, then I want a proposed
21 order, but I will not -- I, I do not want to -- I do
22 not believe the 1.8 million is a fair quantification of
23 the damages that were -- and I disagree with you, that
24 were presented at trial. I feel a judgment should,
25 should encompass what was presented at trial.

1 What you had to defend against, I understand,
2 is part, can be or is an analysis on prevailing party,
3 but I find that -- and if I'm wrong, I'm wrong, but as
4 far as what's in a judgment, I do not want to -- I
5 don't think it's proper to say it was quantified as 1.8
6 million.

7 I have been as distinct as I can here, so
8 what I would like -- and I know, you know --

9 MS. LUNDVALL: If the Court --

10 THE COURT: -- everything flows from this,
11 and that's why this was so critical.

12 MS. LUNDVALL: And if the Court wishes for us
13 as far as to take the guidance that you have given to
14 us during the course of this hearing then, particularly
15 within the last few comments, and for us to craft a new
16 judgment then, and we will submit it to Mr. Jimmerson
17 then for his review, and hopefully we can reach
18 agreement on it. If we can't --

19 THE COURT: Absolutely.

20 MS. LUNDVALL: -- then we'll submit both of
21 the competing language then to you --

22 THE COURT: That's exactly what I would want.

23 MS. LUNDVALL: -- for your review.

24 Thank you, your Honor.

25 THE COURT: The reason I did the hearing

1 today is because I read everything, and I wanted to
2 make you understand how I look at it so that we can
3 hopefully come to one. Then once we agree on the
4 judgment, then it goes, I understand we go from there.

5 And I did read -- but once we get that -- and
6 I have done a lot of the analysis, but I understand
7 better, I'll be honest. I understand Lundvall's side
8 better, I understood exactly Jimmerson's side before.
9 I put yours together a little differently, and that's
10 why I'm not quibbling, I want to rephrase, but the
11 language to me is important in the judgment. It is.
12 It, to me, is the most critical, so that's what I would
13 like to do.

14 Now, there's a couple of other -- but that is
15 what I would like to do, and then you know what, no
16 one's waiving any arguments on anything else, because
17 as you know, the memos of costs, all the prevailing
18 party, once I strike this then those all are gone
19 because that would be, I guess, an advisory opinion if
20 I did feel somebody -- but the prevailing party, I want
21 to get this done. I have done a lot of work on it.

22 And if you have another case please give it
23 to me, because I have, I will be very honest, that is
24 an issue I understand, I understand is an issue. It
25 has to stem from this though, how I want it in here.

1 I'm not saying --

2 MS. LUNDVALL: Your Honor?

3 THE COURT: But I want the wording in here
4 based on what I saw, in fairness, all right, and I
5 understand that, so I do want this -- this is stricken,
6 and I do find it is erroneous, and I do feel that this
7 judgment does not reflect my findings and what I feel
8 would be appropriate in a judgment from the trial. I
9 want to be very clear on that. I feel it is erroneous
10 under -- and what's my rule, NRCP 58(a), correct?

11 MR. JIMMERSON: Also 52, your Honor.

12 THE COURT: 52. I have them both, 52(b).

13 MR. JIMMERSON: That the findings are
14 erroneous.

15 THE COURT: The findings are erroneous.

16 Well --

17 MS. LUNDVALL: Your Honor?

18 THE COURT: -- let's do this --

19 MS. LUNDVALL: One of the things that I would
20 ask --

21 THE COURT: I want to be specific, yes.

22 Go ahead. I'm sorry.

23 MS. LUNDVALL: One of the things that I would
24 ask would be this: The conclusion of the Court's
25 ruling is that I'm going to prepare new language for a

1 judgment. We're going submit it then to Mr. Jimmerson,
2 and we're gonna hopefully then agree upon language to
3 submit to you.

4 THE COURT: Right.

5 MS. LUNDVALL: In the event that we are not
6 in agreement and the Court has to make a ruling upon
7 that --

8 THE COURT: Correct, I have to.

9 MS. LUNDVALL: -- that, in fact, we can
10 articulate then in the letters we transmit then to you
11 why, what it is and why it is we disagree.

12 THE COURT: Absolutely. That's how I do it,
13 because otherwise, I don't know if -- I understand a
14 lot of it is going to be based on all this.

15 MS. LUNDVALL: The Court may make, enter a
16 judgment at that point in time.

17 THE COURT: Yes.

18 MS. LUNDVALL: Currently, there's a stay in
19 place of any enforcement.

20 THE COURT: Right, because there is no
21 judgment.

22 MS. LUNDVALL: Well, no, hold on. Judge
23 Bonaventure --

24 THE COURT: Bonaventure, I'm sorry, you're
25 right.

1 MS. LUNDVALL: Judge Bonaventure entered the
2 stay, so my request is that we have the opportunity to
3 allow that stay to be in place for any new judgment
4 until there may be resolution then of any of the
5 outstanding motions to amend that may result, any
6 additional motion practice that may result by reason of
7 a new judgment.

8 MR. JIMMERSON: Your Honor, the rules call
9 for a stay for ten business days from the date that a
10 judgment is entered, so there is that protection for
11 that two-week time period, including weekends, to the
12 defendant. Afterwards, the defendant must post a bond
13 or there is the right to collect under Rule 62 and --

14 THE COURT: Well, didn't Judge Bonaventure
15 hear and put a stay in effect?

16 MR. JIMMERSON: He put a stay until you --

17 THE COURT: So you know what, I'm gonna
18 comply with --

19 MR. JIMMERSON: Until these issues are
20 resolved?

21 THE COURT: I'm going to comply with Judge
22 Bonaventure. I'm going to do what Judge Bonaventure
23 did, because I want to make sure when this judgment is
24 done that everybody gets their chance to do their
25 motions, and when it is done, it is done as far as this

1 Court, and then they can execute.

2 MS. LUNDVALL: Thank you, your Honor.

3 THE COURT: And all the other post-trial that
4 results from the judgment, those can all still happen,
5 and I know they're going to, depending on -- but I want
6 this judgment cleared up, because I looked at it
7 because it does, it does stay you executing your money,
8 Mr. Jimmerson.

9 I did look at what Judge Bonaventure did. I
10 understand it, so I am going to do that.

11 MS. LUNDVALL: Okay.

12 THE COURT: And I want to make that as part
13 of the order for denying -- granting, I am sorry,
14 granting the motion to amend this judgment of
15 June 15th, 2015.

16 MR. JIMMERSON: Is it your intention, Judge,
17 as I'm listening to your remarks, thank you, is it your
18 intention to defer the other motions that are pending
19 for resolution today until a final judgment is entered
20 by you?

21 THE COURT: Yes. I will be honest, I worked
22 on them all, but I can still work on them, but I
23 realized they all flow from this judgment.

24 MR. JIMMERSON: They do.

25 THE COURT: Now, there is one other one that

1 we could do.

2 Let's make sure this is all clear.

3 MR. JIMMERSON: I would like to do a brief
4 reply.

5 MS. LUNDVALL: What I want to make sure is
6 that the record is clear.

7 THE COURT: Yes.

8 MS. LUNDVALL: I believe the Court has
9 indicated that any new judgment that you intend to
10 order, to enter, that Judge Bonaventure's order of a
11 stay pending resolution of any post-judgment motions --

12 THE COURT: Regarding the judgment.

13 MS. LUNDVALL: -- continues to be in place.

14 THE COURT: It is.

15 MS. LUNDVALL: Thank you.

16 THE COURT: That is my ruling.

17 MS. LUNDVALL: Thank you.

18 MR. JIMMERSON: May I have --

19 THE COURT: I did want to give -- I cut you
20 off on the reply. We kind of got ahead, but yes, I
21 want you to be able to reply to Ms. Lundvall's.

22 MR. JIMMERSON: I just have a short reply.

23 THE COURT: That's fine. I'm taking it all
24 in.

25 MR. JIMMERSON: The pressure that Pardee may

1 be placing upon their law firm to reverse the Court's
2 findings must be intense, but it doesn't justify
3 distorting the record.

4 Let's talk as lawyers and judges here. This
5 lawsuit was brought by a complaint, and there were two
6 amendments, so you have a complaint, you have an
7 amended complaint and a second amended complaint, and
8 the only differences in the complaints was there was a
9 clarification of the assignment from the general realty
10 companies to the individuals, and then there was the
11 permission to plead as attorney's fees special damages,
12 but the nature of the claims were identical.

13 In that complaint, in the complaint and the
14 amended complaints, all the complaints, is just simply
15 all that is stated is --

16 MS. LUNDVALL: And your Honor, may I clarify
17 one thing?

18 THE COURT: Sure.

19 MS. LUNDVALL: You've made your ruling on the
20 motion to amend. Are we now moving into the motion for
21 attorney's fees?

22 THE COURT: No.

23 MR. JIMMERSON: No. I'm doing a reply.

24 THE COURT: What I did is I, unfortunately,
25 made my ruling and didn't give him a chance to reply.

1 I made my ruling. It's not going to change, but if he
2 wants to give a reply, we did it out of order. And
3 it's my fault because I know where I'm going, but if he
4 wanted to add anything, I should have waited. I knew
5 where I wanted -- no, we are not getting into the other
6 motions.

7 There's another motion I wanted to handle
8 too. I'm sorry it's taking so long, but this is really
9 important. Do you mind going through lunch a little
10 bit? You don't care. If I can stay here, you can
11 stay. It's just too important, okay?

12 MR. JIMMERSON: Thank you.

13 The amended complaint was served upon the
14 defendant in approximately January of 2 thousand -- not
15 approximately, in January of 2011, and it had general
16 allegations as to who the parties were, and then it
17 talked about the entry of the commission agreement and
18 then the original option agreement which allowed the
19 payment of the commission.

20 The allegation then at Paragraph 6 and 7 and
21 8 is pursuant to the commission agreement, plaintiffs
22 were to keep -- excuse me, defendants were to keep the
23 plaintiffs fully informed of all issues and all sales
24 and purchases of real property governed by the option
25 agreement.

1 Specifically the letter said Pardee shall
2 provide each of you a copy of each written exercise
3 notice given pursuant to Paragraph 2 of this option
4 agreement, together with the information as to the
5 number of acres involved and the scheduled closing
6 dates. In addition, Pardee shall keep each of you
7 reasonably informed as to all matters relating to the
8 amount and due dates of your commission payments, and
9 then it went on.

10 There is clearly -- the main thrust of this
11 entire case was for information. There is clearly a
12 claim that if the Court found that there were past due
13 commissions due, largely because the Court would find
14 option property was exercised.

15 THE COURT: Right.

16 MR. JIMMERSON: Although no notices were
17 given, because it was to the east of the Parcel 1
18 location, then that would be compensable potentially to
19 the plaintiffs. We didn't know if that had been done
20 and how the Court was going to rule on that.

21 And secondly, during the course of the trial,
22 not beforehand, we discovered 225 acres of multi-family
23 property being redesignated as single family, and then
24 one part of that, Res. 5, actually having been filed
25 with Clark County as residential production real

1 estate, which would have quantified at 1.5 percent to
2 \$30,000, okay? We didn't know that until the trial, as
3 you know.

4 And then the whole issue of redesignation
5 came up during the trial. We had not argued about
6 redesignation, because we simply were asking for the
7 commission based upon what they were designating as
8 residential production property and then whether it
9 fell within the original purchase as an exercise of
10 option property.

11 THE COURT: That was your theory from the
12 beginning. I understand that.

13 MR. JIMMERSON: Right.

14 And of course none of this about 1.8 million
15 ever entered the trial, but I want you to -- and this
16 was attached to their opposition. It was our fifth
17 disclosure.

18 And I want you to read it and understand what
19 it says, because there was never -- everybody in this
20 courtroom knew that what had been purchased by Pardee
21 was roughly 1,800 acres that grew to about 2,000 acres.
22 How do we know that? Because you can take \$84 million,
23 you can divide it by 40,000 an acre, you get 1,800
24 acres, and as Mr. Whittemore said, with parks and
25 different things it turned out that we deeded over to

1 them, about 2,100 acres.

2 THE COURT: Right, I remember.

3 MR. JIMMERSON: There were 5,000 or more
4 acres in this whole development that was designated for
5 single-family potential for Pardee. Pardee in the
6 option agreement, therefore, had another 3,000 acres
7 over the next 35 years to build production
8 single-family real estate, and for which our clients
9 would be entitled to a commission. This is our fifth
10 supplement.

11 That's why they're in this case, because
12 everybody knew that there hadn't been a subsequent
13 purchase of any acres, let alone 3,000 acres for, you
14 know, beyond that. We just didn't know how the lines
15 were drawn. We knew about what had been purchased and
16 whether or not it quantified to a commission.

17 This is what we wrote: Computation of
18 damages. See, this is where I believe respectfully the
19 Court and opposing counsel have inadvertently misstated
20 this, there is no theory -- the theory of liability,
21 the claims, which are claims under our Nevada Rules of
22 Civil Procedure, are three: Accounting, breach of
23 contract for failure to provide information, breach of
24 implied covenant of good faith and fair dealing for
25 failure to give information, and if there are damages

1 -- if there are commissions due through discovery, then
2 that should be paid. That's what the complaints say.

3 There was no two different theories. What
4 was discussed was two possible areas or theories of
5 calculation of damages, so I just want to make it
6 clear.

7 THE COURT: Do that again. You're saying you
8 didn't have a theory that they breached because they
9 didn't pay and you didn't --

10 MR. JIMMERSON: No, that's not true. I'm
11 saying --

12 THE COURT: Okay.

13 MR. JIMMERSON: -- that our complaint and
14 amended complaints always said the same thing, that
15 there was a need for an accounting because we didn't --

16 THE COURT: I understand that.

17 MR. JIMMERSON: Because we needed to know if
18 there were more commissions due to us, breach of
19 contract for failure to give that information, and if
20 there were monies due to us, to be paid those monies,
21 and the same with the implied covenant of good faith
22 and fair dealing.

23 THE COURT: So if they had money due, if, if
24 they had actually not paid you the full commission
25 based on what they had bought, you had -- that was a

1 breach of the contract.

2 MR. JIMMERSON: Exactly.

3 THE COURT: Okay. That's all I was saying.

4 MR. JIMMERSON: Right. You got it right.

5 THE COURT: That's what Ms. Lundvall was
6 saying.

7 MR. JIMMERSON: So what we had then were two
8 components. The defendant used the word "theory."

9 THE COURT: Okay.

10 MR. JIMMERSON: But two components of
11 damages. We had whatever commissions would be due to
12 us that we learned through the case and through the
13 trial, and second would be, of course, the damages
14 associated with the need to file a lawsuit and
15 alternatively find information from CSI that was never
16 intentionally produced by Pardee to the plaintiffs,
17 which the Court awarded \$141,500.

18 The number \$1.8 million, as shown in the
19 disclosure, has nothing to do with what I just said.
20 What we wrote was specific and clear about what might
21 happen in the future, so what was read in the
22 disclosure is under Computation of Damages. It's at
23 Page 7 of the document. It was filed October, I think
24 13th, but I may be wrong.

25 THE COURT: Okay.

1 MR. JIMMERSON: 2012. Let me look at the
2 exact date.

3 The 26th day of October 2012, so it's a year
4 before trial. This is what's written: There appears
5 -- this is Line 22. There appears to be at least 3,000
6 acres of property defined as option property, not
7 purchase property, not the 84 million.

8 THE COURT: No.

9 MR. JIMMERSON: Defined as option property
10 under the option agreement effective June 1, 2004,
11 currently owned by Coyote Springs. Under the option
12 agreement effective June 1, 2004, these 3,000 acres can
13 be purchased by Pardee and designated as production
14 residential property purchase and a designation that
15 would entitle plaintiffs to a 1.5 percent commission on
16 a per acre price of 40,000.

17 If 3,000 acres were purchased by Pardee under
18 this scenario, plaintiffs would be entitled to
19 \$1.8 million in commissions; however, Pardee's course
20 of conduct by failing to appropriately discharge its
21 duties under the commission agreement robbed plaintiffs
22 of this opportunity to be paid these commissions.

23 Pardee's actions have served to reclassify
24 the land originally labeled as purchase property and
25 option property, and under the new reclassifications,

1 all option property has been removed from Clark County,
2 thereby divesting plaintiffs of any hope to collect any
3 part the \$1.8 million in commissions that would be paid
4 had no reclassification occurred.

5 The second part is, the second component is
6 calculation, is the attorney's fees associated with
7 that at that time was \$102,000 in October 2012.

8 So all I'm saying to you is that we knew that
9 they had purchased about 2,100 acres.

10 THE COURT: Out of the --

11 MR. JIMMERSON: Out of the 5,000 --

12 THE COURT: Right.

13 MR. JIMMERSON: -- that they had, and all I
14 was saying to them is that if you have gone ahead
15 behind our back and purchased the other 3,000 then, or
16 if you're going to in the future, that would entitle us
17 to commission, because they would be paying
18 \$120 million for the 3,000 acres. Multiply that by 1.5
19 is a million, eight. That's all.

20 THE COURT: That relates to the million,
21 eight. I understand.

22 MR. JIMMERSON: That's right.

23 THE COURT: It's a quantification issue.

24 MR. JIMMERSON: This trial was never about
25 1.8 million, and that's where I respectfully believe

1 Pardee has distorted in their motions and presentations
2 to this point, because they understood and you
3 understood no 3,000 acres had yet been purchased by
4 Pardee. We were debating on the 2,100 acres that was
5 purchased as to whether it was purchase property --

6 THE COURT: I agree.

7 MR. JIMMERSON: -- or whether it was option
8 property.

9 And by the way, as it turns out, it may have
10 not made much of a difference, because you're still
11 multiplying by 1.5 percent above \$50 million, so it may
12 not have changed the actual dollars, but I do want to
13 make it clear that the defendant, Pardee, clearly knew
14 this was a theoretical possibility in the next 35
15 years, that this could be owed and certainly would be
16 owed if Pardee brought 3,000 acres of this real estate.

17 THE COURT: Hold on. I'm gonna let you.

18 MR. JIMMERSON: So what is a fair
19 characterization of what occurred was --

20 THE COURT: What occurred, okay.

21 MR. JIMMERSON: Was our claim for additional
22 commissions was lost at trial. I totally understand
23 that.

24 THE COURT: Okay. We're on the same page.

25 MR. JIMMERSON: And in our proposed findings

1 and in the defense's proposed findings, you have both
2 sides of the issue of whether or not we're entitled to
3 a commission on the 225 acres or the Res. 5. The
4 reason that we broke it to Res. 5 was it was the one
5 parcel that had been platted and given to Clark County
6 as opposed to the whole 225 which resulted in that
7 30,000 --

8 THE COURT: The other acres with the
9 geographical boundary issue, so we're all there.

10 MR. JIMMERSON: All right. So had you gone
11 with the plaintiffs' position, as part of the
12 accounting you would have had a discussion of what has
13 been purchased, what is owed.

14 THE COURT: Right, because --

15 MR. JIMMERSON: Redesignation entitles the
16 plaintiffs to \$30,000. We have gone through that.
17 That would have been part of the accounting, but at no
18 time was anybody defending \$1.8 million.

19 THE COURT: And here's the issue --

20 MR. JIMMERSON: Because the 3,000 acres
21 hadn't even been purchased.

22 THE COURT: And I understand they wanted you
23 to quantify, but you can't quantify until you find out
24 how much, through those documents, were actually, of
25 the option property, would go under it. I understand

1 all that.

2 MR. JIMMERSON: Absolutely.

3 THE COURT: That's why I had the disconnect
4 on the 1.8 million. I understand that. That's why
5 this was helpful. We're on the same page.

6 MR. JIMMERSON: Got it.

7 THE COURT: I certainly understand.

8 MR. JIMMERSON: So here's, here's an issue
9 for you. You found -- and one of the things that
10 disturbed me when I read this is the, the part of the
11 judgment, the finding in the first order which you've
12 stricken, it was completely outside of your findings.
13 You know, that was offensive to Mr. Wolfram and to
14 Mr. Wilkes and myself, because there was no attempt to
15 write a judgment that would mirror or, you know, state
16 in some fashion your findings, and so this whole issue
17 of \$1.8 million and somehow Pardee prevailed was
18 nowhere part of your findings, so it was just a
19 creativity by Pardee because they were looking for a
20 way to try to get their attorney's fees back.

21 I think I said I understand the pressure that
22 counsel is under for the defense, but it's not right to
23 distort the record to do that.

24 THE COURT: No.

25 MR. JIMMERSON: So hear me out. We asked for

1 141,000 -- excuse me, we asked for 150,000. I asked
2 for 146,000 plus 6,000. You gave us 135,500 plus
3 6,000. I lost \$10,000, but my point is I won that
4 claim, all right?

5 I didn't win the 30,000 for Res. 5, and I
6 didn't win a calculation of what dollars may be owed to
7 the plaintiffs for option property to the east of the
8 Parcel 1 boundary. I lost.

9 THE COURT: Okay. I agree.

10 MR. JIMMERSON: And we don't know what that
11 was. You see, when Ms. Lundvall stands here before
12 you, she nowhere can quote any testimony from
13 Mr. Wolfram or Mr. Wilkes or from anyone for the
14 defendant that quantifies what is owed. That's why the
15 whole \$1.8 million is a fugitive issue.

16 THE COURT: I think I was very clear when I
17 spoke with her that the 1.8 was my disconnect, and
18 Ms. Lundvall said to me if you have a quantification
19 issue -- I certainly do.

20 MR. JIMMERSON: Right. So all I'm trying to
21 say to the Court is that you have three claims, you
22 have a couple theories of damage, but they're not
23 theories of -- the claims are just accounting. The
24 three, they never changed, but we do have two aspects
25 or two components of damages, and we lost one.

1 THE COURT: Okay.

2 MR. JIMMERSON: In the sense that we didn't
3 win additional commissions. Okay, I mean I wasn't
4 happy with that ruling, but that's what it was. But
5 what was being discussed was the information.

6 You see, where the defendant distorts this is
7 they somehow say to you, We entirely spent 90 percent
8 of our time defending against the money claim. Well,
9 that wasn't this trial. They defended against the
10 claim of accounting and breach of contract on damages.
11 We spent all the time -- not damages, on the
12 information.

13 We spent all the time on what information was
14 provided, and the defense argued that was sufficient to
15 satisfy the requirement of the commission agreement
16 letter to provide information, which the Court
17 disagreed with. That's the thrust of this case.

18 So I guess what I'm saying to you is when you
19 win on accounting, when you win on breach of contract
20 for failure to inform and you win \$141,500, and you
21 lose some unknown amount of dollars, depending on what
22 that may have been, to the east of Parcel 1, I mean was
23 it \$50,000? Was it \$200,000? We don't know, because
24 nobody quantified it, because we wouldn't know the
25 number of acres to the east without an accounting.

1 Jon Lash I asked this specifically: How many
2 acres are to the east of Parcel 1? I don't know,
3 Mr. Jimmerson. Well, if he didn't know, no one's going
4 to know, and that's what the second phase of this trial
5 would have determined had you gone with that point.

6 So I'm totally with defendants and with you
7 to say that aspect of entitlement to additional
8 commissions we lost, but that aspect had nothing to do
9 with \$1.8 million, it had to do with the 30 acres
10 Res. 5 and had to do with whether or not you allowed
11 them to build east of the Parcel 1 boundary. That's
12 it. That's what this trial was about.

13 And when you read the deposition testimony --
14 I'm sorry, when you read the trial testimony of
15 Mr. Wolfram, and this was what was cross-examined by
16 Ms. Lundvall, he testifies this: Plaintiff has --
17 excuse me.

18 Mr. Wolfram testifies: And this is, to me,
19 the basis of my whole court case here. I don't, I
20 don't care about money and all that stuff. My basis is
21 that I've been breached on information. I should not
22 have had to go to this particular map. There are other
23 things too. Not my family could ever ever have tried
24 to find out what's going on and do a map like this, I
25 mean there is just not a chance, October 30th, 2013

1 testimony, Page 174, Lines 8 through 15 of the trial
2 transcript.

3 Our opening statement and our closing
4 statement mirrors that point, that the evidence will
5 demonstrate that he could have lost commissions, may
6 have lost commissions, so we knew that, we believed we
7 may have been entitled to that but we didn't know that.

8 And there was so much discovery during the
9 trial, because we didn't have access to Mr. Whittemore
10 in the fashion that you did. You know, your
11 questioning of him, okay, as well as some of the other
12 witnesses, is very helpful, because they can, they can
13 dance if I'm asking a question or opposing counsel is
14 questioning, but when a judge asks you a question, you
15 know, you tend to get a more honest, truthful response
16 and a more, in this regard, comprehensive understanding
17 of this, and the Court was probing him, if you look at
18 the record.

19 So all I'm getting at is we can't have
20 revisionist history. Pardee cannot try to change what
21 occurred, which was a struggle, a really hotly
22 contested case. My compliments to the defense counsel
23 with their eagerness. They certainly spent a lot of
24 money on this case apparently in fees, but they didn't
25 prevail, because their clients didn't do the right

1 thing. It's not the lawyers did right or wrong, their
2 clients didn't do the right thing, as found by you.

3 And I will tell you we're gonna have an issue
4 on this judgment. This judgment has to say, has to
5 mirror your findings. I have no problems saying that
6 an unknown amount of money, an unquantified amount of
7 money that the plaintiffs thought they may be entitled
8 to were the Court to agree you can't redesignate to
9 beat somebody out of commission, and you can't build
10 east of the Parcel 1 without compensating them as
11 option property, that would have been owed to them,
12 but that, that is certainly the minor part of the case.
13 The case was --

14 THE COURT: But now you're going to the
15 arguing of the prevailing, and I understand we both did
16 it.

17 MR. JIMMERSON: Right. I'm just saying, I'm
18 demonstrating to you though --

19 THE COURT: Right.

20 MR. JIMMERSON: -- for purposes of today's
21 motion, that any suggestion that they won any part of
22 this case is false. They did defend successfully our
23 claim for an unknown amount of commissions based upon
24 their actions building east of the Parcel 1 or
25 redesignating property that we discovered during trial.

1 I understand that, but that is really not what this
2 case was about. That's not what they did. They didn't
3 defend against Res. 5, they were defending against the
4 accounting. They were defending against their claim
5 that they didn't provide -- that they did provide
6 information, which the Court found against them on
7 those. That's what this case was about and that's what
8 the testimony was about.

9 And that's why when you ask questions of
10 opposing counsel, when she does choose to answer them,
11 she doesn't answer many of your questions, but when she
12 answered the question, Yes, there is nothing in the
13 record that talks about \$1.8 million, there's nothing
14 in the record that says this is a quantification,
15 because the whole thing going forward will be, as we'll
16 discuss later, I guess, that 1.8 million is bigger than
17 \$141,500; therefore, we should at least get a break on
18 his fees that he's entitled to as prevailing party on
19 the commission as well as exceeding the offer of
20 judgment.

21 That's where the mischief was. The mischief
22 by Pardee is I got to rewrite to the judgment to
23 reflect somehow that we won so that we can somehow
24 mitigate the damages that we obviously will owe to the
25 plaintiffs in the form of the attorney's fees, and

1 that's what will come later on, but I needed to correct
2 the record because it's not two theories, it's two
3 elements of a claim of damages, one of which we were
4 not successful on.

5 But when you talk in terms of the testimony,
6 if you just look at Jon Lash's testimony, Harvey
7 Whittemore's testimony, the plaintiffs' testimony, it
8 was not about quantification of damages, it was about
9 whether or not they breached their agreement to provide
10 information. And then the second part of the trial
11 that we had spoken to would have been that
12 quantification, that's true.

13 And I never said, respectfully, it's
14 upsetting to suggest that I never said this was not
15 about dollars. What I was saying to you is that we
16 didn't know.

17 And when you're at trial and Ms. Lundvall
18 asked Mr. Wolfram, What are you claiming? What are you
19 asking for? I don't know, I can't tell you. That's
20 about as clear as you need to have evidence to know
21 that this was about the liability portion of the case
22 in terms of establishing the right to an accounting,
23 establishing a breach of contract for failure to
24 provide information, and the implied covenant of good
25 faith and fair dealing to do the same, and then from

1 that we would have had a second trial. You ruled in
2 their favor with regard to those issues, but that
3 clearly was not the dominant part of that.

4 And when you look at your own finding, that
5 is really the final point. When you look at your own
6 finding, there's nothing in what you said that would
7 have supported what they wrote, and that's why you're
8 granting this motion to strike, in addition to the
9 irregularities with regard to how it got signed in the
10 first place.

11 THE COURT: Right.

12 MR. JIMMERSON: I'm not familiar with the
13 cover letter. I don't know that they produced the
14 cover letter. You didn't see the cover letter, but all
15 I'm trying to get at is it's an important document.
16 Both of sides know it.

17 I had an issue with the defendant not giving
18 me notice the previous October with regard to a
19 submission that they made to you. I wrote them a
20 letter to please add someone. They didn't do that, you
21 know. It's just a matter that they have an obligation.
22 I would no more submit a judgment without at least
23 contacting them and either having their name on the
24 document and slash it in case they refuse to cooperate,
25 but, of course, what would happen and what likely will

1 happen here is you will be given competing orders.

2 THE COURT: You know, we're kind of back to
3 where we would have been if this judgment was first
4 submitted, because I don't think you would have, based
5 on all that's happened it probably would have not, but
6 that's okay.

7 I just want to get us back to square one so
8 that then -- plus, in all honesty, if I would have
9 gotten competing judgments like that, I probably would
10 have asked for a hearing on it, because you've now
11 fleshed it out, in all honesty, so I feel bad we lost
12 some time, but we didn't, because it probably would
13 have done its normal course.

14 Does that make sense?

15 MR. JIMMERSON: I only --

16 MS. LUNDVALL: Your Honor?

17 MR. JIMMERSON: Can I just mention one other
18 thing?

19 MS. LUNDVALL: What I would like to do is to
20 respond as far as to the comments.

21 THE COURT: Are you finished, Mr. Jimmerson?

22 MR. JIMMERSON: I do want to speak to the
23 stay for just a second.

24 THE COURT: Okay.

25 MR. JIMMERSON: Judge?

1 MS. LUNDVALL: The Court has made a ruling on
2 this. I guess this is a motion for reconsideration
3 now?

4 THE COURT: I'm gonna keep the stay,
5 Mr. Jimmerson.

6 MR. JIMMERSON: I understand.

7 THE COURT: Until I get this judgment clear,
8 and it's not going to be an easy -- I don't have a
9 crystal ball, but I feel like it will be contested, and
10 that's important.

11 So I'm not gonna let you execute on a
12 judgment until I know what I feel truly it should be.

13 MR. JIMMERSON: I appreciate it.

14 THE COURT: I'm not, I'm not gonna change
15 that.

16 MR. JIMMERSON: I don't agree, but I respect
17 your decision and I'm not rearguing. That's not my
18 style.

19 I just want to indicate a bond would have
20 been appropriate here, and they have not posted a bond.
21 See, I don't know what's going on with Pardee.

22 THE COURT: Did he -- when he did the stay,
23 did he ask for a bond?

24 MS. LUNDVALL: Your Honor, hold, hold, hold,
25 hold.

1 MR. JIMMERSON: He said no bond is necessary
2 because Pardee is a big company. I mean that's what
3 Judge Bonaventure said.

4 THE COURT: All right. I'm not gonna redo
5 that. I'm not going to require a bond, I'm not, but --

6 MR. JIMMERSON: At some point, when a
7 judgment is entered, I would ask you to reconsider
8 that.

9 THE COURT: All right. Let's just, let's
10 just, let's just step back and let's get this judgment
11 done, because that is very critical.

12 And I'm more than letting you -- I agree.

13 MR. JIMMERSON: Is there a reason, is there a
14 reason why Ms. Lundvall is at the podium?

15 THE COURT: You know what, I would like to
16 hear everything while I've got it in my mind, because
17 this is argument I'm going to have to know about when
18 this judgment -- so I don't mind letting you respond.

19 MS. LUNDVALL: Thank you.

20 THE COURT: And if you need to, I'll stay
21 here all day, if you all fall over from hunger. This
22 is too important to me. I will stay.

23 MR. JIMMERSON: It's important to the
24 plaintiffs too, your Honor.

25 THE COURT: I would never infer it's not

1 important to everybody. That has been blatantly clear
2 from day one of this case. I would stipulate everybody
3 has done great efforts.

4 MS. LUNDVALL: Thank you, your Honor.

5 One of the comments I want to make simply is
6 that the concession that Mr. Jimmerson made in the
7 remarks that he made to you, he identified the fact
8 that one of the theories that they were advancing was
9 the fact that we had purchased option property, and
10 he's absolutely correct in that regard. What we were
11 defending, what we were defending against is whether or
12 not that we had purchased option property. That, your
13 Honor, was 90 percent of your case.

14 THE COURT: Okay.

15 MS. LUNDVALL: And the Court found, the Court
16 found in our favor, that we had not purchased option
17 property.

18 Now, Mr. Jimmerson and the Court now has
19 identified that you quarrel with the quantification
20 that we put on that, but there is no question about the
21 fact that what they had suggested is that we had
22 purchased option property, but what we had defended
23 against is that we did not, and that you had found in
24 our favor on that point.

25 Now --

1 THE COURT: I would have agreed to that if
2 you walked in from day one. My findings showed that,
3 and he understands that.

4 MS. LUNDVALL: Now --

5 THE COURT: That could have been day one
6 stipulated, okay?

7 MS. LUNDVALL: One of the things I want to do
8 is that the Court has indicated that you had an
9 interest in some additional cases --

10 THE COURT: Yes.

11 MS. LUNDVALL: -- that we had spoken to.

12 THE COURT: On the --

13 MS. LUNDVALL: Prevailing party issue.

14 THE COURT: Yes. Sorry.

15 MS. LUNDVALL: Thank you.

16 THE COURT: I read every one.

17 MS. LUNDVALL: And that's why I'm standing at
18 the podium.

19 THE COURT: Okay. I appreciate it. Please
20 make sure they get it too.

21 MS. LUNDVALL: So a couple points I want to
22 make as far as a preface to this when giving these to
23 the Court, when I look at all of the papers and in
24 preparation for this hearing, in my opinion it's easy
25 to get lost, and so what I'm gonna try to do is my

1 level best to give a little bit of a road map on this
2 prevailing party issue then to the Court.

3 And the most important part that I think that
4 the Court needs to do is to start from why it is that
5 the Court's being asked to make this determination.

6 The reason that the Court is being asked to
7 make this determination is because there's a clause
8 within the commission agreement.

9 THE COURT: For attorney's fees.

10 MS. LUNDVALL: Correct.

11 THE COURT: I saw that.

12 MS. LUNDVALL: And there's, there's case law
13 that has been bounded about, in particular from
14 Mr. Jimmerson's office, that speaks to NRS 18.010 and
15 interpreting 18.010.

16 And what I want to do is to make sure that
17 the Court looks at the entirety of the statute, because
18 the statute says this: In requesting attorney's fees,
19 and making a determination for prevailing party under
20 18.010 --

21 THE COURT: 18.010.

22 MS. LUNDVALL: -- it does not apply to a
23 private contract and there is a provision within the
24 private --

25 THE COURT: Did you brief it that way?

1 MS. LUNDVALL: 18.010, Subsection --

2 THE COURT: No, I have read it, 18.010. I
3 actually almost brought it up here until I realized
4 there was a judgment issue.

5 MS. LUNDVALL: All right. Section Sub .4,
6 and I'm going to quote, the Sections 2 and 3 upon which
7 they rely do not apply to any action arising out of a
8 written instrument or agreement which entitles the
9 prevailing party to an award of reasonable attorney's
10 fees.

11 THE COURT: Okay.

12 MS. LUNDVALL: So when they contend in their
13 brief that we did not get a monetary damage in our
14 favor, and therefore, we can't be the prevailing party,
15 they cite to NRS 18.010 cases, and guess what, those
16 cases don't apply.

17 And so what I did is I tried to laser focus
18 my research to be able to identify for the Court the
19 cases that arise from a contract provision --

20 THE COURT: Right.

21 MS. LUNDVALL: -- that has a prevailing
22 party, because that's what's at issue, and so I've got
23 one.

24 THE COURT: I read, I read every one of
25 those. If you have another one, that's fine, because

1 this is gonna come up when we do our judgment.

2 MS. LUNDVALL: Your Honor, what I would hand
3 to the Court and what I would hand a copy then to
4 Mr. Jimmerson --

5 THE COURT: Is that Nevada, I hope?

6 MS. LUNDVALL: Yes. This is from the Nevada
7 Supreme Court. It's called Davis versus Bailey.

8 THE COURT: Okay.

9 MS. LUNDVALL: It's 278 Pacific 3d 501. It's
10 a 2012 case.

11 The sum total of this case, which was a case
12 involving a contract provision that had a prevailing
13 party clause within that contract was that when there
14 is a successful defense, that successful defense can be
15 used as a foundation to argue that you are the
16 prevailing party, all right? It's pretty simple.

17 THE COURT: Okay. That's not too difficult.

18 MS. LUNDVALL: All right. The second
19 decision that I intend to offer the Court then --

20 THE COURT: Did you -- you didn't cite this
21 in your brief, right?

22 MS. LUNDVALL: To be honest with you, I don't
23 know the answer to that.

24 THE COURT: Okay.

25 MS. LUNDVALL: If we did not, we are

1 supplementing.

2 THE COURT: It doesn't ring a bell to me, but
3 I've read so many I'm not gonna say you didn't.

4 You have another one?

5 MS. LUNDVALL: Now, the second one, it's
6 quite possible we did not cite this, and the reason why
7 was that there was recently a rule change for our
8 Nevada Supreme Court as to whether or not that you can
9 cite to unpublished decisions.

10 THE COURT: Yes. You're not supposed to, but
11 we all did it, but after January they'll actually say
12 it has authority.

13 Don't you love that? I think it's great what
14 they did.

15 MR. LUNDVALL: And here's one for the Court
16 then to consider, and I'm gonna hand a copy to
17 Mr. Jimmerson as well.

18 THE COURT: And I have to do it under the new
19 rule since it was December 20th, I get it.

20 MS. LUNDVALL: Understood.

21 And it's a case that's called Freedman versus
22 Freedman, and it's found at 2012 Westlaw 6681933. It's
23 a 2012 decision from our Nevada Supreme Court. And
24 what this decision, if you go through this, this dealt
25 with a marital agreement, and there was two parties

1 then that were obviously on opposite sides, and each
2 had differing views concerning that marital agreement,
3 but the marital agreement had a provision for
4 prevailing party.

5 THE COURT: Okay.

6 MS. LUNDVALL: All right. So what happened
7 in this case is that the plaintiff prevailed on a
8 portion of their case, and the defendant prevailed on a
9 portion of his, and what the Court did then in the
10 district court is it quantified the damages that were
11 entailed with the portion that the plaintiff prevailed
12 upon, compared that then to the portion that the
13 defendant prevailed upon, and created a net judgment in
14 accordance with the prevailing party provision.

15 THE COURT: Sure.

16 MS. LUNDVALL: And that's what we ask the
17 Court to do, and you can make that same determination
18 then in this case.

19 THE COURT: I see where you're coming from.

20 MS. LUNDVALL: Okay. So from the standpoint
21 you've already quantified the amount of attorney's fees
22 that they incurred by reason then of not getting the
23 information, and you made that a form of special
24 damages.

25 THE COURT: I did.

1 MS. LUNDVALL: And we know what that sum is.

2 THE COURT: Right.

3 MS. LUNDVALL: So then what the issue becomes
4 then, we also know that Pardee prevailed on a portion
5 of this case, so then the issue is --

6 THE COURT: Is the quantification.

7 MS. LUNDVALL: Precisely.

8 THE COURT: I get it, Ms. Lundvall. That's
9 what started me on the 1.8 million.

10 MS. LUNDVALL: All right. So let's focus on
11 our motion for attorney's fees.

12 THE COURT: No, I'm not gonna go there.

13 MS. LUNDVALL: But let --

14 THE COURT: All I want to do is address the
15 quantification. I'm on the same page with you on the
16 prevailing party. I understand what you're saying. I
17 don't want to get -- I'm not going to go through the
18 attorney's fees.

19 My problem on this judgment, and I'm still
20 gonna stand with it, is the 1.8. The quantification
21 was an issue that just stuck out to me from the
22 beginning, and it still does.

23 MS. LUNDVALL: But what I understand then
24 that the Court will allow us to do, is once that you
25 finalized your new judgment, that you're gonna give us

1 the opportunity then to argue our motions for
2 attorney's fees.

3 THE COURT: Absolutely.

4 MS. LUNDVALL: Thank you.

5 THE COURT: That's --

6 MS. LUNDVALL: That's --

7 THE COURT: If I didn't make that clear,
8 absolutely. When I worked through all this and then
9 when I looked it up and realized, whether you disagree
10 with me, I have a problem on the judgment. It has to
11 be right. And going back, I started to write one
12 myself, and I go, No, I'm gonna enforce my own rule.

13 And I wanted to give you an understanding why
14 I do not agree with this judgment. I would not have
15 agreed with that, and we went through why it happened.
16 Once again, I take responsibility. We didn't follow
17 our procedure, but once -- now we're gonna start with
18 that, okay, absolutely.

19 In fact, that's what I was going to go
20 through. Let me keep my notes here, one second.

21 Then my notes here, the only -- so then I've
22 got -- let's do this then.

23 MS. LUNDVALL: My prediction is that --

24 THE COURT: Let's do this. The defendant's
25 -- then I can go through, I've got them all here.

1 Defendant's motion to amend the judgment entered
2 6/15/2015, this is your one on wanting to change on --
3 now, here's what I looked at. Let me do this, and
4 maybe -- when I looked at your motion as far as the
5 Sandy Valley damages, you were saying you were amending
6 this judgment, the one I just said was erroneous.

7 Do you realize that's what it said here?

8 MS. LUNDVALL: Yes.

9 THE COURT: Okay. I realize that I need --
10 this I can address, and I went through it extensively.
11 My only question to you was whether you're really
12 wanting to amend my findings of fact, conclusions of
13 law and order where I cited, or whether you can -- you
14 didn't waive anything by that, because obviously -- so
15 this is gonna, you're gonna do this, because it still
16 would -- that part is still gonna be in the new
17 judgment, based on my findings of fact and conclusions
18 of law. So, to me, then this would become moot,
19 obviously.

20 Is it still gonna be there? Absolutely. You
21 are not waiving anything.

22 Here's my question. I've read it a lot. If
23 you want to amend, supplement, fine, but I feel like I
24 have a lot of briefing on that, so this one I'm going
25 to deny without prejudice, because --

1 MS. LUNDVALL: May I explain to the Court why
2 it is we brought that motion?

3 THE COURT: No.

4 MS. LUNDVALL: Very simply, I have two lines,
5 and that is the one issue is we had not cited to Liu to
6 you.

7 THE COURT: I did.

8 MS. LUNDVALL: I recognize and acknowledge
9 you did, but we had not.

10 This is an issue that quite possibly may be
11 taken up on appeal.

12 THE COURT: Oh, Ms. Lundvall, I would
13 guarantee you it was from day one.

14 MS. LUNDVALL: I did not want an argument
15 coming from plaintiffs' counsel that we had not argued
16 Liu to you.

17 THE COURT: How could you, it came in after
18 the motion?

19 MS. LUNDVALL: I understand that.

20 I got another appeal that, where that
21 argument has been advanced, and we have been hashing
22 through those issues. And what I was trying to do is
23 to preserve my record.

24 I understand very likely where the Court may
25 come out on this, but I did not want to get any

1 argument that somehow we have waived it by failing to
2 raise Liu in the court below. That's the reason, your
3 Honor, that we filed it.

4 MR. JIMMERSON: Judge, I want to add one
5 other factor that does cut into this that's quite
6 important, and it will help you in your calculation and
7 your calculus.

8 We have filed a motion for attorney's fees on
9 two different bases.

10 THE COURT: Right. I know.

11 MR. JIMMERSON: One under prevailing party.
12 The reason I say the fact that we offered a judgment
13 which was denied or declined and we exceeded that
14 judgment, you know, you need to be aware of it, because
15 that cuts off even an analysis for prevailing party.

16 In other words, when you look at the case
17 law, if the Court finds that the plaintiffs have
18 exceeded their offer of judgment and that the statutory
19 requirements under the then existing 17.115, which was
20 later delayed but it was applied at the time, that cuts
21 off the whole issue of prevailing party or you won on
22 three issues and you won on one issue, because the
23 offer of judgment resolves all matters, so I'm just
24 asking you, that's something you will need to look at
25 in conjunction with prevailing party.

1 THE COURT: I think that was kind of -- I
2 inferred that that was going to be an issue. I
3 understand you don't agree with that. I agree with
4 you, I actually, like I said, worked a lot on these
5 until I backed it up into realizing on this judgment.
6 I spent the longest time on this for obvious reasons,
7 because everything flows.

8 MR. JIMMERSON: The prevailing party analysis
9 as to published decisions makes it clear that --

10 MS. LUNDVALL: The point that Mr. Jimmerson
11 just articulated though, two points to this, number
12 one, it assumes that he has a valid offer of judgment,
13 which he doesn't, and we briefed that and the Court is
14 gonna hear argument on that.

15 THE COURT: Right.

16 MR. JIMMERSON: Right.

17 MS. LUNDVALL: Number two, and that is that
18 the law he's now citing to the Court, which is why I'm
19 trying to underscore this, is under NRS 18.010, it's
20 not under the prevailing party provisions in a
21 contract, and so that there's a different analysis that
22 applies.

23 THE COURT: Okay.

24 MS. LUNDVALL: Even if by some strange thing
25 that the Court finds his offer of judgment valid, let

1 alone if he beat his offer of judgment, because he
2 didn't under the plain language of it, but the point
3 being is it still does not cut off the Court's analysis
4 under the contract provision.

5 THE COURT: I appreciate that. I get it, so
6 let me clean this up.

7 And here's the other thing, I'm not gonna set
8 these all on one day, in fairness to all of us. I'm
9 gonna try -- you can see I got into a criminal trial,
10 but when I -- I wanted to reserve today to really do a
11 fair record for both of you on this judgment issue and
12 also give exactly what I did, give guidance on where I
13 feel we should go to at least give you some idea of
14 what I want. I accomplished that. That was my goal.
15 It took me -- but in fairness, I understand that.

16 So what I want to do is now clean this up.
17 As far as defendant's motion to amend judgment entered,
18 which basically I call them the Sandy Valley, as we all
19 know, damages, I'm going to deny this as moot because I
20 have stricken the judgment.

21 I'm keeping all this. You are not waiving
22 anything when this new judgment -- because it will have
23 the Sandy Valley damages in it, because -- and here's
24 the other thing: To be honest, I, I understand why you
25 now say you feel it was a record on appeal, I honestly

1 felt it was just another chance to argue Sandy Valley,
2 but I'm okay with that, because to be real honest, I
3 want the most there, you know, in there for our appeal,
4 because I know we all -- I suspected strongly from my
5 rulings that, that the Sandy, that this would be,
6 because I, I -- and that's why it would go up. That
7 does not shock this Judge at all.

8 In fact, that's why I tried, honestly,
9 Ms. Lundvall, that's why I looked for every new case
10 that came down between when, after my Actos trial,
11 between when we finished your trial and before I took
12 the week off to do this, so you're not surprised I
13 found the case.

14 It's fine, and honestly, Mr. Jimmerson,
15 that's why I don't mind if you briefed it. I have no
16 problem if that's in my record, in this record, so this
17 is moot only for that reason, okay? Because the
18 judgment, okay, nothing is waived, as we know. I'm
19 very explicit.

20 The next one, the Number 4, which one is
21 this?

22 The countermotion, okay, the countermotion
23 for attorney's fees on Pardee's motion to amend
24 judgment, this is also moot, because I did not hear the
25 motion to amend the judgment, but I will tell you, I, I

1 do look at -- I can't give you advisory.

2 Let me just say, since we've opened up a lot
3 of topics here, I do look at NRCP 11(a)(1)(a), instead
4 of allowing countermotions, I will tell you, because I
5 do look at it that if I agree you can have a motion for
6 sanction, if you think it's, if the Court has grounds
7 for that, but I do require a separate motion just even
8 before you did it, just for that reason, because I am
9 trying so hard, because people do countermotions, so I
10 do read Rule 11 that way, okay?

11 But that does not waive any of your rights
12 for that, you do understand, so that's not advisory,
13 I'm just telling you how I read Rule 11 on the
14 countermotions.

15 Okay. The plaintiffs' motion for order --
16 okay, this one we could do, the plaintiffs' motion for
17 order requiring defendant, when serving by electronic
18 means, to serve three specific persons.

19 I don't know how Wiznet works. I tried to
20 find out.

21 Basically the defense is, Hey, if they want
22 it through the electronic, it can go to Wiznet.

23 Here's my thought, because of this case I
24 have no problem, because that's whether it gets to your
25 firm, not you specifically.

1 MR. JIMMERSON: Well, your Honor, we're
2 talking two different things.

3 THE COURT: Okay.

4 MR. JIMMERSON: By Wiznet, there is an
5 obligation by each lawyer, each firm, to serve the
6 list, to serve whoever you've designated.

7 THE COURT: Right, on the list service.

8 MR. JIMMERSON: We're not talking about that.
9 This motion doesn't speak to that. This motion speaks
10 to emails to myself.

11 MS. LUNDVALL: No, it doesn't.

12 MR. JIMMERSON: I want emails that are gonna
13 be communicated to me by McDonald Carano to be added to
14 my secretary and now to Mr. Flaxman.

15 THE COURT: Are you asking me for any email
16 between you?

17 MR. JIMMERSON: That's right. Any order, any
18 email communicated to me is to be sent to three people,
19 not one person, and the defense has no defense to that.
20 They are confused. They say we're talking about
21 Wiznet. Well, Wiznet, you got to serve whoever is on
22 the mailing list.

23 If they submit a judgment to me by email, and
24 they know I don't read it, I'm asking for a Court order
25 so there is no excuse by them not to comply and that

1 they would serve my secretary and my associate.

2 THE COURT: When you say "email," you mean
3 any order? You're not saying every correspondence?

4 MR. JIMMERSON: I'm saying every
5 correspondence from McDonald Carano on this case be
6 done, not on other cases, this case. I want to make
7 sure that I read it and that I see it, and that what
8 happened in this case on June 15th or so does not
9 repeat, that's all.

10 It's so easy for them to add one other name
11 or two other names to the "to" box on a computer,
12 that's all, to the point where don't send it to me,
13 send it -- my point is it's no big deal to send it to
14 three people.

15 What gets me is if she would have asked me,
16 Would you make sure you send Rory a copy, yes, of
17 course, but not with Pardee. Pardee, they're just
18 never gonna communicate or cooperate, so I want an
19 order that obligates them that with regard to this
20 case, any communications by email as opposed to a
21 letter in the mail be sent to three people, not just to
22 me.

23 MS. LUNDVALL: Your Honor, I'm not trying to
24 be difficult here, but you know what, there are rules
25 that have consequences in this case, and there are

1 issues that interrelate to this request that he has
2 made now orally.

3 THE COURT: Uh-huh.

4 MS. LUNDVALL: And I want to as far as point
5 the Court specifically to his motion.

6 THE COURT: I got it.

7 MR. LUNDVALL: Mr. Jimmerson is so very apt
8 to read, and let me read from his own motion.

9 He says on Page 1 of his motion, Request this
10 Court for an order compelling defendants and its
11 counsel, if they are choosing to serve documents by
12 electronic means, and especially when serving by
13 electronic means without hard copies by U.S. Mail to
14 plaintiffs' counsel, to serve three individuals.

15 MR. JIMMERSON: Right.

16 MS. LUNDVALL: And now he's changing the
17 identity of who it is he wants to have served from his
18 motion, but the point being is that we serve documents
19 through Wiznet. You can't order what happens through
20 Wiznet. I can't order what happens through Wiznet.

21 If he wants things served upon him, then he
22 and his staff have to register with Wiznet. That is
23 all I'm talking about.

24 THE COURT: Okay.

25 MS. LUNDVALL: Now, to the extent he's made

1 an oral motion that is separate and apart from what the
2 actual motion he filed before the Court is, from my
3 perspective, I am a stickler for rules, and especially
4 when those rules will adversely impact my client,
5 because I know what's gonna happen. His argument is
6 going to be that since we did not do this in the past,
7 that somehow there was something nefarious then,
8 because we had sent the letter to the Court, we had
9 copied him on that letter.

10 And so to the extent that what he's trying
11 now by which to do is not only to accomplish something
12 prospectively, but to accomplish then something then
13 that's going to have a relationship to an issue that's
14 already before the Court, and so his oral motion,
15 number one, has no factual basis. His oral motion has
16 no legal foundation. He has no rule, no citation to a
17 rule by which that he can say, Your Honor, to compel
18 her to send me an email and compel her to copy somebody
19 else. That, with all due respect, your Honor, is
20 ridiculous.

21 THE COURT: So here's how I'm gonna do this
22 motion, because the reason I brought it up is because
23 of what happened in our first motion.

24 And I am a stickler for rules too, you know,
25 that affects this Court and everybody, as you know,

1 because of what happened on not approving as to form
2 and content, so I, above all people, I am a stickler
3 for rules now.

4 What I'm going to say as far as I'm not going
5 to grant this motion, but I'm going to emphasize that
6 for any orders or any judgment in this case, that you,
7 both of you are ordered to give it to the other person
8 as to form and content, and that if you do not have
9 someone to form and content within a reasonable time,
10 you are to let this Court know what the reasonable time
11 was, what efforts you made to get ahold of the other
12 person, and -- before you do it, and if you get ahold
13 of them and they disagree, do exactly what I said.
14 Tell me either you both proposed and your basis for it.
15 That's what I'm going to do.

16 MS. LUNDVALL: Thank you, your Honor.

17 THE COURT: Which I thought was my standing
18 order, but obviously I am going to do a specific one
19 here, so if there's a misunderstanding that an order is
20 different from a judgment, it won't happen again.

21 MR. JIMMERSON: Could I have the Court order
22 that any communication to myself be directed to my
23 secretary? They don't have to send it to me.

24 THE COURT: I'm not sure I have the
25 jurisdiction.

1 MR. JIMMERSON: When you hear that they
2 refuse to serve somebody I asked to be served, and I
3 don't read it, and they knew about it a year and a half
4 ago, and they still go through that, what is somebody
5 to believe? I just want to make sure that when I get
6 something from the McDonald Carano firm in this case
7 that I'm aware of it, and so sending it to me will not
8 make me aware of it.

9 I would like to have an order from the Court
10 or a stipulation from the defendant.

11 THE COURT: Here's what I said, let's be real
12 plain here, any communication, whether it's written or
13 whether it's email or -- who do you want them to, if
14 it's not you, who do they --

15 MS. LUNDVALL: Your Honor?

16 MR. JIMMERSON: Ks@jimmersonlawfirm.com.

17 THE COURT: Okay.

18 MS. LUNDVALL: Your Honor, there is a way for
19 you to be able to accomplish what it is he wants, and
20 let me make a suggestion. There is a function in
21 Wiznet that when I file something, I also have to ask
22 for it to be served, but if I don't want something
23 filed, I can simply say I'm going to serve him.

24 Now, whoever they have had register for their
25 service, they get it automatically. They're in charge

1 of that.

2 THE COURT: But he's going beyond service.

3 MR. JIMMERSON: I'm not talking about
4 service, I'm talking about --

5 MS. LUNDVALL: This is what I'm talking
6 about, is that if I'm going to send him a proposed
7 judgment, I can do that through the service function on
8 Wiznet.

9 MR. JIMMERSON: But you didn't do that this
10 year, you didn't do that in --

11 THE COURT: Okay. You know what, it's real
12 easy, I'm sorry.

13 MS. LUNDVALL: And I will do that. That's
14 the point I'm trying to make, and so it will accomplish
15 what it is that he wants.

16 THE COURT: You will serve it to that person?

17 MS. LUNDVALL: I will do it through Wiznet,
18 and whoever they have through Wiznet, they receive
19 copies of it. So once again, it puts the ball in their
20 court to have somebody register for --

21 MR. JIMMERSON: No problem, we have
22 registered everyone in this case.

23 THE COURT: But you're going beyond that,
24 you're going beyond other emails.

25 Am I understanding you right?

1 MR. JIMMERSON: Absolutely right.

2 THE COURT: That's his oral motion, and I
3 agree he just asked about service, and I agree.

4 Who, instead of them doing it to you, and
5 they're not going to -- on different communications,
6 they are not going to have to do three people. You're
7 telling them who you want any communication to go to.

8 MR. JIMMERSON: Right, any emails, just send
9 it to ks@jimmersonlawfirm.com.

10 You know, we send everything to Ms. Lundvall
11 and to Rory.

12 Sorry, I don't remember your last name.

13 They won't accommodate that, and they know I
14 don't read it.

15 THE COURT: Okay. It's very easy, if you
16 want to -- I absolutely feel like, so we don't have any
17 more misunderstandings, any emails on this case that
18 you want to go to Mr. Jimmerson, do not send it to his
19 email, send it to --

20 MR. JIMMERSON: Ks@jimmersonlawfirm.com.

21 THE COURT: Ks@jimmerson, and he cannot come
22 to this Court and say he didn't get it.

23 MR. JIMMERSON: Agreed.

24 MS. LUNDVALL: And from this perspective, one
25 of the things that I would suggest to the Court, let me

1 offer this suggestion to you. I've made the
2 representation that any emails, any letters, anything,
3 we will send to Mr. Jimmerson through the serve
4 function on Wiznet and so it gets to them. I've made
5 that representation, and so that's a stipulation.

6 THE COURT: You're using Wiznet for
7 everything, like Mr. Jimmerson --

8 MS. LUNDVALL: Absolutely.

9 THE COURT: You're using --

10 MS. LUNDVALL: Absolutely. You can use
11 Wiznet for that function, absolutely.

12 MR. JIMMERSON: Do you understand the game
13 they're playing?

14 MS. LUNDVALL: What I'm trying to do is to
15 give the Court an out, because number one, you don't
16 have a motion before you. Number two, you don't have
17 any grounds before you, and I'm trying to make sure
18 that there's no issue in your record that --

19 THE COURT: Well, if you want to appeal me on
20 this, have at it, Ms. Lundvall. I mean I have an issue
21 in front of me that somebody -- and I can tell you the
22 issue came because the stickler for the rules, the
23 rules didn't happen on this judgment.

24 MR. JIMMERSON: That's right.

25 THE COURT: So I do have an issue. My

1 concern is how do I address it?

2 If you're saying you don't do private email,
3 every email you send goes through Wiznet?

4 MR. JIMMERSON: That's not true.

5 THE COURT: I just, I just want her to get on
6 the record and tell me. Every email, whether it's,
7 Mr. Jimmerson, I'm going to be late for court on
8 January 14, so please don't start without me, that
9 would go through Wiznet?

10 MS. LUNDVALL: Prospectively, for this case,
11 I will do that from this point forward.

12 MR. JIMMERSON: I'm not asking her to do
13 that. She does not need to do that.

14 THE COURT: But if that accomplishes, if you
15 will do that, then you have them on Wiznet, and then
16 you can get five of them or whoever you have on Wiznet.
17 We're done.

18 MS. LUNDVALL: That's right.

19 THE COURT: If that's what you'll do, that's
20 fine.

21 MS. LUNDVALL: Thank you, your Honor.

22 THE COURT: We accomplished what we want.
23 I'm fine.

24 And then not only that one, but then if it's
25 -- then we actually have a basis to trace that it went

1 through Wiznet.

2 MS. LUNDVALL: Absolutely. That's my point.

3 THE COURT: Well, I -- so based on that, I'm
4 gonna order that. That's regarding plaintiffs' motion
5 for ordering client, defendant, when serving electronic
6 means, to serve three, what I'm going to say is that I
7 am going to deny that -- no.

8 MS. LUNDVALL: Yes, you are denying it.

9 THE COURT: I'm just trying to think how I
10 make sure I get in the ruling, denying it based on the
11 ruling that you, prospectively, the defendant
12 prospectively will serve all email through Wiznet.

13 MS. LUNDVALL: Thank you, your Honor.

14 MR. JIMMERSON: For this case.

15 MS. LUNDVALL: For purposes of this case
16 prospectively.

17 THE COURT: For this case. This is the only
18 case I have with you, so for this case, so we're very
19 specific, yes. Okay.

20 We have Pardee's motion for attorney's fees.
21 This is Number 6. It is also moot, because it's based
22 on the judgment of 6/15/2015.

23 This is the prevailing party -- I understand.
24 The notes from what you just gave me, I will put it
25 with that. We can get into so many things, can we not,

1 on this case?

2 So this is denied only because it is moot.

3 MS. LUNDVALL: Hold on, your Honor. From
4 this prospective, are you denying these motions --

5 THE COURT: No.

6 MS. LUNDVALL: -- or are you holding them
7 over for future --

8 THE COURT: That's a good question. I was
9 going to deny them as moot. Then you would have to
10 refile them.

11 MS. LUNDVALL: Then everything would have to
12 be refiled, then there would be a new opportunity if
13 you want to -- my suggestion to the Court is to simply
14 continue these then.

15 THE COURT: Well, but your motion is asking
16 for a judgment of 6/15/2015.

17 MS. LUNDVALL: Well, from this perspective,
18 your Honor, though, no matter what is contained within
19 the judgment, based upon what you've said today, our
20 position being the prevailing party on the portion of
21 the case, as we've talked about, we prevailed on a
22 portion of this case.

23 THE COURT: Okay. Just, just --

24 MS. LUNDVALL: They prevailed on another one.
25 That's all set forth.

1 THE COURT: Okay. You know what, I am going
2 -- no, no. I'm going to deny it, and you can just --
3 you have it all in your briefing, and you can refile it
4 based on the new judgment.

5 MR. JIMMERSON: Could we have a --

6 THE COURT: I'm denying it as moot, and you
7 can refile it.

8 MR. JIMMERSON: For both parties, Judge, can
9 we have the opportunity to say plaintiff and defendant,
10 individually have 10 days to exchange proposed
11 judgments to keep it on track?

12 THE COURT: Yeah, however you want to do it.

13 MR. JIMMERSON: I'm just suggesting it might
14 be a fair time, because we plan on preparing one.

15 THE COURT: If you think you need to clarify
16 anything else on your exchange on judgments, I'm fine.

17 Okay, Pardee's motion to retax memo of costs
18 filed June 19th, that also applies to the June 15th,
19 2015.

20 MR. JIMMERSON: Yes, it does.

21 THE COURT: So I'm gonna it as moot at this
22 time, and let's see what happens, because it's the NRS.
23 It goes back to the prevailing party thing.

24 And plaintiffs' motion for attorney fees and
25 costs, same thing, I'm gonna deny it as moot, and we'll

1 go from there.

2 What is the last thing then, you want to make
3 sure on these from my ruling of the first motion on
4 exchanging these new judgments, do you want to add you
5 each --

6 MR. JIMMERSON: I'm just suggesting that we
7 exchange them within the next ten days, that's all.

8 THE COURT: Oh.

9 MR. JIMMERSON: So we keep it on track, and
10 then you'll make -- and then maybe if we have a
11 dispute, we would telephone you. I'm just suggesting a
12 joint call and/or your law clerk and just say, Listen,
13 we're not able to get this together ourselves, we need
14 a hearing by the Court on competing orders. You will
15 have two orders in front of you, and you may make a
16 third of your own. I'm just saying that may be a fair
17 way to --

18 THE COURT: Well, what are your thoughts on
19 that?

20 MS. LUNDVALL: The Court has told us you have
21 a standing order and you want us to comply with that
22 standing order.

23 THE COURT: Let's just do it.

24 MS. LUNDVALL: So my suggestion is that we do
25 it that way.

1 THE COURT: I have to agree, because as soon
2 as I do something outside the normal course, as with
3 this case, then I have issues.

4 And if I feel like I need a hearing, I'm not
5 shy, I will ask for a hearing.

6 MR. JIMMERSON: Very good, your Honor.

7 THE COURT: I would like to do it that way.

8 MR. JIMMERSON: It's getting to the point
9 where if I suggest today is a Friday, I'm going to get
10 an opposition.

11 I'm with you. We'll just submit it.

12 THE COURT: Okay. It's all important. I
13 take no dispersions. It's all important. I get that.

14 MR. JIMMERSON: So as I understand it, we're
15 going to exchange between ourselves, try to reach an
16 accommodation. If not, we'll be sending letters served
17 upon the opposing side so each side has --

18 THE COURT: Okay, here's what I would like to
19 do, here's how it works: One of you does the proposed
20 order. The other one looks at -- judgment, excuse me,
21 judgment. The other one looks at it, says what their
22 issue is and whether they can approve it or not. If
23 not, you try to work together.

24 If you can't, then whoever, then each of you,
25 the first one who proposed the judgment and the second

1 one who couldn't agree, you couldn't work it out, give
2 me competing judgments or give me information on what
3 sections of the judgment you can't agree on.

4 MR. JIMMERSON: Okay.

5 MS. LUNDVALL: Thank you, your Honor.

6 THE COURT: Do it that way, and I will make
7 the determination whether I want more. And based on
8 this, I may, you know. I'm very aware of peoples'
9 arguments now.

10 One thing with both of you, oral argument
11 helps, because I do think there's so much stuff, and
12 trying to focus where we're at, but I will make that
13 determination when I get there.

14 MS. LUNDVALL: As the Court has previously,
15 as the Court has previously ordered at least three
16 times before, I will prepare the judgment.

17 THE COURT: Yes.

18 MS. LUNDVALL: And I will give it to
19 Mr. Jimmerson.

20 THE COURT: That was my --

21 MR. JIMMERSON: I didn't know you ordered it
22 three times before for the defendant, who lost this
23 case, to prepare the judgment. Your Honor, I'm just
24 saying it will not alter the ultimate result, but since
25 I won the case, my clients won the case, we should be

1 preparing the order. It's okay.

2 THE COURT: Unfortunately, the way it started
3 out in the first place, I'm going to keep consistent.
4 I'm fine. No one's waiving any rights.

5 MS. LUNDVALL: Thank you, your Honor.

6 THE COURT: You know, no one has to take
7 their ball and go home, okay? We're okay, I promise,
8 okay?

9 MR. JIMMERSON: You got it.

10 THE COURT: Thank you for staying so long.

11 MR. JIMMERSON: Thank you for all your time
12 and your staff's time too. I appreciate everybody's
13 efforts.

14 THE COURT: You're welcome, okay.

15 * * * * *

16 ATTEST:

17 Full, true, and accurate transcription of proceedings.

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21 /S/Loree Murray
22 Loree Murray, CCR #426

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\$1,800,000 [4] 22:1,12 44:3,22 \$1,950,000 [1] 42:11 \$1,952,000 [3] 21:25 42:23 43:24 \$1.8 [50] 24:15,16,16,20 25:4,12,21,25 30:5,9,10 31:13 33:19,20 34:12,20 36:3 39:24,24 40:6 41:3,5,13,15,25 42:19 43:24 44:19,25 46:19 48:9 50:4,6 69:2 71:15 74:22 75:10 79:13 80:25 102:6 107:20 108:21 130:18 131:19 132:3 134:18 135:17 136:15 138:9 141:13 \$1.9 [2] 21:14 78:11 \$1.952 [1] 42:23 \$10,000 [2] 69:19 136:3 \$102,000 [1] 132:7 \$120 [1] 132:18 \$134,000 [1] 99:17 \$135,500 [2] 31:25 38:13 \$141,500 [6] 32:1 38:18 39:5 130:17 137:20 141:17 \$146,000 [1] 38:15 \$146,500 [2] 22:4 31:24 \$200,000 [1] 137:23 \$30,000 [3] 33:1 127:2 134:16 \$40,000 [1] 24:25 \$50 [1] 133:11 \$50,000 [1] 137:23 \$550,000 [1] 43:15 \$6,000 [3] 22:5 31:19 38:13 \$7,200 [1] 31:19 \$75 [1] 31:18 \$80 [1] 31:18 \$84 [2] 87:12 127:22	1 1 [15] 30:13,13,20 31:4 35:1 126:17 131:10,12 136:8 137:22 138:2,11 140:10,24 165:9 1,500 [1] 48:16 1,800 [2] 127:21,23 1,800,000 [1] 101:5 1.3 [1] 45:1 1.5 [6] 25:3 45:1 127:1 131:15 132:18 133:11 1.8 [30] 69:6,9 73:12,13 78:12 88:12 98:1 101:5,21 102:9,14 104:10,11,12,13 107:6,24 109:10,19 110:2,7 116:22 117:5 127:14 132:25 135:4 136:17 141:16 154:9,20 1.9 [1] 74:5 1/2 [1] 33:1 1/25/2013 [1] 17:13 10 [2] 98:17 175:10 10,000 [1] 48:20 10/23 [1] 72:18 10/23/2013 [1] 17:12 10/8/2013 [1] 17:14 102 [1] 23:19 11 [5] 24:22 98:20,25 162:10,13 11(a)(1)(a) [1] 162:3 12 [1] 99:13 13 [2] 9:15 14:2 134 [1] 101:9 134,964 [1] 99:18 135,500 [1] 136:2 13th [5] 3:11 10:9 21:7 47:16 130:24 14 [2] 10:16 172:8 141,000 [1] 136:1 141,500 [1] 47:3 146,000 [1] 136:2 14th [1] 72:19 15 [2] 115:21 139:1 150,000 [1] 136:1 15th [7] 3:7 13:23 14:12 53:	18 122:15 164:8 175:18 16.1 [17] 24:21 69:25 70:1,4,10,12 73:22,25 74:2,7 75:6 76:10,16,17,23 88:13,21 17 [2] 21:21 98:7 17.115 [1] 158:19 174 [1] 139:1 18 [4] 14:2 21:21 22:9 98:7 18.010 [8] 149:14,15,20,21 150:1,2,15 159:19 19 [1] 98:7 19th [1] 175:18 2 2 [10] 3:9 14:1,2 21:20,21 24:22 57:17 125:14 126:3 150:6 2,000 [1] 127:21 2,100 [3] 128:1 132:9 133:4 20 [1] 34:16 2004 [2] 131:10,12 2005 [1] 48:17 2011 [4] 23:17,19 40:13 125:15 2012 [10] 17:9 72:10,11,22 131:1,3 132:7 151:10 152:22,23 2013 [12] 5:8,24 6:3 19:5 23:16 24:22 25:8 34:15 41:9 72:14,19 138:25 2014 [8] 3:10 5:10 15:6 21:6,10 36:1 52:6,8 2015 [16] 3:7 10:9,17 11:5 13:23 14:12 15:5,21 21:8 42:7 47:16 52:3 53:18 115:21 122:15 175:19 20th [1] 152:19 21 [1] 98:7 22 [3] 22:10 98:7 131:5 225 [4] 99:4 126:22 134:3,6 23 [3] 14:3 21:22 98:7 25 [3] 5:9,24 6:6 25th [5] 3:9,10 21:6 36:1 52:3 26th [1] 131:3 278 [1] 151:9	3 [1] 150:6 3,000 [10] 128:6,13 131:5,12,17 132:15,18 133:3,16 134:20 3/14/2013 [1] 17:13 30 [3] 30:8 42:17 138:9 30,000 [8] 24:23 25:11 33:21 40:9 50:14 101:9 134:7 136:5 30,134 [1] 101:18 30th [1] 138:25 33 [1] 42:17 34 [2] 42:17 98:10 35 [10] 33:22 40:11 41:8 44:8,9,13 50:12 98:10 128:7 133:14 36 [2] 42:18 98:10 3d [1] 151:9 4 4 [4] 98:4,4 150:5 161:20 4/12/2013 [1] 17:13 40 [1] 25:2 40,000 [3] 33:1 127:23 131:16 48 [1] 98:14 49 [1] 98:14 5 5 [11] 32:12,24 82:2 99:10 101:20 126:24 134:3,4 136:5 138:10 141:3 5,000 [2] 128:3 132:11 5/13 [1] 52:22 5/13/2015 [6] 4:3 9:14 17:14 46:8 52:23 57:10 5/30/2013 [1] 17:13 50 [2] 32:25 98:14 501 [1] 151:9 511 [2] 48:16,17 52 [2] 119:11,12 52(b) [3] 3:8 13:22 119:12 58 [1] 98:17 58(a) [6] 3:16 4:5,22 8:13 13:15 119:10
* * [6] 179:15,15,15,15,15,15 /			

<p>59 ^[1] 3:8</p> <p>59(a) ^[1] 13:22</p> <hr/> <p>6</p> <hr/> <p>6 ^[2] 125:20 173:21</p> <p>6,000 ^[2] 136:2,3</p> <p>6/15 ^[1] 18:5</p> <p>6/15/2015 ^[7] 3:12 17:16</p> <p>18:2 51:16 156:2 173:22</p> <p>174:16</p> <p>6/25/2014 ^[5] 3:25 13:4 46:8 52:8 57:10</p> <p>6/5/2013 ^[1] 17:13</p> <p>60 ^[3] 36:12 39:6 98:20</p> <p>62 ^[2] 99:7 121:13</p> <p>63 ^[1] 99:7</p> <p>64 ^[1] 99:8</p> <p>65 ^[1] 99:8</p> <p>6681933 ^[1] 152:22</p> <hr/> <p>7</p> <hr/> <p>7 ^[4] 23:23 98:8 125:20 130:23</p> <p>7/23/2013 ^[1] 17:14</p> <hr/> <p>8</p> <hr/> <p>8 ^[5] 14:1 21:21 113:1 125:21 139:1</p> <p>8/14/2014 ^[1] 17:14</p> <p>84 ^[1] 131:7</p> <p>8th ^[1] 23:19</p> <hr/> <p>9</p> <hr/> <p>9 ^[2] 23:23 98:14</p> <p>90 ^[5] 34:11,17 43:16 137:7 147:13</p> <hr/> <p>A</p> <hr/> <p>abandoning ^[1] 69:1</p> <p>ability ^[3] 48:11,12 108:17</p> <p>able ^[10] 9:1 36:18 68:9 74:1 87:8 89:23 123:21 150:18 168:19 176:13</p> <p>above ^[2] 133:11 167:2</p> <p>absolutely ^[35] 5:14 7:2 12:13,16 19:16 20:9 23:1 31:7 52:13 65:14 69:3 76:18,24 90:15,17,20,23 92:6</p>	<p>95:7 104:15 113:23 117:19</p> <p>120:12 135:2 147:10 155:3,8,18 156:20 170:1,16 171:8,10,11 173:2</p> <p>abundantly ^[1] 75:10</p> <p>accepted ^[2] 59:1 63:13</p> <p>access ^[1] 139:9</p> <p>accommodate ^[1] 170:13</p> <p>accommodation ^[1] 177:16</p> <p>accomplish ^[4] 166:11,12 168:19 169:14</p> <p>accomplished ^[2] 160:14 172:22</p> <p>accomplishes ^[1] 172:14</p> <p>accordance ^[1] 153:14</p> <p>according ^[2] 52:23 77:10</p> <p>accounted ^[1] 100:1</p> <p>accounting ^[44] 4:3 6:5,18,24 8:12,21,22 11:14 13:9 14:5 27:7 30:21 33:4 34:5 36:9,11,13,25 38:1 39:6 41:19 46:18 47:13 49:11 65:13 66:18 88:17 93:11,15 94:5,15,23 95:3 101:13 128:22 129:15 134:12,17 136:23 137:10,19,25 141:4 142:22</p> <p>accurate ^[3] 100:20,21 179:17</p> <p>accusation ^[2] 56:16 60:20</p> <p>acknowledge ^[1] 157:8</p> <p>acknowledged ^[1] 67:23</p> <p>acre ^[4] 25:1 32:25 127:23 131:16</p> <p>acres ^[36] 24:23 25:1,11 30:18 33:22 40:9 48:16,17,18,20 50:14 99:4 126:5,22 127:21,21,24 128:1,4,6,13,13 131:6,12,17 132:9,18 133:3,4,16 134:3,8,20 137:25 138:2,9</p> <p>across ^[1] 87:9</p> <p>acting ^[1] 23:11</p>	<p>action ^[9] 16:12 22:1,5 46:16 111:23,25 112:4,11 150:7</p> <p>actions ^[3] 96:25 131:23 140:24</p> <p>actos ^[3] 20:12 49:20 161:10</p> <p>actual ^[3] 98:16 133:12 166:2</p> <p>actually ^[19] 13:8 16:17 30:3 46:4 57:15 75:2 78:12 79:17 80:17,19 92:7 94:9 126:24 129:24 134:24 150:3 152:11 159:4 172:25</p> <p>add ^[6] 78:12 125:4 143:20 158:4 164:10 176:4</p> <p>added ^[2] 15:15 163:13</p> <p>addition ^[4] 75:11 98:22 126:6 143:8</p> <p>additional ^[26] 35:7,9 37:12 67:20 70:24 75:11,14 78:12 83:9 84:16 85:1,3,9,16 86:11 88:1 93:24 99:25 100:24 106:17 113:8 121:6 133:21 137:3 138:7 148:9</p> <p>address ^[3] 154:14 156:10 172:1</p> <p>addressed ^[3] 6:1 11:11 15:8</p> <p>addressing ^[4] 106:23 107:1,3 114:10</p> <p>adjudged ^[3] 22:10 43:5 44:1</p> <p>admissions ^[1] 42:17</p> <p>admit ^[1] 27:21</p> <p>admitted ^[1] 67:24</p> <p>adopt ^[4] 19:23,25 100:1,2</p> <p>advance ^[2] 74:1 96:17</p> <p>advanced ^[6] 70:20 71:7 78:1 95:25 115:9 157:21</p> <p>advancing ^[3] 74:16 113:19 147:8</p> <p>adverse ^[1] 106:11</p> <p>adversely ^[2] 96:23 166:4</p> <p>advise ^[1] 16:12</p> <p>advised ^[1] 64:4</p>	<p>advisory ^[3] 118:19 162:1,12</p> <p>advocate ^[1] 7:24</p> <p>affected ^[4] 44:18 82:25 96:20,23</p> <p>affects ^[1] 166:25</p> <p>affidavit ^[2] 18:17 34:10</p> <p>after ^[17] 7:16,17 9:22 11:19 20:11 22:23 43:20 59:4,21 61:1 63:19 73:18 74:3 76:12 152:11 157:17 161:10</p> <p>afterwards ^[1] 121:12</p> <p>again ^[23] 12:25 19:11 20:11,15,18 21:21 32:15 33:17 36:5 58:4 59:2 68:13 69:24 79:21 96:21 101:22 104:1 113:12 116:16 129:7 155:16 167:20 169:19</p> <p>against ^[41] 14:10 22:11 30:22 32:15 37:17 39:15 40:6 43:6,10 44:2,20 46:16 47:3 49:3 71:21 73:15 74:9,12,25 78:9 82:13,14 92:8 103:21 104:7,9 105:24 106:2 108:11,13 111:17 114:24 117:1 137:8,9 141:3,3,4,6 147:11,23</p> <p>ago ^[1] 168:4</p> <p>agree ^[56] 3:18 4:8,12 6:24 9:3,8 12:19,22 29:11 31:5 33:6,6 51:16 52:21 53:1 59:25 62:9 65:20 67:3 69:7 79:4,5,11 80:7 81:2 84:24 90:2 91:12,13,23 95:2 101:19 105:3 110:11,14,18 112:17 115:20 116:9,10 118:3 120:2 133:6 136:9 140:8 145:16 146:12 155:14 159:3,3 162:5 170:3,3 177:1 178:1,3</p> <p>agreed ^[12] 9:5 17:5 26:7,8 27:2 65:4 67:18 78:10 112:1 148:1 155:15 170:23</p> <p>agreement ^[53] 11:24 22:3,8,14,16,19 24:25 26:24</p>
--	--	---	---

<p>27:15,17 31:1 35:20 44:5 50:14 61:12 67:14 70:14, 23 79:20 80:6 83:1,5 84:7, 24 86:18,22 87:3,15 94:12 98:10,21,22 99:4 116:17,19 117:18 120:6 125:17,18,21, 25 126:4 128:6 131:10,12, 21 137:15 142:9 149:8 150: 8 152:25 153:2,3 agreements [2] 94:16 98: 13 ahead [5] 91:21 95:15 119: 22 123:20 132:14 ahmed [1] 15:17 ahold [2] 167:11,12 aimed [1] 29:25 air [1] 71:19 allegation [1] 125:20 allegations [3] 69:22,23 125:16 alleged [6] 41:24 42:19 43: 23 69:15 113:10 114:24 alleging [1] 65:18 allow [4] 38:13 95:12 121: 3 154:24 allowed [3] 56:19 125:18 138:10 allowing [1] 162:4 allows [1] 38:12 almost [2] 27:16 150:3 alone [4] 41:1 89:13 128: 13 160:1 along [2] 60:15 72:15 already [11] 14:22 26:9,10, 23 34:16,16 64:12 88:2 106:15 153:21 166:14 also [21] 6:4 9:12 20:21 23: 16 57:8 60:7 84:16 85:5,25 86:9,11 94:4,21 99:13 119: 11 154:4 160:12 161:24 168:21 173:21 175:18 alter [1] 178:24 alternatively [1] 130:15 although [3] 46:14 94:19 126:16 always [3] 16:18 17:24</p>	<p>129:14 am [20] 16:25 29:12 47:9 48:1,5 93:15 103:3 112:19 116:3,14 122:10,13 162:8 166:3,24 167:2,18 169:25 173:7 175:1 amend [19] 13:22,23 14:3 68:25 75:24 89:10 91:8,9 100:15 114:11 121:5 122: 14 124:20 156:1,12,23 160: 17 161:23,25 amended [10] 21:7 37:7,8 69:21 115:6 124:7,7,14 125:13 129:14 amending [1] 156:5 amendment [4] 10:8 11:4 42:1 48:17 amendments [9] 26:20 31:2 66:11,21,24 80:12 82: 25 94:20 124:6 amount [17] 28:2 30:17 34: 13 37:6 38:13 43:14 69:6 70:5 79:16 99:14 109:1 126:8 137:21 140:6,6,23 153:21 an [96] 6:5 10:16 14:5 15:4, 18,23 16:20,21 18:18 19:4 22:22 28:2 31:12,18,18 33: 13 34:5 36:9,11,13,21 39: 17 40:7 41:18 43:11,14 45: 23 46:1 48:12 50:5 51:13 53:8,23 55:18 56:25 60:20, 25 61:5,12 63:2,3,13 64:5 65:13 72:14 76:23 84:17 86:8 88:16 94:15,22 108: 19 114:14 115:21 116:17, 19 117:2 118:19,24,24 124: 6 127:9,23 129:15 135:8 137:25 140:3,6,6,23 142:22 143:15,17,21 145:8 148:8 150:9 154:21 155:13 157: 10,14 158:15 159:2 163:4 164:18 165:10 166:1,13,18 167:19 168:9 171:15,20,25 177:10,15 analysis [8] 106:4 110:8</p>	<p>117:2 118:6 158:15 159:8, 21 160:3 analyzed [2] 23:7 31:10 and/or [1] 176:12 andrews [1] 32:9 angry [1] 63:16 another [13] 17:4 66:24 101:15 108:17 115:1 118: 22 125:7 128:6 150:25 152: 4 157:20 161:1 174:24 answer [5] 25:16,21 141: 10,11 151:23 answered [1] 141:12 anticipate [1] 14:21 anticipated [1] 86:16 any [85] 11:23 15:2 22:16, 17 24:11,11 25:18,19,20 27: 22 29:7 31:14 34:19 37:16, 17 39:12,12,13 41:24 42:1, 1,2,14,15,17 43:9,9 50:10 58:2 62:25 66:20 67:2,14 70:2,3 74:1,6,21 75:19 78: 9 80:16 86:1 87:24,25 88:1 89:12 91:15 96:10 97:2 103:24 104:18 113:14 118: 16 120:19 121:3,4,5 123:9, 11 128:13 132:2,2 136:12 140:21,21 150:7 157:25 162:11 163:15,17,17 164:3, 20 167:6,6,22 168:12 170:7, 8,16,17 171:2,2,17 179:4 anybody [1] 134:18 anyone [2] 50:24 136:13 anything [19] 10:25 25:15 26:1 27:25 28:11 44:25 62: 1 63:1 80:16 89:11 91:10 94:24 118:16 125:4 156:14, 21 160:22 171:2 175:16 anyway [1] 73:8 anywhere [1] 39:17 apart [1] 166:1 apologies [1] 52:10 apologize [2] 95:14 116: 16 apparently [1] 139:24 appeal [6] 10:16 157:11,20</p>	<p>160:25 161:3 171:19 appealable [1] 12:17 appeared [1] 24:17 appears [2] 131:4,5 appellate [1] 12:18 appended [1] 56:9 applied [1] 158:20 applies [4] 54:6,7 159:22 175:18 apply [5] 54:10 116:12 149: 22 150:7,16 appreciate [5] 5:2 145:13 148:19 160:5 179:12 appropriate [8] 10:18 30: 2 62:4 63:24 107:6,7 119:8 145:20 appropriately [1] 131:20 approval [5] 53:21 57:3,4, 8 62:17 approve [3] 17:4 45:20 177:22 approved [16] 16:22,23,25 17:16 23:13 51:16 53:3,10, 21 59:2,5 61:23 62:15 63:3 64:5,15 approving [1] 167:1 approximately [3] 31:24 125:14,15 apt [1] 165:7 are [71] 8:17 17:2 18:4 22: 20 24:18,18 25:2 26:4 28: 19 37:5,18 40:5 41:4 49:24 54:8,9,22 59:4 61:7,15 74: 8 77:23 78:19 84:23 89:20 90:7 92:3 98:23 100:2 103: 4,5 107:10,18 111:24 112: 23 113:3 118:18 119:13,15 120:5 121:19 122:18 124: 20 125:5 128:21,22,25 129: 1 136:23 138:2,22 142:18, 18 144:21 151:15,25 156: 21 160:21 163:12,15,20 164:24,25 165:11 167:7,10 170:6 173:8 174:4,6 176: 18 areas [1] 129:4</p>
--	--	--	--

<p>argue ^[3] 151:15 155:1 161:1</p> <p>argued ^[7] 25:8 42:3 69:11 96:15 127:5 137:14 157:15</p> <p>arguing ^[2] 90:19 140:15</p> <p>argument ^[13] 51:5,8 82:10 93:25 96:13 103:11 146:17 157:14,21 158:1 159:14 166:5 178:10</p> <p>arguments ^[10] 50:20 77:17 88:4,6 92:20 96:16 98:22 103:15 118:16 178:9</p> <p>arise ^[1] 150:19</p> <p>arising ^[1] 150:7</p> <p>articulate ^[1] 120:10</p> <p>articulated ^[2] 101:4 159:11</p> <p>aside ^[1] 49:15</p> <p>ask ^[16] 21:19 41:2 76:15 79:5 97:3 98:3 99:15 115:8 119:20,24 141:9 145:23 146:7 153:16 168:21 177:5</p> <p>asked ^[28] 4:1 23:20 31:15 40:23 41:3,6 69:5,23 86:3,7 89:12 97:22,25 98:1 104:18 108:9,10 135:25 136:1,1 138:1 142:18 144:10 149:5,6 164:15 168:2 170:3</p> <p>asking ^[14] 8:1 29:16 30:20 44:19 68:16 86:9 127:6 139:13 142:19 158:24 163:15,24 172:12 174:15</p> <p>asks ^[1] 139:14</p> <p>asleep ^[6] 56:22,23,24 58:11 62:14 64:20</p> <p>aspect ^[2] 138:7,8</p> <p>aspects ^[1] 136:24</p> <p>asserted ^[1] 21:15</p> <p>assertion ^[1] 22:20</p> <p>assigned ^[1] 15:16</p> <p>assignment ^[1] 124:9</p> <p>associate ^[3] 15:16,25 164:1</p> <p>associated ^[2] 130:14 132:6</p> <p>assumes ^[1] 159:12</p>	<p>assuming ^[1] 30:7</p> <p>attached ^[1] 127:16</p> <p>attempt ^[2] 22:22 135:14</p> <p>attest ^[1] 179:16</p> <p>attorney ^[5] 74:6 99:20 103:25 109:4 175:24</p> <p>attorneys ^[2] 38:14 64:4</p> <p>attorney's ^[26] 9:24 22:4,24 38:15 43:13,21 49:7,24 77:21 78:13 99:20 124:11,21 132:6 135:20 141:25 149:9,18 150:9 153:21 154:11,18 155:2 158:8 161:23 173:20</p> <p>authority ^[1] 152:12</p> <p>automatically ^[1] 168:25</p> <p>award ^[3] 38:9,9 150:9</p> <p>awarded ^[4] 31:18,19,25 130:17</p> <p>aware ^[21] 18:4 23:7,8,9 48:5 49:17 50:2 56:13 57:25 58:4,4,16 67:2,2,4,5 68:12 158:14 168:7,8 178:8</p>	<p>129:25 140:23 144:4 156:17 173:3,10,21 174:19 175:4 178:7</p> <p>bases ^[1] 158:9</p> <p>basic ^[3] 69:22 88:7,9</p> <p>basically ^[4] 79:12 90:18 160:18 162:21</p> <p>basis ^[12] 15:3 43:2,19 49:6 62:8 80:15 88:16 138:19,20 166:15 167:14 172:25</p> <p>beat ^[2] 140:9 160:1</p> <p>became ^[3] 10:17 15:4 116:17</p> <p>become ^[1] 156:18</p> <p>becomes ^[2] 49:6 154:3</p> <p>been ^[60] 10:21 11:2 16:18 17:7,8 19:4 23:13,25 26:11,19 30:15 33:20 34:23 35:1 36:20,21 38:4 42:7 53:24 55:4 58:16,16 59:1 61:2 65:6,6,16 67:19 72:11,18 84:10 88:2 96:24 106:13 107:25 114:24 117:7 126:19,24 127:20 128:12,15 132:1 133:3 134:5,13,17,21 137:22 138:21 139:7 140:11 142:11 144:3 145:20 147:1 148:5 149:13 157:21,21</p> <p>before ^[30] 23:16 42:15 51:23 54:16 57:24 63:7 64:1 67:3 71:20 75:23 76:1,3 77:23 82:1 92:20 96:1 97:9,20 118:8 131:4 136:11 161:11 162:8 166:2,14 167:12 171:16,17 178:16,22</p> <p>beforehand ^[2] 37:20 126:22</p> <p>beginning ^[5] 16:17,19 68:16 127:12 154:22</p> <p>behalf ^[3] 23:19,20 48:2</p> <p>behemoth ^[1] 37:18</p> <p>behind ^[1] 132:15</p> <p>being ^[20] 15:19 20:25 25:2 40:9,11 48:18 50:15 68:2,22 71:14,15 80:2 83:8 126:23 137:5 149:5,6 160:3</p>	<p>165:18 174:20</p> <p>belief ^[1] 10:18</p> <p>believe ^[20] 4:5 5:8 23:8,25 62:1,2,3 67:14 76:22 102:4,19 104:21 114:13,13,25 116:22 123:8 128:18 132:25 168:5</p> <p>believed ^[5] 30:11,12 84:15 104:22 139:6</p> <p>bell ^[2] 83:23 152:2</p> <p>below ^[1] 158:2</p> <p>bench ^[3] 17:8 20:15 28:20</p> <p>best ^[3] 3:22 41:22 149:1</p> <p>bet ^[1] 29:15</p> <p>better ^[2] 118:7,8</p> <p>between ^[10] 6:3 16:11 21:13 36:14 49:19 61:12 161:10,11 163:16 177:15</p> <p>beyond ^[7] 34:17,22 48:22 128:14 169:2,23,24</p> <p>big ^[4] 70:1 109:17 146:2 164:13</p> <p>bigger ^[3] 91:2 108:11 141:16</p> <p>billings ^[1] 34:19</p> <p>bills ^[1] 34:14</p> <p>bit ^[3] 3:14 125:10 149:1</p> <p>blank ^[1] 37:6</p> <p>blatantly ^[1] 147:1</p> <p>bolts ^[1] 14:13</p> <p>bonaventure ^[9] 17:17 120:23,24 121:1,14,22,22 122:9 146:3</p> <p>bonaventure's ^[1] 123:10</p> <p>bond ^[6] 121:12 145:19,20,23 146:1,5</p> <p>both ^[40] 5:20 6:2 7:22 8:16 9:8,21 11:15,22 12:8 13:1,7 16:10 18:4 19:20 28:23 29:11,13 32:22 38:11 45:4,6 53:10 59:6 61:15 62:6,16 76:11 96:15 103:12 113:10 117:20 119:12 134:1 140:15 143:16 160:11 167:7,14 175:8 178:10</p>
--	--	---	---

B

back ^[30] 16:20 17:7,9,11 18:8 20:16 39:19 43:13 47:25 57:5,12 58:5 61:17 70:17 77:16 78:4,15 82:6,15,16 87:14 92:1 97:18 132:15 135:20 144:2,7 146:10 155:11 175:23

backed ^[1] 159:5

bad ^[6] 23:11 36:22 38:22 60:21 62:11 144:11

bailey ^[1] 151:7

balance ^[3] 46:13 94:13,21

ball ^[3] 145:9 169:19 179:7

ballpark ^[1] 32:24

based ^[39] 6:25 8:17 13:13 15:19 22:9 27:17 30:6 31:21 32:18 43:23 45:9 51:5,12 67:13 77:22 79:18 83:3 84:23 86:23,24 87:17 99:15 110:9 114:22 115:25 116:6 119:4 120:14 127:7

<p>bought ^[3] 26:10 82:4 129:25</p> <p>boundaries ^[8] 79:11 80:18 83:7,12,14 85:15 86:16,23</p> <p>boundary ^[4] 85:13 134:9 136:8 138:11</p> <p>bounded ^[1] 149:13</p> <p>box ^[1] 164:11</p> <p>breach ^[45] 6:16,16 14:6,7 22:3 34:3,5,7 37:9 38:2,20,21,24 39:1,4 46:17,17 49:12 65:19,23 66:19 70:14 89:3,4,17,21,23 90:4,5,5,6,10 91:15 92:8 93:4 96:11,19 112:7 128:22,23 129:18 130:1 137:10,19 142:23</p> <p>breached ^[13] 22:15 41:17 70:22,23 89:19,19,20,20 113:4,6 129:8 138:21 142:9</p> <p>breaches ^[2] 89:24 113:11</p> <p>break ^[3] 20:21 70:19 141:17</p> <p>brief ^[5] 37:1 123:3 149:25 150:13 151:21</p> <p>briefed ^[3] 25:8 159:13 161:15</p> <p>briefing ^[9] 4:2 6:23 8:11 52:12,15,18,19 156:24 175:3</p> <p>briefs ^[2] 36:12 40:16</p> <p>bring ^[2] 64:5 106:6</p> <p>broad ^[1] 70:12</p> <p>broke ^[2] 89:16 134:4</p> <p>broken ^[1] 71:1</p> <p>brokerage ^[1] 86:5</p> <p>brothers ^[1] 44:17</p> <p>brought ^[6] 97:20 124:5 133:16 150:3 157:2 166:22</p> <p>build ^[6] 30:12 32:3 34:24 128:7 138:11 140:9</p> <p>building ^[1] 140:24</p> <p>built ^[5] 25:2 40:11 48:15,19,21</p>	<p>bulk ^[4] 93:20,21,22 94:2</p> <p>burak ^[1] 15:17</p> <p>burden ^[7] 77:8,11 103:7,19 104:24 105:1 108:6</p> <p>business ^[1] 121:9</p> <p>buy ^[3] 50:14 101:19,19</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculate ^[3] 34:13 74:5 99:8</p> <p>calculated ^[1] 74:14</p> <p>calculation ^[8] 33:21 40:8 41:7 50:11 129:5 132:6 136:6 158:6</p> <p>calculations ^[2] 74:15,18</p> <p>calculus ^[1] 158:7</p> <p>calendar ^[1] 3:1</p> <p>california ^[1] 38:12</p> <p>call ^[10] 50:24 60:6,7,7 71:8 73:10 78:5 121:8 160:18 176:12</p> <p>called ^[6] 10:7 12:7 14:22 55:17 151:7 152:21</p> <p>came ^[14] 3:23 57:12 60:5 63:18 66:21,22 69:10 81:24 111:1 114:20 127:5 157:17 161:10 171:22</p> <p>can ^[81] 3:4 6:24 9:13 10:6 12:11 19:12 23:22,24 25:15,16 29:4 33:11 35:3 39:8,10 44:24 48:2,20 49:24 51:11 59:7,10 60:13,23 62:18 63:5 68:7 73:4 82:6 83:16 89:17,19 98:18 100:1 102:23 106:24 108:17,19 112:3 114:7 116:8 117:2,7,17 118:2 120:9 122:1,4,22 125:10,10 127:22,23 131:12 136:12 139:12,12 141:23 144:17 151:14 152:8 153:17 155:25 156:10,13 160:9 162:5,22 166:17 168:23 169:7 171:10,21 172:16 173:25,25 175:2,3,7,8 177:22</p> <p>cannot ^[2] 139:20 170:21</p> <p>can't ^[25] 7:10 17:24 19:10</p>	<p>20:20 24:2,6 44:5 88:4 91:16 94:18 102:17 103:24 116:20 117:18 134:23 139:19 140:8,9 142:19 150:14 162:1 165:19,20 177:24 178:3</p> <p>carano ^[4] 41:14 163:13 164:5 168:6</p> <p>care ^[2] 125:10 138:20</p> <p>cases ^[10] 106:6,7,16 114:2 116:12 148:9 150:15,16,19 164:6</p> <p>cause ^[2] 112:4,10</p> <p>causes ^[4] 21:25 46:16 111:22,24</p> <p>central ^[1] 23:4</p> <p>certain ^[2] 83:13 85:14</p> <p>certainly ^[15] 18:9 29:12,21 30:2 35:4 39:1 41:1 63:19 85:1,2 133:15 135:7 136:19 139:23 140:12</p> <p>chance ^[6] 15:19 72:7 121:24 124:25 138:25 161:1</p> <p>change ^[7] 26:7 113:18 125:1 139:20 145:14 152:7 156:2</p> <p>changed ^[5] 67:7 80:18 83:1 133:12 136:24</p> <p>changes ^[1] 28:15</p> <p>changing ^[1] 165:16</p> <p>characterization ^[1] 133:19</p> <p>characterized ^[2] 31:10 85:12</p> <p>charge ^[1] 168:25</p> <p>charged ^[1] 34:13</p> <p>checked ^[1] 32:10</p> <p>chicago ^[1] 37:22</p> <p>children ^[1] 44:13</p> <p>choice ^[1] 28:14</p> <p>choose ^[1] 141:10</p> <p>choosing ^[1] 165:11</p> <p>circumstance ^[2] 93:12 106:13</p> <p>circumvented ^[1] 98:11</p> <p>citation ^[1] 166:16</p>	<p>cite ^[4] 150:15 151:20 152:6,9</p> <p>cited ^[3] 49:16 156:13 157:5</p> <p>citing ^[1] 159:18</p> <p>civil ^[1] 128:22</p> <p>claim ^[84] 14:5,6,7 21:13 22:1,12,23 25:20,25 26:9 31:11,15 34:4,5,12,20 36:10 37:3 38:2,24 39:11,24 40:5 41:24 42:1,11,22,23 43:15,17,19,24 44:3,9,21,22,25 46:19 48:12 49:11,12 50:3 66:10,19 67:12 68:4 70:12 79:14 89:25 91:11 92:7,7,19 94:5 98:10 104:22 107:5 108:21,24 109:1,1,10 110:2 111:12,15,15,17,20,21 112:3,4,11 113:13,25 115:16,17 126:12 133:21 136:4 137:8,10 140:23 141:4 142:3</p> <p>claimed ^[4] 21:24 73:10 95:20 105:11</p> <p>claiming ^[8] 41:4 48:8,21,25 49:2,15 92:3 142:18</p> <p>claims ^[15] 33:20 67:14 68:23 77:5 95:3 103:17 111:22,24 113:3 114:23 124:12 128:21,21 136:21,23</p> <p>clarification ^[1] 124:9</p> <p>clarifies ^[1] 49:22</p> <p>clarify ^[2] 124:16 175:15</p> <p>clarifying ^[1] 92:21</p> <p>clark ^[3] 126:25 132:1 134:5</p> <p>clause ^[3] 98:9 149:7 151:13</p> <p>clean ^[2] 160:6,16</p> <p>clear ^[28] 4:16,19,25 11:3 18:23 19:22 28:17 45:13 49:10,23 62:25 75:10 90:8,8 94:14 95:2 119:9 123:2,6 129:6 130:20 133:13 136:16 142:20 145:7 147:1 155:7 159:9</p>
---	--	---	--

<p>cleared ^[1] 122:6</p> <p>clearly ^[7] 15:18 33:11 82:18 126:10,11 133:13 143:3</p> <p>clerk ^[4] 56:7 57:2 63:6 176:12</p> <p>client ^[4] 34:14 61:18 166:4 173:5</p> <p>clients ^[5] 25:3 128:8 139:25 140:2 178:25</p> <p>clients' ^[1] 96:20</p> <p>close ^[1] 50:19</p> <p>closing ^[9] 6:20 21:12 88:3,6 92:20 96:15 103:11 126:5 139:3</p> <p>collect ^[2] 121:13 132:2</p> <p>collection ^[1] 17:19</p> <p>college ^[1] 17:18</p> <p>combined ^[1] 31:25</p> <p>come ^[15] 13:6 24:5 54:16 61:17 76:11 94:10 99:21 105:13,18 110:6 118:3 142:1 151:1 157:25 170:21</p> <p>comes ^[3] 50:18 63:1 110:14</p> <p>comfortable ^[2] 8:23 62:18</p> <p>coming ^[3] 116:6 153:19 157:15</p> <p>commend ^[1] 13:7</p> <p>comment ^[1] 64:25</p> <p>comments ^[3] 117:15 144:20 147:5</p> <p>commission ^[51] 11:24 22:3,8,14,15,18 26:14 27:15,17 32:10 33:1,24 35:6,9,20 44:5 67:13 69:17,18 70:14 79:3,20 80:6 83:1,2,5 84:9 86:22 87:2,14,15 90:6 92:8 96:21 98:9 125:17,19,21 126:8 127:7 128:9,16 129:24 131:15,21 132:17 134:3 137:15 140:9 141:19 149:8</p> <p>commissionable ^[1] 35:12</p> <p>commissions ^[60] 22:2,</p>	<p>13,17,18 25:11,25 26:4,6 27:13 28:16 32:2 34:22 37:6 41:5 44:4 66:2 67:20 70:22 71:15 73:13 74:18,22 78:24 82:18,20 83:9,15 84:16 85:1,3,6,8,10,16 86:5,12 87:17 88:1 90:7 91:16 94:1 98:12 107:7,17,21,24 113:7 126:13 129:1,18 130:11 131:19,22 132:3 133:22 137:3 138:8 139:5,6 140:23</p> <p>communicate ^[2] 16:11 164:18</p> <p>communicated ^[3] 15:11 163:13,18</p> <p>communication ^[6] 19:6 55:13 57:23 167:22 168:12 170:7</p> <p>communications ^[3] 56:17 164:20 170:5</p> <p>companies ^[1] 124:10</p> <p>company ^[1] 146:2</p> <p>compare ^[1] 19:18</p> <p>compared ^[1] 153:12</p> <p>compel ^[2] 166:17,18</p> <p>compelling ^[1] 165:10</p> <p>compensable ^[1] 126:18</p> <p>compensating ^[1] 140:10</p> <p>compensatory ^[1] 69:18</p> <p>competing ^[7] 59:6 63:8 117:21 144:1,9 176:14 178:2</p> <p>complaint ^[21] 37:7,8,8,16,19 39:11 42:1,1 69:13,15,21 96:2 112:3 124:5,6,7,7,13,13 125:13 129:13</p> <p>complaints ^[5] 124:8,14,14 129:2,14</p> <p>complete ^[3] 9:1 10:6 50:13</p> <p>completed ^[1] 10:12</p> <p>completely ^[6] 26:21 33:14 77:11 102:19 112:9 135:12</p>	<p>compliance ^[3] 57:9 73:21 115:22</p> <p>complied ^[6] 16:1,19 18:5 39:3 51:10,15</p> <p>compliments ^[1] 139:22</p> <p>comply ^[10] 5:5 8:24 18:3 53:19 59:16 88:21 121:18,21 163:25 176:21</p> <p>component ^[3] 78:12 108:16 132:5</p> <p>components ^[3] 130:8,10 136:25</p> <p>comprehensive ^[1] 139:16</p> <p>computation ^[2] 128:17 130:22</p> <p>computer ^[1] 164:11</p> <p>conception ^[1] 85:24</p> <p>concern ^[5] 5:19 77:1 110:23 111:21 172:1</p> <p>concerned ^[1] 62:15</p> <p>concerning ^[2] 67:18 153:2</p> <p>concerns ^[1] 112:5</p> <p>concession ^[1] 147:6</p> <p>concludes ^[1] 47:6</p> <p>conclusion ^[2] 110:15 119:24</p> <p>conclusions ^[31] 3:24 5:11 6:6,14 10:8 11:5 13:24 19:13,19 21:5,10 22:21 32:6 33:10 35:24 36:6,7 42:13 43:7 46:4 49:16 52:2 59:24 61:23 91:14 97:10 99:22,24 100:5 156:12,17</p> <p>concocted ^[1] 43:11</p> <p>conduct ^[2] 96:23 131:20</p> <p>confidential ^[1] 94:19</p> <p>confused ^[1] 163:20</p> <p>confusing ^[1] 3:2</p> <p>conjunction ^[1] 158:25</p> <p>consequence ^[3] 95:6,9,16</p> <p>consequences ^[1] 164:25</p> <p>consequential ^[1] 22:6</p>	<p>conservative ^[1] 37:16</p> <p>consider ^[6] 16:21 63:3 94:4 95:3,5 152:16</p> <p>consistent ^[3] 37:15 55:1 179:3</p> <p>contacting ^[1] 143:23</p> <p>contained ^[2] 13:25 174:18</p> <p>contend ^[1] 150:12</p> <p>contended ^[1] 105:8</p> <p>contending ^[1] 103:5</p> <p>content ^[19] 16:22,25 17:16 53:4,11 54:1 57:4,5,8,19 59:5 60:2 61:24 63:4,21 64:6 167:2,8,9</p> <p>contented ^[1] 51:17</p> <p>contested ^[5] 41:20,23 54:17 139:22 145:9</p> <p>continue ^[4] 71:23 91:7 114:5 174:14</p> <p>continued ^[2] 77:25 96:17</p> <p>continues ^[2] 87:11 123:13</p> <p>continuing ^[2] 86:14 96:22</p> <p>contract ^[32] 6:16 14:7 34:3,6 36:19 37:9 38:3,20 39:2 46:17 49:12 65:19 89:5,17 93:4 96:12,20 112:8 113:4,7 128:23 129:19 130:1 137:10,19 142:23 149:23 150:19 151:12,13 159:21 160:4</p> <p>contracted ^[1] 38:3</p> <p>contracts ^[1] 85:25</p> <p>control ^[2] 36:16,17</p> <p>convictions ^[1] 21:4</p> <p>convince ^[5] 3:20 81:19,20,21 104:24</p> <p>cooperate ^[2] 143:24 164:18</p> <p>copied ^[5] 15:23 55:11 56:11 60:18 166:9</p> <p>copies ^[2] 165:13 169:19</p> <p>copy ^[10] 55:11 56:8 73:3,6 97:5 126:2 151:3 152:16</p>
---	---	--	--

<p>164:16 166:18 correct ^[28] 7:7 10:10,22 18:18 19:24 20:1 26:13 27: 8 28:12 51:17 52:24,25 53: 4 54:2 55:9 75:16 81:1,18 82:8 83:21 87:18 99:12 114:12 119:10 120:8 142:1 147:10 149:10 correctly ^[1] 31:9 correspondence ^[3] 15: 13 164:3,5 cost ^[2] 106:9,12 costs ^[4] 9:23 118:17 175: 17,25 could ^[33] 3:22 4:19 7:6 8: 4 13:8 25:3,11 32:25 33:5 39:9 41:7 44:8 72:21 76:12 80:5,24 84:24 86:16 94:9, 23 99:8 103:16 112:8 116: 7 123:1 133:15 138:23 139: 5 148:5 157:17 162:16 167: 21 175:5 couldn't ^[4] 34:17 37:15 178:1,1 counsel ^[23] 3:2 12:11 15: 7,13 19:6 21:1 31:16 34:10 40:25,25 41:1,2,10 45:10 48:1 128:19 135:22 139:13, 22 141:10 157:15 165:11, 14 countermotion ^[2] 161: 22,22 countermotions ^[3] 162: 4,9,14 county ^[4] 32:10 126:25 132:1 134:5 couple ^[5] 88:5 94:20 118: 14 136:22 148:21 course ^[19] 18:13,20 32:8 36:5 42:22 67:17 75:9 77:4 78:23 103:6 117:14 126:21 127:14 130:13 131:19 143: 25 144:13 164:17 177:2 courtroom ^[4] 44:10 83: 17 103:13 127:20 court's ^[17] 3:4 5:6 13:16,</p>	<p>23 14:11,23 33:5 37:25 42: 8 49:25 93:19 110:23 114: 23 119:24 124:1 149:5 160: 3 covenant ^[11] 6:17 14:8 34:8 38:25 39:1,2 46:17 92: 9 128:24 129:21 142:24 cover ^[8] 53:23 59:10,12 60:5,15 143:13,14,14 coyote ^[2] 79:22 131:11 craft ^[1] 117:15 crafted ^[2] 86:17,22 created ^[1] 153:13 creativity ^[1] 135:19 criminal ^[1] 160:9 critical ^[9] 51:24 59:20 61: 8,11,19,22 117:11 118:12 146:11 cross-examine ^[1] 58:1 cross-examined ^[1] 138: 15 crystal ^[1] 145:9 csi ^[6] 26:10 44:7 79:22 87: 13 98:11 130:15 currently ^[2] 120:18 131: 11 custom ^[7] 15:12 84:16,18 85:10 86:11 93:25 98:22 cut ^[3] 123:19 158:5 160:3 cuts ^[2] 158:15,20</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily ^[1] 15:3 damage ^[5] 70:5 88:22 105:13 136:22 150:13 damaged ^[1] 23:25 damages ^[83] 14:6 21:14, 25 22:2,4,6,13 24:10,13 25: 4 30:16 31:15 32:20 34:6 38:9,10 39:4 40:17 42:11, 24 43:24,25 44:4,22 49:13, 13,25 68:16 69:5,9,18,24 70:6,13 71:13 73:21 74:1,5, 8 75:11 77:6 79:14 80:25 88:9,11,18 89:12 91:12 96: 7 97:3,23 98:1,3 99:15 100: 7,23 101:16,18 102:18 103:</p>	<p>5,17,18 105:2,9 116:23 124: 11 128:18,25 129:5 130:11, 13,22 136:25 137:10,11 141:24 142:3,8 153:10,24 156:5 160:19,23 dance ^[1] 139:13 dangerous ^[2] 82:7,9 date ^[5] 3:10 21:17 53:24 121:9 131:2 dates ^[2] 126:6,8 davis ^[1] 151:7 day ^[15] 16:5 18:21 40:22 55:4 61:2 78:19 86:8 93:18 131:3 146:21 147:2 148:2, 5 157:13 160:8 days ^[10] 6:3 36:12 39:6 53: 24 78:17,22 85:23 121:9 175:10 176:7 dead ^[1] 44:10 deal ^[2] 70:2 164:13 dealing ^[12] 6:17 14:8 34: 8 38:25 39:3 46:18 92:9,13 106:3 128:24 129:22 142: 25 deals ^[1] 96:21 dealt ^[1] 152:24 debating ^[1] 133:4 december ^[3] 5:7 6:3 152: 19 deceptive ^[1] 108:23 deceptively ^[1] 71:20 decide ^[1] 6:23 decided ^[2] 79:9,10 decision ^[5] 10:14 145:17 151:19 152:23,24 decisional ^[1] 38:11 decisions ^[2] 152:9 159:9 declined ^[1] 158:13 decreed ^[3] 22:10 43:5 44: 2 deeded ^[1] 127:25 deemed ^[1] 84:10 deeply ^[1] 19:1 defeat ^[1] 79:13 defeated ^[1] 40:1 defeating ^[2] 34:11 112:</p>	<p>15 defend ^[6] 89:24 104:13 108:12 117:1 140:22 141:3 defendant ^[45] 11:16 14:9 15:6,18,22 19:20 24:15 25: 19,20 33:11 36:3,15,24 37: 17 38:5,17,22 39:13,15 41: 17,23 42:14,18 47:3 48:2 50:5 77:2 94:8 103:3 121: 12,12 125:14 130:8 133:13 136:14 137:6 143:17 153:8, 13 162:17 168:10 173:5,11 175:9 178:22 defendants ^[5] 36:17 107: 10 125:22 138:6 165:10 defendant's ^[6] 36:17 40: 25 41:2 155:24 156:1 160: 17 defended ^[9] 62:7 71:21 73:14 78:9 105:24 106:1 113:10 137:9 147:22 defending ^[17] 74:9,12 77: 8,21 82:13,14 103:21 104:6, 9,10 114:24 134:18 137:8 141:3,4 147:11,11 defense ^[14] 45:10 77:9 103:24 108:3,14 113:2 135: 22 137:14 139:22 151:14, 14 162:21 163:19,19 defense's ^[2] 25:9 134:1 defer ^[1] 122:18 define ^[1] 111:21 defined ^[5] 24:24 84:6 108: 25 131:6,9 definite ^[1] 83:12 definitely ^[1] 67:12 definitions ^[1] 82:22 delay ^[2] 49:20 57:6 delayed ^[1] 158:20 delete ^[1] 14:3 deleted ^[1] 21:19 deletion ^[1] 49:9 demonstrate ^[3] 87:23 93:22 139:5 demonstrating ^[1] 140: 18</p>
--	---	--	---

demonstrative ^[1] 83:11 denial ^[1] 50:1 denied ^[5] 25:9 49:7 71:15 158:13 174:2 deny ^[7] 22:16 156:25 160:19 173:7 174:9 175:2,25 denying ^[7] 13:14 25:9 122:13 173:8,10 174:4 175:6 department ^[6] 16:18 51:10,14 52:23 53:22 60:25 depending ^[2] 122:5 137:21 depends ^[3] 71:8 78:5 107:13 deposition ^[10] 23:15,17,18,23 40:13 81:11,12 86:6,8 138:13 depositions ^[4] 31:12 42:17 81:12 96:3 describe ^[1] 41:22 description ^[1] 115:16 designate ^[1] 35:7 designated ^[6] 24:23 30:7 40:9 128:4 131:13 163:6 designating ^[1] 127:7 designation ^[2] 36:23 131:14 despite ^[1] 15:23 detached ^[2] 67:9 84:22 detail ^[1] 13:3 detailed ^[1] 32:5 details ^[1] 47:24 determination ^[7] 110:1 149:5,7,19 153:17 178:7,13 determine ^[5] 36:11 83:7 94:24 108:19 109:9 determined ^[1] 138:5 developed ^[1] 83:20 development ^[2] 87:9 128:4 device ^[1] 81:23 devious ^[2] 62:1 63:15 devoted ^[2] 34:11 38:16 didn't ^[86] 6:10 9:12 18:3 28:3,5 30:18 31:5 33:2 43:	17 48:13,14 49:15 50:5,6,7,8,9 58:1,10 60:4 61:21 63:12 65:10,14 66:9,20 67:8 68:4 70:2,3 75:19 76:15 77:1 78:9 88:21,22 89:11,11,13 90:6,25 91:9,11 94:21 99:1 102:14 104:12 106:16 108:7,12 111:24 121:14 124:25 126:19 127:2 128:14 129:8,9,15 136:5,6 137:2 138:3 139:7,9,24,25 140:2 141:2,5 142:16 143:14,20 144:12 151:20 152:3 155:7,16 156:14 160:2 169:9,10 170:22 171:23 178:21 difference ^[2] 112:20 133:10 differences ^[1] 124:8 different ^[23] 40:20 65:19,20,24 66:22 79:19 81:10,12 83:5 89:18 101:2 110:5,8 111:4,22 113:13 127:25 129:3 158:9 159:21 163:2 167:20 170:5 differently ^[2] 30:11 118:9 differing ^[1] 153:2 difficult ^[2] 151:17 164:24 difficulty ^[2] 40:22 109:17 diligently ^[1] 13:5 direct ^[1] 24:9 directed ^[1] 167:22 direction ^[1] 5:2 directly ^[2] 19:6 38:16 disagree ^[7] 35:3 59:7 113:17 116:23 120:11 155:9 167:13 disagreed ^[2] 27:1 137:17 disagreeing ^[1] 91:22 disappointing ^[1] 50:21 discharge ^[1] 131:20 disclosed ^[1] 77:22 disclosure ^[11] 24:21 34:15 69:25 70:1 74:3,7,8,13 127:17 130:19,22 disclosures ^[6] 50:8 70:11 75:7,8 77:23 88:13	disconnect ^[3] 88:19 135:3 136:17 discovered ^[2] 126:22 140:25 discovery ^[18] 24:8 66:21,23 70:20 76:8,12,14 79:14 81:8,9,13,23 82:7 95:18 109:14 111:7 129:1 139:8 discuss ^[2] 49:8 141:16 discussed ^[4] 14:23 67:16 129:4 137:5 discussion ^[2] 26:21 134:12 dispersions ^[1] 177:13 dispute ^[1] 176:11 distinct ^[1] 117:7 distinction ^[2] 59:19 114:2 distinctly ^[1] 111:25 distort ^[1] 135:23 distorted ^[1] 133:1 distorting ^[1] 124:3 distortion ^[1] 33:15 distorts ^[1] 137:6 distress ^[1] 59:14 distressed ^[2] 61:3 63:12 distressful ^[3] 29:1 62:24 63:9 district ^[2] 110:17 153:10 disturbed ^[1] 135:10 divested ^[1] 74:21 divesting ^[1] 132:2 divide ^[1] 127:23 docket ^[1] 61:16 document ^[21] 4:22 9:20 11:15,18 14:22 15:7 16:4,13 18:15,19,22,24 42:2,9 44:23 50:4 97:4,4 130:23 143:15,24 documents ^[9] 24:12 26:20 42:16 82:23 94:6,9 134:24 165:11,18 does ^[40] 3:19 12:5,6 18:25 24:14,15 35:5 46:3,11,15 53:2 58:2 61:1 62:20 91:19,21 103:20,21 108:12,20	110:19 111:10 113:18 114:2 115:5 119:7 122:7,7 141:10 144:14 149:22 154:22 158:5 160:3 161:7 162:11 164:8 172:13 175:20 177:19 doesn't ^[14] 29:24 40:4 54:10 68:4 91:17 100:25 101:1 108:7 124:2 141:11 152:2 159:13 163:9,11 doing ^[8] 3:4 4:14,21 13:14 29:17 75:24 124:23 170:4 dollars ^[6] 37:6 45:1 133:12 136:6 137:21 142:15 dominant ^[1] 143:3 dominoes ^[2] 22:25 23:1 done ^[35] 3:3 6:10,25 8:20 11:14,22 17:12,17 19:18 28:15 29:10 33:20 54:2 55:20 56:4 58:13 60:16 64:12 66:25 77:12 79:9 80:19,20 118:6,21,21 121:24,25,25 126:19 144:13 146:11 147:3 164:6 172:17 don't ^[97] 3:10 4:15 5:15,15 11:23 12:8 16:4 17:3,6 18:20 19:2 20:6 24:2,3,6 26:3,17 28:1 34:19 37:12 39:9,12,13 44:6 45:15 46:23,25 50:16 54:23,23 57:13,21,23 59:9,11,17,18,18 60:22 61:7,25 62:5,13 63:15,18,18 64:7,8 67:3 70:4 74:6 76:15 101:14 102:3,6 104:1,17,25 110:12 112:9 113:14 114:4 116:4 117:5 120:13 125:10 136:10 137:23 138:2,19,20 142:19 143:13 144:4 145:8,16,21 146:18 150:16 151:22 152:13 154:17 159:3 161:15 162:19 163:24 164:12 167:23 168:3,22 170:12,14,16 171:15,16 172:2,8 double ^[1] 32:10 down ^[4] 50:15 89:16 106:
---	---	--	--

<p>20 161:10 drafted [2] 16:23 64:14 drawn [1] 128:15 drew [1] 19:20 drive [1] 48:20 driven [1] 108:14 drop [1] 95:10 drove [2] 108:2,3 due [25] 22:18 26:1,11 27:22 28:11 32:2 33:24 34:6,22 37:13 65:6 66:2,20 67:20 86:5 99:9 126:8,12,13 129:1,18,20,23 130:11 166:19 duplicates [1] 3:6 duplicative [1] 3:8 during [14] 24:8 27:21 32:8 42:22 70:20 75:8 78:23 95:17 103:11 117:14 126:21 127:5 139:8 140:25 duties [4] 8:17 38:4,5 131:21 duty [1] 41:17</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each [10] 8:15 126:2,2,6 153:1 163:5,5 176:5 177:17,24 eagerness [1] 139:23 earley [1] 29:17 earned [1] 82:18 easier [3] 3:14 63:8 73:2 east [15] 30:13,19,19 31:3 32:4 34:24 48:22 126:17 136:7 137:22,25 138:2,11 140:10,24 easterly [1] 67:5 easy [6] 47:23 145:8 148:24 164:10 169:12 170:15 eat [1] 114:7 echoed [2] 85:13 86:21 edification [1] 63:11 educating [1] 79:6 effect [1] 121:15 effective [2] 131:10,12 effort [5] 5:19,20,21 22:6 38:10</p>	<p>efforts [4] 17:1 147:3 167:11 179:13 eight [4] 66:13,14 132:19,21 either [13] 10:16 17:1,3,23 33:18 42:13 53:20,21 57:21 59:5 113:15 143:23 167:14 electronic [5] 162:17,22 165:12,13 173:5 elements [1] 142:3 else [8] 10:25 17:22 48:18 103:13 110:7 118:16 166:19 175:16 elsewhere [1] 38:12 email [19] 15:7,12,18,23 18:19 53:23 55:7 163:15,18,23 164:2,20 166:18 168:13 170:19 172:2,3,6 173:12 emails [9] 15:2,3 18:20 163:10,12 169:24 170:8,17 171:2 emphasize [1] 167:5 encompass [1] 116:25 end [4] 24:7 68:17 93:17,18 ends [1] 110:15 energy [1] 107:14 enforce [5] 58:19 59:15 63:13,16 155:12 enforcement [1] 120:19 enough [7] 8:19,23 24:2,4,6 31:1 94:11 ensure [1] 115:8 entailed [1] 153:11 enter [4] 39:25 44:20 120:15 123:10 entered [28] 3:7,9,12,25 4:3 13:23 21:6 22:11 35:24 39:5 43:5,20 44:1,2 45:12 46:7 49:3 51:15 52:1 115:5,21 121:1,10 122:19 127:15 146:7 156:1 160:17 entering [2] 16:13 98:12 entire [9] 39:21,22,23 83:25 84:1 86:8 98:5 108:14 126:11</p>	<p>entirely [1] 137:7 entirety [3] 99:23 105:7 149:17 entitle [4] 32:20 35:9 131:15 132:16 entitled [34] 25:4 31:19 36:25 37:6 41:5 48:14,22 70:13 79:2,16,18 83:9 84:16 85:1,3,6,15 88:1 94:1 95:21,23,24 96:7,24 99:25 100:3,23 113:8 128:9 131:18 134:2 139:7 140:7 141:18 entitlement [4] 14:4 36:13 42:19 138:7 entitles [2] 134:15 150:8 entries [2] 34:18,18 entry [6] 3:19 21:5 41:13 43:9 45:8 125:17 envision [2] 9:17 13:15 envisioned [5] 7:15,16,18 8:5 9:22 envisioning [1] 59:25 erroneous [7] 115:22 116:2 119:6,9,14,15 156:6 especially [10] 7:23 8:15 11:16,17,18 61:13 79:7 80:10 165:12 166:3 establishing [2] 142:22,23 estate [5] 32:15 40:10 127:1 128:8 133:16 even [29] 11:3 28:1 31:14 57:4 59:3,4,12 61:4,11,22 63:6 64:1,4,5 66:9 75:8 79:24 85:18 92:6 94:6 96:5 100:3 101:8,12 103:11 134:21 158:15 159:24 162:7 event [4] 35:6,12 41:8 120:5 events [1] 44:18 ever [9] 25:13 29:2 33:19 42:18,21 103:3 127:15 138:23,23 every [17] 5:20 20:18,19 23:6 36:5 48:3 54:23 75:6 93:14 106:18 148:16 150:24</p>	<p>161:9 164:3,4 172:3,6 everybody [10] 7:24 34:1 40:12 103:12 121:24 127:19 128:12 147:1,2 166:25 everybody's [1] 179:12 everyone [2] 44:10 169:22 everything [16] 45:16 48:18 76:22 92:3 94:12 95:23,24 97:19 110:7 117:10 118:1 146:16 159:7 170:10 171:7 174:11 evidence [32] 5:21 6:25 7:9 8:20,23 25:14 27:3 31:1,2,7,21 32:18 41:12 42:3 43:18 48:8 50:3,7 69:10 75:20,21 76:17 77:3 80:24 83:11 101:8 103:4,17,25 109:6 139:4 142:20 evidenced [3] 5:18 34:14 40:14 evidences [1] 18:24 evidentiary [1] 105:19 ex [2] 55:13 56:16 exact [1] 131:2 exactly [26] 7:1 17:9,24 20:5 24:18 27:5 30:10,17 35:16 45:14,22 46:22 47:17,17 52:19 57:1,13 59:8 91:23 101:9 111:5 117:22 118:8 130:2 160:12 167:13 example [1] 50:5 exceeded [2] 158:13,18 exceeding [1] 141:19 excess [2] 69:19 74:5 exchange [6] 51:6 64:25 175:10,16 176:7 177:15 exchanged [1] 65:3 exchanging [1] 176:4 excuse [7] 40:25 92:16 125:22 136:1 138:17 163:25 177:20 execute [2] 122:1 145:11 executed [1] 82:25 executing [1] 122:7 exercise [4] 30:14 48:22 126:2 127:9</p>
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<p>exercised ^[2] 33:23 126:14</p> <p>exhibit ^[3] 41:12 48:3 76:23</p> <p>exhibits ^[3] 48:6 56:9 77:11</p> <p>exist ^[1] 43:17</p> <p>existed ^[1] 36:14</p> <p>existing ^[2] 31:12 158:19</p> <p>expect ^[1] 12:8</p> <p>expected ^[1] 7:16</p> <p>expecting ^[1] 12:3</p> <p>expended ^[3] 22:6 34:16 43:14</p> <p>experience ^[1] 15:20</p> <p>explain ^[5] 17:3 29:4 56:3 112:19 157:1</p> <p>explained ^[1] 110:25</p> <p>explaining ^[3] 15:14 60:16 63:9</p> <p>explains ^[1] 63:20</p> <p>explanation ^[2] 51:13 101:21</p> <p>explicit ^[5] 7:3 8:4 11:22 13:3 161:19</p> <p>expression ^[1] 56:22</p> <p>expressly ^[1] 53:6</p> <p>extensive ^[2] 3:22 20:21</p> <p>extensively ^[1] 156:10</p> <p>extent ^[11] 55:12 60:19 68:1 85:22 87:6 89:9 100:6,11 105:20 165:25 166:10</p> <p>extraordinary ^[1] 43:14</p> <p>eyes ^[2] 56:18,20</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabricated ^[2] 71:17 108:24</p> <p>fabricating ^[1] 109:23</p> <p>face ^[3] 18:22,24 33:21</p> <p>fact ^[83] 3:24 5:10 6:6,14 9:4 10:8 11:4 13:4,10,24 14:4 19:13,19 20:20 21:9 22:21 26:2 28:2,14 32:6 33:10 35:10,23 36:6,7 42:12 43:7 45:6 46:4 52:2 54:17 55:17,19 56:12 57:10,15 59:24</p>	<p>64:14 65:4 67:19 69:12 70:2,25 71:12 72:16 77:25 81:17,22 82:15 83:14 85:25</p> <p>89:19,22 91:13,22 92:2 96:8,22 97:10 99:22,24 100:4 103:4,19 104:24 105:2 106:7 107:1 108:5,20,24,25 110:20 111:11 120:9 147:7,9,21 155:19 156:12,17 158:12 161:8</p> <p>factor ^[2] 110:7 158:5</p> <p>facts ^[5] 8:19 10:15 61:23 67:1,4</p> <p>factual ^[1] 166:15</p> <p>failed ^[2] 72:11 103:19</p> <p>failing ^[2] 131:20 158:1</p> <p>failure ^[9] 34:4 37:10 38:17,23 128:23,25 129:19 137:20 142:23</p> <p>fair ^[24] 5:20 6:17 14:8 15:19 29:13 34:8 38:25 39:3 46:18 59:24 66:10 72:8 82:24 92:9,12 113:2 116:22 128:24 129:22 133:18 142:25 160:11 175:14 176:16</p> <p>fairness ^[5] 66:8 72:6 119:4 160:8,15</p> <p>faith ^[16] 6:17 14:8 23:11 34:8 36:22 38:22,25 39:3 46:18 60:21 62:12 92:9,12 128:24 129:21 142:25</p> <p>fall ^[7] 9:7 15:6 19:4 22:25 62:14 64:20 146:21</p> <p>false ^[1] 140:22</p> <p>familiar ^[2] 47:19 143:12</p> <p>family ^[5] 30:8 67:8 84:23 126:23 138:23</p> <p>far ^[41] 51:15,21 64:1 67:16 68:7,8,25 69:4 76:19 83:17,23 86:14 88:4 90:6 91:25 92:1 95:12 101:23,24 102:16 103:24 105:11,16,17,18 110:20,21 111:10 112:20 113:1 114:9 115:13 117:4,13 121:25 144:20 148:22 156:4 160:17 165:4 167:4</p>	<p>fashion ^[3] 83:20 135:16 139:10</p> <p>fault ^[2] 57:25 125:3</p> <p>favor ^[9] 38:7 39:15 40:1 46:15 49:3 143:2 147:16,24 150:14</p> <p>february ^[1] 72:14</p> <p>fee ^[1] 99:20</p> <p>feel ^[27] 4:18 8:23 28:6,11 62:7 63:15,24 66:24 69:8 115:21,22 116:1,2,4,24 118:20 119:6,7,9 144:11 145:9,12 156:23 160:13,25 170:16 177:4</p> <p>fees ^[30] 9:24 22:4,24 38:14,15 43:13,21 49:7,24 77:21 78:13 99:20 124:11,21 132:6 135:20 139:24 141:18,25 149:9,18 150:10 153:21 154:11,18 155:2 158:8 161:23 173:20 175:24</p> <p>fell ^[2] 58:10 127:9</p> <p>felt ^[15] 8:25 26:22 28:13,14,24 58:15 59:23 60:4 62:7,8,13 63:10 79:15 82:6 161:1</p> <p>few ^[1] 117:15</p> <p>fiction ^[1] 49:4</p> <p>fifth ^[3] 34:15 127:16 128:9</p> <p>figure ^[6] 75:9 79:15,24 80:4,15 88:22</p> <p>figured ^[2] 11:1 28:2</p> <p>file ^[3] 15:25 130:14 168:21</p> <p>filed ^[17] 24:20 37:19 43:21 52:22 67:3 70:17 71:24 72:9 74:2,3 126:24 130:23 158:3,8 166:2 168:23 175:18</p> <p>filing ^[1] 73:18</p> <p>final ^[15] 3:9 6:10 7:12,19 9:17 10:15,17 11:6,7,8 12:15 21:6 61:5 122:19 143:5</p> <p>finality ^[2] 61:18,18</p> <p>finalized ^[1] 154:25</p> <p>financial ^[1] 69:16</p> <p>find ^[29] 27:22 31:17 36:7</p>	<p>38:3,4,5,7,21,22 39:1,4,4 43:12 60:22 66:20 67:8 79:17 80:20 90:6 94:16 98:18 102:23 117:3 119:6 126:13 130:15 134:23 138:24 162:20</p> <p>finder ^[2] 81:17,22</p> <p>finding ^[17] 21:18 23:12 30:1 33:12 34:21 36:6 37:24 40:6 42:10 43:23 46:1 98:6,17 105:17 135:11 143:4,6</p> <p>findings ^[71] 3:24 5:10,22 6:6,14 10:8 11:4 13:4,10,24 19:13,15,19,21,23 21:5,7,9 22:21 28:8 31:5,6 32:6,23 33:10 35:21,23 36:6 37:2,25 38:20 39:12,12,13 42:12 43:6,10 45:5 46:4 47:1 49:10,22 52:2,11 55:19 57:10 59:24 61:23 90:7,7 91:13,22 97:10 99:21,24 100:4 106:25 114:23 119:7,13,15 124:2 133:25 134:1 135:12,16,18 140:5 148:2 156:12,17</p> <p>finds ^[2] 158:17 159:25</p> <p>fine ^[14] 16:3 45:18,24 47:3 58:17 88:10 123:23 150:25 156:23 161:14 172:20,23 175:16 179:4</p> <p>finish ^[3] 11:25 95:13 114:7</p> <p>finished ^[2] 144:21 161:11</p> <p>firm ^[9] 17:10,11 45:11 62:25,25 124:1 162:25 163:5 168:6</p> <p>first ^[37] 3:5 5:8 14:5 24:20 34:4,12,25 36:10 37:2,7 40:13,22 48:13,16 51:8 52:2 65:19 66:8,9,10 67:6 69:25 70:1,11 74:3,17 94:22 102:6 105:17,21 135:11 143:10 144:3 166:23 176:3 177:25 179:3</p> <p>five ^[3] 37:20 89:18 172:16</p>
---	--	--	---

flaxman ^[1] 163:14 fleshed ^[1] 144:11 flexibility ^[1] 87:8 flip ^[1] 68:19 flow ^[1] 122:23 flowed ^[2] 70:13 71:13 flows ^[2] 117:10 159:7 focus ^[8] 85:19 86:5 91:8 93:9,16 150:17 154:10 178:12 focused ^[1] 85:20 follow ^[5] 3:4 44:13 51:20 73:4 155:16 followed ^[3] 6:4 22:22 40:17 following ^[6] 18:21 19:8 36:8 77:13 91:5 104:17 form ^[23] 14:10 16:22,25 17:16 51:17 53:3,11 54:1 57:3,5,8,19 59:5 61:23 63:4,21 64:6 86:18 141:25 153:23 167:1,8,9 forms ^[1] 65:19 forth ^[7] 70:5 86:25 96:2,3, 3 98:4 174:25 forward ^[5] 38:19 47:14 96:11 141:15 172:11 found ^[27] 8:19 21:14 28:6 30:3,11 32:1,3,11 34:23 37:16 42:10 49:18 52:19 72:21 89:23 90:5 106:8 109:7 126:12 135:9 140:2 141:6 147:15,16,23 152:22 161:13 foundation ^[3] 92:12 151:15 166:16 four ^[2] 37:20 70:11 frame ^[1] 72:22 fraudulent ^[1] 108:23 freedman ^[2] 152:21,22 frequency ^[1] 78:21 friday ^[1] 177:9 front ^[4] 7:15 100:13 171:21 176:15 frustrated ^[1] 59:17 frustration ^[3] 58:8 59:15	62:12 fugitive ^[3] 3:12 4:22 136:15 full ^[4] 78:17,22 129:24 179:17 fully ^[2] 38:5 125:23 function ^[4] 168:20 169:7 171:4,11 further ^[3] 32:2 33:16 88:10 future ^[32] 4:3 8:17,18,24 11:16 22:2,13,17 25:11,25 26:4,6,16,18,19 27:6,6,9 35:6,7 43:22,25 44:4,7,18 61:15 67:21 107:6 130:21 132:16 174:7 <hr/> G <hr/> game ^[1] 171:12 gave ^[11] 17:11 74:18 75:3 78:17 86:4 97:11,14 100:4 101:8 136:2 173:24 general ^[2] 124:9 125:15 geographical ^[1] 134:9 geography ^[1] 98:18 get ^[78] 9:9 29:24,24 43:13 51:23 53:21 58:20 60:25 64:1 65:14 66:10 67:12 69:25 73:18 75:1,4 77:24 78:16 83:2 84:9 85:4,7,11 88:3,16 89:16 92:24 93:6,10 94:15,15,18,23 95:10 97:1 100:11 104:2 105:13 106:2 107:11,17,25 108:10 113:22,22,23 116:8 118:5,21 127:23 135:20 139:15 141:17 143:15 144:7 145:7 146:10 148:20,25 150:13 152:19 154:8,17 157:25 160:5 167:11,12 168:5,25 170:22 172:5,16 173:10,25 176:13 177:9,13 178:13 gets ^[5] 74:7 121:24 162:24 164:15 171:4 getting ^[4] 125:5 139:19 153:22 177:8 give ^[28] 17:23 34:4 37:23	51:11 63:6 88:22 101:21 106:16,19 113:2 118:22 123:19 124:25 125:2 128:25 129:19 149:1 154:25 155:13 160:12,12,13 162:1 167:7 171:15 178:1,2,18 given ^[21] 8:20 9:13 18:14 39:21 40:13 42:7 57:2,5 59:4,11,12 66:4,15 70:25 75:8 115:17 117:13 126:3,17 134:5 144:1 giving ^[2] 143:17 148:22 glad ^[3] 28:18,19 68:13 go ^[56] 4:15 5:16 23:14 28:3,5 31:2 33:16 38:19 57:20 58:8 61:15 63:7,19,23,25 70:17 73:17 74:19 76:13 80:5 82:15,16 87:9,13 91:21,24 94:6 95:15 98:4,8,14,16,20 99:13,23 102:25 114:7 118:4 119:22 134:25 138:22 152:24 154:12,17 155:12,19,25 160:13 161:6 162:22 168:4 170:7,18 172:9 176:1 179:7 goal ^[1] 160:14 goes ^[5] 56:6 94:18 118:4 172:3 175:23 going ^[74] 4:20 6:23 8:5 14:14 41:9 44:7,9,13,13 47:13 63:19 75:4 76:13 77:2 78:15 87:9 96:16 100:3 103:3 105:14 112:19 114:6 116:3,14 119:25 120:1,14 121:21,22 122:5,10 125:1,3,9 126:20 132:16 138:3,24 140:14 141:15 145:8,21 146:5,17 150:6 154:17 155:11,19 156:24 159:2 160:19 166:6,13 167:4,4,5,15,18 168:23 169:2,6,23,24 170:5,6 172:7 173:6,7 174:9 175:1,2 177:9,15 179:3 gone ^[12] 28:1 29:2 39:19 47:25 61:17 94:20 96:11 118:18 132:14 134:10,16	138:5 gonna ^[60] 8:12 13:20 20:15 28:3 34:9 54:8,9 56:17 57:18 60:25 61:15,19 62:24 65:12,13 69:4,9 77:24,25 80:8,17 85:7 91:13 97:5 101:11 104:11,13 105:13 111:23 120:2 121:17 133:17 140:3 145:4,11,14 146:4 148:25 151:1 152:3,16 154:12,20,25 155:12,17 156:15,15,16,20 159:14 160:7,9 163:12 164:18 166:5,21 173:4 175:21,25 good ^[23] 4:25 5:21 6:17 13:12 14:8 15:1 16:6,15 18:2 29:16 34:8 38:25 39:2 46:17 91:4,5 92:9,12 128:24 129:21 142:24 174:8 177:6 goodness ^[1] 54:8 gosh ^[1] 81:25 got ^[51] 7:17 12:2,4 21:23 26:20 27:14 30:9 35:1 46:6 47:5,10 52:4 59:10 62:13 63:17 64:11 67:13 75:14,15,17 81:3 86:20 88:18 94:5 95:18,24 102:21 104:19 105:5,15 109:3 110:25 111:3,5,8 112:8 114:16 123:20 130:4 135:6 141:22 143:9 146:16 150:22 155:22,25 157:20 160:9 163:21 165:6 179:9 gotten ^[3] 58:5 96:8 144:9 governed ^[1] 125:24 grant ^[1] 167:5 granted ^[5] 6:5,18,24 38:3 47:2 granting ^[3] 122:13,14 143:8 grateful ^[1] 47:22 great ^[2] 147:3 152:13 greatest ^[1] 78:21 grew ^[1] 127:21 ground ^[1] 92:25 grounds ^[2] 162:6 171:17
---	--	---	--

<p>guarantee [1] 157:13</p> <p>guess [14] 4:25 47:6 61:3 77:15 88:22 106:21,22 113:20 114:8 118:19 137:18 141:16 145:2 150:15</p> <p>guidance [2] 117:13 160:12</p> <p>guns [1] 33:9</p> <p>guys [1] 81:2</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hadn't [6] 12:7 36:20 48:19 82:1 128:12 134:21</p> <p>half [2] 78:18 168:3</p> <p>hand [3] 151:2,3 152:16</p> <p>handle [1] 125:7</p> <p>hansen [1] 41:14</p> <p>happen [12] 50:12 58:24 59:10 76:10 79:21 122:4 130:21 143:25 144:1 166:5 167:20 171:23</p> <p>happened [22] 11:1 17:24 45:14 50:23 51:8,12 53:18 55:21 57:13 59:9,18 60:3 61:1 67:15 78:15 80:11 144:5 153:6 155:15 164:8 166:23 167:1</p> <p>happening [1] 41:8</p> <p>happens [8] 20:16 43:20 49:5 53:22 59:8 165:19,20 175:22</p> <p>happy [1] 137:4</p> <p>hard [13] 4:17 8:1,1 9:6,9 19:12 29:3,7,13 101:21 109:16 162:9 165:13</p> <p>harvey [4] 81:10 85:17,21 142:6</p> <p>has [63] 14:20,22 16:24 17:7 22:15,17 24:5 33:12,12 39:14 43:2 53:24,25 54:1 55:4 58:4,6 61:2,4,8,18 63:3 72:7 97:20 100:13 106:9,13 109:16 111:9 113:12 114:14 118:25 120:6 123:8 130:19 132:1 133:1 134:12 138:16 140:4,4 145:1 147:1,3,18 148:8 149:13 150:21</p>	<p>152:12 155:10 157:21 159:12 162:6 163:19 165:1 166:15,15,16 176:20 177:17 178:14,15 179:6</p> <p>hashing [1] 157:21</p> <p>haven't [1] 96:10</p> <p>having [8] 21:11 29:23 32:9 42:7 45:12 47:25 126:24 143:23</p> <p>he [98] 31:15 40:23 53:25 54:1 56:13 58:2,4,16 60:6 65:17,18 66:9,18,19,23 67:2,3,4,5,12,14,23,24 68:2,3,4,5,15,17 82:17,18,21,24 83:4,6,10,18,18 84:15,15,15,25,25 85:2,2,5,5,6,9,11,13,22,23,25 86:3,4,6,8,13,15,21 88:10,10,15 94:18 97:22,22,25 121:16 125:1,3 138:3,16 139:5 145:22,22,23 146:1 147:7,7 148:3 159:12,13 160:1,1 165:1,9,17,21,21 166:2,16,17 168:19 169:15 170:3,21,22</p> <p>head [1] 9:16</p> <p>hear [9] 25:18 45:11 99:1 121:15 135:25 146:16 159:14 161:24 168:1</p> <p>heard [7] 42:25 43:18 45:12 78:20 85:18 110:2,9</p> <p>hearing [11] 19:5 28:19 67:17 105:19 117:14,25 144:10 148:24 176:14 177:4,5</p> <p>hearings [2] 15:10 54:17</p> <p>heart [1] 28:24</p> <p>heck [1] 64:10</p> <p>help [3] 23:6 89:16 158:6</p> <p>helpful [2] 135:5 139:12</p> <p>helping [1] 15:3</p> <p>helps [1] 178:11</p> <p>her [7] 72:7 92:19 136:17 166:18,18 172:5,12</p> <p>here [59] 4:19 11:22 13:14,20 17:19,22 19:2,5 21:18 34:2 42:7 47:11 56:25 57:18 61:1 63:1 66:10 68:2 72:</p>	<p>7 75:5 83:17 89:2,19,19,20,20 96:14 100:25 101:2 102:24,25 106:20,24 109:9 111:19 112:3,12 115:14 116:9,12 117:7 118:25 119:3 124:4 125:10 136:11 138:19 144:1 145:20 146:21 150:3 155:20,21,25 156:7 162:3 164:24 167:19 168:12</p> <p>hereby [3] 22:10 43:4 44:1</p> <p>here's [24] 7:22,23 11:18,18 13:2 17:3 59:7 89:15,16 111:16,21 134:19 135:8,8 152:15 156:3,22 160:7,23 162:23 166:21 168:11 177:18,19</p> <p>he's [8] 58:4 141:18 147:10 159:18 165:16,25 166:10 169:2</p> <p>hey [2] 3:23 162:21</p> <p>high [1] 58:15</p> <p>highlight [3] 78:20 87:11 88:4</p> <p>highlighted [2] 71:6 86:14</p> <p>him [15] 55:7 60:5 65:3 67:17 68:22 82:19 83:14 86:7 124:25 139:11,17 165:21 166:9 168:23 169:6</p> <p>himself [1] 83:6</p> <p>hinge [1] 96:16</p> <p>his [41] 23:23 31:15 40:13 53:21 54:1 55:14 56:10 65:4,17,18 66:3,10,25,25 68:15 80:5 82:19,25 83:1,12 85:7,16,24 86:8 88:7 89:10 117:17 141:18 153:9 159:25 160:1 165:5,8,9,17,22 166:5,14,15 170:2,18</p> <p>history [4] 14:25 16:20 68:10 139:20</p> <p>hold [11] 102:10 103:10 109:18 111:19 120:22 133:17 145:24,24,24,25 174:3</p> <p>holding [1] 174:6</p> <p>holds [1] 74:23</p>	<p>home [2] 20:18 179:7</p> <p>honest [21] 7:15 8:10 9:13,25 29:2 57:18 58:14 59:22 61:6 63:12 67:11 80:1 106:24 116:13 118:7,23 122:21 139:15 151:22 160:24 161:2</p> <p>honestly [4] 20:19 160:25 161:8,14</p> <p>honesty [4] 80:3 91:17 144:8,11</p> <p>honor [60] 3:17 5:1 9:15 20:23 39:25 40:5 48:3 51:4 54:3,12 60:8 68:18 69:3 74:24 82:12 87:12 88:8 89:2 90:20,23 94:3,25 99:25 101:24 102:13 105:7,24 107:9 109:13 115:4,11 117:24 119:2,11,17 121:8 122:2 124:16 144:16 145:24 146:24 147:4,13 151:2 158:3 163:1 164:23 166:17,19 167:16 168:15,18 172:21 173:13 174:3,18 177:6 178:5,23 179:5</p> <p>hope [3] 13:13 132:2 151:5</p> <p>hopefully [6] 11:22 20:14 61:16 117:17 118:3 120:2</p> <p>horizontal [1] 83:20</p> <p>horizontally [3] 31:3 32:4 34:25</p> <p>hot [1] 28:20</p> <p>hotly [3] 41:20,23 139:21</p> <p>hour [2] 31:18,18</p> <p>hours [3] 25:15 31:17 40:24</p> <p>how [67] 3:3 6:23,24 7:6 23:24 25:21 28:1 29:11 30:9,19 33:11 36:12 39:7 44:8,12 46:14 58:6,7 62:13 67:15 69:10 74:14,19 75:6 78:25 79:7,7,9,9,10 80:4,10,10 82:18 83:11,13,18 86:15,15 87:12 91:12 96:16,19 98:5 99:8 105:11 107:13,18,19 111:21 114:16 118:2,25</p>
--	--	---	---

<p>120:12 126:20 127:22 128:14 134:24 138:1 143:9 157:17 162:13,19 166:21 172:1 173:9 177:19</p> <p>however [2] 131:19 175:12</p> <p>huge [1] 83:18</p> <p>hunger [1] 146:21</p> <p>hypothetical [1] 33:21</p> <hr/> <p>I</p> <p>i'd [1] 65:9</p> <p>idea [6] 3:1 44:15 58:4 86:4 113:13 160:13</p> <p>identical [1] 124:12</p> <p>identified [6] 74:14 105:21,21 107:16 147:7,19</p> <p>identify [4] 93:7,8 106:7 150:18</p> <p>identity [1] 165:17</p> <p>i'll [12] 8:10,25 29:2 58:14 59:22 61:11,16 63:11 67:11 80:1 118:7 146:20</p> <p>imagine [1] 103:24</p> <p>immediately [3] 16:4 22:23 73:18</p> <p>impact [1] 166:4</p> <p>impetus [1] 94:21</p> <p>implications [1] 61:5</p> <p>implied [9] 6:16 14:8 34:7 38:25 46:17 92:9 128:24 129:21 142:24</p> <p>important [16] 29:8 31:8 42:21 108:16 118:11 125:9,11 143:15 145:10 146:22,23 147:1 149:3 158:6 177:12,13</p> <p>importantly [1] 48:15</p> <p>impression [1] 86:6</p> <p>improper [2] 30:1 46:1</p> <p>improperly [1] 21:15</p> <p>inadvertently [1] 128:19</p> <p>incident [1] 59:4</p> <p>incidentally [1] 52:20</p> <p>include [1] 19:7</p> <p>included [5] 14:1 18:19 75:9 115:14,15</p>	<p>including [2] 93:15 121:11</p> <p>incorporate [1] 79:20</p> <p>incorporated [2] 47:15,16</p> <p>incurred [4] 22:4 77:21 78:13 153:22</p> <p>independent [1] 19:21</p> <p>independently [1] 37:22</p> <p>indicate [1] 145:19</p> <p>indicated [7] 14:23 41:21 72:20 73:20 74:4 123:9 148:8</p> <p>individually [1] 175:10</p> <p>individuals [2] 124:10 165:14</p> <p>infer [1] 146:25</p> <p>inferred [1] 159:2</p> <p>inform [1] 137:20</p> <p>information [73] 7:6 9:1 17:1 22:7 24:7 26:5 31:17 34:3,4,7 35:18 36:18,22 37:10,14,21,23 38:7,17,23 40:17 41:17,19 42:2 48:13 49:12 58:20 59:1 65:15 66:4,11,20,22 67:12,13 71:1 75:3,12,15 76:1,2 78:21 79:12 81:14 82:5 88:17 94:12,23 95:6,10,18,21 96:5,9 99:16 108:25 113:8 126:4,11 128:23,25 129:19 130:15 137:5,12,13,16 138:21 141:6 142:10,24 153:23 178:2</p> <p>informed [4] 53:6 108:15 125:23 126:7</p> <p>initially [2] 68:8 76:12</p> <p>inquire [1] 24:13</p> <p>inquiry [2] 24:9,9</p> <p>inserted [2] 33:12 39:11</p> <p>insertion [1] 30:1</p> <p>inside [1] 5:16</p> <p>instead [3] 73:4 162:3 170:4</p> <p>instructed [1] 54:18</p> <p>instrument [1] 150:8</p> <p>insufficient [1] 66:4</p>	<p>intend [3] 11:3 123:9 151:19</p> <p>intended [2] 5:13 7:12</p> <p>intense [2] 41:21 124:2</p> <p>intent [4] 12:21,23 13:16 21:1</p> <p>intention [2] 122:16,18</p> <p>intentional [1] 36:21</p> <p>intentionally [1] 130:16</p> <p>interest [2] 38:19 148:9</p> <p>interpret [1] 5:21</p> <p>interpretation [4] 6:9 27:18,18 96:6</p> <p>interpreted [1] 12:12</p> <p>interpreting [1] 149:15</p> <p>interrelate [1] 165:1</p> <p>interrogatories [3] 24:11 42:15 70:3</p> <p>into [24] 8:5 13:3 19:11 25:14 39:11 50:7 70:19 71:2 75:4 76:17 79:20 98:12 101:7,16 103:4 106:2 110:24 115:10 124:20 125:5 158:5 159:5 160:9 173:25</p> <p>introduce [4] 50:7,7,8,10</p> <p>introduced [3] 25:14 42:3 43:18</p> <p>invested [2] 28:23 29:18</p> <p>involved [1] 126:5</p> <p>involving [1] 151:12</p> <p>irregularities [1] 143:9</p> <p>issue [54] 4:17,18 10:7 13:9 15:4 17:19 19:4 23:4,6 39:16,17 40:2,7 42:18 50:2,18 84:17 85:20 86:9 106:9,10 113:12 118:24,24 127:4 132:23 134:2,9,19 135:8,16 136:15,19 140:3 143:17 148:13 149:2 150:4,22 154:3,5,21 157:5,10 158:21,22 159:2 160:11 166:13 171:18,20,22,25 177:22</p> <p>issued [4] 5:8,23 52:18 72:14</p> <p>issues [13] 6:2 7:13,25 11:16 31:10 116:1 121:19 125:23 143:2 157:22 158:22 165:1 177:3</p> <p>its [14] 6:5 14:10 15:19 31:1 33:21 37:24 41:17 49:11,11 50:13,13 131:20 144:13 165:10</p> <p>it's [100] 10:25 16:14,15,15 18:2,16 20:19 21:20 22:22 28:8 29:6 30:7 33:17 34:20 39:7,10,16,22 41:6 45:3,5,6 47:10,23 49:4 50:19,20,21 52:8 54:22 55:2 60:2 63:2 71:17,17,18,19 82:7,9 91:13,23 93:19 94:14 101:12 104:21,23,25 111:20 114:1,1 115:24 116:10,11,14 117:5 125:1,3,8,11 130:22 131:3 132:23 135:22 140:1 142:2,2,13 143:15,21 145:8 146:23,25 148:24 151:7,9,9,16 152:5,13,21,22,22 159:19 161:14 162:6 164:10,13 168:12,13,14 169:11 170:15 172:6,24 173:21 175:22 177:8,12,13 179:1</p> <p>itself [1] 15:21</p> <p>iv [4] 16:18 51:10,14 60:25</p> <p>i've [18] 3:3 17:8 20:15 29:1 39:21 47:10 97:25 101:25 110:25 138:21 146:16 150:22 152:3 155:21,25 156:22 171:1,4</p> <p>iv's [1] 52:24</p> <hr/> <p>J</p> <p>james [2] 23:15,18</p> <p>january [4] 125:14,15 152:11 172:8</p> <p>jim [3] 31:11 40:13 82:17</p> <p>jimmerson's [3] 53:3 118:8 149:14</p> <p>jim's [1] 44:12</p> <p>job [9] 29:6,14,17,17,17 64:11,12,21 93:19</p> <p>joint [1] 176:12</p> <p>jon [8] 35:11 80:10 81:11 85:21 86:21,21 138:1 142:</p>
---	---	--

<p>6</p> <p>judge ^[31] 4:10,23 14:17 17:17,21 21:20 23:10 29:7, 23 33:18 40:16 42:12 46:1, 19 50:16 54:10 58:18 120: 22 121:1,14,21,22 122:9,16 123:10 139:14 144:25 146: 3 158:4 161:7 175:8</p> <p>judges ^[2] 106:8 124:4</p> <p>judgments ^[6] 54:11 144: 9 175:11,16 176:4 178:2</p> <p>judicial ^[1] 17:18</p> <p>july ^[1] 17:8</p> <p>june ^[28] 3:7,9,10 5:9,24 6: 6 10:16,19 13:23 14:12 15: 4,21 19:8 21:6,10,16 35:25 36:1 42:7 52:3 53:18 115: 21 122:15 131:10,12 164:8 175:18,18</p> <p>jurisdiction ^[1] 167:25</p> <p>jurists ^[1] 16:3</p> <p>just ^[91] 8:3 10:6 11:25 12: 9 13:15 16:14,15 18:24 23: 16 30:5 33:16,17 34:13,20 49:4 50:19,20 51:6 63:10, 16 68:8 70:12 76:14,25 79: 5 80:3,8 89:23 90:21 92:1, 18 95:1,10 99:1 101:8,20 104:16,18 109:4 111:13,14, 23 113:24 123:22 124:14 125:11 128:14 129:5 130: 19 135:18 136:23 138:25 140:17 142:6 143:21 144:7, 17,23 145:19 146:9,10,10 154:21 156:6 158:23 159: 11 161:1 162:2,7,8,13 164: 17,21 168:5 170:3,8 172:5, 5 173:9,24 174:23,23 175:2, 13 176:6,11,12,16,23 177: 11 178:23</p> <p>justify ^[1] 124:2</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep ^[11] 91:9 104:5 114:6 125:22,22 126:6 145:4 155: 20 175:11 176:9 179:3</p> <p>keeping ^[1] 160:21</p>	<p>key ^[2] 78:19 85:17</p> <p>keys ^[1] 85:19</p> <p>kim ^[1] 15:16</p> <p>kind ^[6] 3:4 23:12 61:13 123:20 144:2 159:1</p> <p>kinds ^[1] 82:21</p> <p>knew ^[13] 15:18 18:19 19:2 48:15,19 125:4 127:20 128: 12,15 132:8 133:13 139:6 168:3</p> <p>knife ^[1] 50:22</p> <p>knowledge ^[1] 37:11</p> <p>known ^[1] 18:3</p> <p>ks@jimmerson ^[1] 170: 21</p> <p>ks@jimmersonlawfirm .com ^[3] 168:16 170:9,20</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labeled ^[2] 84:3 131:24</p> <p>land ^[1] 131:24</p> <p>lands ^[1] 74:20</p> <p>language ^[12] 14:1 114:17 115:7,13 116:9,17,19 117: 21 118:11 119:25 120:2 160:2</p> <p>largely ^[1] 126:13</p> <p>laser ^[1] 150:17</p> <p>lash ^[8] 32:9 35:11 37:22 80:10 85:21 86:21,21 138: 1</p> <p>lash's ^[2] 81:11 142:6</p> <p>last ^[6] 32:7 50:14 97:8 117: 15 170:12 176:2</p> <p>late ^[2] 103:12 172:7</p> <p>later ^[5] 96:21 101:11 141: 16 142:1 158:20</p> <p>latest ^[1] 14:11</p> <p>law ^[44] 3:24 5:11 6:6,15 10:9,15 11:5 13:24 19:13, 19 21:10 22:22 32:6 33:10 35:24 36:6,7 38:11 42:13 43:7 45:11,21 46:5 49:16 52:2 56:6 57:2 59:24 61:23 63:5 93:5,5,7 97:10 99:22, 24 100:5 124:1 149:12 156: 13,18 158:17 159:18 176:</p>	<p>12</p> <p>lawsuit ^[9] 67:3 75:15 94: 8,14,22 95:11 101:16 124:5 130:14</p> <p>lawyer ^[2] 61:6 163:5</p> <p>lawyers ^[2] 124:4 140:1</p> <p>lead ^[3] 19:6 25:11 34:10</p> <p>learn ^[1] 20:16</p> <p>learned ^[3] 20:15 81:13 130:12</p> <p>least ^[9] 34:25 63:20 91:3 114:7 131:5 141:17 143:22 160:13 178:15</p> <p>led ^[1] 33:13</p> <p>legal ^[3] 62:4,8 166:16</p> <p>less ^[1] 50:14</p> <p>let ^[41] 11:25 12:9 19:17 20: 16 41:1 47:4 51:4,21 55:21 60:24 63:17 68:7 77:15 82: 3 88:4 89:12 91:25 92:18, 23 101:24 102:16,23 103:2 104:4 107:15 110:21,21 128:13 131:1 133:17 145: 11 154:13 155:20 156:3 159:25 160:6 162:2 165:8 167:10 168:20 170:25</p> <p>let's ^[28] 23:14 51:23 62:21 63:23,25 64:21 66:10 69: 12 73:17 75:4 98:2 100:12 102:20 111:18 114:6 119: 18 123:2 124:4 146:9,9,10, 10 154:10 155:22,24 168: 11 175:22 176:23</p> <p>letter ^[26] 17:1,3,23 27:16 53:23 55:10,12 56:6,8,10 59:6,10,12 60:5,15,19 69: 17 126:1 137:16 143:13,14, 14,20 164:21 166:8,9</p> <p>letters ^[6] 37:20 63:9 96:1 120:10 171:2 177:16</p> <p>letting ^[2] 146:12,18</p> <p>level ^[1] 149:1</p> <p>liability ^[19] 65:21,25 68:3 90:2 91:23 108:8,8 112:1,2, 7,10,15 113:25 115:9,13 116:3,7 128:20 142:21</p>	<p>lie ^[1] 42:24</p> <p>like ^[43] 7:23 8:16,25 10:25 11:17 16:2,4 20:19 26:22 33:9 41:4 44:19,25 51:7,13 58:15,24 59:19 60:4 61:7 62:7,13 63:10,15 97:13 116:5 117:8 118:13,15 123: 3 138:24 144:9,19 145:9 146:15 156:23 159:4 168:9 170:16 171:7 177:4,7,18</p> <p>likely ^[2] 143:25 157:24</p> <p>limiting ^[1] 100:12</p> <p>line ^[4] 30:19 72:15 98:17 131:5</p> <p>lines ^[9] 14:1,2 21:21,21 22:9 23:23 128:14 139:1 157:4</p> <p>list ^[3] 163:6,7,22</p> <p>listen ^[2] 46:18 176:12</p> <p>listened ^[2] 21:11 32:9</p> <p>listening ^[2] 109:4 122:17</p> <p>literally ^[2] 20:2 54:9</p> <p>litigate ^[1] 106:10</p> <p>litigation ^[3] 11:24 12:10 44:17</p> <p>little ^[7] 3:14 61:3 85:21 105:14 118:9 125:9 149:1</p> <p>liu ^[8] 49:14,15,16,22 50:1 157:5,16 158:2</p> <p>location ^[2] 83:6 126:18</p> <p>long ^[6] 16:17 62:5 79:23 112:25 125:8 179:10</p> <p>longest ^[1] 159:6</p> <p>look ^[34] 3:15 19:10 20:7 34:18 37:24 59:3 61:21 64: 22 66:9,18 67:11 70:18 80: 13 93:11 97:4,6 98:2 104: 25 107:11 111:22 114:3 118:2 122:9 131:1 139:17 142:6 143:4,5 148:23 158: 16,24 162:1,3,5</p> <p>looked ^[25] 7:8 8:22 16:19 17:7,9,11 18:8 27:3 31:22 57:20 66:23 71:23 80:2,14 102:14,21 111:7 112:5 114: 1 116:13 122:6 155:9 156:</p>
--	---	---	---

<p>3,4 161:9 looking ^[9] 3:2 10:21 26:3 28:3 31:6 57:4 73:5 102:24 135:19 looks ^[4] 110:20 149:17 177:20,21 lose ^[2] 68:4 137:21 loss ^[2] 68:19 74:17 lost ^[27] 22:2,13 41:5 43:25 44:4 68:2,3,5,17 74:24 78: 24 92:7 103:22 107:6,16,21, 24 133:22 136:3,8,25 138:8 139:5,6 144:11 148:25 178: 22 lot ^[20] 5:19 7:25 20:3 41: 21 79:5,11,14,23 80:1,3,19 98:22 118:6,21 120:14 139: 23 156:22,24 159:4 162:2 lots ^[5] 84:17,18 85:10 86: 11 93:25 loud ^[2] 4:16,25 love ^[2] 56:22 152:13 lunch ^[1] 125:9 lundvall's ^[3] 17:10 118:7 123:21</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>ma'am ^[1] 51:2 made ^[34] 5:22 6:19 17:2 18:9 19:12 34:15 41:25 44: 22 64:14 68:2 69:22 70:12 71:11,18 73:11 74:13 75: 10 87:24 88:5 103:16 124: 19,25 125:1 133:10 143:19 145:1 147:6,7 153:23 165: 2,25 167:11 171:1,4 mail ^[2] 164:21 165:13 mailing ^[1] 163:22 main ^[1] 126:10 make ^[74] 11:21 13:2 15:14 16:9 18:8 22:9 28:15,16 39: 12,13 40:6 41:24 42:21 43: 19 44:7 48:12 49:14,21 57: 8,19 59:19 62:18,25 68:15, 19 72:7 73:2 76:14,25 77: 16 80:8 87:25 89:14 91:5 93:1 103:2 104:4,17 109:9</p>	<p>110:1 113:21 114:2,9 118: 2 120:6,15 121:23 122:12 123:2,5 129:5 133:13 144: 14 147:5 148:20,22 149:5,7, 16 153:17 155:7 164:6,16 168:5,8,20 169:14 171:17 173:10 176:2,10,15 178:6, 12 makes ^[14] 12:5 24:10 36: 2,3 37:24 42:14 49:23 62: 20 68:6,22 70:1 91:2,3 159: 9 making ^[9] 10:14 19:21 23: 11,12 40:5 77:17 96:21 109:6 149:19 many ^[14] 12:10 15:2 16:3, 5 40:24,24 53:24 81:12 85: 18 87:9 138:1 141:11 152: 3 173:25 map ^[5] 32:12 35:1 138:22, 24 149:1 maps ^[2] 83:11,18 march ^[3] 48:17 72:17,19 marital ^[3] 152:25 153:2,3 marked ^[1] 21:23 mathematical ^[1] 40:8 matter ^[9] 10:2 16:6 18:20 45:21 64:14,15 111:12 143: 21 174:18 matters ^[3] 6:15 126:7 158: 23 may ^[40] 3:11 8:17 9:15 10: 9,16 11:5 21:7 26:19 40:21 44:17 47:16 66:25 76:9,10 79:21 89:18 90:10 96:13 112:20 120:15 121:4,5,6 123:18,25 124:16 130:24 133:9,11 136:6 137:22 139: 5,7 140:7 157:1,10,24 176: 15,16 178:8 maybe ^[7] 51:11 57:25 73: 2 96:12 113:25 156:4 176: 10 mcdonald ^[3] 163:13 164: 5 168:6 mcdonald's ^[1] 41:14</p>	<p>mean ^[24] 11:10 13:2 26:7 45:23 47:15 53:1,20 58:7, 25 62:3 87:5 90:7 101:1 103:20,21 108:7,12 110:19 137:3,22 138:25 146:2 164: 2 171:20 means ^[5] 11:18 162:18 165:12,13 173:6 meet ^[1] 108:5 melodramatic ^[1] 39:9 members ^[1] 51:13 memo ^[1] 175:17 memorialized ^[1] 115:10 memos ^[1] 118:17 mention ^[2] 92:18 144:17 mentioned ^[1] 42:15 merit ^[1] 96:13 middle ^[1] 10:19 might ^[6] 10:20 16:5 50:12 73:2 130:20 175:13 million ^[75] 21:14 24:15,16, 16,20 25:4,12,21,25 30:5,9, 10 31:13 33:19,20 34:12,20 36:3 39:24,24 40:6 41:3,5, 13,15,25 42:19,23 43:24 44: 19,25 45:1 46:19 48:9 50:4, 6 69:2,9 71:15 73:13 74:22 75:10 78:11 79:13 80:25 87:12 101:5 102:6,9 107:6, 20 108:21 109:10 110:2 116:22 117:6 127:14,22 130:18 131:7,19 132:3,18, 19,20,25 133:11 134:18 135:4,17 136:15 138:9 141: 13,16 154:9 mind ^[8] 5:16 7:11 19:11 66:25 125:9 146:16,18 161: 15 mine ^[1] 102:6 minor ^[2] 47:24 140:12 minute ^[5] 52:18,18 53:5 57:17,20 minutes ^[3] 17:24 25:16 55:3 mirror ^[2] 135:15 140:5 mirrors ^[1] 139:4</p>	<p>mischaracterization ^[1] 33:14 mischief ^[2] 141:21,21 misinformation ^[1] 62: 14 misinformed ^[1] 57:23 misled ^[1] 33:12 miss ^[3] 47:23 61:16 77:1 missing ^[2] 47:9 66:12 misspoke ^[1] 52:10 misstated ^[1] 128:19 mistakenly ^[1] 14:11 misunderstanding ^[3] 63:17 93:1 167:19 misunderstandings ^[1] 170:17 misunderstood ^[2] 57: 22,22 mitigate ^[1] 141:24 modest ^[1] 38:13 moment ^[1] 16:6 monetary ^[2] 7:12 150:13 money ^[35] 34:6 43:15 68: 16 69:5,23 70:21 75:11 85: 13 86:10 88:8,11,18 89:12 91:12 96:7,24 97:3,23 98:1, 3 99:15 100:3,7,22 103:16, 18 105:9,13 122:7 129:23 137:8 138:20 139:24 140:6, 7 monies ^[6] 37:13 65:6 70: 24 100:1 129:20,20 moot ^[10] 156:18 160:19 161:17,24 173:21 174:2,9 175:6,21,25 more ^[34] 8:25 11:23 21:1 25:15 28:11 37:16 48:14 50:24 61:5,7,11,20,22 66: 20 70:21 85:6 90:7,11,16 91:2 96:24 100:3 104:18 116:10,11,14 128:3 129:18 139:15,16 143:22 146:12 170:17 178:7 moreover ^[4] 55:16 56:19 88:12 115:6 morgan ^[1] 49:23</p>
--	---	---	---

<p>most ^[9] 29:1 42:21 78:21 85:1,2 108:16 118:12 149:3 161:3</p> <p>motion ^[81] 3:6 10:6 13:22 21:19 25:7,10 29:21,25 43:21 49:15 50:9 56:10 68:25 70:17,18 71:1,4,5,24 72:4,9 73:8,18,19 74:4 75:24 76:19 78:4 88:21 89:10 91:8,8 96:4 100:12,15 105:7 106:3 107:23 114:10 121:6 122:14 124:20,20 125:7 140:21 143:8 145:2 154:11 156:1,4 157:2,18 158:8 160:17 161:23,25 162:5,7,15,16 163:9,9 165:5,8,9,18 166:1,2,14,15,22,23 167:5 170:2 171:16 173:4,20 174:15 175:17,24 176:3</p> <p>motions ^[18] 3:21 23:5 29:20 50:23 59:22 93:6 97:19 110:16 111:4 116:8 121:5,25 122:18 123:11 125:6 133:1 155:1 174:4</p> <p>motive ^[1] 43:12</p> <p>move ^[1] 62:21</p> <p>moved ^[2] 42:9 79:11</p> <p>moving ^[2] 67:4 124:20</p> <p>much ^[16] 4:13 13:3 23:24 28:23 29:11 30:19 50:2 60:13 61:20 107:13,18,19 133:10 134:24 139:8 178:11</p> <p>multi ^[2] 67:8 82:5</p> <p>multi-family ^[5] 32:12 67:6 98:21 99:4 126:22</p> <p>multiply ^[4] 25:1,3 32:25 132:18</p> <p>multiplying ^[1] 133:11</p> <p>murray ^[1] 179:21</p> <p>must ^[4] 58:16,16 121:12 124:2</p> <p>myself ^[8] 15:8 21:1 26:3 46:24 135:14 155:12 163:10 167:22</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name ^[3] 143:23 164:10</p>	<p>170:12</p> <p>names ^[1] 164:11</p> <p>nature ^[2] 113:3 124:12</p> <p>nearly ^[4] 73:18 78:17,22 86:8</p> <p>necessary ^[1] 146:1</p> <p>need ^[24] 3:19 6:17 7:11 8:11 14:21 26:5 35:5 36:16 37:14 40:6,17 47:13 115:5 129:15 130:14 142:20 146:20 156:9 158:14,24 172:13 175:15 176:13 177:4</p> <p>needed ^[5] 11:14 36:17 87:8 129:17 142:1</p> <p>needs ^[2] 93:8 149:4</p> <p>nefarious ^[1] 166:7</p> <p>negate ^[2] 108:20 111:11</p> <p>negotiations ^[1] 85:24</p> <p>neither ^[1] 25:13</p> <p>net ^[1] 153:13</p> <p>nevada ^[7] 12:18 106:14 128:21 151:5,6 152:8,23</p> <p>never ^[41] 14:9 20:14 21:13 23:13 24:10,11,13 27:25 31:11 37:5 41:25 43:17 44:22 45:1 46:19 48:12 49:2 56:24 59:2,10 64:23 72:2 76:11 88:8,11,12 89:12 97:22,24,25 98:1 103:3 105:9 127:19 130:15 132:24 136:24 142:13,14 146:25 164:18</p> <p>new ^[15] 59:3 117:15 119:25 121:3,7 123:9 131:25 152:18 154:25 156:16 160:22 161:9 174:12 175:4 176:4</p> <p>next ^[22] 16:5 20:12 25:2,16 30:8 33:22 35:11 40:11 41:8 44:8,9,13 46:2 47:4 50:12 58:1 62:21 63:25 128:7 133:14 161:20 176:7</p> <p>nicely ^[1] 87:5</p> <p>night ^[1] 103:12</p> <p>nobody ^[4] 33:19 44:19 60:25 137:24</p>	<p>non-circumvention ^[1] 98:9</p> <p>none ^[3] 24:18 42:12 127:14</p> <p>nonetheless ^[1] 12:20</p> <p>nor ^[1] 42:14</p> <p>normal ^[2] 144:13 177:2</p> <p>north ^[1] 31:4</p> <p>nose ^[1] 55:14</p> <p>note ^[1] 18:13</p> <p>noted ^[2] 14:21 21:20</p> <p>notes ^[3] 155:20,21 173:24</p> <p>nothing ^[10] 33:17 45:12 99:19 111:4 130:19 138:8 141:12,13 143:6 161:18</p> <p>notice ^[3] 76:9 126:3 143:18</p> <p>noticeably ^[1] 73:20</p> <p>notices ^[1] 126:16</p> <p>november ^[3] 23:19 72:11,22</p> <p>now ^[48] 5:12 11:3 14:14,25 16:15 19:10 26:1 27:17 28:20 30:22 44:15 46:13 47:21 63:5,6,23 74:6 79:12 98:23 100:13 110:5,25 113:12 115:25 118:14 122:25 124:20 140:14 144:10 145:3 147:18,18,25 148:4 152:5 155:17 156:3 159:18 160:16,25 163:14 165:2,16,25 166:11 167:3 168:24 178:9</p> <p>nowhere ^[5] 24:14,15 101:7 135:18 136:12</p> <p>nrcp ^[10] 3:7,8,16 4:5,22 13:15,22 70:10 119:10 162:3</p> <p>nrs ^[4] 149:14 150:15 159:19 175:22</p> <p>nuances ^[1] 47:24</p> <p>number ^[24] 13:21 24:17 25:1,6 31:14,14 33:19 70:21,22,24 75:5 89:12 108:9,11 126:5 130:18 137:25 159:11,17 161:20 166:15 171:15,16 173:21</p>	<p>numerous ^[1] 78:24</p> <p>nuts ^[1] 14:13</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object ^[1] 16:10</p> <p>objection ^[2] 15:11 58:2</p> <p>objections ^[1] 58:6</p> <p>obligated ^[4] 82:19 83:14 107:10 110:17</p> <p>obligates ^[3] 70:4 113:1 164:19</p> <p>obligation ^[4] 31:13 35:5 143:21 163:5</p> <p>obliged ^[1] 38:18</p> <p>observation ^[1] 110:21</p> <p>obviate ^[1] 35:5</p> <p>obviated ^[1] 33:4</p> <p>obvious ^[2] 116:18 159:6</p> <p>obviously ^[9] 28:17 31:4 58:22 116:7 141:24 153:1 156:14,19 167:18</p> <p>occasions ^[1] 40:20</p> <p>occurred ^[5] 57:1 132:4 133:19,20 139:21</p> <p>october ^[7] 6:3 72:9 130:23 131:3 132:7 138:25 143:18</p> <p>off ^[11] 4:9 18:14,23 20:3 42:8 61:16 123:20 158:15,21 160:3 161:12</p> <p>offensive ^[2] 19:1 135:13</p> <p>offer ^[11] 97:5 101:24 110:21 141:19 151:19 158:18,23 159:12,25 160:1 171:1</p> <p>offered ^[2] 31:23 158:12</p> <p>office ^[2] 107:11 149:14</p> <p>officer ^[1] 45:23</p> <p>offset ^[1] 108:19</p> <p>oh ^[14] 54:8,9 55:15 56:21 64:16 68:12 79:13 81:25 92:4 95:7 106:18 111:3 157:12 176:8</p> <p>once ^[26] 12:25 23:5 26:19 58:3,3 62:17 66:21 67:12 69:24 75:14,17 88:18 95:6,10 96:21 100:1,11 113:12 116:16 118:3,5,18 154:24</p>
--	---	--	--

<p>155:16,17 169:19 ones ^[3] 67:21,22 105:20 one's ^[3] 118:16 138:3 179:4 only ^[37] 15:8,8 16:5 17:15,25 24:9,16 29:19 30:12 31:15 38:16 39:8 48:15 50:6 57:7 66:22 75:20 86:10 94:5,8,22 97:4 100:1 104:2 105:10 108:25 110:20 114:10 124:8 144:15 155:21 156:11 161:17 166:11 172:24 173:17 174:2 opened ^[1] 162:2 opening ^[14] 6:19 21:11 24:14 25:22,23 26:2 33:18 40:3,15 45:4 88:3,6 96:15 139:3 opinion ^[3] 83:12 118:19 148:24 opportunity ^[12] 5:16 16:10 18:14 42:8 74:21 98:12 108:10 121:2 131:22 155:1 174:12 175:9 opposed ^[5] 71:4 73:8 115:14 134:6 164:20 opposing ^[9] 12:11 15:13 21:1 71:5 74:8 128:19 139:13 141:10 177:17 opposite ^[1] 153:1 opposition ^[12] 25:7,19 50:8 56:10 71:16 72:10,21 73:2 96:4 107:22 127:16 177:10 oppositions ^[1] 76:19 option ^[70] 24:25 26:8,11,23 28:15 30:14 31:1 33:22 35:1,11,19 48:18,22 50:13 65:5,25 67:5,19 71:8,11,12,14 73:10,11 74:20 78:5,8,10,25 79:16 80:17,19 82:20,24 84:3,4,7,10 86:1 87:19,24,25 93:23 94:7,12,16 96:10,18 98:5,6 125:18,24 126:3,14 127:10 128:6 131:6,9,10,11,25 132:1 133:7 134:</p>	<p>25 136:7 140:11 147:9,12,16,22 options ^[1] 67:1 or ^[100] 4:8 10:16 14:3 15:1,2 16:23 17:1,4,10,21,23 18:21 21:1,19 25:14,19,19,19,20 26:4 29:12,18 31:11,12,13 37:12,20 39:24 41:16,18 42:3,13,15,16,17 43:22,24 44:12,19,25 53:21 57:23 58:17 59:5,6 60:7 61:12 63:8,8 67:5 76:10 80:7,7 83:2,8 86:23 91:2 98:2 101:15 103:21 110:16 112:4,11 114:5 116:10 117:2 121:13 128:3,16 129:4 132:15 133:7 134:2,3 135:15 136:13,13,25 138:10 139:13 140:1,24 142:9 147:11 150:8 152:8 156:13 158:13,21 164:8,11,18 167:6 168:10,12,13 172:16 174:6 177:22 178:2 oral ^[7] 58:20 63:13 166:1,14,15 170:2 178:10 orally ^[2] 42:3 165:2 order ^[97] 3:23,24 5:8,11,25 6:10,14,15 7:5,18 9:2,11 10:9,15,16,17 11:6 13:4,10,14,20 16:20,21 17:15 18:4,6 19:14,18 21:6,10 22:9 23:12 30:4 32:6 33:11,13 36:7 39:5 44:20 46:7 47:16 51:9,14 52:18,19,22 53:5,8,15 54:6,16,19,21,23 55:2,4,18 56:25,25 57:11 59:11,13,16,25 60:25 61:2,5 63:2,3 64:5 72:14 91:22 116:21 122:13 123:10,10 125:2 135:11 156:13 162:15,17 163:17,24 164:3,19 165:10,19,20 167:18,19,21 168:9 173:4 176:21,22 177:20 179:1 ordered ^[7] 22:10 39:15 43:5 44:1 167:7 178:15,21 ordering ^[1] 173:5 orders ^[23] 3:3,8,9 5:6 12:</p>	<p>11 17:6,11,22 37:24 54:7 57:9 59:3,6 60:10,24 63:8 72:19 115:23,23 144:1 167:6 176:14,15 original ^[4] 66:19 85:24 125:18 127:9 originally ^[1] 131:24 other ^[50] 15:8 16:3,5,23 17:2,15,21 23:6 44:16 49:24 67:14 68:23 69:23 85:6,17,18 88:2 89:7,8,24 90:11 93:3 99:21 101:11,14 106:8,21 116:8 118:14 122:3,18,25 125:5 132:15 134:8 138:22 139:11 144:17 158:5,16 160:7,24 164:6,10,11 167:7,11 169:24 177:20,21 others ^[1] 106:11 otherwise ^[5] 3:20 14:23 30:3 48:1 120:13 our ^[65] 6:4,16,16,17,18,19,20 10:5,6,11 25:3,7 26:2 34:11 40:15 50:8 54:3 56:9 70:18 71:1,4,5,14 72:4,9 73:3,8,18,19 74:4 76:19 92:12 93:2 96:6,23 100:2,2 103:18 108:3,14 115:11 127:16 128:8,9,21 129:13 132:15 133:21,25 137:8 139:3,3 140:22 147:16,24 150:13 151:1 152:7,23 154:11 155:1,17 161:3 166:23 174:19 ourselves ^[2] 176:13 177:15 out ^[37] 7:18 11:1 25:2 28:2 38:14 40:11 48:15,19,20 61:6 66:20 70:2,19 71:19 79:15,17,24 80:4,15 94:16 125:2 127:25 132:10,11 133:9 134:23 135:25 138:24 140:9 144:11 150:7 154:21 157:25 162:20 171:15 178:1 179:3 outside ^[5] 83:13 84:2 85:14 135:12 177:2</p>	<p>outstanding ^[1] 121:5 over ^[14] 11:24 12:9 25:1,2 30:8 44:9 56:18,20 68:22,23 127:25 128:7 146:21 174:7 overlays ^[1] 83:18 owe ^[3] 80:16,16 141:24 owed ^[18] 9:21 22:8 26:4,19 31:13 35:12 36:24 41:7,18 70:21 85:9 91:15 133:15,16 134:13 136:6,14 140:11 owing ^[11] 22:18 26:12 27:23 28:11 32:2 34:6 37:13 65:6 66:2,21 67:20 own ^[23] 3:22 19:21 42:20 47:1 49:9,18 58:11,21,21,25 59:14 60:23 63:11,12,14,16 64:11 114:23 143:4,5 155:12 165:8 176:16 owned ^[1] 131:11</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pacific ^[1] 151:9 page ^[25] 14:1,2 21:20,21 23:16,19 35:18 47:4,9 57:17 98:4,4,8,14,17,24,25 99:13 112:6 130:23 133:24 135:5 139:1 154:15 165:9 pages ^[1] 47:10 paid ^[15] 20:3 22:17 34:23 37:14 69:17 73:13 87:12 88:2 95:23 99:14 129:2,20,24 131:22 132:3 painfully ^[1] 87:4 paper ^[1] 73:3 papers ^[1] 148:23 paragraph ^[4] 98:20 99:2 125:20 126:3 paragraphs ^[1] 98:10 parcel ^[16] 30:13,13,20 31:4 32:12,25 35:1 83:11 126:17 134:5 136:8 137:22 138:2,11 140:10,24 parcels ^[2] 83:7 86:23 pardee ^[78] 8:17,24 10:18 11:17 15:6,13 19:2 21:15</p>
--	---	--	---

<p>22:7,12,15,17 23:11,20 24:1,9 25:24 26:9 30:8 31:2,13 33:12 34:24 35:5,11 36:4,15 37:11,19 39:3 43:6,12,12 44:3,7,21 45:10 46:16 49:3 50:12,21 52:19 54:18 68:20 79:8,22 82:19,25 85:12 86:1 87:12,23 96:5,9 98:11 100:21 123:25 126:1,6 127:20 128:5,5 130:16 131:13,17 133:1,4,13,16 135:17,19 139:20 141:22 145:21 146:2 154:4 164:17,17</p> <p>pardee's ^[11] 19:6 22:3 24:8 31:16 41:10 83:3 131:19,23 161:23 173:20 175:17</p> <p>parks ^[1] 127:24</p> <p>part ^[43] 6:5 9:1 21:15 24:18 31:9 32:7 33:3 39:22 41:6 43:2 50:10 53:14 72:2 73:19 75:22 79:19,22 87:16,22 92:19,21 100:7,8,9 103:18 113:23 114:25 115:1 117:2 122:12 126:24 132:3,5 134:11,17 135:10,18 140:12,21 142:10 143:3 149:3 156:16</p> <p>parte ^[2] 55:13 56:16</p> <p>particular ^[3] 71:2 138:22 149:13</p> <p>particularly ^[2] 36:22 117:14</p> <p>parties ^[15] 5:20 7:22 9:21 11:22 12:8 13:1 45:5,6 47:2 61:12 75:23 93:9 125:16 152:25 175:8</p> <p>parts ^[1] 105:22</p> <p>party ^[42] 8:15 22:25 33:18 68:6,22,23 75:25 79:18 89:25 90:11,16 91:2 106:3,9,11,20 110:7 116:13 117:2 118:18,20 141:18 148:13 149:2,19 150:9,14,22 151:13,16 153:4,14 154:16 158:11,15,21,25 159:8,20 173:23 174:20 175:23</p> <p>passed ^[1] 47:23</p>	<p>past ^[8] 27:13 30:15 67:21,21 86:5 91:15 126:12 166:6</p> <p>pat ^[1] 40:3</p> <p>pause ^[2] 16:3 18:3</p> <p>pay ^[4] 35:6 82:19 83:14 129:9</p> <p>paying ^[3] 70:23 113:7 132:17</p> <p>payment ^[1] 125:19</p> <p>payments ^[1] 126:8</p> <p>pending ^[2] 122:18 123:11</p> <p>people ^[10] 59:16 61:17 62:6 76:9 162:9 163:18 164:14,21 167:2 170:6</p> <p>peoples' ^[1] 178:8</p> <p>per ^[2] 24:25 131:16</p> <p>percent ^[10] 25:3 34:11,16,17 43:16 127:1 131:15 133:11 137:7 147:13</p> <p>perception ^[2] 92:2,5</p> <p>perfect ^[3] 58:22,23 104:16</p> <p>perfectly ^[1] 111:13</p> <p>period ^[2] 25:4 121:11</p> <p>permission ^[1] 124:11</p> <p>person ^[6] 57:21 58:5 163:19 167:7,12 169:16</p> <p>personally ^[1] 15:2</p> <p>persons ^[1] 162:18</p> <p>perspective ^[11] 54:4 56:15 60:14 64:19 82:12 105:6 109:15 115:4 166:3 170:24 174:17</p> <p>pertinent ^[1] 31:9</p> <p>phase ^[1] 138:4</p> <p>phony ^[2] 22:20 34:20</p> <p>piece ^[3] 42:2 44:24 108:17</p> <p>pieced ^[1] 51:11</p> <p>place ^[6] 14:18 120:19 121:3 123:13 143:10 179:3</p> <p>placed ^[1] 111:12</p> <p>places ^[2] 24:17 99:21</p> <p>placing ^[1] 124:1</p> <p>plain ^[2] 160:2 168:12</p>	<p>plaintiff ^[23] 14:4 19:20 21:13 24:16,21 25:18,20,23 33:24 37:16 38:1 39:16 41:18,25 42:13,21 48:12 77:5 115:18 138:16 153:7,11 175:9</p> <p>plaintiffs ^[65] 11:15 14:10 22:11,17 23:21 30:23 32:20,23 34:22 35:9,13 36:10,15,16,19,24,25 37:5,18 38:4,8 40:5 42:23 43:6,10,24 44:2,21 46:16 47:2 48:8 49:4,10,11 50:4,22,25 66:5 74:21 77:10 85:9 92:8 97:2 103:4 104:22,23 105:8 107:16 109:24 111:1 115:9 125:21,23 126:19 130:16 131:15,18,21 132:2 134:16 136:7 140:7 141:25 146:24 158:17</p> <p>plaintiffs' ^[29] 3:6 6:4 13:21 21:24 22:1,12 24:10 25:7 34:10 39:24 40:25 41:1,24 42:10 44:3,21 88:6 103:7 107:5 111:15,17 134:11 142:7 157:15 162:15,16 165:14 173:4 175:24</p> <p>plan ^[1] 175:14</p> <p>platted ^[1] 134:5</p> <p>playing ^[1] 171:13</p> <p>plead ^[1] 124:11</p> <p>please ^[6] 44:11 51:19 118:22 143:20 148:19 172:8</p> <p>plenty ^[1] 75:3</p> <p>plus ^[6] 3:25 38:19 101:9 136:2,2 144:8</p> <p>podium ^[2] 146:14 148:18</p> <p>point ^[39] 6:8 20:25 46:20 48:19 49:10 50:1 62:22 63:25 68:2,18 70:20 88:10 89:1,13 90:9 96:14 97:1 103:2 106:14 113:20 114:10 120:16 133:2 136:3 138:5 139:4 143:5 146:6 147:24 159:10 160:2 164:12,13 165:4,18 169:14 172:11 173:2</p>	<p>177:8</p> <p>points ^[4] 50:18 88:5 148:21 159:11</p> <p>policy ^[1] 63:13</p> <p>poor ^[1] 15:1</p> <p>portion ^[15] 78:14 92:11 100:22 106:2 110:24 111:11,15 142:21 153:8,9,11,12 154:4 174:20,22</p> <p>position ^[8] 26:22 46:21 54:14 88:7,9 93:2 134:11 174:20</p> <p>possibility ^[1] 133:14</p> <p>possible ^[3] 33:23 129:4 152:6</p> <p>possibly ^[3] 44:5,8 157:10</p> <p>post ^[1] 121:12</p> <p>posted ^[1] 145:20</p> <p>post-judgment ^[4] 9:24 110:6,16 123:11</p> <p>post-trial ^[2] 110:16 122:3</p> <p>potential ^[1] 128:5</p> <p>potentially ^[2] 27:13 126:18</p> <p>powerpoint ^[1] 73:3</p> <p>practice ^[11] 15:1,1,12 16:7,15 17:8 18:2,3 105:7 106:3 121:6</p> <p>practicing ^[1] 61:6</p> <p>prayed ^[1] 69:18</p> <p>precisely ^[4] 60:8 65:17 93:13 154:7</p> <p>prediction ^[3] 72:10,21 155:23</p> <p>predominant ^[1] 113:19</p> <p>preface ^[2] 51:5 148:22</p> <p>prejudice ^[1] 156:25</p> <p>preparation ^[2] 36:5 148:24</p> <p>prepare ^[4] 54:18 119:25 178:16,23</p> <p>prepared ^[7] 28:19 47:22 48:1,1 53:2 55:18 97:9</p> <p>preparing ^[2] 175:14 179:1</p> <p>preposterous ^[3] 33:17</p>
--	--	---	---

<p>39:7,11 present [2] 34:22 40:14 presentation [1] 71:23 presentations [1] 133:1 presented [3] 6:2 116:24, 25 preserve [1] 157:23 pressure [2] 123:25 135:21 pretty [3] 103:12,13 151:16 prevail [12] 89:11,13 90:25 91:9,11 93:9 101:10 103:16,20 106:12 115:10 139:25 prevailed [43] 14:4 33:13 39:13 43:17 49:10,11 50:19 73:15 82:14,15 89:6,7 90:10,10,24 91:14 92:3 93:3,3,18,19 100:10,21 101:14 106:9,11 108:15,16,20 111:11,14 112:14 113:18 114:25 115:1 135:17 153:7,8,11,13 154:4 174:21,24 prevailing [40] 22:24 36:4 47:2 68:6,22,23 75:25 89:25 90:11,16 91:2 106:3,19 110:6 116:13 117:2 118:17,20 140:15 141:18 148:13 149:2,19 150:9,14,21 151:12,16 153:4,14 154:16 158:11,15,21,25 159:8,20 173:23 174:20 175:23 prevails [1] 38:1 previous [2] 115:23 143:18 previously [2] 178:14,15 price [5] 82:23 86:24 87:13,16 131:16 principle [2] 81:4 87:7 prior [5] 15:4,19,24 29:20 66:17 prism [1] 110:20 private [3] 149:23,24 172:2 privy [1] 79:8 probably [5] 72:18 83:16</p>	<p>144:5,9,12 probing [1] 139:17 problem [9] 53:17 111:9 113:14,23 154:19 155:10 161:16 162:24 169:21 problems [1] 140:5 procedural [1] 3:14 procedurally [1] 5:23 procedure [7] 12:18 58:11,19 59:15 116:19 128:22 155:17 procedures [1] 58:23 proceeding [1] 6:21 proceedings [1] 179:17 process [8] 12:25 13:1 89:15,17 90:3,4 101:13 105:14 produce [1] 94:7 produced [5] 5:17 94:9,13 130:16 143:13 product [1] 5:18 production [11] 24:12,24 32:14 35:8 40:10 42:16 70:4 126:25 127:8 128:7 131:13 professional [1] 39:10 promise [1] 179:7 promulgated [1] 42:18 proof [5] 77:9 103:8,20 104:24 105:1 proper [3] 106:25,25 117:5 properly [3] 14:20 21:20 44:6 property [84] 24:24 26:8,10,11,23 28:15 30:7,14 33:22 35:1,7,8,12,19 36:23 48:18,23 65:5 66:1 67:9,19 71:8,11,12,14 73:10,11 74:20,20 78:5,8,10,25 79:2,16 82:20,23,24 83:8,13,19 84:5,7,22 85:14 86:2,24 87:13,16,19,24,25 93:23 94:7 96:10,18 98:5,6 99:5,10 101:20 125:24 126:14,23 127:8,10 131:6,6,7,9,14,24,25 132:1 133:5,8 134:25 136:7 140:11,25 147:9,12,17,22</p>	<p>proposed [19] 15:22 17:4 19:19 20:7 32:23 39:20 45:6 97:13,14 99:21 101:8 116:20 133:25 134:1 167:14 169:6 175:10 177:19,25 proposing [1] 58:6 proposition [1] 82:9 propriety [1] 16:12 prosecuting [1] 22:5 prospective [1] 174:4 prospectively [5] 166:12 172:10 173:11,12,16 protection [1] 121:10 prove [2] 81:16 104:11 proven [1] 98:15 provide [13] 37:10 38:6,17,23 41:17 108:18 126:2 128:23 137:16 141:5,5 142:9,24 provided [9] 31:23 36:19,20 37:21 39:19 85:25 99:16 106:15 137:14 proving [1] 108:6 provision [6] 149:23 150:19 151:12 153:3,14 160:4 provisions [4] 73:25 83:5 99:20 159:20 published [1] 159:9 pull [2] 56:18 61:13 pulled [2] 56:20 71:19 punitive [1] 3:12 purchase [20] 30:6 35:11 50:13 71:11 74:20 78:9,11 79:2 82:23 83:12 86:24,24 87:13,16 127:9 128:13 131:7,14,24 133:5 purchased [25] 71:12 78:8 83:8,19 85:14 86:1 93:23 96:10,18 98:6 99:4 127:20 128:15 131:13,17 132:9,15 133:3,5 134:13,21 147:9,12,16,22 purchases [14] 44:6 65:5,25 67:18 71:14 73:11,12 83:3 84:9 87:24,25 96:17 98:16 125:24 purported [1] 22:3</p>	<p>purportedly [1] 22:8 purpose [3] 10:5,6 44:11 purposes [2] 140:20 173:15 pursuant [10] 3:7 13:15,22 21:19 35:19 38:10,11 69:16 125:21 126:3 pushed [2] 107:17,17 put [40] 8:8 9:12 10:23 11:9 13:20 29:12 45:16 50:21 55:2 57:1 59:7 71:20 75:25 76:2,9,17 77:3,9 79:14 90:21 91:3 101:2,7,16 103:4,17 104:12 105:1,23 109:1,9,24 110:24 111:4,18 118:9 121:15,16 147:20 173:24 puts [3] 88:10 101:3 169:19 putting [1] 103:25</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quantification [26] 73:12 74:1 78:11 101:4 107:12 108:18 109:20,22,24 110:24,25 111:1,10 113:24 114:20 115:17 116:22 132:23 136:18 141:14 142:8,12 147:19 154:6,15,20 quantified [14] 69:6 73:21 88:14 102:5,8 105:21,22 108:21 117:5 127:1 128:16 137:24 153:10,21 quantifies [1] 136:14 quantify [10] 69:8 93:8,20 103:22 104:3,19 107:12,18 134:23,23 quarrel [1] 147:19 question [19] 25:17 41:2,4,10,11 56:12 58:1 84:23 94:11 97:2 104:2,19 139:13,14 141:12 147:20 156:11,22 174:8 questioned [1] 82:17 questioning [2] 139:11,14 questions [16] 8:13 40:23 78:24 79:6,23 80:2,9,20 81:</p>
---	--	---	---

<p>2,3,4 82:21 86:7,9 141:9,11 quibble ^[1] 116:14 quibbles ^[1] 115:6 quibbling ^[2] 116:11 118:10 quit ^[1] 3:2 quite ^[3] 152:6 157:10 158:5 quote ^[3] 24:7 136:12 150:6 quoting ^[2] 72:24 73:1</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raise ^[1] 158:2 raised ^[1] 25:6 raises ^[1] 33:19 ran ^[1] 39:2 reach ^[2] 117:17 177:15 read ^[49] 3:21 4:16 7:10 15:9,19 18:20 19:2 20:17,19 27:19 36:5 37:7,7 43:6 49:14,15,18,22 54:7 62:2 76:22 82:6 91:16 93:10,14 97:19 106:16,18 118:1,5 127:18 130:21 135:10 138:13,14 148:16 150:2,24,24 152:3 156:22 162:10,13 163:24 164:7 165:8,8 168:3 170:14 reading ^[2] 23:18,22 real ^[9] 32:15 40:10 125:24 126:25 128:8 133:16 161:2 168:11 169:11 realize ^[3] 109:12 156:7,9 realized ^[4] 8:11 122:23 150:3 155:9 realizing ^[1] 159:5 really ^[26] 4:15 5:19 23:11 26:17 27:12 28:18,18,20 47:21 51:19 59:23 79:1 80:20 90:11 101:15 106:23 111:24 112:14 114:1 116:9 125:8 139:21 141:1 143:5 156:11 160:10 reality ^[1] 124:9 rearguing ^[1] 145:17 reason ^[20] 7:21 18:8 24:5</p>	<p>62:16 87:7 94:14,22 117:25 121:6 134:4 146:13,14 149:6 152:6 153:22 158:2,12 161:17 162:8 166:22 reasonable ^[3] 150:9 167:9,10 reasonably ^[1] 126:7 reasoning ^[2] 28:10 77:14 reasons ^[2] 11:11 159:6 rebuttal ^[1] 25:19 recall ^[10] 19:14 20:11 50:25 83:16 84:17 86:2 87:15 103:10,11,13 receive ^[4] 16:3,25 98:12 169:18 received ^[3] 14:9 16:2 95:6 receiving ^[1] 45:9 recently ^[1] 152:7 reclassification ^[2] 79:1 132:4 reclassifications ^[1] 131:25 reclassified ^[2] 74:19 78:25 reclassify ^[1] 131:23 recognize ^[1] 157:8 recollection ^[5] 42:20 51:1 55:22 66:16 72:13 reconsider ^[1] 146:7 reconsideration ^[1] 145:2 record ^[36] 4:20 18:1,7,11 20:17 24:19 33:7 39:20,22 45:13,17,19 50:10 53:2 57:1,16 58:3 72:7 75:23 94:15 95:2 103:25 123:6 124:3 135:23 139:18 141:13,14 142:2 157:23 160:11,25 161:16,16 171:18 172:6 recorded ^[1] 40:15 records ^[1] 32:11 recover ^[3] 24:1 74:22 77:20 redesignate ^[2] 33:5 140:8</p>	<p>redesignated ^[2] 32:11 126:23 redesignating ^[1] 140:25 redesignation ^[7] 32:19 79:10 86:9 94:2 127:4,6 134:15 redesignations ^[1] 86:12 redo ^[1] 146:4 reduced ^[1] 60:11 reference ^[10] 24:20 25:24 34:19 36:2,3 40:4 41:24 42:14 48:7 49:21 referenced ^[3] 39:16 45:1 47:13 references ^[5] 25:13 41:13,15 42:4 50:6 referring ^[2] 13:25 14:12 refile ^[3] 174:10 175:3,7 refiled ^[1] 174:12 reflect ^[5] 14:3 46:4 115:12 119:7 141:23 reflective ^[1] 55:18 refuse ^[2] 143:24 168:2 regard ^[13] 16:12 21:5 24:10 33:10 37:2 38:22 41:11 139:16 143:2,9,18 147:10 164:19 regarding ^[5] 4:2 22:7 84:17 123:12 173:4 regardless ^[2] 45:25,25 regards ^[1] 6:15 register ^[3] 165:22 168:24 169:20 registered ^[1] 169:22 related ^[6] 21:25 22:2,13 36:23 43:25 44:4 relates ^[3] 75:24,25 132:20 relating ^[1] 126:7 relationship ^[4] 36:14 37:11 69:16 166:13 relative ^[1] 10:15 reliance ^[1] 36:15 relied ^[1] 70:8 relief ^[6] 14:5,6,7 36:10 38:2,24</p>	<p>rely ^[2] 59:16 150:7 remained ^[1] 15:25 remaining ^[1] 30:6 remains ^[1] 15:15 remarks ^[3] 21:12 122:17 147:7 remember ^[19] 20:20,21 28:1 32:12 35:10 40:21 48:16 67:7 72:1 76:15 83:24,24 87:1,4 94:17,19 99:11 128:2 170:12 remembers ^[1] 48:4 removed ^[1] 132:1 repeat ^[2] 46:23 164:9 repeated ^[1] 15:21 repercussions ^[1] 58:25 rephrase ^[1] 118:10 reply ^[7] 123:4,20,21,22 124:23,25 125:2 representation ^[2] 171:2,5 request ^[9] 6:4,4,18 15:24 49:6 115:11 121:2 165:1,9 requested ^[3] 19:3 38:14 52:11 requesting ^[2] 37:20 149:18 requests ^[4] 24:12 42:16,16 70:3 require ^[4] 3:19 42:9 146:5 162:7 required ^[6] 4:1,6 29:19 36:19 38:7,16 requirement ^[1] 137:15 requirements ^[1] 158:19 requiring ^[1] 162:17 res ^[12] 32:12,24 82:2 99:10 101:19,20 126:24 134:3,4 136:5 138:10 141:3 research ^[2] 3:22 150:18 resembled ^[1] 31:14 reserve ^[1] 160:10 residential ^[8] 24:24 35:8 67:9 84:22 99:5 126:25 127:8 131:14 resolution ^[3] 121:4 122:</p>
--	---	---	---

<p>19 123:11 resolve ^[3] 13:8 23:5,6 resolved ^[3] 10:2 30:22 121:20 resolves ^[2] 6:15 158:23 resources ^[2] 107:13,14 respect ^[3] 58:15 145:16 166:19 respectfully ^[5] 64:20 115:4 128:18 132:25 142: 13 respond ^[3] 50:22 144:20 146:18 responded ^[2] 53:25 54:2 response ^[1] 139:15 responsibility ^[4] 58:19 60:23 63:14 155:16 rest ^[3] 40:8 94:15,20 result ^[13] 31:9 38:16 95:5, 22 96:23 97:3 99:15 108:9, 11 113:18 121:5,6 178:24 resulted ^[1] 134:6 results ^[1] 122:4 retax ^[1] 175:17 returned ^[1] 43:16 reverse ^[3] 30:3 66:6 124: 1 reversed ^[1] 49:25 review ^[5] 15:2 75:20 76: 16 117:17,23 reviewed ^[7] 20:10 45:3,4, 5 53:3 58:5 64:13 reviewing ^[1] 15:12 revisionist ^[1] 139:20 rewrite ^[1] 141:22 ridiculous ^[2] 22:23 166: 20 rights ^[4] 50:13 96:20 162: 11 179:4 ring ^[2] 83:23 152:2 road ^[1] 149:1 robbed ^[1] 131:21 rory ^[2] 164:16 170:11 roughly ^[1] 127:21 rule ^[23] 16:23 42:9 43:21 58:8 61:22 70:4,12 73:21</p>	<p>74:2,7 75:6 88:13 113:1 119:10 121:13 126:20 152: 7,19 155:12 162:10,13 166: 16,17 ruled ^[5] 8:21 32:15 74:25 108:11 143:1 rules ^[16] 12:18 16:16,16, 18 31:24 42:17 63:16 121: 8 128:21 164:24 166:3,4,24 167:3 171:22,23 ruling ^[14] 5:24 17:21 33:5 119:25 120:6 123:16 124: 19,25 125:1 137:4 145:1 173:10,11 176:3 rulings ^[2] 19:13 161:5</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sacred ^[1] 61:9 said ^[59] 12:8 23:21 24:22 26:2 28:6 30:10,25 32:17 52:9 57:3,7,14 58:17 60:23 64:12,23 66:24 70:9 71:22 78:4 84:6,15,25 85:2,5 86: 13,21 88:11 92:6 96:9 97: 11,22,24,25 101:10 109:25 110:1 111:13,14,25 113:3,6 126:1 127:24 129:14 130: 19 135:21 136:18 142:13, 14 143:6 146:1,3 156:6,7 159:4 167:13 168:11 174: 19 sales ^[1] 125:23 same ^[29] 4:18 14:3,3 15: 25 18:24 35:18 37:9 39:4 48:2 56:24 69:22,22 77:13 78:1 82:11 86:21 92:8 93: 11 112:6,10,24 129:14,21 133:24 135:5 142:25 153: 17 154:15 175:25 sanction ^[1] 162:6 sanctioning ^[1] 73:25 sandy ^[7] 38:10 49:13 156: 5 160:18,23 161:1,5 sat ^[2] 20:18 112:8 satisfied ^[3] 38:5,6,15 satisfy ^[1] 137:15 saw ^[8] 14:25 23:1 42:6</p>	<p>109:3,5 110:10 119:4 149: 11 say ^[66] 5:3 7:10 11:3 12:9 19:10,11,12,17 25:14 26:16 29:16 33:8 34:9 35:17 37:9 40:1 43:4 44:24 46:15 50: 16 54:9,10 58:1 61:8,11 68: 5,21 71:10,13 73:9 81:4 83: 4 89:19 91:12,13,16,17,21, 21 95:23 99:24 100:25 101: 1 102:14 109:7 112:4 117: 5 129:2 136:21 137:7 138: 7 140:4 152:3,11 158:12 160:25 162:2 163:20 164:2 166:17 167:4 168:23 170: 22 173:6 175:9 176:12 saying ^[53] 8:3,23 45:21 53:23 54:22,25 58:11 59:6 62:5,11,12 64:18 69:8 79: 12 80:22 88:15 90:1,22 91: 4,9 92:15,24 100:21 104:5, 10,14 106:25 107:4,5 109:8 110:3,8 111:20 112:10,12 119:1 129:7,11 130:3,6 132:8,14 137:18 140:5,17 142:15 154:16 156:5 164:3, 4 172:2 176:16 178:24 says ^[17] 3:1 21:18 34:11 39:5,14 85:7 86:4,6 89:10 91:23 93:7 98:21 127:19 141:14 149:18 165:9 177: 21 scenario ^[1] 131:18 scheduled ^[1] 126:5 searching ^[1] 22:7 second ^[35] 6:21 7:16,18 14:6 25:6 33:3 34:5 37:7,8 38:2 48:17 53:22 66:3 69: 21 78:14 87:21,22 90:6,25 91:1 92:1 94:10 101:9 124: 7 130:13 132:5,5 138:4 142:10 143:1 144:23 151: 18 152:5 155:20 177:25 secondly ^[1] 126:21 secretary ^[6] 15:15,16,24 163:14 164:1 167:23</p>	<p>section ^[3] 53:20 111:19 150:5 sections ^[4] 57:17 71:2 150:6 178:3 see ^[40] 3:22 20:7 22:25 33: 11 34:19 45:20 56:6 60:6, 13,23 68:7 69:4 75:19 77: 25 80:5,12,22 88:4,17,18, 25 90:1,13 98:2 102:16,20, 23 104:8 107:4 111:18 113: 16 128:18 136:11 137:6 143:14 145:21 153:19 160: 9 164:7 175:22 seeing ^[1] 60:2 seeking ^[6] 24:1 75:11 77: 20 88:8,11,12 seems ^[1] 112:22 seen ^[4] 12:10 23:13 32:22 82:1 seeno ^[1] 44:17 sees ^[1] 15:22 selling ^[1] 26:19 semantics ^[5] 104:9 112: 21 113:17 114:1 116:11 send ^[17] 17:3,4 53:22 70:3 164:12,13,13,16 166:18 167:23 169:6 170:8,10,18, 19 171:3 172:3 sending ^[3] 15:18 168:7 177:16 senior ^[1] 17:21 sense ^[4] 12:5 62:20 137:2 144:14 sent ^[10] 15:24 18:18 19:3 53:23 55:10 60:5,15 163: 18 164:21 166:8 separate ^[2] 162:7 166:1 serve ^[18] 24:11,11 49:24 70:2 162:18 163:5,6,21 164:1 165:11,14,18 168:2, 23 169:16 171:3 173:6,12 served ^[9] 11:5 50:25 125: 13 131:23 165:17,21 168:2, 22 177:16 service ^[6] 163:7 168:25 169:2,4,7 170:3</p>
--	--	--	--

<p>serving ^[3] 162:17 165:12 173:5</p> <p>set ^[10] 49:15 65:17,18 70:5 86:25 96:2,2,3 160:7 174:25</p> <p>sets ^[1] 98:4</p> <p>seven ^[3] 6:3 23:5 25:15</p> <p>shall ^[2] 126:1,6</p> <p>sharon ^[1] 44:12</p> <p>she ^[7] 23:21 136:12 141:10,11,11 164:15 172:13</p> <p>shock ^[1] 161:7</p> <p>short ^[1] 123:22</p> <p>should ^[28] 6:24 8:24 18:10,13 39:25 49:7 50:17 56:12 60:1 61:14 73:25 83:2,19,22 84:9 85:15 96:24 99:14,25 116:24,25 125:4 129:2 138:21 141:17 145:12 160:13 178:25</p> <p>show ^[1] 69:9</p> <p>showed ^[1] 148:2</p> <p>shown ^[3] 109:11,11 130:18</p> <p>shy ^[1] 177:5</p> <p>side ^[9] 16:10 17:2 30:19 42:13 68:19 118:7,8 177:17,17</p> <p>sides ^[5] 6:2 59:6 134:2 143:16 153:1</p> <p>side's ^[1] 74:8</p> <p>sign ^[11] 16:4 17:6,20,22 18:14,23 42:8 57:14 63:2 64:7,9</p> <p>signed ^[9] 16:22 18:22 21:17 52:23 57:24 58:17 64:13,17 143:9</p> <p>significant ^[1] 71:11</p> <p>simple ^[6] 102:4 104:4,5,18 115:11 151:16</p> <p>simplify ^[1] 104:18</p> <p>simply ^[11] 40:16 41:6 101:24 102:1 115:16 124:14 127:6 147:5 157:4 168:23 174:13</p> <p>since ^[10] 3:5 6:23 8:16 17:</p>	<p>8,8 84:22 152:19 162:2 166:6 178:24</p> <p>single ^[10] 30:8 32:13 36:5 41:2 48:3 67:8 75:6 84:23 93:14 126:23</p> <p>single-family ^[8] 24:23 32:14 35:8 40:10 67:9 84:22 128:5,8</p> <p>sir ^[1] 23:25</p> <p>sits ^[1] 17:22</p> <p>sitting ^[1] 106:8</p> <p>situation ^[1] 106:8</p> <p>situations ^[1] 49:24</p> <p>slash ^[1] 143:24</p> <p>slide ^[1] 55:14</p> <p>slides ^[1] 75:5</p> <p>smaller ^[1] 108:9</p> <p>sold ^[3] 26:10,23 67:6</p> <p>some ^[20] 3:5 6:21 16:10,11 18:8 40:23 45:11 47:23 57:16,20 66:17 82:5 135:16 137:21 139:11 144:12 146:6 148:9 159:24 160:13</p> <p>somebody ^[7] 118:20 140:9 166:18 168:2,4 169:20 171:21</p> <p>somehow ^[16] 22:24 33:13 43:18 56:16,17,19 60:20 61:4 108:22 113:13 135:17 137:7 141:23,23 158:1 166:7</p> <p>someone ^[4] 16:24 17:22 143:20 167:9</p> <p>something ^[25] 28:16 30:2 31:4 33:3 55:14,17 59:19 60:20 63:17 71:17,18,18,19 72:15 93:18,19 101:12 158:24 166:7,11,12 168:6,21,22 177:2</p> <p>sometimes ^[1] 56:6</p> <p>somewhat ^[2] 63:21 84:2</p> <p>somewhere ^[1] 106:20</p> <p>soon ^[1] 177:1</p> <p>sorry ^[11] 82:4 95:15 98:23 119:22 120:24 122:13 125:8 138:14 148:14 169:12</p>	<p>170:12</p> <p>sort ^[2] 6:21 33:9</p> <p>sought ^[2] 97:2 100:22</p> <p>speak ^[6] 5:2 24:12,15,16 144:22 163:9</p> <p>speaking ^[3] 21:9 23:2 51:12</p> <p>speaks ^[2] 149:14 163:9</p> <p>special ^[8] 22:4 36:14 37:10 38:9 49:13,25 124:11 153:23</p> <p>specific ^[11] 34:18 37:25 38:21 86:16,23 93:7 119:21 130:20 162:18 167:18 173:19</p> <p>specifically ^[11] 13:25 21:18 22:1 42:10 98:1,15,18 126:1 138:1 162:25 165:5</p> <p>spent ^[11] 5:18 16:17 20:2 31:17 79:23 86:8 137:7,11,13 139:23 159:6</p> <p>spoke ^[1] 136:17</p> <p>spoken ^[3] 25:14 142:11 148:11</p> <p>springs ^[2] 79:22 131:11</p> <p>square ^[1] 144:7</p> <p>staff ^[8] 15:3,8 19:3,7 51:13 57:21 58:21 165:22</p> <p>staff's ^[1] 179:12</p> <p>stand ^[5] 40:20,24 54:10 85:23 154:20</p> <p>standard ^[2] 18:4 42:8</p> <p>standing ^[18] 51:9,14 53:14 54:6,16,20 55:2,4 56:25 57:11 59:3,16 60:24 61:2 148:17 167:17 176:21,22</p> <p>standpoint ^[1] 153:20</p> <p>stands ^[1] 136:11</p> <p>start ^[16] 3:3,15 4:11 14:19 20:12 25:22 51:4,8 64:24 69:12 92:23,25 100:12 149:4 155:17 172:8</p> <p>started ^[7] 61:19 75:15 96:1 116:5 154:9 155:11 179:2</p> <p>starting ^[1] 3:13</p>	<p>state ^[1] 135:15</p> <p>stated ^[4] 14:11 25:10 44:6 124:15</p> <p>statement ^[12] 6:19 10:7 24:14 25:22,23 26:3 33:18 40:3,15 113:2 139:3,4</p> <p>statements ^[3] 6:20 21:12 45:4</p> <p>states ^[1] 40:16</p> <p>statute ^[2] 149:17,18</p> <p>statutory ^[1] 158:18</p> <p>stay ^[15] 120:18 121:2,3,9,15,16 122:7 123:11 125:10,11 144:23 145:4,22 146:20,22</p> <p>staying ^[1] 179:10</p> <p>stem ^[1] 118:25</p> <p>step ^[7] 46:3 65:18 77:16 92:1 105:14 108:10 146:10</p> <p>stewart ^[1] 15:16</p> <p>stick ^[2] 33:9 68:25</p> <p>stickler ^[4] 166:3,24 167:2 171:22</p> <p>still ^[14] 15:15 96:6 106:22 111:10 122:4,22 133:10 154:19,22 156:15,16,20 160:3 168:4</p> <p>stipulate ^[1] 147:2</p> <p>stipulated ^[1] 148:6</p> <p>stipulation ^[2] 168:10 171:5</p> <p>stopped ^[1] 96:9</p> <p>strange ^[1] 159:24</p> <p>stricken ^[5] 21:19 50:17 119:5 135:12 160:20</p> <p>strictly ^[1] 4:20</p> <p>strike ^[7] 3:6 42:9 76:20 116:4,14 118:18 143:8</p> <p>strongly ^[1] 161:4</p> <p>struggle ^[1] 139:21</p> <p>stuck ^[1] 154:21</p> <p>stuff ^[5] 28:20 50:23 62:2 138:20 178:11</p> <p>style ^[1] 145:18</p> <p>sub ^[1] 150:5</p> <p>submission ^[2] 97:9 143:</p>
---	---	---	---

<p>19 submit ^[12] 10:18 46:10 53:8 64:20 115:4 117:16, 20 120:1,3 143:22 163:23 177:11 submits ^[1] 16:24 submitted ^[11] 5:7 15:7, 23 18:21 21:16 32:23 52: 20,21,22 56:5 144:4 submitting ^[3] 53:25 56: 13 92:20 subsection ^[1] 150:1 subsequent ^[5] 4:4 46:8 98:13 105:18 128:12 substance ^[10] 4:14,15,20 5:3 51:24 63:23 64:1,22 80: 21,24 substance-wise ^[1] 46:3 substantive ^[1] 80:12 successful ^[4] 105:12 142:4 151:14,14 successfully ^[2] 106:1 140:22 such ^[6] 3:11 16:13 22:16 31:14 58:15 90:14 sue ^[1] 89:17 sufficient ^[2] 70:25 137: 14 suggest ^[4] 108:22 142:14 170:25 177:9 suggested ^[2] 64:21 147: 21 suggesting ^[5] 76:4,7 175:13 176:6,11 suggestion ^[6] 33:17 140: 21 168:20 171:1 174:13 176:24 suggests ^[1] 109:23 suit ^[2] 88:16 101:15 sum ^[2] 151:11 154:1 summary ^[19] 25:8,10 50: 9 70:17,18 71:1,5,6,25 72:4 73:9,19,19 74:4 78:4 93:6 96:4 103:1 107:23 superior ^[1] 37:11 supplement ^[4] 35:15 75:</p>	<p>2 128:10 156:23 supplemental ^[17] 4:1,2 6:22 7:17 8:11 9:11 10:9 11:4 13:6,8,10 24:21 37:1 52:12,15,17 59:25 supplementals ^[1] 104: 25 supplemented ^[1] 21:7 supplementing ^[1] 152:1 supplements ^[1] 102:22 support ^[1] 44:23 supported ^[2] 22:21 143: 7 supposed ^[5] 20:3 29:14 106:13 115:24 152:10 supreme ^[5] 31:24 106:14 151:7 152:8,23 sure ^[37] 4:18 11:21 12:11 15:14 16:9 18:8 48:1 56:1 57:9,19 62:18 68:15 72:25 73:4 76:15 77:1,16 79:21 91:5 93:1 101:12 104:17 114:9 121:23 123:2,5 124: 18 148:20 149:16 153:15 164:7,16 167:24 168:5 171: 17 173:10 176:3 surprise ^[1] 60:2 surprised ^[1] 161:12 suspected ^[1] 161:4 switch ^[1] 62:15</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take ^[14] 16:11 24:25 33:3 58:18 70:18 77:8 81:17 85: 12 97:5 117:13 127:22 155: 16 177:13 179:6 taken ^[5] 23:16,17 50:15 60:10 157:11 takes ^[1] 13:20 taking ^[3] 37:18 123:23 125:8 talk ^[11] 25:15 74:19 83:4 98:8,15,17 99:3,7,13 124:4 142:5 talked ^[11] 75:5 83:10,18 85:23 86:13,15 87:7 95:25 96:19 125:17 174:21</p>	<p>talking ^[13] 24:3,4 27:4 107:18,19 112:23 163:2,8, 20 165:23 169:3,4,5 talks ^[1] 141:13 telephone ^[1] 176:11 tell ^[38] 3:18 4:4,9 7:11,14 8:16 16:14 17:24 20:17 23: 22,24 24:6,17 29:18 55:3, 21 56:23 57:12,13,15 58:22 59:2,9,18 60:24 61:25 62: 24 63:5 82:5 107:15 115: 20 140:3 142:19 161:25 162:4 167:14 171:21 172:6 telling ^[4] 9:16 58:18 162: 13 170:7 tells ^[1] 37:22 ten ^[2] 121:9 176:7 tend ^[1] 139:15 termed ^[1] 79:1 terms ^[5] 24:19 40:23 90: 22 142:5,22 testified ^[4] 82:24 83:6 85: 5 86:1 testifies ^[2] 138:16,18 testimony ^[30] 20:10,20 21:11,12 25:18 27:19 31: 23 32:9,24 35:10 40:12 44: 24 65:7,9 66:16 77:10 78: 18 82:17,19 85:16 86:15 136:12 138:13,14 139:1 141:8 142:5,6,7,7 than ^[18] 17:15 21:1 25:15 50:24 61:5,20 81:13 88:2 100:3 101:2 110:5 111:4 113:14 116:11,11,14 141: 16 146:12 thank ^[24] 4:10,13,23 14: 17 18:12 28:22 51:2 117: 24 122:2,17 123:15,17 125: 12 146:19 147:4 148:15 155:4 167:16 172:21 173: 13 178:5 179:5,10,11 them ^[65] 3:1,5 13:14,20 19:3,3 20:16 22:8,22 24:18 31:13 37:13 40:1,7 43:16 60:11 63:6 66:12,13,17,17</p>	<p>67:7,8 70:4,21,24,25 73:14 74:25 79:3 80:8,14 94:13, 20 106:10 107:18 108:12 119:12 122:22,22 128:1 132:14 138:11 140:10,11 141:6,10 143:19,23 155:25 160:18 163:25 164:10,19 167:13 168:13 170:4,7 171: 4 172:15,16 174:6,9,10 176: 7 themselves ^[3] 16:11 79: 6 111:2 theoretical ^[5] 30:6 40:8 41:7 50:11 133:14 theories ^[18] 65:20,24 70: 19 74:15 89:3,4,21 90:2 93: 2,24 102:2 112:7 129:3,4 136:22,23 142:2 147:8 theorized ^[1] 85:11 theory ^[67] 65:4 66:3,8,25 67:5,18 68:3,15,18,19 70:5 71:6,21 73:14 74:23,23,24 76:12 77:20 78:1,3,7,9,14, 25 79:25 83:1,25 84:1,13 85:13 90:25 91:2,14,23 94: 6,10 95:25 96:17 98:5 100: 2,2 102:6 103:19,22 105:11, 12,22,23 108:7,8 112:1,1, 10,15 113:14,19,25 115:8, 13 116:3,7 127:11 128:20, 20 129:8 130:8 thereby ^[1] 132:2 therefor ^[1] 40:18 therefore ^[11] 36:24 39:25 43:25 66:1 73:24 79:2 83:8 108:22 128:6 141:17 150: 14 therein ^[1] 13:25 there's ^[32] 25:24 33:16 37: 12 39:23 42:2 43:11 44:23 48:7,8,11 50:4 53:20 60:19 76:10 88:19 91:16 93:1 94: 11 106:17 115:25 118:14 120:18 125:7 141:13 143:6 149:7,12,12 159:21 167:19 171:18 178:11</p>
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<p>these ^[25] 9:17 11:16 37:18 50:20,23 57:16 61:17,21 78:19 80:12 96:16,21 97:19 98:13 116:8 121:19 131:12,22 148:22 159:4 160:8 174:4,14 176:3,4</p> <p>they'd ^[1] 78:1</p> <p>they'll ^[1] 152:11</p> <p>they're ^[11] 90:8,8 101:11 111:20 122:5 128:11 136:22 164:17 168:25 170:5 171:13</p> <p>thin ^[1] 71:19</p> <p>thing ^[29] 8:21 19:11 24:5 29:1 37:9 40:4 50:5 53:22 59:15 61:19,20 79:20 86:21 90:14 106:22 112:24 124:17 129:14 140:1,2 141:15 144:18 159:24 160:7,24 175:23,25 176:2 178:10</p> <p>things ^[21] 16:6 20:16 44:16 58:24 68:9 69:4 76:10 89:18 95:4 96:25 114:4 119:19,23 127:25 135:9 138:23 148:7 163:2 165:21 170:25 173:25</p> <p>think ^[42] 5:18 17:17 23:10 38:14 51:12 52:6 61:4,19 62:1,3 75:13 80:7 81:7 82:3,12 85:6 88:7,15 91:1 95:4 96:6 97:18 99:25 106:15 107:10 109:23 112:23 116:10,11,14 117:5 130:23 135:21 136:16 144:4 149:3 152:13 159:1 162:6 173:9 175:15 178:11</p> <p>thinking ^[2] 5:17 61:10</p> <p>third ^[7] 14:7,21 34:7 36:21 38:24 79:18 176:16</p> <p>those ^[37] 11:11 25:13 26:20,20 30:18 32:20 43:10 50:18 59:22 60:15,24 66:11 70:24 71:2 73:12 77:23 84:9,21 86:7 89:20 93:23,24 94:1,16 106:16 108:19 116:12 118:18 122:4 129:</p>	<p>20 134:24 141:7 143:2 150:15,25 157:22 166:4</p> <p>though ^[9] 64:1 68:1 85:18 96:5 103:11 118:25 140:18 159:11 174:18</p> <p>thought ^[26] 8:10 11:10 12:24 13:1 27:7,22 39:8 57:17 60:4 84:8 85:9 89:15,17 90:3,3 91:4 95:13 97:12 101:13 104:12 105:2 107:1 116:16 140:7 162:23 167:17</p> <p>thoughts ^[1] 176:18</p> <p>thousand ^[3] 3:9 24:22 125:14</p> <p>three ^[19] 25:16 47:10 78:17,22 83:4 85:23 128:22 136:21,24 158:22 162:18 163:18 164:14,21 165:14 170:6 173:6 178:15,22</p> <p>through ^[65] 3:21 7:8 14:2,2 15:7 17:7 21:21,22 22:10 23:14,23 26:22 28:3 29:2 34:14 40:14 48:3 63:7 66:12,21,22 68:10 69:5 71:7 72:19 80:2 81:9,13 82:3,21,22 93:23 94:8 102:21 105:10 107:25 112:8 125:9 129:1 130:12,12 134:16,24 139:1 152:24 154:17 155:8,15,20,25 156:10 157:22 162:22 165:19,19,20 168:4 169:7,17,18 171:3 172:3,9 173:1,12</p> <p>throughout ^[3] 6:20 37:15 105:7</p> <p>throw ^[3] 107:13,14,15</p> <p>thrust ^[2] 126:10 137:17</p> <p>time ^[63] 5:19 15:17 16:18 20:3 22:6 25:6 28:23 29:12,19 33:23 34:11,13,15,16 38:10 40:11,21,24 41:1,3,14,23,24 45:11 54:23 57:3,6 58:10 62:5 70:20 72:22 73:15 74:3 75:4 78:16 79:23 80:13,14 95:15 96:12 97:1 99:16 101:21 108:6 109:16</p>	<p>113:20 114:10 120:16 121:11 132:7 134:18 137:8,11,13 144:12 158:20 159:6 167:9,10 175:14,22 179:11,12</p> <p>times ^[4] 32:25 33:1 178:16,22</p> <p>tired ^[1] 103:13</p> <p>title ^[1] 37:22</p> <p>today ^[9] 25:16 41:4 43:22 49:8 118:1 122:19 160:10 174:19 177:9</p> <p>today's ^[2] 28:19 140:20</p> <p>together ^[9] 10:23 13:7 51:11 59:8 91:3 118:9 126:4 176:13 177:23</p> <p>token ^[1] 82:11</p> <p>told ^[9] 28:10 57:24 77:19 104:11 107:19,20,22 111:3 176:20</p> <p>too ^[13] 55:21 72:7 85:5,13 125:8,11 138:23 146:22,24 148:20 151:17 166:24 179:12</p> <p>took ^[9] 10:15 40:19 58:20 81:10,11,12 86:6 160:15 161:11</p> <p>topics ^[1] 162:3</p> <p>total ^[4] 21:25 42:11,24 151:11</p> <p>totality ^[1] 93:12</p> <p>totally ^[2] 133:22 138:6</p> <p>tough ^[1] 29:6</p> <p>trace ^[1] 172:25</p> <p>track ^[3] 98:7 175:11 176:9</p> <p>tracked ^[1] 74:14</p> <p>transactions ^[1] 85:8</p> <p>transcript ^[6] 20:18 39:21,22,23 45:3 139:2</p> <p>transcription ^[1] 179:17</p> <p>transfer ^[1] 44:15</p> <p>transmit ^[1] 120:10</p> <p>transmitted ^[1] 56:11</p> <p>treat ^[2] 79:7,10</p> <p>treated ^[1] 80:4</p> <p>tried ^[19] 8:4 39:17 41:9 44:</p>	<p>18 45:7 68:18 71:20 74:23 75:2 78:7,20 85:2 94:17,17 101:25 138:23 150:17 161:8 162:19</p> <p>trier ^[6] 20:19 28:14 89:18,22 104:24 105:2</p> <p>trigger ^[1] 56:22</p> <p>true ^[9] 7:9 14:4 20:24 69:20 72:25 129:10 142:12 172:4 179:17</p> <p>truly ^[4] 62:1,2 67:14 145:12</p> <p>truthful ^[1] 139:15</p> <p>try ^[21] 34:9 55:2 56:2,18 58:23 75:4 82:16 93:20 94:16 96:22 106:22 107:12,17 108:7,8 135:20 139:20 148:25 160:9 177:15,23</p> <p>trying ^[33] 4:24 29:13 31:17 43:12 55:14 56:2 60:21 68:5,24 79:24 80:4,9,14 85:12,18 89:14 91:7 93:22 96:14 112:16 113:21 136:20 143:15 157:22 159:19 162:9 164:23 166:10 169:14 171:14,17 173:9 178:12</p> <p>turn ^[1] 47:4</p> <p>turned ^[1] 127:25</p> <p>turns ^[1] 133:9</p> <p>two ^[49] 9:17 13:21 18:21 20:7 23:17 24:17 33:19 40:20 47:23 50:6 61:17 65:18,20,24 66:16 70:19,22,24 71:2 74:15,15 81:3,4 89:3 93:2 102:2 105:14,22 108:10,19 112:7 124:5 129:3,4 130:7,10 136:24,25 142:2,2 152:25 157:4 158:9 159:11,17 163:2 164:11 171:16 176:15</p> <p>two-part ^[1] 65:18</p> <p>two-step ^[1] 105:13</p> <p>two-week ^[1] 121:11</p> <p>type ^[3] 23:12 83:7 107:14</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>u.s ^[1] 165:13</p>
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<p>uh-huh ^[14] 16:8 47:8 52:16 54:5 55:23 71:9 78:6 97:7,21 99:6 100:14 106:5 109:21 165:3</p> <p>ulterior ^[1] 43:12</p> <p>ultimate ^[1] 178:24</p> <p>unambiguous ^[1] 86:25</p> <p>unclear ^[1] 27:10</p> <p>uncomfortable ^[1] 57:16</p> <p>under ^[43] 4:5,22 8:13 22:8,13,18 24:24 26:14,23 27:15 44:4 49:13 50:13,22 55:14 70:12 73:24,25 80:5,5,16 84:7 98:21 99:3 119:10 121:13 128:21 130:22 131:10,11,17,21,25 134:25 135:22 149:19 152:18 158:11,19 159:19,20 160:2,4</p> <p>underscore ^[6] 82:17 96:14,22 97:16 106:7 159:19</p> <p>understand ^[79] 8:2 11:23 12:24 26:17,21 27:24 29:9 30:5 35:22 37:4 44:11 45:9 46:2,9,21 47:25 48:10,24 49:1 62:6 63:10 64:16,17 68:15 70:10 76:14 77:11 80:9 82:10 84:11 88:20 89:1 92:14 93:11,15,16 102:18,19 108:4 112:6,9 115:2,25 116:2,6 117:1 118:2,4,6,7,24,24 119:5 120:13 122:10 127:12,18 129:16 132:21 133:22 134:22,25 135:4,7,21 140:15 141:1 145:6 154:16,23 157:19,24 159:3 160:15,24 162:12 171:12 173:23 177:14</p> <p>understandable ^[1] 47:24</p> <p>understanding ^[10] 18:16 51:12 54:15,22 56:5 85:7 114:14 139:16 155:13 169:25</p> <p>understands ^[3] 77:16 114:9 148:3</p> <p>understood ^[12] 5:22 27:</p>	<p>19 34:2 40:12 58:7 84:13 86:3 106:19 118:8 133:2,3 152:20</p> <p>unfortunate ^[1] 49:5</p> <p>unfortunately ^[3] 20:11 124:24 179:2</p> <p>unhappy ^[1] 49:5</p> <p>unknown ^[4] 30:18 137:21 140:6,23</p> <p>unless ^[2] 17:23 59:4</p> <p>unnecessary ^[1] 3:8</p> <p>unpaid ^[1] 91:15</p> <p>unpublished ^[1] 152:9</p> <p>unquantified ^[1] 140:6</p> <p>until ^[17] 8:11,21 18:5 27:10 68:17 94:12 116:9 121:4,16,19 122:19 127:2 134:23 145:7,12 150:3 159:5</p> <p>untrue ^[1] 42:24</p> <p>up ^[32] 3:1,23 7:15 13:6 20:16 21:23 25:4,10 33:3 45:13 60:6 65:17,18 71:18 73:5 76:11 81:24 93:17 94:10 110:6 122:6 127:5 150:3 151:1 155:9 157:11 159:5 160:6,16 161:6 162:2 166:22</p> <p>upheld ^[1] 106:13</p> <p>upon ^[43] 15:19 19:20 30:6 31:23 43:22,23 45:9 50:24 51:5 70:8 71:8 73:15 74:25 77:22 79:3 83:3,15 84:9 86:23,24 87:16 93:9,21 94:1 96:16 99:16 100:10 103:23 107:13 114:22 115:10 120:2,6 124:1 125:13 127:7 140:23 150:6 153:12,13 165:21 174:19 177:17</p> <p>upsetting ^[1] 142:14</p> <p>us ^[39] 7:11 14:23 30:18 32:15 37:14 40:1 53:6 60:7 70:9 75:3,8 77:19,22 78:10 85:13 88:22 91:2 107:19,20 108:15,25 113:3,7 114:5 115:17 117:12,14,15 129:18,20 130:12 132:16 136:2</p>	<p>144:7 154:24,25 160:8 176:20,21</p> <p>use ^[4] 6:10 42:17 80:17 171:10</p> <p>used ^[7] 6:13 31:18 112:2,2 115:7 130:8 151:15</p> <p>using ^[3] 81:22 171:6,9</p> <p>usually ^[2] 55:2 58:12</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid ^[2] 159:12,25</p> <p>valley ^[6] 38:10 49:13 156:5 160:18,23 161:1</p> <p>value ^[1] 111:12</p> <p>values ^[1] 105:23</p> <p>various ^[1] 76:19</p> <p>version ^[1] 60:12</p> <p>versus ^[2] 151:7 152:21</p> <p>vertical ^[1] 83:19</p> <p>vertically ^[1] 31:3</p> <p>very ^[71] 4:13,17,19 5:21 7:2,9,15,24 9:5,8,13 11:2 13:12 18:23 19:12,22 23:8 27:10 28:17 29:11,13 32:5 38:21 41:22 47:19 48:5 49:10,17 50:2 51:24,24 57:16,18 59:17,17 60:13,23 62:25 64:25 67:17 68:16 73:20 80:2 82:18 83:25 90:8,8 91:5 94:14 95:2 97:8 101:24 102:1 109:17 111:23,25 116:13,17 118:23 119:9 136:16 139:12 146:11 157:4,24 161:19 165:7 170:15 173:18 177:6 178:8</p> <p>views ^[1] 153:2</p> <p>virtue ^[2] 15:10 19:4</p> <p>visualize ^[1] 83:17</p> <p>volumes ^[1] 23:17</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait ^[2] 57:17,20</p> <p>waited ^[1] 125:4</p> <p>waiting ^[1] 45:11</p> <p>waive ^[2] 156:14 162:11</p> <p>waived ^[2] 158:1 161:18</p> <p>waiver ^[1] 18:9</p>	<p>waiving ^[4] 118:16 156:21 160:21 179:4</p> <p>walk ^[2] 48:2 68:10</p> <p>walked ^[3] 68:13 105:10 148:2</p> <p>walt ^[3] 31:11 85:4,5</p> <p>wanted ^[34] 6:22 7:21 8:12,25 11:13,14,21 13:9 15:14 18:7,11 28:24 63:11 68:9 69:8 76:25 80:23 84:4 86:11 90:21 95:1 96:25 102:18 105:16,17,18 114:5 118:1 125:4,5,7 134:22 155:13 160:10</p> <p>wanting ^[2] 156:2,12</p> <p>wants ^[6] 17:2 125:2 165:17,21 168:19 169:15</p> <p>warranted ^[2] 36:9,10</p> <p>wasn't ^[15] 10:22 17:19 27:9 30:9 34:2 40:7 63:21 67:5 81:5 82:24 86:23 101:15 116:18 137:3,9</p> <p>way ^[33] 4:18 12:1 17:12,12 22:16,16 28:1 41:22 43:13 49:14 58:13 68:17 69:5 71:7 76:13 78:3 80:23 81:13 87:14 91:16,21 94:5 116:2 133:9 135:20 149:25 162:10 168:18 176:17,25 177:7 178:6 179:2</p> <p>week ^[4] 17:18 20:2,12 161:12</p> <p>weekends ^[1] 121:11</p> <p>welcome ^[2] 14:18 179:14</p> <p>well ^[54] 10:1,22 12:10 16:14 19:21 20:25 28:21 29:21 32:24 34:12 39:21 49:7 50:25 52:22 55:7 60:24 64:4 67:7 68:14 72:17 73:7 80:22 81:5,9 83:25 85:10,20 88:12 90:9,13 91:6,20 94:1 101:17,23 102:12 109:18 112:13,22 119:16 120:22 121:14 137:8 138:3 139:11 141:19 152:17 163:1,21 171:19 173:3 174:15,17</p>
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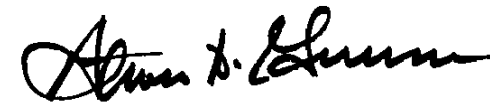
<p>176:18 we'll ^[6] 49:8 117:20 141:15 175:25 177:11,16 went ^[24] 13:3 26:22 30:13 40:21 46:2 66:12 71:10,13 72:19 76:15 80:23 81:9 82:21 83:4,10,13 84:2 86:15 104:12 109:5 126:9 155:15 156:10 172:25 we're ^[32] 7:22 9:21 13:2 14:14 26:3 53:25 74:12 76:13 85:6 90:11 96:7 106:23 112:6 113:7 120:1,2 133:24 134:2,9 135:5 140:3 144:2 155:17 163:1,8,20 172:17 173:18 176:13 177:14 178:12 179:7 weren't ^[5] 55:13 79:19 81:22,23 88:1 westlaw ^[1] 152:22 we've ^[3] 107:25 162:2 174:21 weyerhaeuser ^[1] 44:16 whatever ^[1] 130:11 what's ^[17] 19:1 29:13 41:9 44:13 49:4 59:11,12,12 77:12 116:12 117:4 119:10 131:4 138:24 145:21 150:22 166:5 whatsoever ^[2] 14:10 97:2 when ^[95] 3:23 7:8 9:12,17 10:4,7 11:19 12:2 16:3,20 17:17,19,21 19:10 20:16 26:7,16 28:2 31:15 34:15,17 37:24 41:9 42:6 44:9 49:19,22 50:3,18,20,23 54:16 61:15,17 66:9,18 71:22 80:18,20 81:24 82:4,6 86:3,20 93:6 104:12 106:2 107:11,15 108:24 112:3,5 114:1 121:23,25 135:10 136:11,16 137:18,19 138:13,14 139:14 141:9,10,11 142:5,17 143:4,5 145:22 146:6,17 148:22,23 150:12 151:1,13</p>	<p>155:8,9 156:4 158:16 160:10,22 161:10,11 162:17 164:2 165:12 166:4 168:1,5,21 173:5 178:13 whenever ^[1] 17:18 where ^[44] 6:14 7:22 8:15 9:21 13:2 14:13 24:18 25:10 26:7 32:17 48:22 63:18 69:10 77:24 88:25 89:18 93:20 98:18,23 106:7,8 107:7 109:3 110:25 111:5,8,18 114:19 116:6 125:3,5 128:18 132:25 137:6 141:21 144:3 153:19 156:13 157:20,24 160:12 164:12 177:9 178:12 whereas ^[1] 106:10 where's ^[1] 57:3 wherever ^[1] 20:18 whether ^[46] 4:21 7:11 15:1 17:10,10 26:4 29:11 37:12 41:16,18 63:2 67:13 79:15,17,24 80:15,15,16,17,18 83:2,8 84:21,24 91:15 98:2 106:24 116:10 127:8 128:16 133:5,7 134:2 138:10 142:9 147:11 152:8 155:9 156:11,13 162:24 168:12,13 172:6 177:22 178:7 which ^[64] 4:1 6:5,18 14:22 15:9,17 19:5,7 22:16,22 23:13 25:9 27:16,21 30:11 32:25 33:4 42:20 43:21 46:3 47:24 49:7,14,24 54:18 59:10 61:1,4 63:13 65:9 75:15 80:15 87:16 89:22 93:20 95:20 100:22 101:9,19 106:10,12 125:18 127:1 128:8,21 130:17 134:6 135:11 137:16 139:21 141:6 142:3 150:6,8 151:11 158:13,19 159:13,18 160:18 161:20 166:11,17 167:17 while ^[1] 146:16 whittemore ^[11] 32:10 78:19,22 79:7 80:10 85:17,21</p>	<p>87:7 94:18 127:24 139:9 whittemore's ^[3] 81:11 86:14 142:7 who ^[18] 15:15,24 34:10 50:18 64:14,15,15 78:20 86:4 125:16 165:17 168:13,14 170:4,7 177:25 178:1,22 whoever ^[7] 16:22 163:6,21 168:24 169:18 172:16 177:24 whole ^[14] 24:5 44:11 61:20 73:9 79:19 85:8 127:4 128:4 134:6 135:16 136:15 138:19 141:15 158:21 whoops ^[1] 76:13 who's ^[2] 58:5 110:6 why ^[79] 4:9 7:25 8:3,7,18,18 9:4,12,17 10:3,17,20 11:9 12:1,2,22,25 13:3,5,9 17:1,3 30:20 35:14 39:17 43:11 51:9,14,20 53:19,19,20 57:5,18 58:24 60:1,23,24 61:21 62:18 63:21,24 79:10 80:1,11 86:7,17,22 88:19,20 89:24 111:25 112:2 114:22,24 115:1 117:11 118:10 120:11,11 128:11 135:3,4 136:14 141:9 143:7 146:14 148:17 149:4 152:6 155:13,15 157:1 159:18 160:24 161:6,8,9,15 wilkes ^[8] 31:11 40:20 41:11 78:18 85:4,5 135:14 136:13 will ^[88] 3:3,18 5:2,5 7:14 8:16 9:25 13:2 16:14 17:22 20:7,17 23:5 24:17 29:18 35:12 36:7,11,11,25 43:21 44:10 45:13,16 47:25 48:2 50:25 55:3 56:23 57:12,13,14,15 58:22,24 59:2,3,9,18 61:6,25 62:24 63:6 82:5 83:16 87:15 93:6 106:6 108:18 115:20 116:1,21 117:16 118:23 122:21 139:4 140:3 141:15,24 142:1 143:25</p>	<p>144:1 145:9 146:22 154:24 158:6,24 160:22 161:25 162:4 166:4 168:7 169:13,14,16,17 171:3 172:11,15 173:12,24 176:14 177:5 178:6,12,16,18,24 win ^[8] 68:20,21 136:5,6 137:3,19,19,20 wishes ^[1] 117:12 withdrawn ^[1] 92:19 withholding ^[1] 36:22 within ^[17] 12:17 14:11 19:21 30:12 31:1,4 34:19 37:24 98:9 117:15 127:9 149:8,23 151:13 167:9 174:18 176:7 without ^[8] 54:1 57:4 137:25 140:10 143:22 156:25 165:13 172:8 witness ^[3] 40:20 85:17,23 witnesses ^[6] 78:17,19 81:10 85:18 93:24 139:12 wiznet ^[22] 162:19,22 163:4,21,21 165:19,20,20,22 168:21 169:8,17,18 171:4,6,11 172:3,9,15,16 173:1,12 wolfram ^[17] 23:15,18,20 24:2 31:11 37:23 38:11 40:13,19,22 41:3 78:17 135:13 136:13 138:15,18 142:18 wolfram's ^[1] 82:17 won ^[11] 34:21 44:8 91:1 111:18 136:3 140:21 141:23 158:21,22 178:25,25 won't ^[3] 63:5 167:20 170:13 wool ^[2] 56:18,19 word ^[12] 6:11,13 11:10 27:16,16 39:8,23 61:10 80:17 111:20 112:3 130:8 wording ^[3] 101:1,2 119:3 words ^[4] 22:20 44:25 69:23 158:16 work ^[14] 5:18 29:3,6 41:22 53:6 59:21,21,23 80:10</p>
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<p>110:15 118:21 122:22 177: 23 178:1 worked ^[15] 4:17 7:18,25 8:1 9:5,8 13:5,7 19:12 23:3 62:5 111:23 122:21 155:8 159:4 works ^[2] 162:19 177:19 worth ^[2] 107:20,23 wouldn't ^[6] 46:14 72:18 79:4,5,11 137:24 wow ^[1] 66:24 write ^[2] 135:15 155:11 writing ^[3] 58:12,13,20 written ^[6] 37:20 46:15 126:2 131:4 150:8 168:12 wrong ^[6] 29:18 92:5 117: 3,3 130:24 140:1 wrongly-filed ^[1] 50:17 wrote ^[6] 15:12 111:16 128: 17 130:20 143:7,19</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yeah ^[2] 81:3 175:12 year ^[3] 131:3 168:3 169: 10 years ^[14] 12:10 25:2 30:8 33:22 40:11 41:8 44:8,9,14 47:23 50:12 87:10 128:7 133:15 yes ^[34] 3:17 4:11 5:1,10 9: 15 20:23 33:7 64:18 65:22 67:7 75:21 77:18 81:6 84: 19 91:19 93:16 100:6 109: 17 119:21 120:17 122:21 123:7,20 141:12 148:10,14 151:6 152:10 156:8 164:16 173:8,19 175:20 178:17 yet ^[4] 4:15 5:4 79:17 133:3 yielded ^[1] 73:12 you'll ^[6] 35:17,18,18 48: 16 172:19 176:10 you're ^[55] 14:18 24:1 28: 12 29:17,23 45:21 61:18 64:18 68:5 69:1,4,7,9 74:9 76:9 77:8,24 79:12 80:22 90:4,18 92:24 104:9,14 106:25 107:4,5 109:6,8</p>	<p>110:3 112:9,11 116:6 120: 24 129:7 132:16 133:10 140:14 142:17 143:7 152: 10 153:19 154:16,25 156: 11,15 161:12 164:3 169:23, 24 170:6 171:6,9 172:2 179:14 yours ^[2] 64:14 118:9 yourself ^[2] 35:24 56:19 you've ^[14] 11:2 23:25 32: 22 64:11,12,12 81:3 97:19 124:19 135:11 144:10 153: 21 163:6 174:19</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zealous ^[1] 7:24 zero ^[1] 93:1</p>
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MOT

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Attorneys for Plaintiffs

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PLAINTIFFS' MOTION TO SETTLE TWO
(2) SETS OF COMPETING JUDGMENTS
AND ORDERS**

COMES NOW, Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST (hereinafter collectively "Plaintiffs"), by and through their counsel of record, JAMES J. JIMMERSON, ESQ. and MICHAEL C. FLAXMAN, ESQ. of THE JIMMERSON LAW FIRM, P.C., and hereby submit their Motion to Settle Two (2) Sets of Competing Orders.

The basis for the Motion is that there is a dispute between the parties through their respective counsel with regard to the proper and final language to be included within the Court's Order of January 15, 2016, regarding the two (2) competing Orders from that day. Plaintiffs proposed Order from that day is attached hereto as Exhibit "1."

1 It includes certain Findings that Defendant, Pardee Homes of Nevada and its counsel
2 objects. Defendant's competing Order, which includes no Findings whatsoever, is
3 attached hereto as Exhibit "2."

4 Separate and apart from the same, this Court tasked each party to propose a
5 new final Judgment that incorporated the Court's Findings of Fact, Conclusions of Law,
6 and Order of June 25, 2014, and the Court's Order of May 13, 2015 Order on Findings
7 of Fact and Conclusions of Law and Supplemental Briefing Re: Future Accounting, filed
8 on May 13, 2015. Again, the Court requested Defendant's counsel to prepare the first
9 new proposed, revised and corrected Judgment, which the Court can see constitutes
10 the grossest of revisionist history, and nowhere recites accurately the Court's Order
11 from June 25, 2014, and the Plaintiffs who are unwilling to agree to this income, had
12 prepared their own Findings of Fact, Conclusions of Law, and Judgment, which closely
13 tracks the Court's Findings, Conclusions, and Order from June 25, 2014, to reverse the
14 Court's Findings, Conclusions, and final Order. The Plaintiffs' proposed Order with
15 regard to the new proposed Judgment is attached hereto as Exhibit "3," and the
16 Defendant's new proposed Judgment is attached hereto as Exhibit "4."

17 ///


18 ///

19 ///

1 It is clear that the Court will need to review and settle these Orders between the
2 parties. The Court may choose to write its own Orders. The Court's Orders from June
3 25, 2014 and May 13, 2015, are a fair and clear statement of the Court, Findings,
4 Conclusions and final Orders, regardless of whether either party agrees to the same or
5 not.

6 DATED this 14th day of March, 2016.

THE JIMMERSON LAW FIRM, P.C.

7
8 
9 JAMES J. JIMMERSON, ESQ.
10 Nevada State Bar No. 000264
11 MICHAEL C. FLAXMAN, ESQ.
12 Nevada State Bar No. 12963
13 415 South Sixth Street, Suite 100
14 Las Vegas, Nevada 89101
15 Attorneys for Plaintiffs


16 **NOTICE OF MOTION**

17 TO: ALL INTERESTED PARTIES:

18 PLEASE TAKE NOTICE that the undersigned will bring **PLAINTIFFS' MOTION TO**
19 **SETTLE TWO (2) SETS OF COMPETING JUDGMENTS AND ORDERS** on for hearing
20 before the above-entitled Court on the 27 day of APRIL 2016, at the hour of
21 9:00A.m., of said date, in Dept. IV, or as soon thereafter as counsel may be heard.

22 DATED this 14th day of March, 2016.

THE JIMMERSON LAW FIRM, P.C.

23 
24 JAMES J. JIMMERSON, ESQ.
25 Nevada State Bar No. 000264
26 MICHAEL C. FLAXMAN, ESQ.
27 Nevada State Bar No. 12963
28 415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

REPLY MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BRIEF STATEMENT OF FACTS

Following the January 15, 2016 hearing, this Court instructed Defendant, Pardee Homes of Nevada (hereinafter "Defendant"), to submit their proposed final judgment to accurately reflect the Court's June 25, 2014 Findings of Fact and Conclusions of Law and Order and the Court's subsequent Accounting Order, filed May 13, 2015. To no surprise, the Defendant's proposed Judgment given to Plaintiff's counsel on February 5, 2016, attached hereto as Exhibit 1, fails to incorporate *any* of the findings enumerated in *either* of the aforementioned Orders.

Once again, the Defendant seeks to rewrite the record in its proposed final Judgment by erroneously claiming that the Plaintiffs asserted a claim of relief arising out of Pardee's failure to pay commissions. Given the differing opinions and interpretations regarding this Court's orders and Defendant's failure to incorporate this Court's Findings, it is no surprise that both sides submitted competing final Judgments. It is the intent of the Defendant to make this Court believe that the Plaintiffs asserted two (2) theories of breach by Pardee, to include an alleged failure to properly pay commissions owed and failure to properly inform Plaintiffs. Nothing could be farther from the truth, as demonstrated in the January 15, 2016 hearing before this Court.

So as to ensure that the final Judgment entered is an accurate reflection of the record and this Court's Orders, Plaintiffs request that the Court withhold execution of either proposed Judgments until such time as the Court hears oral argument attesting to the validity of Plaintiffs' proposed Final Judgment and to the lack of validity in the Defendant's version.

Pursuant to NRCP 54(b), the Court's 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. Based on a closer examination of the differing understandings of this Court's orders, it is clear that a hearing is required so that this Court's final Judgment is aligned with this Court's decision granting relief, pursuant to NRCP 58(a)(2).

Furthermore, counsels have been unable to reach a resolution regarding the language to be contained in the Order from the January 15, 2016 hearing. As such, Plaintiffs respectfully request that the Court also refrain from execution of the competing Orders After Hearings until such time as counsels have had an opportunity to brief and oral present their arguments before this Court. Plaintiffs reserve the right to supplement this Motion with further briefing regarding Defendant's attempt to reverse the Court's Orders and otherwise, seek to gain an unfair advantage from their loss at Trial and from their having been found to have materially breached their contract with Plaintiffs, the Implied Covenant of Good Faith and Fair Dealing within that contract with Plaintiffs, and their requirement to provide an accounting to the Plaintiffs. Defendant misrepresentations of the Court's previous Orders and Findings of Fact, Conclusions of Law, and Orders, in a transparent effort to avoid the court's award of costs and attorney's fees against the Defendant is reprehensible and by the Defendant that is in abject bad faith. See EDCR 7.60, NRS 18.011.

II. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant its Motion to Settle Competing Orders, based upon the differing opinions as it relates to this Court's June 25, 2014 and May 13, 2015 Orders and based upon Defendant's willful failure to incorporate this Court's prior Findings of Fact Conclusions of Law and Order. Plaintiffs request that this Court withhold execution of the final Judgment until such time that oral argument has been given on the same.

DATED this 14th day of March, 2016.

THE JIMMERSON LAW FIRM, P.C.



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Nevada State Bar No. 000264

MICHAEL C. FLAXMAN, ESQ.

Nevada State Bar No. 12963

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Las Vegas, Nevada 89101

Attorneys for Plaintiffs

EXHIBIT “1”

EXHIBIT “1”

1 **ORDR**

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 v.

17 PARDEE HOMES OF NEVADA,
18
19
20 Defendant.

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

**ORDERS FROM JANUARY 15,
2016 HEARINGS**

21 This matter coming on for a hearing on the 15th day of January, 2016, on Plaintiffs'
22 Motion to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP
23 59 et al., Plaintiffs' Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's
24 Judgment Entered on June 15, 2015 et al., Plaintiffs' Motion for Attorney's Fees and
25 Costs, Plaintiffs' Motion for Order Requiring Defendant, When Serving by Electronic
26 Means, to Serve Three Specific Persons, Defendant's Motion for Attorney's Fees and
27
28

1 Costs, Defendant's Motion to Retax and Defendant's Motion to Amend Judgment, James
2 J. Jimmerson, Esq. and Michael C. Flaxman, Esq. appearing on behalf of Plaintiffs,
3 JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER
4 D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST and Plaintiff James
5 Wolfram being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on
6 behalf of Defendant, Pardee Homes of Nevada, and the Court having reviewed the
7 papers and pleadings on file herein, and heard the arguments of counsel, and for good
8 cause appearing:
9

10 THE COURT HEREBY FINDS that it did not consider its prior Orders from June
11 25, 2014 and May 13, 2015 as final judgments pursuant to NRCP 58(a) and had
12 contemplated that it would enter a final judgment after the parties had fully briefed the
13 supplemental issue of future account.
14

15 THE COURT FURTHER FINDS that the Judgment entered on June 15, 2015
16 was erroneous, did not comport with the Court's prior findings and Orders, and did not
17 encompass what was presented at Trial in this matter.

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion
19 to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as
20 Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and
21 May 13, 2015, and as such, is a Fugitive Document, is denied.
22

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion
24 Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment Entered on
25 June 15, 2015 et al, is granted. The language provided in the June 15, 2015
26 Judgment, specifically contained on page two (2), lines 8-13 and lines 18-23, is hereby
27 stricken.
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court expects
2 to enter a final judgment pursuant to NRCP 58(a) once the parties have submitted a
3 proposed judgment or competing proposed judgment for the Court's review. Should
4 the parties find it necessary to submit competing proposed judgments for the Court's
5 review, each party shall explicitly enumerate in a cover letter to the Court both the efforts
6 made by the parties in attempting reach an agreement on the proposed judgment and
7 the issues that precluded the parties from reaching an agreement on the language to be
8 contained in the proposed judgment.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court's Order
10 entered July 10, 2015 shall remain in full force and effect. That Order stays any
11 execution upon a final judgment until ten (10) days after written notice of entry of orders
12 resolving all parties' post-judgment motions, including any motions to amend or alter the
13 final judgment and motions resolving the parties' competing claims for attorney's fees
14 and recoverable costs, or until further order of the Court.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for
16 Order Requiring Defendant, When Serving by Electronic Means, to Serve Three Specific
17 Persons is denied in consideration of Defendant's counsel's concession that any and all
18 Orders, Judgments and/or electronic communications submitted by Defendant's counsel
19 prospectively be served upon Plaintiffs' counsel and staff via Wiznet.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for
21 Attorney's Fees and Costs is denied as moot in consideration that the Court has stricken the
22 June 15, 2015 Judgment.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Motion
24 to Amend Judgment is denied as moot in consideration that the Court has stricken the June
25 15, 2015 Judgment. Plaintiffs' Countermotion for Attorney's Fees is also denied as moot.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Motion
27 for Attorney's Fees is denied as moot in consideration that the Court has stricken the June
28 15, 2015 Judgment.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Retax is denied as moot in consideration that the Court has stricken the June 15, 2015 Judgment.

DATED this _____ day of _____, 2016.

DISTRICT COURT JUDGE

Respectfully submitted by:	APPROVED AS TO FORM AND CONTENT:
Dated this _____ day January, 2016.	Dated this _____ day January, 2016.
JIMMERSON HANSEN, P.C.	McDONALD CARANO WILSON, LLP

_____ JAMES J. JIMMERSON, ESQ. Nevada State Bar No. 000264 MICHAEL C. FLAXMAN, ESQ. Nevada Bar No. 012963 415 South Sixth St., Ste. 100 Las Vegas, NV 89101 <i>Attorneys for Plaintiffs</i>	_____ PAT LUNDVALL Nevada State Bar No. 3761 AARON D. SHIPLEY Nevada State Bar No. 12416 2300 West Sahara Ave., Ste. 1200 Las Vegas, Nevada 89102 <i>Attorneys for Defendant</i>
--	---

EXHIBIT “2”

EXHIBIT “2”

1 **ORDER**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
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11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

DISTRICT COURT
CLARK COUNTY, NEVADA

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**ORDER ON PLAINTIFFS' MOTION TO
STRIKE JUDGMENT ENTERED ON
JUNE 15, 2015**

16
17 AND RELATED CLAIMS

18 The Honorable Judge Kerry Earley heard Plaintiffs James Wolfram and Walt
19 Wilkes' ("Plaintiffs") Motion to Strike "Judgment" Entered June 15, 2015 Pursuant to
20 N.R.C.P. 52(b) and N.R.C.P. 59, as Unnecessary and Duplicative Orders of Final
21 Orders Entered on June 25, 2014 and May 13, 2015 and as such, is a Fugitive
22 Document (the "Motion") on January 15, 2016 at 10:00 a.m. James J. Jimmerson and
23 Michael C. Flaxman, of the law firm JIMMERSON LAW FIRM P.C., appeared on behalf of
24 Plaintiffs. Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP,
25 appeared on behalf of Defendant Pardee Homes of Nevada ("Pardee").
26
27
28

1 The Court reviewed the papers and pleadings on file, and heard the arguments
2 of counsel presented at the hearing. For good cause appearing, the Court hereby finds
3 as follows:

4 Plaintiffs' Motion **IS DENIED**. The Court did not consider its previous orders
5 dated June 25, 2014 and May 13, 2015 as final judgments under Rules 54 and 58 of
6 the Nevada Rules of Civil Procedure. Instead, the Court always contemplated that it
7 would enter a final judgment after the parties had fully briefed the supplemental issue of
8 future accounting and the Court had an opportunity to rule on it.

9 Accordingly, as discussed at the hearing, the Court expects to enter a final
10 judgment pursuant to Rules 54 and 58 of the Nevada Rules of Civil Procedure once the
11 parties have submitted a proposed judgment or competing proposed judgments for the
12 Court's review. Until such time, the Court has not entered final judgment in this case.

13 Moreover, the Court's previous Order entered July 10, 2015 remains in effect.
14 That Order stays any execution upon a final judgment until 10 days after written notice
15 of entry of orders resolving all parties' post-judgment motions, including any motions to
16 amend or alter the final judgment and motions resolving the parties' competing claims
17 to attorney's fees and recoverable costs.

18 DATED this ____ day of January, 2016.

19 _____
20 DISTRICT COURT JUDGE

21 Submitted by:
22 McDONALD CARANO WILSON LLP

Approved/Disapproved by:
JIMMERSON LAW FIRM, P.C.

23
24 /s/ Rory T. Kay
25 PAT LUNDVALL (NBSN #3761)
26 RORY T. KAY (NSB #12416)
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28 Las Vegas, Nevada 89102
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Attorneys for Plaintiffs

EXHIBIT “3”

EXHIBIT “3”

1 **ORDER**

2 **JAMES J. JIMMERSON, ESQ.**

3 **Nevada Bar No. 000264**

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

20 **Plaintiffs,**

21 **v.**

22 **PARDEE HOMES OF NEVADA,**

23 **Defendant.**

CASE NO.: A-10-632338

DEPT. NO.: IV

**FINDINGS OF FACT,
CONCLUSIONS AND ORDER**

24 On October 23, 2013, this matter came on for bench trial before the Honorable
25 Kerry L. Earley. The Court, having reviewed the record, the testimony of witnesses, the
26 documentary evidence, stipulations of counsel, the papers submitted by the respective
27 parties, and considered the arguments of counsel at trial in this matter, with good cause
28 appearing therefor, the Court now enters the following Findings of Fact and Conclusions
of Law. Plaintiffs James Wolfram ("Wolfram") and Walt Wilkes ("Wilkes") (collectively
"Plaintiffs") filed this action against defendant Pardee Homes of Nevada ("Pardee")

1 alleging claims for breach of contract, breach of the covenant of good faith and fair
2 dealing, and accounting related to a Commission Agreement entered into on September
3 1, 2004, between Plaintiffs and Pardee (See Second Amended Complaint). As a
4 conditional counterclaim, Pardee alleges against Plaintiffs breach of the covenant of
5 good faith and fair dealing arising from the Commission Agreement. The Court ordered
6 both parties to provide the Court with supplemental briefs detailing information the
7 Defendant should provide to the Plaintiffs consistent with the Court's Decision. The
8 parties complied with the Court's order, as the Plaintiffs submitted Plaintiffs' Accounting
9 Brief and the Defendant submitted Pardee Homes of Nevada's Supplemental Brief
10 Regarding Future Accounting as well as a Notice of Submission. On February 10, 2015,
11 the Court issued a minute order reflecting its decision on the supplemental briefing.
12

13
14 Now, having considered the parties' briefings, any arguments by counsel
15 presented in support of the same, and good cause appearing therefore, the Court
16 decides the submitted issues as follows:

17 **I. FINDINGS OF FACT**

18 **A. THE PARTIES**

19 1. Plaintiffs James Wolfram and Walt Wilkes have been licensed real estate brokers
20 working in Southern Nevada and the surrounding area for over 35 years.

21
22 2. Plaintiff Wolfram previously worked for Award Realty Group. Plaintiff Wilkes
23 previously worked for General Realty Group. In a previous order, the Court ruled that
24 Wolfram and Wilkes were assigned all claims from Award Realty Group and General
25 Realty Group, and, therefore, had standing to assert the claims at issue.
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1 3. Defendant Pardee Homes of Nevada ("Pardee") is a Nevada corporation
2 operating as a residential homebuilder constructing homes and other structures in
3 Southern Nevada and elsewhere.

4 4. In the 1990's, Harvey Whittemore, through his then-owned company, Coyote
5 Springs Investment LLC ("CSI") began developing a project to be known as ("Coyote
6 Springs".) The project included over 43,000 acres of unimproved real property located
7 north of Las Vegas in the Counties of Clark and Lincoln.
8

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

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

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

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

1 approximately 200 meetings between Pardee and CSI. During the extensive negotiating
2 process, Mr. Whittemore, on behalf of CSI, expressed CSI's decision to only sell certain
3 portions of real estate at Coyote Springs. Pardee made it clear that it only wanted to
4 purchase the land designated as single-family detached production residential
5 ("Production Residential Property") at Coyote Springs. At that time it was understood by
6 Pardee and CSI, that CSI was to maintain ownership and control of all other land at
7 Coyote Springs including land designated as commercial land, multi-family land, the
8 custom lots, the golf courses, the industrial lands, as well as all other development deals
9 at Coyote Springs.
10

11 9. Plaintiffs only participated in the initial meeting, as Pardee and CSI informed
12 Plaintiffs their participation was not required for any of the negotiations by Pardee to
13 purchase Production Residential Property. As such, Plaintiffs were the procuring cause
14 of Pardee's right to buy Production Residential Property in Coyote Springs from CSI.
15

16 **B. OPTION AGREEMENT BETWEEN CSI and PARDEE AND COMMISSION**
17 **AGREEMENT**

18 10. In or about May 2004, Pardee and CSI entered into a written agreement entitled
19 Option Agreement for the Purchase of Real Property and Joint Escrow Instructions
20 ("Option Agreement"), which set forth the terms of the deal, among many others,
21 concerning Pardee's acquisition of the Production Residential Property from CSI at
22 Coyote Springs.
23

24 11. Prior to the Commission Agreement at issue in this case being agreed upon
25 between Pardee and Plaintiffs, the Option Agreement was amended twice. First, on July
26 28, 2004, Pardee and CSI executed the Amendment to Option Agreement for the
27 Purchase of Real Property and Joint Escrow Instructions. Subsequently, on August 31,
28 2004, Pardee and CSI executed the Amendment No. 2 to Option Agreement for the

1 Purchase of Real Property and Joint Escrow Instructions. (The Option Agreement, along
2 with the subsequent amendments, will be collectively referred to as the "Option
3 Agreement"). Plaintiffs acknowledged receiving the Option Agreement and the two
4 amendments.

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

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

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

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

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

9 17. The Commission Agreement provides for the payment of "broker commission[s]"
10 to Plaintiffs in the event that Pardee approved the transaction during the Contingency
11 Period, equal to the following amounts:
12

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

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

19 (iii) Then, with respect to any portion of the Option Property purchased
20 by Pardee pursuant to paragraph 2 of the Option Agreement, Pardee shall
21 pay one and one-half percent (1-1/2%) of the amount derived by multiplying
the number of acres purchased by Pardee by Forty Thousand Dollars
(\$40,000).
22

23 18. The Commission Agreement states that all of the capitalized terms used in the
24 Commission Agreement shall have the exact meanings set forth in the Option
25 Agreement. Copies of the Option Agreement, the amendments including changes to the
26 Purchase Property Price, and the subsequent Amended and Restated Option
27 Agreement were given to Plaintiffs by Stewart Title Company, the escrow company
28 chosen by Pardee and CSI to handle all of its land transactions. Plaintiffs also

1 acknowledge receiving these documents. However, Amendments 1 through 8 to the
2 Amended and Restated Option Agreement between CSI and Pardee were not provided
3 to Plaintiffs until after this litigation was commenced by Plaintiffs.

4 19. The term "Purchase Property Price" was defined in Amendment No. 2 to the
5 Option Agreement as Eighty-Four Million Dollars (\$84,000,000), which was payable in
6 installments over a period of time. The due dates for commissions' payable under
7 paragraphs (i) and (ii) were described in the Commission Agreement as follows:
8

9 Pardee shall make the first commission payment to you upon the Initial
10 Purchase Closing (which is scheduled to occur thirty (30) days following the
11 Settlement Date) with respect to the aggregate Deposits made prior to that
12 time. Pardee shall make each additional commission payment pursuant to
clauses (i) and (ii) above concurrently with the applicable Purchase Property
Price payment to Coyote.

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

16 21. Commission payments required under paragraphs (i) and (ii) were not dependent
17 upon acreage or location of the lands being acquired, or upon the closing of any land
18 transaction. In sum, when Pardee paid CSI a portion of the Purchase Property Price,
19 under the agreed schedule, then Plaintiffs were also paid their commission. Pardee and
20 CSI anticipated that the Purchase Property would be, and was, cooperatively mapped
21 and entitled before the specific location of any lands designated for single family
22 detached production residential would be transferred by CSI to Pardee.
23

24 22. The due date for any commissions payable under paragraph iii was described in
25 the Commission Agreement as follows: "Thereafter, Pardee shall make such commission
26 payment pursuant to clause (iii) above concurrently with the close of escrow on Pardee's
27 purchase of the applicable portion of the Option Property; provided, however, that in the
28

1 event the required Parcel Map creating the applicable Option Parcel has not been
2 recorded as of the scheduled Option Closing, as described in paragraph 9(c) of the
3 Option Agreement, the commission shall be paid into escrow concurrently with Pardee's
4 deposit of the Option Property Price into escrow and the commission shall be paid
5 directly from the proceeds of said Escrow."

6
7 23. The general term "Option Property" is defined in the Option Agreement as follows:
8 "the remaining portion of the Entire Site which is or becomes designated for single-family
9 detached production residential use, as described below . . . in a number of separate
10 phases (referred to herein collectively as the "Option Parcels" and individually as an
11 "Option Parcel"), upon the terms and conditions hereinafter set forth." The general
12 definition of "Option Property" was never changed by CSI and Pardee in any documents
13 amending either the initial Option Agreement or the subsequent Amended and Restated
14 Option Agreement. The definitions of other capitalized terms found within the
15 Commission Agreement were never changed by CSI and Pardee.

16
17 24. The Commission Agreement requires Pardee to provide Plaintiffs with
18 notifications and information concerning future transactions between Pardee and CSI
19 under the Option Agreement. Specifically, the Commission Agreement states:
20

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

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

27 26. Pardee's purchase of the "Purchase Property Price" property and any Option
28 Property designated in the future as single family detached production residential lands

1 was a separate and distinct transaction from any other purchases by Pardee from CSI
2 for unrelated property at Coyote Springs.

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

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

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

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

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

22 31. Pardee did purchase "Purchase Property Price" property from CSI for
23 \$84,000,000.00. Plaintiffs have been paid in full their commissions on the
24 \$84,000,000.00 Purchase Property Price.

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

4 33. Under the express terms of the Commission Agreement, pursuant to paragraphs
5 (i) and (ii), these commissions were based solely on the Purchase Property Price for the
6 land, not the number of acres acquired or the location of those acres. Under the
7 Purchase Property formula, they were entitled to a percentage of the Purchase Property
8 Price. There was no benefit or additional commission for additional acreage being
9 purchased if there is no corresponding increase in price.
10

11 34. Plaintiffs were paid a total of \$2,632,000.00 in commissions pursuant to
12 paragraphs (i) and (ii) of the Commission Agreement.
13

14 35. Pardee did not pay more than \$84,000,000.00 as the Purchase Property Price to
15 CSI under the Option Agreement, the Amended and Restated Option Agreement, or any
16 amendments thereto. CSI has never received more than \$84,000,000.00 as payment
17 under the Option Agreement, the Amended and Restated Option Agreement, or any
18 amendments thereto.
19

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

23 Pardee as of the present time has not exercised any options to purchase single
24 family production residential property pursuant to paragraph 2 of the Option Agreement.
25 Therefore, Pardee as of the present time does not owe any commission to Plaintiffs
26 under paragraph iii of the Commission Agreement.
27
28

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

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

7 38. Pardee did provide information relating to the amount and due dates on Plaintiffs'
8 commission payments under paragraphs (i) and (ii). Specifically, Plaintiffs were paid their
9 first commission at the Initial Purchase Closing and then each commission thereafter
10 concurrently with each Purchase Property Price payment made by Pardee to CSI
11 pursuant to Amendment No. 2 to the Option Agreement as was required by the
12 Commission Agreement. Each commission payment was made pursuant to an Order to
13 Pay Commission to Broker prepared by Stewart Title (later Chicago Title) which
14 contained information including the date, escrow number, name of title company,
15 percentage of commission to be paid, to whom and the split between Plaintiffs. Each
16 Order to Pay Commission to Broker was signed by Pardee and sent to either Plaintiffs
17 brokerage firms or Plaintiffs directly. Each commission check received by Plaintiffs
18 contained the amount, escrow number, payee and payer, along with a memo explaining
19 how the amount was determined. When Plaintiffs were overpaid commissions, a letter
20 was sent by Pardee explaining the overpayment and how the amount and due dates to
21 compensate for the overpayment would be handled. An Amended Order to Pay
22 Commission to Broker reflecting these changes was sent to and signed by each Plaintiff.
23 A letter was sent by Pardee to Plaintiffs informing them when Pardee made its last
24 payment of the Purchase Property Price to CSI.
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1 39. However, from the documents in Plaintiffs' possession provided by Pardee,
2 Plaintiffs were unable to verify the accuracy of any commission payments that may have
3 been due and owing pursuant to paragraph iii of the Commission Agreement. The
4 documents in Plaintiffs' possession included the Option Agreement and Amendments
5 No. 1 and No. 2 to the Option Agreement, the Amended and Restated Option Agreement,
6 various Orders to Pay Commissions, and their commission payments. Amendments
7 Nos. 1 through 8 to the Amended Restated Option Agreement were not provided to
8 Plaintiffs until after commencement of this litigation.
9

10 40. When Plaintiffs began requesting information regarding Pardee's land
11 acquisitions from CSI, the only information provided by Pardee was the location of the
12 Purchase Property purchased for the Purchase Property Price from CSI. All information
13 provided was limited to the single family production property acquisitions. Pardee
14 informed the Plaintiffs that it had purchased from CSI additional property at the Coyote
15 Springs development, but took the position that any documentation regarding the
16 designations of the use of the additionally purchased property was confidential and would
17 not be provided to Plaintiffs. Interestingly, Pardee had already provided to Plaintiffs the
18 initial Option Agreement, Amendments No. 1 and 2 and the Amended Restated Option
19 Agreement, which were also confidential documents between Pardee and CSI.
20

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

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

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

15 II. CONCLUSIONS OF LAW

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

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

22 2. Contract interpretation strives to discern and give effect to the parties' intended
23 meaning...before an interpreting court can conclusively declare a contract ambiguous or
24

1 unambiguous, it must consult the context in which the parties exchanged promises.

2 *Galardi v. Naples Polaris*, 129 Nev. Adv. Op. 33, 301 P.3d 364, 367 (2013).

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

6 4. The Commission Letter Agreement constitutes a valid and enforceable contract
7 between Plaintiffs and Defendant.

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

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

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

17 8. Pardee has never exercised any such option.

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

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

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

23 12. From the very beginning, CSI and Pardee acknowledged that the specific
24 boundaries of the Purchase Property and Option Property may change, for a variety of
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1 reasons. There are many references to the changing boundaries of property at Coyote
2 Springs in Pardee's and CSI's Option Agreement. There are many factors that
3 necessitated those changes, including the BLM configuration, moving the utility corridor,
4 mapping, the subdivision process, the entitlement and permitting processes, the Moapa
5 Dace issue and other wildlife issues, and the design by Jack Nicklaus of the golf courses.
6 There were a number of factors that were out of CSI's and Pardee's control that were
7 expected to change and did change the boundaries and configuration of the Purchase
8 Property. As a result of those boundaries changing, so too did the potential boundaries
9 for Option Property change.
10

11 13. The Plaintiffs' commissions pursuant to paragraphs (i) and (ii) were solely based
12 on the Purchase Property Price, not the acreage acquired by Pardee or its location or its
13 closing. Therefore, the change in boundaries had absolutely no impact on the amount
14 or due date of Plaintiffs' commissions.
15

16 14. Plaintiffs were also entitled to be paid commissions if Pardee exercised option(s)
17 to purchase Option Property pursuant to paragraph 2 of the Option Agreement. To
18 exercise such an option is a multi-step process involving a myriad of written documents.
19 If such an option had been exercised by Pardee those documents would be found in the
20 public record. Since Pardee as of the present time has not exercised any options
21 pursuant to paragraph 2 of the Option Agreement, no commissions are due at the
22 present time to Plaintiffs.
23

24 15. In addition, the Commission Agreement required Pardee to keep Plaintiffs
25 reasonably informed as to all matters relating to the amount and due dates of Plaintiffs'
26 commission payments.
27
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1 16. Plaintiffs did not receive amendments 1 through 8 to the Amended and Restated
2 Option Agreement. Although those amendments did not change Plaintiffs' commissions
3 due under the Commission Agreement, the information contained in the amendments
4 contained the designation information about the separate land transactions involving
5 multi-family, custom lots, and commercial. This information was needed by Plaintiffs as
6 it was necessary to determine the impact, if any on their commission payments.
7 However, Pardee could have provided the requisite information in various forms other
8 than the amendments. Pardee failed to provide information in any form required by
9 Plaintiffs to determine the accuracy of their commission payments.
10

11 17. Pardee did not keep Plaintiffs reasonably informed as to all matters relating to the
12 amount of their commission payments that would be due and owing pursuant to the
13 Commission Agreement. Therefore, Pardee breached the Commission Agreement.
14

15 18. Plaintiffs satisfied any and all of their obligations under the Commission
16 Agreement.

17 19. In order to award consequential damages, the damages claimed for the breach of
18 contract must be foreseeable. See *Barnes v. WU. Tel. Co.*, 27 Nev. 438, 76 P. 931
19 (1904). Under the watershed case, *Hadley v. Baxendale*, 156 Eng. Rep. 145, 151 (1854),
20 foreseeability requires that: (1) damages for loss must "fairly and reasonably be
21 considered [as] arising naturally . . . from such breach of contract itself," and (2) the loss
22 must be "such as may reasonably be supposed to have been in the contemplation of
23 both parties, at the time they made the contract as the probable result of the breach of
24 it." See *Clark County School District v. Rolling Plains Const., Inc.*, 117 Nev. 101, 106, 16
25 P.3d 1079, 1082 (2001) (disapproved of on other grounds, 117 Nev. 948). Stated another
26 way, the damages claimed for the breach of contract must be foreseeable. *Id.*
27
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1 20. Plaintiffs suffered foreseeable damages due to Defendant's breach of not keeping
2 Plaintiffs reasonably informed as to all matters relating to the amount due and owing on
3 the Commission Agreement in the form of their time and efforts attempting to obtain the
4 information owed to them pursuant to the Commission Agreement. The testimony by
5 Plaintiff Wolfram was that he expended 80 hours of time to obtain said information by
6 going through public records and contacting different sources. Using a rate of \$75.00 per
7 hour for Mr. Wolfram's time as a real estate agent, the damages total \$6,000.00.
8

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

25 Mr. Jimmerson testified regarding the attorney's fees and costs to pursue the
26 Plaintiffs' claim for acquiring the information from Pardee related to the Plaintiffs'
27
28

1 commission amounts based on billings contained in Exhibit 31A. The damages for
2 reasonable attorneys' fees and costs are \$135,500.00.

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

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

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

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

26 4. Plaintiffs needed sufficient information regarding purchases of land by Pardee
27 from CSI at Coyote Springs to enable Plaintiffs to verify the accuracy of commission
28 payments. The designation of the land purchased by Pardee from CSI was the basis for

1 Plaintiffs' entitlement to commissions pursuant to Option Property under (iii) of the
2 Commission Agreement.

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

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

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

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

19 1. An accounting is an independent cause of action that is distinct from the equitable
20 remedy of accounting. See e.g. *Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705 (1910);
21 *Young v. Johnny Ribiero Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Oracle USA, Inc.*
22 *v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933 (D. Nev. Aug.
23 13, 2010); *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App.
24 2009); *Mobius Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-
25 RJJ, 2012 WL 194434 (D. Nev. Jan. 23, 2012).
26
27
28

- 1 2. To prevail on a claim for accounting, a Plaintiff must establish the existence of a
2 special relationship whereby a duty to account may arise. See *Teselle v. McLoughlin*,
3 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009). The right to an accounting
4 can arise from Defendant's possession of money or property which, because of the
5 Defendant's relationship with the Plaintiff, the Defendant is obliged to surrender. *Id.*
6
7 3. This Court has previously held that for Plaintiffs to prevail on an independent
8 cause of action for an accounting, Plaintiffs must establish the existence of a special
9 relationship of trust whereby a duty to account may arise. See *Teselle v. McLoughlin*,
10 173 Cal. App. 4th 156 (2009); See also, Order Denying Pardee's Motion for Partial
11 Summary Judgment.
12
13 4. Courts have found the existence of a special relationship of trust when, in a
14 contractual relationship, payment is collected by one party and the other party is paid by
15 the collecting party. *Wolf v. Superior Court*, 130 Cal. Rptr. 2d 860 (Cal. Ct. App. 2003);
16 *Mobius Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMIN -RA 2012
17 WL 194434 (D. Nev. Jan. 23, 2012).
18
19 5. In contractual relationships requiring payment by one party to another of profits
20 received, the right to an accounting can be derived from the implied covenant of good
21 faith and fair dealing inherent in every contract, because without an accounting there
22 may be no way by which such a party entitled to a share in profits could determine
23 whether there were any profits. See, *Mobius Connections Group v. Techskills, LLC*, *Id.*
24
25 6. The Court finds there is a special relationship of trust between Plaintiffs and
26 Pardee that entitles Plaintiffs to an accounting for the information concerning the
27 development of Coyote Springs in the future as it pertains to Plaintiffs' commissions on
28 option property. There is no way for Plaintiffs or their heirs to determine whether a

1 commission payment is due in the future without an accounting of the type of land of any
2 future purchases by Pardee from CSI at Coyote Springs. Access to said information is
3 required to ensure the accuracy of commission payments that may be due and owing in
4 the future.

5 7. Pardee or its successors in interest and/or assigns shall provide to Plaintiffs an
6 affidavit or unsworn declaration in lieu thereof pursuant to NRS 53.045 executed under
7 penalty of perjury by a corporate representative from Weyerhaeuser NR Company
8 ("WNR") acknowledging and confirming the representations contained in Pardee
9 counsel, Pat Lundvall's, letter dated August 5, 2014, regarding the transactions which
10 resulted in Pardee's rights and obligations under the Commission Agreement being
11 assigned/transferred to WNR.
12

13 8. Pardee shall provide to Plaintiffs and their successors and/or assigns all future
14 amendments, if any, to the Amended and Restated Option Agreement dated March 28,
15 2005. The documents will be designated CONFIDENTIAL pursuant to the protective
16 order in the above-referenced matter.
17

18 9. In compliance with the Court's Decision, Pardee provide the following to Plaintiffs
19 in the future to keep them reasonably informed pursuant to the Commission Agreement:
20

21 1. Within fourteen (14) days of the relevant event described below, Pardee
22 shall provide Plaintiffs with courtesy copies of the following:

- 23 a. All publicly-recorded documents related to any transaction involving
24 Pardee's purchase of Option Property¹ from CSI;
25
26
27

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

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

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

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

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

JUDGMENT

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

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

1 Springs because it pertained to Plaintiffs' present and potential future commissions.
2 Damages are to be awarded to Plaintiffs from Defendant in an amount totaling
3 \$141,500.00, plus legal interest thereon until paid in full.

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

7
8 3. The Court reserves jurisdiction over this Judgment regarding the issues of
9 attorney's fees, costs, and legal interest.

10 DATED this _____ day of March, 2016.

11
12
13 _____
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

16 Dated this 2 day March, 2016.

Dated this _____ day March, 2016.

17 JIMMERSON HANSEN, P.C.

McDONALD CARANO WILSON, LLP

18
19 _____
20 JAMES J. JIMMERSON, ESQ.
21 Nevada State Bar No. 000264
22 MICHAEL C. FLAXMAN, ESQ.
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EXHIBIT “4”

EXHIBIT “4”

JUDG
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

JUDGMENT

AND RELATED CLAIMS

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

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

1 After reviewing the parties' supplemental briefing, the Court then entered an
2 order on April 20, 2015 reflecting its decision on the supplemental briefing (the
3 "Accounting Order").

4 In accordance with the Findings of Fact and Conclusions of Law entered on June
5 25, 2014 and the Accounting Order entered on April 20, 2015, the Court finds the
6 following:

7 In their NRCP 16.1 disclosures, Plaintiffs stated they were entitled to \$1,952,000
8 in total damages related to their asserted causes of action. Specifically, Plaintiffs
9 disclosed \$1,800,000 in damages related to lost future commissions from Pardee's
10 purported breach of the Commission Agreement, \$146,500 in attorney's fees incurred
11 as special damages in prosecuting the action, and \$6,000 in consequential damages
12 for time and effort expended searching for information regarding what Pardee
13 purportedly owed them under the Commission Agreement.

14 Plaintiffs' asserted causes of action included accounting, breach of contract and
15 breach of the implied covenant of good faith and fair dealing. Each asserted claim was
16 predicated upon allegations of breach of contract by Pardee of the Commission
17 Agreement. Plaintiffs asserted two theories of breach by Pardee: failure to properly pay
18 commissions owed and failure to properly inform Plaintiffs.

19 Having considered the entire record presented at trial, including testimony of
20 witnesses, the documentary evidence, stipulations of counsel, the papers submitted by
21 the respective parties, and the arguments of counsel at trial in this matter, the Court
22 enters judgment as follows:

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
24 **ENTERED** against Plaintiffs and for Pardee on Plaintiffs' causes of action for
25 accounting, breach of contract and breach of the implied covenant of good faith and fair
26 dealing as to Plaintiffs' theory that Pardee owed them money damages under the
27 Commission Agreement. Pardee has not breached the Commission Agreement in such
28

1 a way as to deny Plaintiffs any commissions, and Pardee has paid all commissions due
2 and owing under the Commission Agreement.

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
4 **ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for
5 breach of contract and breach of the implied covenant of good faith and fair dealing as
6 to Plaintiffs' theory that Pardee failed to properly inform Plaintiffs. Plaintiffs are entitled
7 to damages from Pardee in an amount totaling \$141,500.00, of which \$6,000 are
8 consequential damages from Pardee's breach of the Commission Agreement and the
9 remaining \$135,500.00 are special damages in the form of attorney's fees and costs.

10 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
11 Pardee shall provide Plaintiffs with future accountings related to the Commission
12 Agreement consistent with the Accounting Order entered by the Court on April 20,
13 2015.

14 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
15 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Pardee's cause
16 of action for breach of the implied covenant of good faith and fair dealing. Pardee is not
17 entitled to any damages on this cause of action.

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

20 DATED this ____ day of February, 2016.

21
22 _____
23 DISTRICT COURT JUDGE
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Submitted by:
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Approved by:
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**Re: James Wolfram, Walt Wilkes v. Pardee Homes of Nevada
A-10-632338-C: Draft Judgment**

Dear Messrs. Jimmerson and Flaxman:

Pursuant to the Court's oral instruction at the January 16, 2016 hearing and the Court's updated standing order available on the Court's website regarding submission of proposed orders, please see the attached draft judgment resolving this matter. As the Court instructed at the hearing, this judgment will be a final order in accordance with the Findings of Fact and Conclusions of Law that the Court entered on June 25, 2014 and the Court's subsequent Accounting Order entered on April 20, 2015.

Please execute the attached or indicate any desired modifications to the judgment on or before February 12, 2016. Contact me if you would like to discuss this issue in more detail.

Sincerely,

Rory T. Kay

cc: Conrad Smucker

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