

23. Defendant has a duty to honor its contractual obligations. Defendant has failed and refused to perform its obligations pursuant to the terms and conditions of the Commission Letter.

24. As a result of Defendant's breach of contract, Plaintiffs have suffered damages in the amount according to proof, in excess of Ten Thousand Dollars (\$10,000).

25. As a result of Defendant's breach of contract, Plaintiffs have been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.

### THIRD CLAIM FOR RELIEF

**(Breach of Good Faith and Fair Dealing)**

26. Plaintiffs reallege and incorporate herein each and every allegation contained in paragraphs 1 through 25, inclusive, herein above.

27. Defendant Pardee owed, and continues to owe, Plaintiffs a duty of good faith and fair dealing to do everything under the Commission Letter that Defendant is required to do to further the purposes of the Commission Letter and to honor the terms and conditions thereof to the best of its ability.

28. In doing the acts alleged herein, Defendant Pardee failed to act in good faith and to the best of its ability, and also failed to deal fairly with Plaintiffs, thereby breaching its duties to so conduct itself and injuring Plaintiffs' rights to conduct its business and its ability to receive the benefits of the Commission Letter.

29. As a direct and proximate result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiffs have been damaged in a sum in excess of \$10,000.00 according to proof of trial, together with attorney's fees and interest to accrue at the legal rate.


30. As a direct and proximate result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiffs have been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.

1 WHEREFORE, Plaintiffs prays as follows:

- 2 1. For the documents promised to them including, but not limited to an accurate  
3 parcel map with Assessor's Parcel numbers, and an accounting of all  
4 transfers or title or sales.  
5 2. For compensatory damages in the sum and excess of \$10,000.00.  
6 3. For cost of suit.  
7 4. For reasonable attorney's fees.  
8 5. For such further relief as the Court deems proper.

9 DATED this 14 day of January, 2011.

10 JIMMERSON HANSEN, P.C.

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12  
13 By   
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Case title: James Wolfram, Plaintiff(s)vs.Pardee Homes of Nevada, Defendant(s)

Document title: Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs

Document code: OPPS Filing Type: EFS

Repository ID: 8305703

Number of pages: 186

Filed By: Jimmerson Hansen

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1 through UU?  
 2 MR. J.J. JIMMERSON: That's right.  
 3 MS. LUNDVALL: Let me clarify then, as far as  
 4 on concerning Plaintiffs' exhibits, we have stipulations  
 5 concerning 1 through 5, stipulation concerning 17,  
 6 stipulation concerning 21.  
 7 As to the exhibits, Exhibits 6 through 14,  
 8 those are the various agreements that we have given the  
 9 complete copies to plaintiffs. They have not shown us  
 10 what is contained within the exhibit books yet, but I'm  
 11 assuming that what they have included is the same  
 12 exhibits that we have given to them and, therefore, we  
 13 would stipulate to those exhibits. I would say, though,  
 14 it was subject to check across the course of the trial  
 15 if we find any pages that may be missing or may be  
 16 upside down or something of that nature.  
 17 THE COURT: Okay. That would be fine. So if  
 18 we find something, we can deal with it at the time.  
 19 But I assume, Mr. Jimmerson, you are telling me  
 20 6 through 14 was what was produced by Ms. Lundvall.  
 21 Correct?  
 22 MS. LUNDVALL: Yes. 6 through 13. 14 was a  
 23 letter.  
 24 THE COURT: What's 14?  
 25 MR. J.J. JIMMERSON: 14 is a piece of

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1 correspondence that had been agreed upon.  
 2 THE COURT: Do you have any issue with that? I  
 3 just want to make sure we get it on the record. So  
 4 right now we have 1 through 13, 17 and 21 of  
 5 Plaintiffs'. I just want to make sure 14 is stipulated  
 6 to.  
 7 MS. LUNDVALL: We have no objection to 14,  
 8 Your Honor.  
 9 THE COURT: All right. So those all stipulated  
 10 will all be admitted into evidence.  
 11 MS. LUNDVALL: As to Defendant's exhibits, they  
 12 can begin A through UU, and it's my understanding  
 13 there's no objection to any of our exhibits.  
 14 THE COURT: That was my understanding. It was  
 15 a stipulation. So those will be admitted also. All  
 16 right. We've got that handled. I just want to make  
 17 sure I mark it so I don't have to keep going back.  
 18 What else do we have?  
 19 MR. J.M. JIMMERSON: We've got two orders  
 20 concerning the motion to compel and motion for partial  
 21 summary judgment. May I approach?  
 22 THE COURT: Yes. These are from the other  
 23 hearings?  
 24 MR. J.M. JIMMERSON: Yes.  
 25 THE COURT: Have they been agreed to for form

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1 and content?  
 2 MS. LUNDVALL: We have, Your Honor.  
 3 THE COURT: No problem. I'll sign those.  
 4 MR. J.M. JIMMERSON: And the final issue that  
 5 we have, we would like to use certain demonstratives,  
 6 which are representations of certain parcel maps, which  
 7 had not been stipulated to, but the authenticity was  
 8 stipulated to. The only question was establishing  
 9 relevance.  
 10 I would like to use them for the purposes of  
 11 the opening statement, not as evidence, but just to show  
 12 the Court what we're looking at when those exhibits are  
 13 presented for offering into evidence.  
 14 THE COURT: Objection?  
 15 MS. LUNDVALL: Yes, Your Honor. I have  
 16 objection to the use of any demonstrative that has not  
 17 been admitted into evidence, and I shared that objection  
 18 with Mr. Jimmerson.  
 19 It has been my practice and every time that  
 20 I've ever done an opening statement, is that the Court  
 21 has allowed me to use a demonstrative of an exhibit  
 22 that's been admitted, but not a demonstrative of an  
 23 exhibit that has not been admitted. And what he is  
 24 suggesting is he wants to use a blowup, basically, of  
 25 something that has not yet been admitted into evidence.

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1 THE COURT: Okay. And I'm kind of confused.  
 2 Because when I think of demonstrative, I think of  
 3 something you make up like, "Here's my time line," like  
 4 if I would do an opening, just to help on my opening,  
 5 "This happened on this date," that sort of thing.  
 6 If something is getting into evidence, that's  
 7 an actual separate document, not something that would  
 8 have been recreated or created for trial as a  
 9 demonstrative. So now I'm confused on what we're doing  
 10 here.  
 11 MR. J.M. JIMMERSON: The demonstratives are not  
 12 the evidence. The evidence are the certified copies,  
 13 the sheets, which they are very specific match lines for  
 14 the sheets. They are recorded in the Clark County  
 15 Recorder's Office. This is a construction of those  
 16 sheets put together.  
 17 THE COURT: So if you got up there, you could  
 18 draw on your own, like I would have done, a time line,  
 19 or you might have done a time line, just so the opening  
 20 will flow. It's not actually --  
 21 MR. J.M. JIMMERSON: It's not being offered as  
 22 evidence. It's being offered as the evidence will show  
 23 when we enter it into evidence later.  
 24 MS. LUNDVALL: Your Honor, from this  
 25 perspective, they've made a photocopy of a proposed

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# JAMES M. JIMMERSON, ESQ.'S OPENING STATEMENT

1 exhibit. That proposed exhibit has not been entered  
2 into evidence.

3 THE COURT: Is that the chart you are using?

4 MS. LUNDVALL: That's the -- they've made a  
5 photocopy and they've tried to blow it up then, and  
6 that's what they want to use. So it's not, as the Court  
7 properly described, a demonstrative aid. It is a blowup  
8 of an inadmissible piece of evidence.

9 MR. J.M. JIMMERSON: Your Honor, It's not  
10 inadmissible. It's going to be admitted. The moment  
11 we're able to put someone on the stand to testify as to  
12 relevance, it will come in. The authenticity has not  
13 been questioned.

14 And, more importantly, you don't need to  
15 have -- you don't need to admit evidence prior to  
16 referencing it or showing it in your opening statement.  
17 Under that logic, you could never say "evidence will  
18 show" if the evidence hasn't been admitted yet.

19 So, here, the Court -- it's not being offered  
20 to say "The evidence is this." The evidence will be  
21 presented in front of the witness. The evidence will be  
22 submitted to you to review through the sheets using your  
23 own faculties, not my reconstruction of it. It is  
24 merely for the use of showing you how we're doing our  
25 measurements and how it's going to be applied in this

9

1 your theory of the case. So under that, I'm going to go  
2 ahead, since it's a bench trial, I will let it in.

3 MS. LUNDVALL: Understood, Your Honor. The  
4 point, though, that I would like to raise, though, is  
5 the Court is not making a predetermination as to the  
6 admissibility.

7 THE COURT: No. Absolutely not. I couldn't do  
8 that because I wouldn't have any evidence or any  
9 foundation. So, once again, if the foundation and it  
10 doesn't come in, then, you know, I will judge the case  
11 on the evidence.

12 And if your opening statement doesn't flow what  
13 the evidence does, then it doesn't flow. And sometimes  
14 that happens. The evidence doesn't always come in the  
15 way we may want. Hopefully, both of you feel it will.  
16 But, no, I'm not making a predetermination at all.

17 MR. J.J. JIMMERSON: We will invoke the  
18 exclusionary rule. It's my understanding Mr. Hallman is  
19 not a possible witness. So he is certainly invited to  
20 be here. Normally a party is only allowed to have one  
21 representative. There's two. I have no issue. I know  
22 Mr. Lash will be a witness.

23 But I just need to make it clear that if  
24 Mr. Hallman sits in, he will not be called as a witness  
25 by the defense.

11

1 Court. If there's any prejudice here, I don't know what  
2 it is.

3 THE COURT: Since it's a bench trial, I am more  
4 inclined to allow it. Because if it would help me  
5 understand your flow -- and if it doesn't get into  
6 evidence, then, you know what, then I discount it and  
7 I'm not going to use it. But since it's a bench trial,  
8 there is a distinction, but if you are going to use it  
9 for demonstrative purposes to follow your argument, not  
10 "This is evidence," and I understand it's a hybrid, I  
11 understand that completely.

12 But since it's a bench trial and it will help  
13 me understand where you are going when the evidence  
14 comes in, then it would be helpful to me. So under  
15 that, since it's a bench trial, I am going to allow them  
16 to do it. And I will understand that is not the  
17 specific evidence that's going to come in, but hopefully  
18 you are going to use it to explain how when that  
19 evidence does come in, it is applicable to your theory  
20 of the case.

21 MR. J.M. JIMMERSON: Exactly, and how -- it's  
22 actually really being used how we constructed -- how we  
23 made these determinations, really, is more of a process  
24 than it is of "Here's the evidence."

25 THE COURT: Okay. Well, then I can understand

10

1 MS. LUNDVALL: Mr. Hallman is not anticipated  
2 to be called as a witness by the defense. And we  
3 understand and we will respect the exclusionary rule.  
4 The exclusionary rule, though, does not apply to opening  
5 statements. It only applies to the taking of testimony  
6 then from the witnesses.

7 THE COURT: I mean, if it turns out for some  
8 reason you need to, we'll work it out, if you need to  
9 call him. All right? How about that? All right?

10 Okay. Counsel?

11 MR. J.J. JIMMERSON: Your Honor, may I get one  
12 minute to --

13 THE COURT: Can I give you your orders back,  
14 too, so I don't get them in the middle of my exhibits?

15 MR. J.J. JIMMERSON: Don't give them to us.  
16 We're sure to lose them.

17 THE COURT: Give them to Ms. Hansen.

18 While you are doing that, I'll do my exhibits  
19 so I can keep it straight. So, basically, the entire  
20 Defendants' have all been admitted.

21 MR. J.J. JIMMERSON: Correct.

22 THE COURT: I don't have any issue. Okay.

23 (Pause in proceedings.)

24 MR. J.M. JIMMERSON: May it please the Court,  
25 this case is about fairness. This case is about

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1 plaintiffs James Wolfram and Walt Wilkes and their  
2 commitment to being fair with their clients and being  
3 forthright in their 70 years of combined experience in  
4 the land sales field.

5 This case is about their skill and talent and  
6 how those skills and talents resulted in being the  
7 procuring cause for, at the time, the largest land  
8 transaction involving brokers in the history of the  
9 state of Nevada; that is, Coyote Springs Investment,  
10 LLC, with Pardee Homes of Nevada.

11 This case is also about the defendant, Pardee  
12 Homes of Nevada, and defendant's failure to treat  
13 plaintiffs fairly, their failure to abide by their  
14 duties under the law as well as under the Commission  
15 Letter Agreement of September 1, 2004.

16 Plaintiffs have come to you, have come to this  
17 Court, seeking relief that no one else can give them,  
18 seeking you to compel Pardee Homes of Nevada to produce  
19 the information that the plaintiffs were entitled to  
20 under the September 1, 2004 Commission Letter Agreement,  
21 to account for their actions in the land transactions  
22 and for the commission payments and for how they were  
23 calculated and to do what was necessary under that  
24 agreement and inside that relationship.

25 The evidence will show that that relief could

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1 purchased both Purchase Property and Option Property.  
2 We know this by referring to the Option Agreement which  
3 defines those critical terms. For Purchase Property,  
4 the portion of the entire site consisting of Parcel 1 as  
5 shown on Parcel Map 98-57 recorded July 21, 2000 in  
6 Book 20000721, as Document 01332, Official Records,  
7 Clark County, Nevada.

8 Option Property, the remaining portion of the  
9 entire site which is or becomes designated for  
10 single-family detached production residential use as  
11 described below, the Option Property. And as the Option  
12 Agreement further describes, that as described below  
13 refers to production residential property, which is  
14 defined -- which includes, quote, without limitation,  
15 all single-family detached production residential lots,  
16 which shall include lots on which custom homes are  
17 constructed by buyer, all land for roadways, utilities,  
18 government facilities, including schools and parks,  
19 which school and park sites are subject to the  
20 provisions of 7(c) below, open space required or  
21 designated for the benefit of the residential  
22 development pursuant to the master plan, a habitat  
23 conservation plan, or development agreement, drainage  
24 ways or other use associated with or resulting from the  
25 development of Purchase Property and each option parcel

15

1 not come from anyone else. Plaintiffs had tried to  
2 receive it from Pardee. Plaintiffs had gone to  
3 Coyote Springs. Plaintiffs had gone to Chicago Title.  
4 Plaintiffs had gone to the Clark County Recorder's  
5 Office, to zoning and planning, to the other public  
6 offices to find what was happening in the development of

7 Coyote Springs as it pertained to their commissions.

8 This case will largely hinge on was the  
9 property purchased Purchase Property or was it Option  
10 Property? This is because the Commission Letter  
11 Agreement establishes two separate formulas, two  
12 separate mechanisms for calculating how the  
13 commission -- how much the plaintiffs are entitled to  
14 for commission.

15 Under the Purchase Property formula, they are  
16 entitled to a percentage of the Purchase Property Price.  
17 There is no benefit or additional commission for  
18 additional acreage being purchased if there is no  
19 corresponding increase in price.

20 Conversely, the Commission Letter Agreement  
21 specifies that the formula for commissions for Option  
22 Property is dictated by acreage. It is a set flat rate  
23 per acre, and you find out the number of acres and that  
24 is the commission.

25 The evidence will show in this case that Pardee

14

1 of the Option Property.

2 Those three definitions will guide this Court.  
3 The evidence will use those definitions to determine  
4 whether or not Purchase Property -- whether or not  
5 Option Property was purchased here.

6 As this is defined, Purchase Property is

7 defined by Parcel 1 on Parcel Map 98-57. This  
8 demonstrative shows what Parcel 1 looks like. You see  
9 it has fixed boundaries, that there are lines for inside  
10 and outside the property.

11 As Option Property is defined, it's the  
12 remaining property. The evidence will show that that  
13 means anything inside the entire site that is  
14 Coyote Springs that is not part of the Parcel 1.

15 Now, how does the Court determine whether or  
16 not they purchased Option Property or Purchase Property?  
17 Simply, the evidence will show that the recorded maps,  
18 which are found in the amendments to the Amended and  
19 Restated Option Agreement, have property outside this  
20 Parcel 1. Specifically Parcels 2, 3 and 4 of Parcel  
21 Map 113-55 all have land outside of this Parcel 1.

22 As the evidence will demonstrate to this Court,  
23 Parcel 1's width is consistent throughout. It is  
24 similar to a parallelogram were you not to consider the  
25 bottom shift. The Court will learn by examining the

16

1 maps that the distance from the westernmost portion of  
2 Parcel 1, which is U.S. Highway 93 to the easternmost  
3 portion of Parcel 1 is 7996.92 feet. The map tells the  
4 Court this. You don't need to apply a scale. It has  
5 the numbers right on it.

6 Now, looking at Parcel Map Book 113, page 55,  
7 and examining Parcel 2 and Parcel 3 and Parcel 4, the  
8 evidence will show that the easternmost portion of  
9 Parcel 2, away from U.S. Highway 93 exceeds 9,100 feet,  
10 well in excess of the 8,000 feet which is the width of  
11 Parcel 1.

12 The same process the Court will apply to  
13 determine the location for Parcels 3 and 4. And the  
14 evidence will show that Parcel 3, at its easternmost  
15 point is over 10,800 feet from U.S. Highway 93, again,  
16 exceeding the 8,000 foot width of Parcel 1.

17 Parcel 4 is a little bit longer, 11,000 feet  
18 plus or minus 50 feet. Again, the evidence will show  
19 that Parcel 4 exceeds the bounds of Purchase Property,  
20 of Parcel 1, by approximately 3,000 feet.

21 But the evidence does not end there, however.  
22 There's one additional parcel, a parcel on Book 116,  
23 page 35, Lot 3 on that parcel. This is located 8,000  
24 feet, not from the western portion of Parcel 1, but from  
25 its eastern boundary. The evidence will show that this

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1 parcel was over a mile and a half away from the most --  
2 the most eastern point of Parcel 1.

3 The Court will hear evidence in this case not  
4 just about the location of these parcels, but of the  
5 designation. As the evidence here guides us, Option  
6 Property is the remaining portion of the entire site  
7 which is or becomes designated for single-family  
8 detached production residential use or production  
9 residential property. If it is not so designated, the  
10 Option Agreement will tell this Court that it cannot be  
11 Option Property.

12 Well, the evidence will show that Amendment  
13 No. 7, April of 2009, to the Amended and Restated Option  
14 Agreement, provided the specific designations for  
15 Parcels 2, 3 and 4, and the evidence will show that that  
16 designation was residential, was active adult, was  
17 washes. It was production residential property.

18 The evidence will show that Parcels 2, 3 and 4,  
19 by being located outside of Parcel 1 and by being  
20 designated as production residential property  
21 constitutes Option Property.

22 As for this fourth parcel that is miles apart  
23 from Parcel 1, it too is designated it as production  
24 residential property. It is a wastewater treatment  
25 parcel. Utilities are part of production residential

18

1 property as described in this Option Agreement as has  
2 been recently entered into evidence.

3 You also will see evidence from the amendments  
4 to the Amended and Restated Option Agreement confirming  
5 that this is that designation.

6 So the evidence in this case will conclusively  
7 demonstrate that Pardee repeatedly purchased Option  
8 Property, and yet Pardee never treated it as such for  
9 the purposes of plaintiffs' commissions.

10 Pardee -- representatives of Pardee will  
11 testify and you will see e-mails and you will hear a  
12 number of witnesses tell you that Pardee insisted that  
13 it never purchased Option Property. If the Court finds  
14 that not to be true, the Court must then apply to the  
15 rest of the agreement to determine if there is a breach.  
16 It must evaluate the rest of the facts to determine what  
17 the damages are, et cetera, et cetera.

18 But the importance of the location of these  
19 parcels cannot go understated, if only because the  
20 definitions of Purchase Property and of Option Property  
21 are in reference to these locations, to these geographic  
22 facts.

23 Now, in addition to demonstrating to this Court  
24 that Pardee purchased Option Property, plaintiffs will  
25 demonstrate, the evidence will show, that Pardee

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1 breached its duties under the September 1, 2004  
2 Commission Letter Agreement.

3 The evidence will show that the commission  
4 payments were inaccurate, were not properly calculated.  
5 The evidence will show that in addition to improperly  
6 calculating these commissions, Pardee -- and this is the  
7 most important part of the case -- failed to keep  
8 plaintiffs reasonably informed as to all matters related  
9 to the amount and due date of their commissions.

10 You will hear evidence that in order to be  
11 reasonably informed as to these pieces of information,  
12 that Pardee had to provide evidence, had to provide  
13 information, had to provide records allowing plaintiffs  
14 to check, to verify that they had received the  
15 appropriate commission payment at the appropriate time.

16 You will hear evidence that without that  
17 information, the information that did not allow them to  
18 do that, was no information at all. You will hear that  
19 effectively plaintiffs were forced to trust Pardee and  
20 could not check and make sure that they had received the  
21 appropriate commission payments.

22 Now, these breaches are important not simply  
23 because it's on a piece of paper between two parties.  
24 It's important because of the magnitude of this  
25 transaction. You will hear evidence that the Option

20

1 Agreement between Pardee and Coyote Springs Investment,  
2 LLC, provided Pardee the option to purchase 30,000 acres  
3 of land in Clark and Lincoln Counties, Nevada. That at  
4 an original price of \$40,000 per acre, Pardee could  
5 theoretically spend \$1.2 billion for land, and  
6 plaintiffs had a commission for those purchases, for  
7 those options.

8 For plaintiffs this was everything. You will  
9 hear evidence that as 60-year-old men signing this  
10 agreement, seeing it get executed, watching the  
11 transaction take place, a 40-year option for them may  
12 pass them by. For them -- and you will hear it from  
13 Mr. Wolfram and you will hear it from Mr. Wilkes -- they  
14 will tell you that a lot of this was for their family,  
15 that the reason that we're here today is not simply  
16 because there could have been an inaccurate calculation  
17 of commissions, but because for the next 40 years, 35  
18 years, this option may still be in place.

19 And they will tell you that without the  
20 information to verify that they were receiving the  
21 appropriate commissions, the magnitude and the size and  
22 the value of the transaction is lost.

23 You will hear evidence that without this  
24 information, without the ability to know that they are  
25 being paid appropriately, without the ability to ask a

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1 question and get a candid answer, materially impacts the  
2 value of this agreement. You will hear evidence that it  
3 hurts them not just because they can't trust them, but  
4 because if they pass on -- and they are experienced land  
5 brokers -- how do their children determine whether or  
6 not they are receiving the appropriate commissions? You  
7 will hear that concern expressed to you from both  
8 Mr. Wolfram and Mr. Wilkes.

9 And the breach of contract goes beyond the  
10 commission payments. It goes beyond the amorphous, "We  
11 didn't receive enough information." You have the  
12 evidence now. It's in evidence. Amendments 1 through 8  
13 of the Amended and Restated Option Agreement were never  
14 given to plaintiffs by Pardee.

15 Starting in 2006, you will see that the  
16 Amendment No. 1 to the Amended and Restated Option  
17 Agreement started the process and ended in 2009 with  
18 Amendment No. 8 of that Amended and Restated Option  
19 Agreement. These amendments, you will see, are the  
20 evidence, are the proof of the transactions, of the land  
21 takedowns, of activity that plaintiffs are receiving a  
22 commission on.

23 You will see in Amendment No. 7 the  
24 designations for the land for all the parcels that have  
25 been taken down to date. You will see that that

22

1 evidence, confirming exactly which property is  
2 designated for what, was denied to our clients. You  
3 will see that each and every amendment does something  
4 new, something significant for the Option Agreement.

5 As the Court will see when considering  
6 Exhibit 2, the Option Agreement for the Purchase of Real  
7 Property and Joint Escrow Instructions, this is the  
8 agreement that Mr. Wolfram and Mr. Wilkes relied upon  
9 when signing the Commission Letter Agreement.

10 The evidence will show the Commission Letter  
11 Agreement adopts the terms in that Option Agreement.  
12 You will see that it relies upon and incorporates the  
13 principles in that Option Agreement. And beyond the  
14 physical -- beyond the technical exact terms of the  
15 Option Agreement -- of the Commission Letter Agreement,  
16 the Option Agreement references Mr. Wolfram and  
17 Mr. Wilkes.

18 Specifically, the Option Agreement states  
19 notwithstanding the foregoing, upon and subject to the  
20 close of escrow for the purchase of property or any  
21 option parcel, buyer shall pay any finder fee owed to  
22 General Realty Group, Walt Wilkes, and Award Realty, Jim  
23 Wolfram, pursuant to a separate agreement. Said fee  
24 shall be split equally.

25 The Court will know that the Option Agreement

23

1 provides for the payment, provides for the establishment  
2 of another agreement to pay plaintiffs for the  
3 transactions resulting in the takedowns of Purchase  
4 Property and Option Property.

5 The amendments to the Amended and Restated  
6 Option Agreement executed in March of 2005, well after  
7 September 1, 2004, were denied the plaintiffs, were not  
8 provided. And without that information, they will tell  
9 you they did not have the ability to confirm that they  
10 were receiving the appropriate commission amounts. The  
11 evidence will show that there's no acceptable  
12 explanation or excuse for this denial of information.

13 The Option Agreement contained a nondisclosure  
14 clause. Plaintiffs received a copy of the Option  
15 Agreement. Amendments 1 and 2 to that Option Agreement  
16 reaffirmed that nondisclosure agreement. Plaintiffs  
17 were afforded a copy of those documents. Even the  
18 Amended and Restated Option Agreement contained a  
19 restatement of the nondisclosure clause, the  
20 confidentiality clause. And plaintiffs were given a  
21 copy of that document.

22 But from March 2005, there wasn't another  
23 agreement executed by Pardee concerning land  
24 transactions for which plaintiffs would be entitled to a  
25 commission that Pardee provided to our clients, not one.

24

1 You will hear about the importance of  
2 Amendments 1 through 8. You will hear about what they  
3 do, parcels they purchase, the locations. You will see  
4 for yourself this is where that property is. This is  
5 how it's designated. And I know, based on the location  
6 and the designation, that it is this type of property,  
7 Purchase Property or Option Property.

8 Plaintiffs never had that chance. You will  
9 hear evidence that for three years, beginning in  
10 approximately 2007, plaintiffs had been curious as to  
11 what had been happening in the development of  
12 Coyote Springs as it pertained to their commissions.

13 You will hear that these inquiries ranged from  
14 phone calls to letters to representatives of Pardee, to  
15 multiple representatives of Pardee. You will hear they  
16 involve phone calls, meetings with title company  
17 members, phone calls with Coyote Springs.

18 You will hear that their requests for  
19 information were not appropriately responded to. You  
20 will hear that despite plaintiffs' pleas for the  
21 information, for some sort of explanation for what was  
22 happening so that they knew that they were receiving the  
23 appropriate commission payment, they didn't receive that  
24 information.

25 You will learn that there are only two letters

25

1 benefit, they weren't going to receive it.

2 You will learn that there wasn't another  
3 document sent to both of them together responding to  
4 these inquiries. The evidence will show that many  
5 documents were sent to Mr. Wolfram, and you will be  
6 shown a stack of deeds and a map and a couple of other  
7 letters and three closing statements.

8 But underneath the surface, the evidence will  
9 show that that map did not accurately reflect the land  
10 transactions, did not demonstrate the designations of  
11 the property in order to show whether or not the  
12 commissions were accurate. The evidence will show that  
13 those deeds were not complete.

14 You will hear evidence that a request for a  
15 deed of Pardee Coyote holdings was denied to plaintiffs.  
16 You will hear evidence that the deeds did not include  
17 information for all of the purchases. You will hear  
18 evidence that the closing statements did not include  
19 specific references to property that was known to  
20 Mr. Wolfram and Mr. Wilkes because they used the  
21 definitions in the amendments to the Amended and  
22 Restated Option Agreement. Without those amendments,  
23 Mr. Wolfram will tell you he could not know what the  
24 closing statements referred to.

25 The evidence will show Mr. Wolfram and

27

1 sent to Mr. Wolfram and Mr. Wilkes concerning these  
2 issues. You will read them for yourself. You will see  
3 and they will show that you cannot confirm the value of  
4 the commissions with those letters.

5 In fact, one of the letters you will see tells  
6 Mr. Wolfram and Mr. Wilkes that Pardee is executing a  
7 custom lot agreement to acquire land for custom lots,  
8 and not only were they not going to receive a copy of  
9 that agreement, they were not going to receive  
10 commissions under that agreement. The evidence will  
11 show that that is improper and that is a circumvention  
12 of the heart, of the spirit, of the purpose of the  
13 Commission Letter Agreement. That is, when Pardee  
14 wishes to take down production residential property,  
15 whether it be Purchase Property or Option Property,  
16 plaintiffs are entitled to a commission once the  
17 transaction has closed.

18 You will hear that in addition to this letter,  
19 the first letter in 2007, one other letter in March of  
20 2008 was addressed to Mr. Wolfram and Mr. Wilkes. In  
21 that letter Jon Lash told them, Your requests for the  
22 production of the parcel maps do not arrive at a mutual  
23 benefit and, thus, they will not be provided to you.  
24 Yes. You will learn that Pardee, Mr. Lash, told  
25 plaintiffs that because it did not afford mutual

26

1 Mr. Wilkes spent years trying to get the information  
2 informally. They didn't want to involve lawyers. You  
3 will hear that it was only in 2009 that Mr. Wolfram  
4 hired an attorney hoping that that would open up the  
5 information from Pardee. You will hear that despite  
6 these efforts, they were unsuccessful.

7 You will hear that in 2010 they had to file  
8 suit in order to get the documents, in order to find out  
9 what was happening as it related to their commissions.  
10 You will hear that after all the effort they went to,  
11 after seeing everyone under the sun, they could not know  
12 whether they were receiving the appropriate commission  
13 payments or not.

14 And the evidence will show that despite having  
15 access to public records where you can get parcel  
16 numbers or acreage or parcel maps, despite that ability,  
17 the one thing they were lacking was Amendment No. 7.

18 The evidence will show that Amendment No. 7 not  
19 only provided those six color maps showing the  
20 designation of the property, you will hear that pursuant  
21 to that the paragraph referencing those maps served to  
22 supersede all prior reconciliations of the property.  
23 Amendment No. 7 was a lot of new information. It  
24 provided a lot of critical documentation for plaintiffs,  
25 and Pardee didn't give it to them.

28



1 In addition to the breach contract claim, the  
2 plaintiffs also have a breach of the claim for the  
3 covenant of good faith and fair dealing. Without  
4 retreading what the evidence will show as it pertains to  
5 the breaches, the Court should take particular notice of  
6 the statements in the Option Agreement.

7 The evidence will show the Option Agreement  
8 succinctly describes the purpose of the Commission  
9 Letter Agreement; that is, to pay a fee to plaintiffs  
10 when certain Option Property or Purchase Property was  
11 taken down. We know and the evidence will conclusively  
12 show that that wasn't followed.

13 We also know that the agreement to purchase  
14 custom lots, which is an area of land, that is a  
15 description of land that is included in production  
16 residential property, is not an action in good faith if  
17 it wasn't given to our clients and if it didn't provide  
18 for commissions for them.

19 The evidence will show that even after the  
20 discovery process, Pardee has not provided to plaintiffs  
21 any maps or any information which references Parcel 1 or  
22 Purchase Property and Parcels 2, 3 and 4 of Book 113,  
23 page 55, which the evidence will show is outside of  
24 Parcel 1.

25 Evidence will show that plaintiffs are not in  
29

1 possession of any documents which would allow them to  
2 calculate the number of acres outside Parcel 1. The  
3 evidence will show that without additional information  
4 concerning those parcels and concerning the custom lot  
5 agreement, plaintiffs just don't know whether or not --  
6 not whether or not, excuse me -- how much they would be  
7 owed under the Commission Letter Agreement if properly  
8 applied to the facts.

9 You will hear Mr. Wolfram tell you that this is  
10 why he brings his accounting claim. Without the  
11 information, he doesn't know whether or not he's  
12 receiving the appropriate amounts -- excuse me, not  
13 whether or not he's receiving -- how much is off in the  
14 commissions.

15 You will also hear, in terms of the covenant of  
16 good faith and fair dealing, that Lot 3, the wastewater  
17 treatment parcel, way on the east of this township, over  
18 a mile and a half away from the outermost boundary of  
19 Parcel 1, was purchased for a price of \$21,800 and  
20 change per acre.

21 The evidence will show that Pardee paid  
22 plaintiffs a commission based on the percentage of that  
23 price, the \$21,000 per acre price. The evidence will  
24 show that if properly applied as Option Property  
25 pursuant to subparagraph 3 of their Commission Letter

30

1 Agreement, that they would be entitled to a commission  
2 equal to 40,000 per acre and a percentage of that.

3 Beyond describing the need for the information,  
4 beyond demonstrating that there was an inaccurate  
5 calculation, you will hear evidence as to the  
6 relationship between Pardee and plaintiffs. You will  
7 hear evidence that Pardee trusted -- excuse me, that  
8 plaintiffs had to trust Pardee. You will hear evidence  
9 that they didn't have access to the information, to the  
10 material facts demonstrating what was happening in the  
11 transaction between CSI and Pardee.

12 You will hear that Pardee instructed  
13 representatives of Chicago Title not to produce  
14 information. Pardee acted to ensure that plaintiffs  
15 only could receive the information from them.

16 The evidence will show that this not only  
17 establishes the relationship of trust necessary to  
18 establish the duty to account, that also when you have  
19 such imbalance of information, the evidence will show  
20 that because -- and not only were all the material facts  
21 in the hands of Pardee, they were peculiar to Pardee as  
22 evidenced by the instruction to Chicago Title to not  
23 produce these documents.

24 And the evidence will show that plaintiffs had  
25 no fair or reasonable access to the same. You will hear  
31

1 about how long Mr. Wolfram spent trying to get that  
2 information. You will hear how many hours he spent. He  
3 spent well over 80 hours trying to get this information  
4 to no avail.

5 Because plaintiffs had this relationship, and  
6 the evidence will confirm that that relationship

7 existed, the evidence will also show that they had a  
8 duty to account. They had a duty to provide the  
9 information that would otherwise -- that otherwise  
10 plaintiffs would otherwise have access to.

11 Finally, you will also hear evidence about a  
12 counterclaim. Defendant has brought a counterclaim  
13 alleging that plaintiffs violated the covenant of good  
14 faith and fair dealing, specifically that the act of  
15 requesting information was in violation of this implied  
16 covenant.

17 They claim that plaintiffs, Mr. Wolfram and  
18 Mr. Wilkes, had a duty to stay silent. They will tell  
19 you or they claim through their pleadings that this  
20 failure to stay silent was a violation of this implied  
21 covenant and that defendant needed to respond and spent  
22 a substantial amount of time and amount of resources  
23 responding to these inquiries.

24 The facts will establish and confirm that  
25 plaintiffs had no such duty to stay silent or refrain

32



# PARDEE'S OPENING STATEMENT

1 from inquiring. But more importantly, the Court will  
2 ask itself, why, if plaintiffs didn't have a right and,  
3 in fact, had a duty not to ask questions, why did  
4 defendant respond if it was going to damage them? If it  
5 was going to harm them, why did Pardee participate in  
6 that harm?

7 The evidence will show that the counterclaim  
8 holds no merit. The evidence will show that not only  
9 was there no violation of the covenant of good faith and  
10 fair dealing, but that these alleged damages were not --  
11 if they existed at all -- were not caused by plaintiffs,  
12 and surely plaintiffs are not liable for them.

13 The evidence will show, though, that this  
14 damage claim, the defendant's damage claim, highlights  
15 the distinction between plaintiffs' claim for time and  
16 effort damages and defendant's. The evidence will show  
17 that unlike defendant's claim for time and damages,  
18 plaintiffs did not have a luxury of sitting still.

19 Plaintiffs, as the evidence will demonstrate,  
20 could have lost commissions, may have lost the  
21 information necessary to confirm --

22 MS. LUNDVALL: Your Honor, Counsel sounds like  
23 this is now closing argument, rather than opening  
24 statement, not highlighting what the evidence is going  
25 to be.

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1 THE COURT: Well, he's pretty much -- he's now  
2 addressing the time and effort damages and what the  
3 evidence will show. So I'm going to overrule it.

4 MR. J.M. JIMMERSON: The evidence will show  
5 that the time and effort damages endured by plaintiffs  
6 were not only foreseeable, but they were directly caused  
7 by plaintiffs.

8 THE COURT: That is more argument, but I know  
9 where you are going, but that is more argument. Tell me  
10 what it's going to be.

11 MR. J.M. JIMMERSON: I'll move on, Your Honor.

12 THE COURT: I know they asked for information.  
13 We've kind of gone a little bit through time and effort,  
14 as both parties know, before.

15 MR. J.M. JIMMERSON: Your Honor, the evidence  
16 will show that plaintiffs are entitled to not only their  
17 time and effort damages, but their attorneys' fees as  
18 damages.

19 You will hear that they had no other ability to  
20 get the information. You will hear that the prosecution  
21 for claim for accounting was necessary in order to  
22 receive all the information to confirm that they had  
23 received it.

24 And at the end of this trial, my father, Jim  
25 Jimmerson, will stand up and ask you to find in favor of

34

1 plaintiffs, will ask you for the fairness that  
2 plaintiffs have always been entitled to. He'll ask you  
3 for a judgment in their favor. Thank you.

4 THE COURT: Thank you, Mr. Jimmerson.

5 MS. LUNDVALL: Your Honor, let me begin by  
6 thanking you for the opportunity to be able to present  
7 opening statement. I know that sometimes in bench  
8 trials that the courts suggest that simply go to the  
9 evidence.

10 THE COURT: No. I appreciate -- the Court  
11 appreciates it, because this is a complicated case.  
12 I've appreciated it from all the motions and you've been  
13 in here. I understand. I appreciate that you will do  
14 it for me to help me.

15 MS. LUNDVALL: One of the things, though, that  
16 I'm hoping that the Court will find at the conclusion,  
17 though, of hearing the evidence, is that, in fact, that  
18 this case is actually quite simple.

19 You've got two contractual documents that are  
20 going to be at issue in this case. You've got a  
21 contractual document that serves as the foundation for  
22 the breach of contract action between Mr. Wolfram and  
23 Mr. Wilkes, on one hand, and Pardee Homes of Nevada, on  
24 the other hand.

25 Now, both those plaintiffs acknowledge that

35

1 this case is principally about a breach of contract, and  
2 they acknowledge that that breach of contract then  
3 underlies all three of their causes of action, both the  
4 breach of the covenant of good faith and fair dealing,  
5 as well as their claim for an accounting.

6 To interpret their Commission Agreement, the  
7 Court is going to be required to take a look at a couple  
8 of other contractual documents, and those contractual  
9 documents are between Pardee Homes of Nevada and  
10 Coyote Springs Investment, LLC. We refer to  
11 Coyote Springs Investment as CSI. And with the Court's  
12 permission or I guess the Court's indulgence, to try to  
13 speed things along --

14 THE COURT: I already refer to them as CSI,  
15 Counsel, in my notes. So that's perfect. I know what  
16 you mean.

17 MS. LUNDVALL: Thank you.

18 One of the things that the Court will see with  
19 the contractual arrangement then between Pardee and CSI,  
20 it reminds me a little bit of an exercise as a child  
21 when you used to play connect-the-dots to figure out  
22 what the picture is. And one of the things that we are  
23 going to do is to allow the Court then and to point out  
24 then the different guideposts that are contained within  
25 those contractual documents so that you can connect the

36

1 dots and to be able to get an accurate picture of the  
2 transactions between Coyote Springs and Pardee.  
3 To the extent that those contractual documents  
4 needs further clarification, we're going to bring you  
5 both sides of that transaction, not just simply to rely  
6 upon what Pardee's stated intent was in entering into  
7 its agreements with CSI, but we're going to bring you  
8 the other side of that transaction and that being CSI.  
9 And so to allow the Court then to interpret the  
10 Commission Agreement that's at issue in this case, we're  
11 going to give you the guideposts then from the  
12 contractual documents between Pardee and CSI, allow you  
13 to follow the dots, and to see an accurate picture of  
14 what the parties' transaction was, and in addition to be  
15 able to listen to the parties' intent when they entered  
16 into that contractual arrangement.  
17 Let me describe a little bit of the  
18 relationship then between these different parties to  
19 each other. The Court then is going to learn that it  
20 was in the 1990s that Harvey Whittemore began to develop  
21 the Coyote Springs project. He began developing that  
22 project through his company that he refers to as CSI and  
23 that we're now referring to as CSI. That project was a  
24 43,000-acre project, and it was unimproved real property  
25 that straddled both Clark as well as Lincoln County. It

37

1 was a huge parcel of property.  
2 And if you can imagine that Summerlin doesn't  
3 exist. I came to this community in 1982. Summerlin  
4 didn't exist. But imagine completely undeveloped  
5 property in Summerlin, no roadways, no commercial  
6 centers, no parking lots, no residential homes, no  
7 custom homesites, no power plants, no utility corridors,  
8 nothing. That's what Coyote Springs was when the  
9 parties began to negotiate then their relationship with  
10 each other. And by that I mean Pardee and  
11 Coyote Springs.  
12 By 2002, the plaintiffs will tell you -- and  
13 I'm going to make the assumption that on certain points  
14 that their testimony that they gave us in deposition is  
15 the testimony that they will give to you from the  
16 witness stand. But they will tell you that by 2002,  
17 that they had become aware of and acquainted with Harvey  
18 Whittemore. They will also tell you that they began  
19 tracking his project.  
20 One of the things that, in addition, from an  
21 evidentiary standpoint as we told you, is that we're  
22 going to bring you the other side of the transaction,  
23 and that is Pardee Homes of Nevada. You are going to  
24 learn a little bit about Pardee Homes through various  
25 representatives that will take the witness stand. They

38

1 are principally a production home builder.  
2 Now, what does that mean? That means that they  
3 do not design custom homes and then make every home  
4 different. They are what they refer to, and some  
5 people, maybe in more of a slang term, refer to as tract  
6 homes or production homes, where they design and develop  
7 then different floor models, and they develop then  
8 housing developments based upon giving options to  
9 potential customers as to what may go into the interior.  
10 But by and large, most of the stuff on the exterior, not  
11 all of it, looks very similar. That is the nature of  
12 their business.  
13 They have been in business through their parent  
14 company since 1921. They have a slogan, and some people  
15 have snickered at this slogan a little bit because some  
16 people suggest that maybe it's kind of corny, but their  
17 slogan is "Do the right thing." But they take that to  
18 heart, and they practice doing the right thing. They  
19 practice doing the right thing, and the Court is going  
20 to see examples of their practice of doing the right  
21 thing with the plaintiffs, Mr. Wolfram and Mr. Wilkes,  
22 in this action. It is a guidepost by which the  
23 representatives of Pardee make their business decisions.  
24 You are going to hear from Jon Lash, who is the  
25 CEO of the parent company located in California. You

39

1 are also going to hear from Cliff Andrews, who is the  
2 president of Pardee Homes of Nevada. In addition, you  
3 are going to hear from other individuals associated with  
4 Pardee. And this is somewhat going to be dependent upon  
5 the evidence that the plaintiff puts on. As the Court  
6 knows, we're going to be responsive to their evidence.  
7 But you may hear from Chuck Curtis. You may  
8 hear from Jim Stringer, and you also may hear from Steve  
9 Levy. Steve Levy is an outside attorney. He's the  
10 attorney that was responsible, from Pardee's  
11 perspective, of drafting the various contractual  
12 arrangements between Pardee and CSI.  
13 By 2002, you are going to learn that  
14 Mr. Wolfram and Mr. Wilkes had also become acquainted  
15 with Jon Lash. They had brought some development deals  
16 to Mr. Lash. And according, as I indicated, to the  
17 plaintiffs, they had been tracking Coyote Springs. And  
18 after learning that Mr. Whittemore had obtained water  
19 rights for the Coyote Springs project, the plaintiffs  
20 contacted Mr. Lash and asked him, if they could  
21 facilitate a meeting with Mr. Whittemore, would he  
22 attend such a meeting. Mr. Lash indicated that he  
23 would.  
24 Unbeknownst to Mr. Lash, though, at that time,  
25 Mr. Whittemore and Cliff Andrews, the president of

40

1 Pardee Homes of Nevada, had already begun working  
2 together concerning the Coyote Springs project. The two  
3 of them had already met. Mr. Whittemore had already  
4 presented his project to Mr. Andrews, and Mr. Andrews  
5 and his staff had already began developing information  
6 concerning the Coyote Springs project.

7 And what you are going to learn is that Pardee,  
8 before the meeting between Mr. Lash and Mr. Whittemore,  
9 had already developed an interest in participating in  
10 the Coyote Springs project. You will also learn from  
11 Mr. Whittemore that Coyote Springs, CSI, had developed  
12 an interest in working with Pardee.

13 As I indicated, though, Mr. Lash said that he  
14 would attend a meeting. And this information about  
15 Mr. Whittemore and Mr. Andrews then working together  
16 already, that was unknown to Mr. Lash at the time. But  
17 there was an initial meeting that was scheduled here in  
18 Las Vegas, and it was scheduled at Pardee's offices.  
19 And you'll learn who was in attendance at that meeting.  
20 And principally that meeting entailed Mr. Whittemore  
21 presenting his project to Mr. Lash.

22 Mr. Wolfram and Mr. Wilkes were there, and from  
23 the different accounts that I have learned of, it  
24 doesn't appear that they contributed much of anything to  
25 that particular meeting. They were there. They had

41

1 facilitated the introduction between Mr. Lash and  
2 Mr. Whittemore. During that meeting, Mr. Whittemore had  
3 expressed his desire to sell certain portions of his  
4 Coyote Springs project.

5 And when you think about a project,  
6 particularly of that magnitude, I think the best way

7 here in our community to compare and contrast it is to  
8 look at the Summerlin project, because Mr. Whittemore  
9 had, as an interest for the development of his project,  
10 very similar to Summerlin. He knew there was going to  
11 be commercial development there. He knew that there was  
12 going to be custom lot development there. He knew that  
13 there was going to be industrial development. He knew  
14 that there was going to be what is referred to and zoned  
15 as single-family production detached homes.

16 That's the property then that Mr. Whittemore  
17 had expressed an interest in and that property falls  
18 square then within Pardee's principal form of its  
19 business. It had an interest in acquiring certain  
20 portions of this project.

21 And what the parties had originally negotiated  
22 then was that CSI was going to sell portions of that,  
23 what you are going to hear the witnesses primarily refer  
24 to it as single-family residential. It has a very long  
25 and specific definition contained within the parties'

42

1 agreement, and it includes the single-family detached  
2 production residential, but typically the witnesses will  
3 refer to it as single-family residential.

4 And Coyote Springs was going to maintain  
5 control then of all of the commercial land, all of the  
6 land that was going to be golf courses, all of the  
7 custom lots, all of the multi-family land. And what do  
8 I mean by multi-family land? The multi-family land is  
9 typically then what condominiums or apartment complexes  
10 are built upon. He was going to retain the industrial  
11 lands and all other development deals in Coyote Springs.

12 And as a result of that meeting, and as a  
13 result of the meeting that had already occurred between  
14 Mr. Andrews and Mr. Whittemore, Pardee and CSI began a  
15 very long and very protracted negotiation. The  
16 plaintiffs, Mr. Wolfram and Mr. Wilkes, they were not  
17 needed with these negotiations. It simply wasn't within  
18 their skill set. And they, like most Realtors, were  
19 happy to stay out of these continuing negotiations.

20 And between the builders, Pardee, and the  
21 developer then, Mr. Whittemore through Coyote Springs,  
22 they were not needed then, and principally what you were  
23 seeing is negotiations that went on between different  
24 segments of Pardee and different segments of CSI.

25 And by that I mean this: There were some

43

1 negotiations that went on directly between Mr. Lash and  
2 Mr. Whittemore. And you are going to learn that they  
3 had a record of 18 calls in one day, and that these  
4 negotiations were very protracted, very long, very  
5 tedious. But ultimately you will learn that these were  
6 an arm's length transaction between these two parties.

7 In addition to the other segment, there were  
8 design people that were talking to each other. There  
9 were also the attorneys that were talking to each other.  
10 Mr. Whittemore, while he's an attorney himself, he  
11 brought in Carl Savely, who was doing much of the  
12 negotiation as it related to water rights.

13 Steve Levy was the person on behalf of Pardee  
14 who was the attorney that began negotiating and that  
15 began the drafting process along with Mr. Savely and  
16 along with Mr. Whittemore and also, I believe, with  
17 David Whittemore, who was an attorney with Lionel Sawyer  
18 and Collins at the time, that Mr. Whittemore had brought  
19 in then, and he was also doing some of the drafting on  
20 these contractual arrangements.

21 Now, this single meeting that I earlier  
22 described, at which time that Mr. Wilkes and Mr. Wolfram  
23 were in attendance, that was the sole participation that  
24 they did concerning those negotiations.

25 I asked during deposition and I would assume

44

1 then that Mr. Wilkes will confirm this as to the sum  
2 total of the time investment that he had into this  
3 project tracking the Coyote Springs project, trying to  
4 determine then if Mr. Whittemore had obtained his water  
5 rights, and he approximated it was about a week's worth  
6 of time that he had put into tracking that project  
7 collectively, assuming a 40-hour workweek, working eight  
8 hours then on a daily basis.

9 Now, as Coyote Springs and Pardee were doing  
10 their negotiations that ultimately led to the Option  
11 Agreement that we're going to bring to the Court's  
12 attention, Pardee was also negotiating then with the  
13 plaintiffs concerning their Commission Agreement. After  
14 several months and, in fact, almost a year's worth of  
15 negotiations, Pardee had entered into a written  
16 agreement and that written agreement we will bring to  
17 your attention is found at Exhibit B in the Defendant's  
18 binders, and it's titled Option Agreement for the  
19 Purchase of Real Property and Joint Escrow Instructions.  
20 Everyone refers to it in shorthand then as the Option  
21 Agreement.

22 It sets forth the terms of the deal, and  
23 specifically it set forth the fact that this deal only  
24 dealt with the single-family detached production  
25 residential land. That was the only thing that was at

45

1 issue.

2 And so now for the first time when I learn that  
3 there's a contention that a wastewater treatment plant,  
4 land upon which a wastewater treatment plant was  
5 constructed somehow falls within this scope of this  
6 Option Agreement or the scope of their Commission  
7 Agreement and for which they are entitled to commissions  
8 on that, when the Court takes a look at the Option  
9 Agreement, you are going to see that it was only the  
10 single-family detached production residential lands that  
11 were at issue under the Option Agreement.

12 Now, prior to the Commission Agreement between  
13 Pardee and the plaintiffs being entered into, there were  
14 two amendments that were made to the Option Agreement,  
15 which is fairly typical in long and protracted  
16 negotiations. You reach a deal, and then as you start  
17 through your due diligence period, what you realize is  
18 that there were certain deal points that need to be  
19 amended. And the parties agreed upon those amendments.  
20 They memorialized those amendments. And they executed  
21 those amendments, and those were done before the  
22 Commission Agreement was ever executed.

23 Now, notably, and contrary to their testimony,  
24 they received those amendments, and we will show the  
25 Court the documentary evidence transmitting those

46

1 amendments to the plaintiffs.

2 You are going to see the first amendment that  
3 is found at Exhibit E, and you are going to see the  
4 second amendment that is found at Exhibit J. And the  
5 principal thing that is important in these amendments --  
6 there are two principal things, actually.

7 The original Option Agreement made reference to  
8 an acquisition by Pardee for a Purchase Property Price  
9 of \$66 million. And it also identified when the initial  
10 closing was going to be on the initial parcel that they  
11 were going to take down. The amendments, though,  
12 increased the price and then made a change as to when  
13 the first closing was going to be.

14 And as I indicated, contrary to the deposition  
15 testimony, which I would assume is going to be the same  
16 thing from the witness stand and the same thing that  
17 we've now heard during opening statement, is that the  
18 plaintiffs were given copies of those amendments.

19 At the time -- and I think it's important for  
20 the Court to have this understanding, and we will  
21 present witnesses then to afford the Court this  
22 understanding, is at the time this land was in the  
23 rawest form of its development. There was no zoning.  
24 There was no parceling. There was no mapping. There  
25 was no permitting. There was no entitlements. There

47

1 was no design that had been accomplished at that point  
2 in time. All of that was work to be done in the future,  
3 and all of that work was going to be done jointly  
4 between Pardee and CSI.

5 In addition, which I think is very important  
6 for the Court to understand, is that there were multiple  
7 issues that were going to impact the boundaries of the  
8 lands that were going to be acquired by Pardee.

9 When we point out in the Option Agreement, you  
10 are going to see multiple places in the Option Agreement  
11 where the parties identified that the boundaries are  
12 going to change and that the boundaries that were at  
13 issue in the Option Agreement were not fixed.

14 I'm going to use the map that I think the  
15 plaintiffs referred to in their opening statement just  
16 to make one reference and that being this: This is what  
17 the plaintiffs contend is the parcel of property that  
18 was being acquired by Pardee under the Option Agreement.  
19 That is not accurate, absolutely not accurate.

20 You are going to be able to see the Option  
21 Agreement. You are going to be able to listen to the  
22 witnesses' testimony, both from Pardee's perspective as  
23 well as CSI's perspective. The easiest way to have an  
24 understanding that this is not what was at issue is  
25 looking at what the size of this is.

48

1 This property, and as was written into the very  
2 first Option Agreement, is 3,605 acres, and I think it's  
3 point 22. At another place in the Option Agreement, it  
4 identified that Pardee was going to be acquiring land  
5 from CSI at a price of \$44,800 an acre. Simple math,  
6 you take that 3,605 acres and multiply it by 44,800, and  
7 what do you get? 160 million and a whole bunch of  
8 change.

9 But the Option Agreement was abundantly clear  
10 that the Purchase Property Price was \$66 million. So to  
11 suggest that this is what Pardee was purchasing is  
12 inaccurate, and we will point out multiple places in the  
13 Option Agreement then so the Court can have an  
14 understanding as to why that was inaccurate.

15 Now let me identify some of the issues for  
16 which the parties knew at the time were going to change  
17 the boundaries of what was being acquired by Pardee.  
18 Those issues included --

19 THE COURT: When you say "parties," you mean  
20 CSI and Pardee?

21 MS. LUNDVALL: Absolutely, Your Honor.

22 THE COURT: Okay. I just wanted to make sure  
23 I'm following you.

24 MR. J.J. JIMMERSON: She's not talking about  
25 the plaintiffs.

49

1 wildlife issues dealing with the desert tortoises that  
2 had to be accounted for.

3 In addition, there was utility corridor, and  
4 that utility corridor was an easement that ran against  
5 the very southern portion of the boundary, and the  
6 parties wanted to be able to move that utility corridor  
7 to federal lands so that that portion of the property,  
8 which was very prime developable land, could be used as  
9 developable land rather than a utility corridor.

10 They knew that there was going to be golf  
11 courses on this entire 43 acres, and that there was  
12 going to be a signature course designed by Jack  
13 Nicklaus. Jack Nicklaus, you will learn, is a very  
14 creative individual, but also a very demanding  
15 individual. And he would say, You know, I want Hole  
16 No. 3 to go up over against this ridge. And so the  
17 boundaries and the contours then of the golf course  
18 lands that were being held by CSI, those were being  
19 moved to accommodate the designs that Jack Nicklaus was  
20 bringing to the golf courses.

21 Also there were subdivision, permitting,  
22 entitlement processes, all of which would require  
23 boundary changes. In addition, there were design  
24 changes. The parties were still working through what  
25 was the proper design by which to bring to the

51

1 THE COURT: Yes. And I think of parties as  
2 plaintiff and defendant. I've been a lawyer too long.  
3 So I'm following. I just wanted to make sure.

4 MS. LUNDVALL: Thank you, Your Honor.

5 THE COURT: So this is between CSI and Pardee.

6 MS. LUNDVALL: One of the things that you are

7 going to hear from both the Pardee representatives, as  
8 well as the CSI representatives, is that there were  
9 multiple issues that were going to impact then the  
10 boundaries of the lands that were going to be acquired.

11 The first one was the BLM configuration. When  
12 you take a look at the entire 43,000-acre site, at the  
13 time that the parties began negotiating, there was a big  
14 piece that was in the middle of it that belonged to the  
15 BLM. The parties wanted to move that outside or move  
16 that then to one of the outer boundaries. And there  
17 were at least three separate forms and ideas and  
18 suggestions for moving that BLM piece to a different  
19 location. That still had to be done yet, and they knew  
20 that at the time of the Option Agreement, and that's  
21 written into the Option Agreement.

22 In addition, there were wildlife issues out at  
23 that parcel. There's what they referred to as the Moapa  
24 dace, which is a small fish, and its wildlife and its  
25 habitat had to be accounted for. There was also

50

1 Coyote Springs project and how to map that design that  
2 they were negotiating.

3 Now, as I indicated, at the same time that  
4 Pardee was negotiating with Coyote Springs, they were  
5 also negotiating with the plaintiffs concerning their  
6 finder's fee or their commission. And what you are

7 going to learn is that Commission Agreement was  
8 extensively negotiated.

9 What you are also going to learn is that the  
10 plaintiffs were represented by very competent counsel in  
11 those negotiations, none other than Jim Jimmerson, as  
12 part of this case, and that there were significant  
13 negotiations back and forth between those parties.

14 You are also going to learn, and I think the  
15 plaintiffs themselves will acknowledge, that they were  
16 seasoned real estate professionals. So it wasn't as if  
17 this was their first rodeo. It wasn't as if this was  
18 their first commission agreement they ever negotiated.

19 All of the obligations they do acknowledge,  
20 though, are found within the four corners of that  
21 Commission Agreement, and they acknowledge that whatever  
22 duties that Pardee had to them are found within the four  
23 corners of that Commission Agreement. And equally, the  
24 duties that they owed to Pardee are found within the  
25 four corners of that Commission Agreement, in addition

52

1 to the covenant of good faith and fair dealing that's  
2 implied within every contract.

3 Pardee had elected to negotiate and to move  
4 forward with its Commission Agreement, notwithstanding  
5 the very first meeting that Cliff Andrews and Harvey  
6 Whittemore had already had before the plaintiffs had  
7 introduced Mr. Whittemore to Mr. Lash. It is an example  
8 of Pardee doing the right thing by these individuals.  
9 Rather than taking the position that, Hey, we've already  
10 developed an interest and you guys weren't the people  
11 that furthered that interest, they negotiated a  
12 Commission Agreement. They did the right thing.

13 Now, this Commission Agreement is going to be  
14 found at Exhibit L, and you are going to see that it  
15 governs the payment of commissions and also the  
16 provision of certain information that Pardee agreed to  
17 provide to the plaintiffs.

18 And it's this Commission Agreement that the  
19 plaintiffs accuse Pardee of breaching, and they  
20 acknowledge that it's the breach of that contract that  
21 serves as the common denominator between their claim for  
22 breach of contract, breach of the covenant of good faith  
23 and fair dealing, as well as their claim for accounting.  
24 But you are going to learn from the plaintiffs  
25 themselves that they acknowledge that this case is

53

1 principally about breach of contract.

2 Now, the Commission Agreement expressly states  
3 in the very first paragraph that, in fact, all of the  
4 capitalized terms in the Commission Agreement have the  
5 same meanings that are set forth within the Option  
6 Agreement. And that's what requires the Court then to  
7 go back and forth between these documents.

8 The copies of the Option Agreement and the  
9 amendment, as we had indicated, were given to the  
10 plaintiffs by Stewart Title Company, and we will show  
11 you the documents transmitting those. Exhibit M is  
12 simply one example of those transmissions.

13 What I'm going to do is use the same poster  
14 boards that I used during the motion for summary  
15 judgment argument in pointing out because it guides what  
16 the evidence is going to be within this case. These are  
17 excerpts from the Commission Agreement. We've offered  
18 the Commission Agreement as Exhibit L.

19 And what you are going to see is that there  
20 were three provisions concerning payment. Those three  
21 provisions, the first two, dealt with what the Purchase  
22 Property Price was that was being paid by Pardee to CSI.  
23 And as the Court will see, paragraph 1 and paragraph 2,  
24 for those Purchase Property Price, and the commissions  
25 that were going to be paid on there have nothing to do

54

1 with acreage, location, parcels. They had everything to  
2 do with what the price was that Pardee was paying to  
3 CSI. And this "Purchase Property Price" is capitalized  
4 here. So we know that we have to go then to the Option  
5 Agreement to determine what that was.

6 Subsection (iii) is going to be important to  
7 look at in its entirety, because the commission that  
8 they got was not just simply based upon Option Property  
9 generically. It was Option Property purchased by Pardee  
10 pursuant to paragraph 2 of the Option Agreement. So  
11 what we're going to have to do is to obviously go to  
12 paragraph 2 of the Option Agreement and to figure out  
13 what these purchases might entail if Pardee ever did  
14 purchase Option Property.

15 As we're going to demonstrate to the Court, the  
16 original Option Agreement provided for \$66 million for a  
17 Purchase Property Price, but the amendments took it up  
18 to \$84 million. And, therefore, what the Court will see  
19 then, through particularly the second amendment, is that  
20 these Purchase Property prices then were -- the

21 commissions that were based upon this Purchase Property  
22 Price paid to the plaintiffs was based upon \$84 million.

23 Now, there is an argument that could have been  
24 made, based upon the language and the way that this was  
25 written, is that once you take the 50 and once you take

55

1 the 16 and they got to the original 66 million, that  
2 that's where their commissions could have stopped. But  
3 Pardee didn't take that position. It also recognized  
4 that they had entered into an agreement based upon  
5 Purchase Property Price, and they paid them commissions  
6 on the full \$84 million.

7 Now, one of the things that I would also think  
8 is important, because of the allegation that we did not  
9 give them proper information about the amount and the  
10 due dates concerning their commissions, is to take a  
11 look at the balance of the Commission Agreement.

12 And let me point out where I'm making reference  
13 to. In the Commission Agreement there is this  
14 paragraph, and it's been pointed out to the Court many  
15 times. It has two provisions to it. The first sentence  
16 obligates Pardee to give them a copy of the written  
17 option exercise notice given pursuant to, once again  
18 we've got reference to paragraph 2 of the Option  
19 Agreement, together with information about the acreage  
20 that was being acquired. "In addition, Pardee shall  
21 keep each of you reasonably informed as to all matters  
22 relating to the amounts and the due dates of your  
23 commission payments."

24 So what does that mean? We've got to take a  
25 look then when the first commission payment was due, and

56



1 that is set forth within with the Commission Agreement  
2 as well. And it informs the Court as to what our  
3 commission payments were going to be to the plaintiffs.

4 The first commission payment was going to be  
5 made on the initial purchase closing. That, once again,  
6 is capitalized and, therefore, we've got to go to the  
7 Option Agreement and its amendment to see when that  
8 happens. And that was based upon, with respect to the  
9 aggregated deposits made prior to that time.

10 The Court is going to learn that that initial  
11 purchase closing was in the March, April time frame of  
12 2005. They got their first commission payment in accord  
13 with that initial purchase closing. The aggregated  
14 deposits that had been made at that point in time were  
15 \$10 million, and their initial commission then was based  
16 upon that \$10 million aggregated payment.

17 And then it says, Pardee shall make each  
18 additional commission payment pursuant to Clauses 1 and  
19 2 concurrently with the applicable Purchase Property  
20 payment to Coyote. It makes no reference to closings.  
21 It makes no reference to acreage. It makes no reference  
22 to location. It makes no reference to boundaries. The  
23 commission payments under paragraphs 1 and 2 were going  
24 to be made dependent upon the payments that were made by  
25 Pardee to CSI.

57

1 procedure by which then the plaintiffs were paid.

2 And you are going to see then on a regular  
3 basis that there was an order to pay broker commission.  
4 That order to pay broker commission, each and every one  
5 of them, you are going to see under Exhibit A. And you  
6 are going to see that order to pay broker's commission  
7 was prepared by the escrow company. It began with  
8 Stewart Title and then it moved to Chicago Title.

9 And what you are going to see also then is that  
10 those orders to pay broker's commission identify each  
11 and every time that there was an aggregate deposit that  
12 had been accumulated that was paid at the purchase  
13 closing. It identified escrow numbers. It identified  
14 dates. It identified amounts of payments, how those  
15 were going to be split, which escrow company it was.  
16 And those orders to pay commissions were sent then to  
17 the plaintiffs.

18 And in addition, when they received their  
19 check, there was also a memo as part of their check that  
20 identified what the escrow number was concerning this  
21 particular transaction as the title company then began  
22 to accumulate these monies and then began to pay out on  
23 those monies.

24 And you are going to see one by one by one each  
25 and every month that they receive those payments, the

59

1 And one of the things that you are going to  
2 learn then is that these purchase -- these payments then  
3 began to accrue on a monthly basis. Principally, as  
4 part of the Option Agreement, you are going to see a  
5 schedule of what the due dates of those payments were.  
6 And after the initial aggregated deposits, you are going  
7 to see a schedule that obligated Pardee to pay  
8 \$1.5 million a month to CSI. And so what happened? The  
9 plaintiffs received a commission payment based upon that  
10 \$1.5 million payment a month that was being made by  
11 Pardee to CSI.

12 The Court is very familiar with the allegation  
13 concerning the Option Property payment or the Option  
14 Property. In the original motion for summary judgment  
15 they had argued that somehow we had changed the  
16 definition. As part of our proof that we will bring to  
17 the Court's attention, there were no changes to the  
18 definition of Option Property across any of the  
19 amendments.

20 What we're also going to demonstrate to the  
21 Court is that we fully performed under this Commission  
22 Agreement. We are going to bring you, under Exhibit A,  
23 and it's going to be somewhat tedious, you are going to  
24 learn that the escrow companies were responsible then  
25 for developing the procedure and they did develop the

58

1 amount of those payments, and the information that was  
2 contained on those payments that was sent to the  
3 plaintiffs. And it identified to a T compliance then  
4 with this schedule and, therefore, identified to a T  
5 that they were reasonably informed as to the amounts and  
6 the due dates of their commissions.

7 And I will get into the additional information  
8 that they were given as well in support of this after  
9 they began advancing questions. But before there was  
10 ever any dispute, Pardee took reasonable efforts and  
11 exercised those reasonable efforts to ensure that they  
12 were informed as to the amounts and the due dates of  
13 their commission payments. And all of that then came  
14 through the escrow company.

15 Now, the second portion of this case then deals  
16 with whether or not Pardee has purchased any Option  
17 Property pursuant to paragraph 2 of the Option  
18 Agreement. And what the Court is going to learn is that  
19 there was a very established process with a great number  
20 of documents that would have been generated if Pardee  
21 had purchased Option Property pursuant to paragraph 2 in  
22 the Option Agreement And let me explain just a little  
23 generally how this works because it makes sense, I  
24 think, when you have the big picture.

25 There were certain properties that were going

60



1 to be acquired as these deposits accumulated, as the  
2 mapping was done, as some of the boundaries then became  
3 to be fixed, and, therefore, the parcels themselves  
4 Pardee would know where they were. But what happened,  
5 though, after those initial parcels were developed,  
6 Pardee had an option to purchase other lands at Coyote  
7 that may be designated for single-family residential  
8 development.

9 And what happens is that you want to give  
10 notice to the world that Pardee had that option. In  
11 other words, CSI had to first sell it to Pardee. If CSI  
12 was going to designate it, if they were going to sell  
13 it, they first had to give Pardee that option. And that  
14 was memorialized then in an Option Agreement that was  
15 recorded.

16 So what had to happen then is, through the  
17 process, when you go through paragraph 2 of the Option  
18 Agreement and you put it in conjunction with also  
19 paragraph 9, which deals with the escrow instructions  
20 that concern Option Property, what you learn is this:  
21 That there had to be a designation by CSI of additional  
22 single-family properties. There had to be a written  
23 notice of exercising that option that was required by  
24 Pardee.

25 There had to be a written agreement drawn for

61

1 the acquisition of that additional Option Property  
2 pursuant to paragraph 2, and there would have to be  
3 escrow instructions given to the escrow company  
4 pursuant -- if Option Property, pursuant to paragraph 2  
5 would be acquired. They would have to open an escrow,  
6 and all the standard things that go along with  
7 purchasing a parcel of property. Classic one, title  
8 insurance.

9 Also the parties had a very specific Option  
10 Property deed that was going to be required. And in  
11 addition, if Pardee was buying portions of what had been  
12 designated, there had to be modifications made to the  
13 Option Property memo that had been recorded against the  
14 other property.

15 In other words, as they -- if they had actually  
16 bought Option Property, the Option Property memo would  
17 have to get smaller in its description because it would  
18 be less. There would be documentary transfer tax  
19 documents, and there would be new quitclaim deeds. The  
20 quitclaim deeds then were required because there were  
21 certain remainder interests that Pardee would be  
22 obligated to give back then to CSI as part of such a  
23 transaction.

24 So all of those things would have had to have  
25 been done if Pardee had purchased Option Property. And

62

1 when you think about that, when you total all of those  
2 things up, and you are going to learn from the  
3 witnesses, not only would Pardee have those documents,  
4 but CSI would also have those documents, as well as the  
5 escrow companies.

6 There were subpoenas, Your Honor, that went to  
7 CSI and to the escrow companies, and there were no  
8 documents dealing with Option Property that I just  
9 described. In addition, there would be public records  
10 as to the changes to the Option Property memorandum.  
11 The Option Property deeds, transfer taxes, all of that  
12 would have been public records. None of those documents  
13 exist.

14 When we told the plaintiffs that we had not  
15 exercised any Option Property, we were telling them the  
16 truth. And part of what you will learn from the  
17 witnesses and the documentary evidence in this case is  
18 that we have not purchased any Option Property pursuant  
19 to paragraph 2 of the Option Agreement.

20 Without that purchase, number one, there would  
21 be no written information to give to them. And, in  
22 addition, there would be no additional commissions that  
23 would be owed to them.

24 Now, one of the things I wanted to begin to  
25 highlight a little bit, because it has come up during

63

1 the opening argument then by plaintiffs' counsel, is  
2 that he seems to focus on that we did not give  
3 information to which the plaintiffs were entitled to  
4 the plaintiffs when they began their questioning about  
5 what information they were entitled to.

6 First and foremost, I think you have to take a  
7 look at what did the contractual obligation -- what was  
8 Pardee contractually obligated to give to them? We were  
9 obligated to give them a notice if we were taking down  
10 Option Property pursuant to paragraph 2. If that didn't  
11 exist, quite obviously, there would be nothing that we  
12 could give to them.

13 You go down then to the last paragraph. We  
14 were supposed to keep them reasonably informed as to the  
15 amounts and the due dates then of their commissions. So  
16 let's talk about then what evidence exists as to what  
17 information that they received on that. As I told you,  
18 at Exhibit A, the Court is going to find then all of the  
19 notices, all of the information that came from the  
20 escrow companies, each and every one of the orders to  
21 pay commission, the escrow numbers, the information that  
22 was on that, how much in payments then that Pardee was  
23 making to CSI, how much has been aggregated, how much on  
24 a monthly basis they were paying. Each and every one of  
25 those pieces of information are contained in there.

64

1 First it came from Stewart Title and then later  
2 it became Chicago Title. It had escrow numbers. It had  
3 name of the title company. It had percentage of the  
4 commission to be paid, to whom, and how it was going to  
5 be split then between the plaintiffs. All of that is  
6 found within each Exhibit A.

7 You are also going to find each commission  
8 check that was received by the plaintiffs. That too  
9 contained the amount of their commission, the escrow  
10 number, the payee, the payor, along with a memo  
11 explaining how that amount was determined.

12 There came a circumstance across the course  
13 then of when Pardee was paying these monthly payments to  
14 the plaintiffs that they were overpaid. We learned of  
15 that and we sent them a letter telling them that, in  
16 fact, that they had been overpaid and how that  
17 overpayment was going to be taken into account, in other  
18 words, how we were going to catch up that overpayment  
19 that was given to them.

20 As part of that letter, we also told them --  
21 and we're now like into 2007, into the 2007 time frame.  
22 The relationship between Pardee and the relationship  
23 between CSI moved on, and the parties had additional  
24 negotiations, and they had additional negotiations for  
25 other properties. And we told them that we had

65

1 additional negotiations for these other properties, for  
2 example, with the golf course.

3 But we also told them that they weren't  
4 entitled to commissions on these other properties, and I  
5 think that throughout the course of discovery, that  
6 they've finally acknowledged that they are not entitled  
7 to commissions on anything other than the single-family  
8 residential land.

9 We sent them -- but we told them of these  
10 additional negotiations. This was another example of us  
11 doing the right thing then by the plaintiffs. We also  
12 told them when, in fact, we had made our very last  
13 payment that totaled \$84 million to CSI. We sent them a  
14 letter telling them, This is when we're making this  
15 payment. It will be the last payment, and it will be a  
16 total of \$84 million.

17 They began questioning then what land we had  
18 taken down in exchange for that \$84 million. Now, from  
19 our perspective, we didn't think that we had a duty to  
20 give them that, but we thought that it would help them  
21 understand what properties that we had received in  
22 exchange for the \$84 million.

23 And so we created a parcel map. We identified  
24 with specificity then when those were taken down, what  
25 amounts were used to pay for those, how that some of

66

1 those lands that were taken down were purchased at  
2 50-percent of value. Why? Because that's what the  
3 Option Agreement provided.

4 As we told the Court, we also informed them of  
5 the additional negotiations that had been between Pardee  
6 and CSI and gave them that information. We informed  
7 them that they were not entitled to commissions on those  
8 additional transactions.

9 And then when they had questions concerning the  
10 takedowns, after they had been paid in full,  
11 Mr. Wolfram, on behalf of both himself and Mr. Wilkes,  
12 began questioning the title company. And we authorized  
13 the title company to give them all information dealing  
14 with the single-family production homes, which was the  
15 subject of the commission agreement, all information.  
16 And the title company did.

17 What you are going to see is exchanges then  
18 where Mr. Wolfram was asking for deeds that made up the  
19 \$84 million acquisitions, and he received each and every  
20 one of them. There were a couple that were missing in  
21 the original provision to him. He asked for them and he  
22 got those as well. Pardee told the escrow company, Give  
23 them all of the information concerning the single-family  
24 homes, and they did.

25 At this point in time I could get into arguing

67

1 my case. I do not think it appropriate to do so during  
2 opening statement.

3 THE COURT: There's a time for that.

4 MS. LUNDVALL: I agree with you.

5 But the one thing that I would ask the Court to  
6 do -- if this were a jury trial -- and I put this

7 admonition into every single jury trial that I have.

8 THE COURT: Keep an open mind until all the  
9 evidence is in. I certainly appreciate that. I told it  
10 to every jury. And I will do the same thing.

11 MS. LUNDVALL: Thank you, Your Honor.

12 THE COURT: And I told you that during summary  
13 judgment. I only made factual determinations that I  
14 needed for that. I said many times when we did it,  
15 Counsel, if you remember, I'm not judging the -- until  
16 we get to the bench trial, I'm not judging any evidence,  
17 and that's what this is for.

18 So I assure both parties, I have not prejudged  
19 anything. I have a little more information just from  
20 the argument, but as you and I both know, mostly legal.  
21 I don't know whether the facts will show that or not.

22 Hopefully, I was clear to both parties at the  
23 time of the different motions as we've gone through.  
24 I've not made any evidentiary -- that's -- I'm taking  
25 very tedious notes for the opening because this is, in

68

1 all honesty, a lot of a new information that the Court  
2 was not aware of.

3 So I will keep an open mind until the end. I  
4 understand that obligation, and I promise both parties I  
5 will do that.

6 MS. LUNDVALL: Thank you, Your Honor.

7 Because I know that -- I think it's a little  
8 bit doubly hard during a bench trial, because the  
9 parties have brought certain pieces of information, but  
10 it's always been cast into what the obligations were,  
11 particularly on a motion for summary judgment.

12 THE COURT: I agree with you completely.  
13 That's why I tried to tell you. I learned pieces. I  
14 understand I am obligated to make my decision on the  
15 full, full facts of the case and in that respect and on  
16 the evidence that comes in front of me.

17 And I used to tell juries, you know, we're  
18 putting together a puzzle. You don't really know what  
19 the puzzle is until all the pieces are there, and I  
20 firmly believe that as judge just as I firmly said it to  
21 every jury I had, "Please promise me that."

22 And I promise both parties that. I know that's  
23 my ethical obligation, and I promise you that is  
24 paramount to me that I will do that. I have not  
25 prejudged anything.

69

1 as to underscore with the Court, there was a suggestion  
2 during opening statement that the reason that the  
3 plaintiffs had received -- or that they filed this case  
4 is because they couldn't get information.

5 One of the things that the Court will have to  
6 decide is whether or not certain letters are going to be  
7 admissible. But if you assume that those letters are  
8 going to be admissible, what you are going to learn is  
9 that, in fact, the plaintiffs were asking for and they  
10 were claiming at the time that their Commission  
11 Agreement took them beyond the single-family lands and  
12 that they wanted information concerning the commercial  
13 transactions, the golf course transactions, other  
14 transactions that were not the subject of their  
15 Commission Agreement.

16 One of the things that the Court is going to  
17 learn from both Pardee, as well as CSI, is that those  
18 development details, those development issues that they  
19 had negotiated were very important to them and very  
20 important to them to be maintained as confidential and  
21 not to get out into the community. That's why certain  
22 exhibits have been designated as confidential pursuant  
23 to the parties' stipulated protective order.

24 If there are specific references made to those  
25 issues, we are going to ask the Court to enforce then

71

1 MS. LUNDVALL: Thank you.

2 THE COURT: Just the facts that I needed to try  
3 to determine -- you know -- I tried to be very up-front  
4 with both counsel when I was analyzing the legal issues  
5 that have been, you know, complex and tough. But I  
6 analyzed it for those purposes, Counsel, not what will  
7 happen at trial.

8 MS. LUNDVALL: Thank you, Your Honor.

9 THE COURT: I promise you that.

10 MS. LUNDVALL: You used the analogy as far as  
11 pieces of a puzzle. I use that same one. I also use  
12 the analogy of connecting the dots.

13 THE COURT: Yes. I actually thought that was  
14 interesting.

15 MS. LUNDVALL: And let me go back and reassure  
16 you that we will connect the dots so that you get an  
17 accurate picture both from Pardee's perspective as well  
18 as CSI's perspective as to what purchases were at issue.

19 THE COURT: And I do understand there's almost  
20 three parties here. There's two parties here, but  
21 there's this silent third party of CSI that is also here  
22 in some respects. I appreciate that's what makes it a  
23 more difficult case.

24 MS. LUNDVALL: Thank you, Your Honor.

25 I guess the one last thing that I wanted as far

70

1 the protective order, and it may require then certain,  
2 you know, folks within the courtroom, that they may not  
3 be able to be permitted to be here.

4 THE COURT: Whatever you feel is important, I  
5 will certainly enforce it. When I read the  
6 confidentiality, I understood that and agreed with that.  
7 I think both parties agreed.

8 MS. LUNDVALL: Thank you, Your Honor. With  
9 that, we'll look forward to the first witness.

10 THE COURT: I will work with both counsel on  
11 the confidentiality so the case can still move forward,  
12 but we keep it confidential.

13 I thank both of you.

14 MR. J.M. JIMMERSON: Your Honor, before we call  
15 our first witness, do you mind if we take a break?

16 THE COURT: I think that's a great idea. Why  
17 don't we take about a 15-minute break.

18 (Whereupon, a recess was taken.)

19 THE COURT: Welcome. Thank you. I had to do a  
20 quick order so it was a few more minutes. Sorry.

21 Mr. Jimmerson, call your first witness.

22 MR. J.M. JIMMERSON: We would like to call  
23 James Wolfram to the stand, Your Honor.

24 (Whereupon, JAMES WOLFRAM was duly sworn.)

25 THE CLERK: For the record, please state and

72

# JAMES J. JIMMERSON, ESQ.'S CLOSING ARGUMENT

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1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4  
5 JAMES WOLFRAM, et al.,  
6 Plaintiffs,  
7 vs.  
8 PARDEE HOMES OF NEVADA,  
9 Defendant.  
10

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

## REPORTER'S TRANSCRIPT OF BENCH TRIAL

## VOLUME II

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

On Friday, December 13, 2013

At 1:00 p.m.

## APPEARANCES:

21 For the Plaintiffs: JAMES J. JIMMERSON, ESQ.  
22 JAMES M. JIMMERSON, ESQ.  
23 For the Defendant: PATRICIA K. LUNDVALL, ESQ.  
24 AARON D. SHIPLEY, ESQ.  
25 Reported by: Jennifer D. Church, RPR, CCR No. 568

133

1 FRIDAY, DECEMBER 13, 2013, 1:00 P.M.  
2 LAS VEGAS, NEVADA  
3 -cCo-  
4 THE COURT: Good afternoon.  
5 MS. LUNDVALL: Good afternoon, Your Honor.  
6 MR. J.J. JIMMERSON: Good afternoon Are you  
7 ready, Your Honor?  
8 THE COURT: I am ready. I have my notepad.  
9 I'm ready.  
10 MR. J.J. JIMMERSON: First of all, I would like  
11 to thank the Court and its staff for its patience and  
12 time it's given to all parties and to all counsel. And  
13 I thank opposing counsel, Ms. Lundvall and Mr. Shipley,  
14 for their opportunity to work opposite them in a  
15 professional manner, and it's been an experience I've  
16 enjoyed, my son has enjoyed and, perhaps, not so much  
17 for the clients.  
18 But on behalf of Mr. Wolfram and Mr. Wilkes,  
19 who is not able to be here this afternoon, we thank you  
20 and all concerned for your time and attention.  
21 THE COURT: You're very welcome.  
22 MR. J.J. JIMMERSON: I would now like to take  
23 this opportunity to speak about what we believe to be a  
24 summation of the facts in evidence and the law that you  
25 have been provided that will allow you to make an

134

1 informed decision. And we certainly believe that, based  
2 upon all the evidence, that the plaintiffs are entitled  
3 to a judgment in its favor in the manner that I will  
4 describe towards the end of our argument.

5 I will be speaking to some exhibits with you,  
6 and through this time process we've all memorized a good  
7 deal of them or portions of them, but I will be making  
8 references to exhibits and to documents so that the  
9 Court has a good understanding and can follow along. So  
10 thank you very much.

11 I would like to begin then with what we believe  
12 to be a clear demonstration of the evidence, certainly  
13 by a preponderance of the evidence with regard to the  
14 facts of this case.

15 Mr. Wolfram and Mr. Wilkes, working for their  
16 then companies Award and General Realty companies, and  
17 thereafter having acquired their own interest in this  
18 commission entitlement, had worked with Mr. Jon Lash in  
19 particular of Pardee Homes prior to spring of 2004.  
20 They had discussions, according to the testimony of  
21 Mr. Wolfram and Mr. Wilkes.

22 And they had shown Mr. Lash the White Hills  
23 property across the Hoover Dam bridge. In fact, he  
24 testified, Mr. Wolfram, that it was actually in escrow  
25 for a period of time. They showed him the Sandy Valley

135

1 property and then they showed him the Coyote Springs  
2 property amongst others.  
3 Even in years following, they showed them other  
4 properties that did not result in anything being placed  
5 into escrow, but that evidenced Mr. Wolfram and  
6 Mr. Wilkes' desire to, of course, earn a commission for  
7 themselves and their families, but also to provide a  
8 service to Mr. Lash and to Pardee as they had done in  
9 the past.

10 I will note that Mr. Andrews didn't recall that  
11 the White Hills property went so far as to be into  
12 escrow, kind of dismissing that. And I think it's a  
13 fair statement that Mr. Andrews, who had probably more  
14 hands-on information about this project than even that  
15 of Mr. Lash, although Mr. Lash was certainly very  
16 knowledgeable, as was Mr. Whittmore and our client,  
17 that Mr. Andrews didn't have a lot of -- had a bit of  
18 disdain for Realtors and didn't have the same  
19 relationship with Mr. Wolfram and Mr. Wilkes as Mr. Lash  
20 did.

21 After the all hands meeting in which  
22 Mr. Wolfram and Mr. Wilkes participated, mostly staying  
23 quiet -- although we heard this morning that Mr. Wilkes  
24 was interjecting himself -- there was no further  
25 involvement, at least in terms of meetings or

136

1 conversations, between them, between Mr. Wolfram and  
2 Mr. Wilkes as the parties, Pardee and CSI,  
3 Coyote Springs, which I'll refer to occasionally as CSI,  
4 began the negotiations for the acquisition of this  
5 property through and including the execution of the  
6 Option Agreement for the Purchase of Real Property and  
7 Joint Escrow Instructions, dated the blank day of May  
8 2004, that we generally refer to as June 1, 2004, the  
9 signature date by Pardee accepting the offer as being  
10 prepared and negotiated between the two sides through  
11 competent counsel and competent principals.

12 The Court has read ad nauseam the terms of the  
13 Option Agreement. There are points, though,  
14 notwithstanding the fact that I am counting and know  
15 that the Court has memorized these terms, that I want to  
16 hit upon, and there is, indeed, a recognition within the  
17 four corners of this document that this was a 40-year  
18 contract.

19 It was a contract that, of course, could  
20 terminate sooner than 40 years, but there are so many  
21 provisions within the four corners of the document that  
22 evidence an ongoing relationship between Pardee, as  
23 purchaser of single-family production real estate  
24 property, and CSI, as seller of that real estate, that  
25 you could see from the parties that there was

137

1 contemplated, through the terms, the express terms of  
2 the Option Agreement, Exhibit 2, a 40-year relationship  
3 potentially between the two parties.

4 What is also important is at the time, and  
5 through all the evidence we've heard, the only  
6 contemplation, the exclusive contemplation as of June 1,  
7 2004, was that Pardee was only going to be permitted to  
8 buy single-family production real estate as so  
9 designated between the two parties and would not be  
10 permitted to buy any other type or category of real  
11 estate, whether it be multi-family, whether it be golf  
12 course, whether it be backup commercial, whether it be  
13 custom lots or the like. And, indeed, all of those  
14 rights within this contract are expressly reserved to  
15 CSI.

16 So when the parties inked this agreement, CSI  
17 and Pardee knew that Pardee was being granted, as  
18 Mr. Andrews confirmed today in his testimony, the  
19 exclusive right to be the provider of production  
20 single-family residential lots and homes for this huge  
21 project.

22 As Mr. Andrews pointed out, he was quite  
23 excited about the project, as was Mr. Lash, because in  
24 terms of the development of Southern Nevada and Clark  
25 County, this may be the single largest piece of property

138

1 that has been attempted to be developed over the years.  
2 I don't know and we didn't have testimony whether it's  
3 bigger than Del Webb's Sun City or whether it would be  
4 bigger than Green Valley by the Greenspun family. But  
5 it is a huge project, a city, to use the words of  
6 Mr. Andrews, that's being contemplated here.

7 The terms within the Option Agreement,  
8 Exhibit 2, are defined and static. That is to say they  
9 are clearly understood. There's not a dispute between  
10 the parties. And through testimony that we've garnered  
11 over the last nine days, we have a clear understanding  
12 of what these definitions mean.

13 First, Purchase Property is defined  
14 specifically as 3,600 acres bounded by Parcel 1 of the  
15 map recorded as 98-57, Document No. 01332, shown on  
16 page 1, paragraph B, of the Option Agreement, Exhibit 2.

17 And I know the Court knows this, but when I  
18 refer to Option Agreement, I'm referring to this  
19 document, June 1. And if I refer to the March 28th  
20 agreement, I'll refer to it as the Amended and Restated  
21 agreement.

22 THE COURT: We've used those terms consistent.

23 MR. J.J. JIMMERSON: Thank you.

24 The Entire Site is 30,000 acres, capital E,  
25 capital S, also a defined term. And the Purchase

139

1 Property, as we've shown, is defined here. It is  
2 further defined as a map of Parcel 1, which is attached  
3 as part of Exhibit 4, the second amendment, where all of  
4 the exhibits to the Option Agreement, Exhibit 2, were  
5 finalized and attached and incorporated by reference  
6 expressly by the words of the second amendment to relate  
7 back to the earlier June 1, 2004 document that had  
8 noticeably a number of absent exhibits, except for the  
9 key one from Mr. Whittemore's perspective, Exhibit E.  
10 He had his price escalating from \$40,000 per acre with  
11 the cost of living increases to a greater amount as the  
12 years go forward.

13 Again, just that schedule alone evidences the  
14 multi-year nature of the project where Mr. Whittemore,  
15 on behalf of his company, would be allowed to charge  
16 greater than \$40,000 per acre after the first five years  
17 going forward on an escalating basis.

18 The second definition, as we've now heard  
19 through Mr. Lash, Mr. Whittemore, from these two  
20 witnesses as well as from Mr. Wolfram, is that there is,  
21 in addition to Purchase Property of which 1,950 acres  
22 were contemplated to be built, was the definition of  
23 Option Property.

24 Option Property was all other property designed  
25 for single-family production residential use that wasn't

140

1 Purchase Property, by definition on page 1, paragraph B,  
2 and page 2, paragraph B of Exhibit 2.

3 The parties, you can tell, also contemplated  
4 that there would be future designations by the parties  
5 of single-family residential property beyond the initial  
6 takedown of 1,950 acres. How do we know that? Let's  
7 look to page 1, paragraph B, and this is very important  
8 language for the Court to consider because it speaks to  
9 this latest issue that we uncovered after October 28th,  
10 after October 29th, after Mr. Whittemore's testimony as  
11 to designation of intended use.

12 Here's the language, beginning with paragraph  
13 B, The parties desire to enter into this agreement --  
14 reading from Bates stamp Plaintiff 1, page 1 of  
15 Exhibit 2, the Option Agreement of June 1, 2004 -- The  
16 parties desire to enter into this agreement to provide  
17 for, (i), buyer's purchase of the portion of the entire  
18 site consisting of Parcel 1, as shown on Parcel  
19 Map 98-57, recorded July 21, 2000, in Book Number  
20 so-and-so, official records, Clark County, Nevada,  
21 containing approximately 3,605.22 acres as shown on the  
22 map attached hereto as Exhibit B and made a part hereof,  
23 the so-called Purchase Property, and (ii), buyer's  
24 option to purchase the remaining portion of the entire  
25 site which is or becomes designated for single-family

141

1 detached production residential use as described below,  
2 parentheses, the Option Property, in a number of  
3 separate phases referred to herein collectively as the,  
4 quote, option parcels, end of quote, parcels being  
5 plural, and individually as a, quote, option parcel,  
6 upon the terms and conditions hereinafter set forth,  
7 period.

8 If the Court focuses upon this language, it is  
9 clear that they are not just speaking to Pardee's right  
10 to acquire Option Property defined as everything outside  
11 of Parcel 1. But, secondly, that they have the right to  
12 purchase property that is, as of June 1, 2004, or  
13 becomes designated for single-family detached production  
14 residential use in the future.

15 This is important because this parcel we have  
16 discovered that we call Residential 5, shown on  
17 Exhibit B-6 in Exhibit E, Exhibits 12 and 13,  
18 respectively, and why it's proper for you to consider an  
19 award of appropriate money damages to the plaintiff is,  
20 Your Honor, this was single-family designated -- this  
21 was single-family detached production residential use  
22 from the outset, from June 1, 2004 going forward.

23 This was single-family production residential  
24 property designated in 2004, not designated in 2011 when  
25 the county planning and zoning department approved the

142

1 tentative map, Exhibit 43, but in 2004 it was so  
2 designated for single-family detached production  
3 residential use outside of the \$84 million of property  
4 acquired by Pardee as outlined in Mr. Lash's letter, for  
5 example, of November 24, 2009, or all the maps that  
6 we've shown you in all the exhibits.

7 In addition, of course, we have unqualifiedly  
8 the intended designation of that same property as the  
9 epicenter of the construction of new single-family  
10 detached production residential homes on one of two  
11 sites, there, which was the exchange parcel and the  
12 attached property, Residential 5, which was acquired by  
13 the multi-family agreement, and across the street to the  
14 west of the Coyote Springs Parkway, just south of the  
15 exchange parcel that then became the property of CSI.

16 I would anticipate from opposing counsel, and  
17 she tried to elicit some of that from Mr. Andrews this  
18 morning, that, Well, listen, it's a tentative map and,  
19 therefore, it can be changed. It's not a final map.  
20 And even final maps can be changed. And, therefore,  
21 plaintiffs are not entitled to a commission because  
22 maybe until it's built, we won't know if the intended  
23 use will carry forth.

24 We do know from the testimony of Mr. Lash  
25 unqualifiedly that the next purchase of land beyond the

143

1 \$84 million clearly was Option Property and clearly  
2 entitled our clients to a commission if used to develop  
3 single-family production residential housing.

4 But what's even more compelling is within this  
5 agreement, Exhibit 2, there is the definition of Option  
6 Agreement that is, quote, Buyer's option to purchase the  
7 remaining portion of the entire site which is or becomes  
8 designated for single-family detached production  
9 residential use.

10 Under the facts of this case, the parcel in  
11 question, Residential 5, which was acquired separately  
12 through the multi-family agreement, was even then, in  
13 2004, designated for single-family production  
14 residential use and confirmed by the same seven years  
15 later as part of the February 16, 2011 process, in  
16 which, unbeknownst to the plaintiffs, Pardee had applied  
17 for and received tentative map approval for the intended  
18 use.

19 One of the things I think you come away from is  
20 there is a conflict in testimony between the parties. I  
21 think it's reasonable to say that as to what can you  
22 glean from the information that was delivered by Pardee  
23 to Mr. Wolfram and Mr. Wilkes or what could Mr. Wolfram  
24 and Mr. Wilkes have acquired if they went to, for  
25 example, the Clark County recorder's office, and there's

144



1 some dispute over that, and I will speak to that a  
2 little bit more in a few minutes.

3 But for now I would like for you to accept what  
4 I believe to be un rebutted fact, and that is no  
5 information could be found from recorded documents or  
6 from the documents provided by the defendants to the  
7 plaintiffs of intended use.

8 Even today Mr. Andrews stated, No, no maps are  
9 going to show intended use. Mr. Lash said the same  
10 thing. Mr. Andrews said, No, unless you go to the  
11 county to see whatever's been filed, you won't know  
12 designated use. And in addition, he was very specific  
13 to state -- and this is very important for an overall  
14 understanding -- Pardee's internal decision-making of  
15 prospective designated use is not known by anyone except  
16 Pardee and possibly CSI.

17 But as you've indicated, we've developed  
18 several maps, he said, as to intended use and we do not  
19 share that information with outside parties. We keep  
20 that internally and it is not recorded. It is not  
21 submitted to the county or the like.

22 Here you have a designation by Pardee of 53  
23 acres of land. Mr. Andrews did the math yesterday. 83  
24 or 82 acres or 80 acres, 80-point-something acres minus  
25 26.96 equals 53.25 acres, approximately -- was applied

145

1 for and received, upgrading the schedule from either R-U  
2 or MPL to single-family production residential property.

3 Now, what's also clear here is that the initial  
4 development of 1,950 acres was within Parcel 1. We have  
5 that testified to by Mr. Lash. We have that testified  
6 to by Mr. Whittemore, and we have that testified to by  
7 Mr. Wolfram. And that was -- it took some days to  
8 develop, but the Court clearly has that in her notes.  
9 So when you couple that to all land, the 1,950 acres for  
10 production residential property within Parcel 1, that is  
11 Purchase Property.

12 On June 1, 2004 -- this is important and the  
13 Court, I know, will do this -- but it's important to  
14 understand what is it the parties knew or reasonably  
15 could have known on June 1, 2004? And on that date what  
16 they knew or reasonably could have known was that there  
17 was only one way to buy land after Purchase Property has  
18 been purchased, and that is to exercise the right to buy  
19 Option Property pursuant to paragraph 2 of Exhibit 2.

20 And, indeed, the structure of the agreement is,  
21 paragraph 1, purchase and sale of Purchase Property, and  
22 the witnesses testified, both Whittemore and -- both  
23 Lash and Andrews, the ability to purchase is virtually  
24 the same steps. You open up an escrow. You pay money.  
25 You receive clear title. You close escrow. That's how

146

1 you do it for the purchase and sale of Purchase  
2 Property.

3 With Option Property there's one additional  
4 ingredient that's specified starting at page 3, you  
5 submit a notice of Option Property exercise rights, and  
6 you pay money according to the terms of the agreement,  
7 and you complete the purchase. There's deeds to be  
8 signed. But it's very similar to the five takedowns  
9 that were part of the \$84 million.

10 Now, there was no other contemplated way for  
11 Pardee to buy single-family residential property after  
12 the \$84 million, the approximate 1,950 acres, except by  
13 use of paragraph 2, Option Property purchase mechanism.  
14 There was no provision here for a side agreement. There  
15 was provision here for some later agreement.

16 There was a statement that if you are going to  
17 buy additional property after the Purchase Property was  
18 completed to add further single-family production  
19 residential property, you would be necessarily obliged  
20 to comply with paragraph 2 of Exhibit 2 for the  
21 acquisition of Option Property.

22 And that's important because at the time the  
23 contemplation of the parties that they knew or  
24 reasonably could have known was that all -- I'm not  
25 saying all -- because it was a big thing -- that Pardee

147

1 was buying was the exclusive right -- we heard it from  
2 Mr. Andrews -- to be the developer of single-family  
3 homes for the entirety of Coyote Springs 30,000-plus  
4 acres of this project in exchange for which they would  
5 pay initially \$84 million to buy approximately 1,950  
6 acres, which developed by virtue of the exchanges and

7 the necessity to subtract golf lots or subtract roads,  
8 would give them a use of 1,950 acres, which turned out  
9 to be a gross of 2,112 acres, per the letter of Mr. Lash  
10 to Mr. Wolfram of November 24, 2009.

11 So that is what the structure of this agreement  
12 was. And what is clear is that that is what was agreed  
13 to between these parties. Now, we know two years later,  
14 in 2006, approximately, the beginning of four additional  
15 agreements occurred, including right up to 2009 in the  
16 eighth amendment, where in the eighth amendment there is  
17 the acquisition of the golf course and the backup rights  
18 to the commercial property that attaches to the exchange  
19 parcel and attaches to Residential 5, which we saw  
20 through Tentative Map 2 of Exhibit 43.

21 And you had to start it with the multi-family  
22 agreement of 2006 and the seven amendments. It followed  
23 with the custom lot agreement. It followed with the  
24 golf course property, and then it followed with the  
25 backup rights under the commercial property. The

148



1 commercial property backup rights were actually attached  
2 to the eighth amendment, but the other three are by  
3 separate agreement, we have been advised by all parties.

4 So that is the method here. That the parties  
5 later change their mind and enter into separate  
6 agreements is their right to do so as between  
7 themselves. They do not, however, have the right to  
8 adversely affect the rights of Mr. Wolfram and  
9 Mr. Wilkes by changing the agreement between  
10 Mr. Whittemore, on behalf of CSI, and Mr. Lash, on  
11 behalf of Pardee Homes. And that is where the defendant  
12 is most vulnerable to a finding by this Court.

13 This is not an issue of mens rea. This is not  
14 an issue of proving an intent to defraud. This is a  
15 breach of contract for three reasons. One, the need for  
16 accounting, Count I, because of the elements that are  
17 required for an accounting, the superior knowledge,  
18 possession of superior knowledge over the matters that  
19 are subject to account. That's the decisions we cited  
20 in our pretrial brief.

21 It is the equity that the Court is allowed to  
22 impose when there's been a failure to act appropriately  
23 and fairly to the parties and when there's damage caused  
24 thereby.

25 The second claim is the breach of the implied

149

1 covenant of good faith and fair dealing. Here you have  
2 the parties having entered into a Commission Agreement,  
3 which I'll speak to in just a minute, and there is  
4 within that contract, and, in fact, within every  
5 contract under Nevada law, the implied covenant to deal  
6 with each party fairly and reasonably in the performance  
7 of their contract, the breach of which would constitute  
8 a breach of the implied covenant of good faith and fair  
9 dealing, entitling the plaintiff to money damages as the  
10 court would deem proper.

11 And third is the breach of contract claim, and  
12 the breach of contract claim, Your Honor, is the failure  
13 to keep the plaintiffs reasonably informed as to all  
14 matters relating to their entitlements to receive  
15 commissions for the sale of production real estate or  
16 single-family residential property.

17 So when you look at the Option Agreement, what  
18 was known on June 1, that's what these parties defined.  
19 We heard a huge amount of testimony by Mr. Whittemore  
20 and Mr. Lash that their defense to this was, We don't  
21 care what the words of the Option Agreement said, we  
22 always knew, because this was a development over many  
23 years, that we would run into circumstances where there  
24 would be a need to alter our earlier plans to  
25 accommodate later plans. An example of that was the

150

1 cost of utilities. I heard that on several occasions.  
2 So did the Court.

3 And, therefore, there was a decision made, just  
4 prior to March 28, 2005, to build more horizontally  
5 along Highway 168, then vertically along Highway 93.  
6 And, of course, there was a substantial refinement of  
7 the term Purchase Property from 3,605 acres, of which  
8 the initial developed parcel would be 1,950 to 511  
9 acres, and Option Property being defined as everything  
10 else.

11 And I resisted that. When I first heard it, I  
12 resisted that. But after I've listened to the testimony  
13 for many days, I think there's probably truth in what  
14 we've heard. And that is that there has to be some  
15 flexibility between the parties to allow the development  
16 of Pardee's dreams or visions for what its single-family  
17 residential homes would look like and Mr. Whittemore's  
18 desire to build a city.

19 MS. LUNDVALL: Your Honor, now that Counsel has  
20 finished this particular thought, I need to place an  
21 objection in the --

22 MR. J.J. JIMMERSON: Your Honor, what is  
23 this --

24 MS. LUNDVALL: Hold on. The objection is under  
25 the Lioce decision. I don't know if I'm pronouncing it

151

1 right, but it's L-i-o-c-e. It is the ethical  
2 prohibition for an attorney to express a personal belief  
3 into the truthfulness of the testimony of a witness.

4 MR. J.J. JIMMERSON: Fine.

5 MS. LUNDVALL: That's where -- I'm trying as  
6 far as not to be technical, but I'm not going to waive  
7 my right, because the subsequent decisions obligate  
8 opposing counsel, to preserve your right, to object to  
9 that, and that's what I'm doing, Your Honor.

10 MR. J.J. JIMMERSON: Thank you.

11 THE COURT: All right. I honestly took it that  
12 based upon the evidence, the plaintiffs' position has  
13 changed.

14 MR. J.J. JIMMERSON: That's right.

15 THE COURT: That's how I took it. I didn't  
16 take it as his personal opinion on what was truthful or  
17 not. That's how I was looking.

18 Is that how it was intended?

19 MR. J.J. JIMMERSON: It is. And I will be very  
20 careful to reach the Lioce decision. I'm quite familiar  
21 with it. It was quite a heated case and it came at a  
22 good teaching moment for the lawyers who take the time  
23 to read it. But that's exactly right.

24 It is not an unreasonable position, although my  
25 clients thought it was, to suggest that it would not

152

1 change. But it is an unreasonable position and a breach  
2 of contract to think that you can adversely affect my  
3 clients' rights to a commission by making a later deal  
4 between the parties that would change defined terms and  
5 entitlement to money and sequence of construction which  
6 would lead to different calculations of commission  
7 because of the fact that Option Property is paid on a  
8 different formula than Purchase Property was paid.

9 Purchase Property was a percentage of the  
10 \$84 million, four percent up to \$50 million and one and  
11 a half percent above \$50 million to \$84 million, whereas  
12 Purchase Property was property that was being acquired  
13 and developed, that it would be one and a half percent  
14 times \$40,000 per acre times the number of acres. So  
15 the math is very different depending upon your finding  
16 as what was purchased by these parties.

17 So while we say within Exhibit A that there has  
18 been, and through the testimony of our clients,  
19 Mr. Wolfram and Mr. Wilkes, there has been a payment of  
20 the appropriate percentage of the \$84 million to the  
21 plaintiffs if all \$84 million of property is found by  
22 the Court to be Purchase Property, it is not the right  
23 calculation if the Court finds that some or a portion of  
24 the 2,100 acres was, indeed, Option Property for which  
25 they would be paid a different formula and a different

153

1 rest.

2 But there was on June 1 -- that's where this  
3 begins, June 1, 2004 -- very defined terms and an  
4 expectation that not only would Pardee be buying  
5 single-family production residential property from the  
6 get-go, up to 1,950 acres, although within the confines  
7 within a larger 3,600 acre parcel, Parcel 1, but in  
8 addition they reserved themselves the right to buy,  
9 buyer's option to purchase the remaining portion of the  
10 entire site, which is everything other than the 3,600  
11 acres which is or becomes designated for single-family  
12 detached production residential use.

13 This is also important because, as counsel,  
14 both sides, it's slip and parry, you know. It's a sword  
15 out. It's a shield back. It's the nature of the  
16 advocacy rules that we both possess, all parties  
17 possess, as attorneys where the crucible of  
18 cross-examination and the presentation of evidence gives  
19 this court an opportunity to measure credibility,  
20 demeanor of the witnesses, and to sort of size up the  
21 situation.

22 Before this became a litigable point, nine  
23 years ago -- this case started in September of 2010. So  
24 I would say to you six years before this became a  
25 litigable issue, these parties, without the benefit of

155

1 sum.

2 What I'm suggesting to the Court, though, is  
3 the legal principle that I think the Court would find  
4 acceptable is that by signing the Amended and Restated  
5 Option Agreement, Exhibit 5, and canceling, superseding,  
6 replacing -- the verbs used by these witnesses before  
7 you starting with Mr. Lash and thereafter -- the  
8 original Option Agreement, Exhibit 2, by Exhibit 5, they  
9 cannot adversely affect the rights of our clients to a  
10 commission.

11 That is where -- that is the folly of Pardee  
12 Homes of Nevada, Inc.'s position throughout the nine  
13 days of trial that we've been working together in this  
14 matter. Because they believe, as they've testified, We  
15 knew that boundaries would change, that the direction of  
16 which building might change -- they didn't say they knew  
17 it would change, but they were going to be flexible  
18 enough to change, and that was the testimony.

19 Mr. Whittemore was humorous enough to note,  
20 Listen, I'm here to entice them to buy more property, as  
21 much as I can get them to buy. Mr. Andrews confirmed  
22 that this morning saying that Mr. Whittemore would sell  
23 them anything that they would be interested in that  
24 Mr. Whittemore's company had an interest in, from water  
25 rights to all types of other aspects, golf course, the

154

1 litigation counsel, predicted, expected, contemplated  
2 when they signed this contract that there not only would  
3 be the designation at the outset of 1,950 acres to be  
4 paid for \$84 million -- it was 66 million, as you recall  
5 and grew to 84 million -- but that there would be the  
6 potential for becoming, the property being later  
7 designated for single-family detached production  
8 residential use for which there would be the right of  
9 Pardee to acquire the same.

10 And then there was a fair amount of negotiation  
11 and agreement as to the definition of production  
12 residential property, which I'm not going to read  
13 throughout, but it's found at page 2, again the same  
14 paragraph B, and it says that the Purchase Property,  
15 capital P, capital P, and the Option Property, capital  
16 O, capital P, are sometimes referred to herein  
17 collectively as the production residential property.

18 And this is what I acquired through Mr. Lash's  
19 cross-examination, and Mr. Whittemore, but particularly  
20 Mr. Lash, that production residential property runs  
21 through both. Production residential property can exist  
22 within with the Purchase Property, Parcel 1, and it can  
23 exist within the Option Property.

24 And that's why the contract says Purchase  
25 Property, a defined term, 3,600 acres of which they were

156

1 going to develop 1,950 on this day, and the production  
2 residential property -- excuse me, and the Option  
3 Property are sometimes referred to herein collectively  
4 as the production residential property. So the two  
5 types of property, purchase and option, are collectively  
6 referred to as production residential property if the  
7 property is being used for the seven reasons that are  
8 set forth in the definition that immediately follows.

9 So we can see that Pardee is not looking to  
10 limit itself on June 1 of 2004. It is investing  
11 \$66 million at that point, and for about 1,500 acres,  
12 and then it raised it up to 1,950 acres for \$84 million.  
13 And how did we get the price? Just take 2,000 acres  
14 times 40,000 an acre, \$80 million. So we know that  
15 that's how they got to the price.

16 And when you look at it, it was actually  
17 44,000, if the Court remembers, \$44,800 per acre, and  
18 then we did the math and had a little bit of humor,  
19 where he said, I guess Mr. Lash got the best of me,  
20 because when you take 2,112 acres and divide it into  
21 \$84 million, you get 43,700-some-odd dollars. I guess  
22 he got the best of me. The Court remembers that.

23 So production residential property, as used in  
24 this agreement, the term production residential property  
25 means the portion of the net usable acreage as defined

157

1 here, and that encompasses all of the Purchase Property  
2 and the Option Property, which includes, without  
3 limitation, all single-family detached production  
4 residential lots.

5 Let's stop there. Again, you can see that the  
6 concept of production residential property crosses the  
7 boundary between Purchase Property and Option Property,  
8 not only by definition, which I've just read to you, but  
9 here it's repeated again where it states, As used in  
10 this agreement, the term production residential property  
11 means that portion of the net usable acreage, as defined  
12 below, that encompasses all of the Purchase Property and  
13 the Option Property.

14 And so not only does it include the 3,600  
15 acres, which is defined as Purchase Property at this  
16 point in this agreement, and the balance of, what, the  
17 27,000 acres of Option Property, totaling 30,000 acres,  
18 which includes, without limitation, all single-family  
19 detached production residential lots. Keep in mind,  
20 we're not talking about houses. We're not talking about  
21 something that's being constructed. We're talking about  
22 lots.

23 And, of course, that translates to what a  
24 broker is entitled to. A broker is entitled, for  
25 putting a seller and a buyer together, to a commission

158

1 for being the procuring cause. Here it's limited to  
2 lots, not construction. But when they paid commission  
3 based upon the acquisition of the property, they weren't  
4 requiring the property to be developed. They weren't  
5 requiring the property to reach final map stage or even  
6 tentative map stage. They were entitled to a commission  
7 from the beginning.

8 And then the seven areas I've mentioned to you  
9 are the ones that are used for production residential  
10 lots, number one; which includes lots on which custom  
11 homes are constructed by buyer, that's two. Three, all  
12 land for roadways, utilities, government facilities,  
13 including schools and parks, and park sites are subject  
14 to the provisions of paragraph 7(c), which gave the  
15 reduced cost, half cost.

16 Open space was a fifth area, required or  
17 designated for the benefit of residential development  
18 pursuant to the master plan. Six was a habitat  
19 conservation plan or a development agreement. Seven was  
20 the drainage ways or other use associated with or  
21 resulting from the development of the Purchase Property  
22 and each option parcel of the Option Property, period.

23 And for purposes of this agreement, the term  
24 net usable acreage that I just referenced here shall  
25 mean the 30,000 plus or minus acres of the entire site

159

1 remaining after the final reserve designation made  
2 pursuant to the Coyote Springs Multi-species Habitat  
3 Conservation Plan as now drafted or as hereafter  
4 approved.

5 So that is the beginning portion of this  
6 contract which frames the expectations of the parties,  
7 CSI and Pardee, when they made their agreement on  
8 June 1, 2004.

9 The second amendment -- the first amendment,  
10 Exhibit 3 has no role in this. It just allows for the  
11 release of \$125,000 out of escrow in favor of CSI.

12 Then Exhibit 4, which is the second amendment,  
13 this is important because it fleshes out the exhibits  
14 referenced in Exhibit 2, and, therefore, by  
15 approximately September 6, approximately -- it's dated  
16 August 31 or September 1 -- by September 1, 2004, 60  
17 days later, there are all of the agreed-to exhibits that  
18 are to be attached to the Option Agreement.

19 Those exhibits you have reviewed extensively.  
20 However, they are quite important because when you look  
21 at the exhibits, you will see that there is, in the  
22 first exhibit, the map of the entire site with the donut  
23 hole in the middle, the donut hole being that property  
24 leased or otherwise in the possession of the Bureau of  
25 Land Management, which was contemplated to be sought to

160

1 have an exchange sometime thereafter.

2 And, therefore, you have the provision of what  
3 the land looks like before reconfiguration and what they  
4 believe it will look like after reconfiguration if they  
5 can get their desires on. And they had an expectation  
6 that they would be able to do that, but not a guarantee.  
7 So that's why they took the care to show what the site  
8 would look like.

9 They are very clear, as you know, in the bottom  
10 left-hand corner, south of the Lincoln County line down  
11 to 168 highway going east and 93 highway going north and  
12 south, to designate the 3,600 acres which  
13 Mr. Whittemore, through his companies, had fee simple  
14 title to, which was then becoming defined as the parcel  
15 property. That's Exhibit A-1.

16 Exhibit A-2 to Exhibit 4 is after  
17 reconfiguration, where it shows the donut hole has been  
18 moved substantially to the east, and you have two types  
19 of property. You still have Parcel 1, still defined  
20 here as of September 1, 2004, and then you have the  
21 Option Property, which is immediately to the east, of  
22 about equal size, equal size there, and then everything  
23 north of the Lincoln County line as also Option  
24 Property. So there's clear definitions of what it looks  
25 like.

161

1 The third exhibit, Exhibit B, is just the  
2 Parcel 1 map, and it shows by crosshatch. We had a map  
3 of it here that shows you what that looked like.

4 And then you have Exhibit C-1, which shows you  
5 what is the property -- the map of the Option Property  
6 before BLM reconfiguration and C-2, the property after  
7 BLM reconfiguration. What's important here at C-2, as  
8 we look at this, because when you look at it, even after  
9 reconfiguration the boundary lines of Parcel 1 remain  
10 intact. C-2, Bates stamp 1566 makes it clear that  
11 Parcel 1 still has an eastern boundary in precisely the  
12 location reflected on the deed in 2000, which was the  
13 Purchase Property 1, defined in the Option Agreement, 60  
14 days later, through September 1, 2004.

15 Now, they could have erased the line. They  
16 could have said, You know, we're going to go east here  
17 and so we're not going to bound our Purchase Property to  
18 just within the 3,600 acres as they had set forth in the  
19 agreement, and as conceded to by Mr. Lash and  
20 Mr. Whittemore. They could have erased the line and  
21 said they could go any direction, but they didn't.

22 And as it's particularly noted in this  
23 amendment, Amendment 2, Exhibit 4, all of the defined  
24 terms are maintained, retained, and confirmed and remain  
25 the same from that of 60 days earlier defined within the

162

1 larger agreement, Option Agreement 2.

2 Therefore, the defense by Pardee that, We had  
3 the right, it was contemplated we could build east as  
4 well as north, that may or may not be true. It is  
5 certainly not evidenced by the four corners of the  
6 agreement. We hear from opposing counsel so many  
7 objections in this trial, it's four corners, it's a  
8 fully integrated agreement. We accept that. That's an  
9 agreement that goes both ways.

10 That is because they cannot, through their oral  
11 recitation about what their intent is to later make  
12 changes, change, modify, or defeat the plain meaning of  
13 the words of Exhibit 2, the Option Agreement.

14 And that's the major defense here, but it must  
15 fail as a matter of law as well as fact because we know  
16 what was contemplated factually by the parties, as I  
17 discussed with you, and we know under the law that it's  
18 an entire agreement and there's not going to be parole  
19 evidence permitted to modify or amend or change its  
20 meaning, that within the plain words of now four  
21 documents, or now three documents -- June 1 document,  
22 Exhibit 2; the Amendment 1, which doesn't play a role,  
23 but confirmed what was going on; and Amendment 2,  
24 Exhibit 4, restating the same provisions -- are now  
25 three documents that confirm the accuracy and relevancy

163

1 and definitions that are set forth in the agreement as  
2 being true.

3 And the exhibits by themselves evidence the  
4 parties' intent now, of September 1, 60 days later, as  
5 it relates to Exhibit 2. And clearly the intent was  
6 Option Property was everything other than Purchase

7 Property 1, Parcel 1, with or without redesignation or  
8 reconfiguration as shown in Exhibit C-1 and C-2, and the  
9 boundaries are firm.

10 That they say between themselves, Listen, we  
11 understood the boundaries may not stay the same is  
12 irrelevant if they don't involve Mr. Wolfram and  
13 Mr. Wilkes in those conversations.

14 And if we listen to Mr. Andrews today, they  
15 were anything but welcome to be part of the development  
16 process and the negotiation process between CSI and  
17 Pardee in the period of February 2004 through signing  
18 the document on June 1, 2004 from the all hands meeting.  
19 And, indeed, Mr. Andrews had no involvement with them  
20 thereafter. Other than the one meeting, he had no  
21 communication. He didn't care for Mr. Wilkes and didn't  
22 have any use for them. They added nothing, in his  
23 testimony.

24 Mr. Lash negotiated with Mr. Wolfram and  
25 Mr. Wilkes the Commission Agreement between June 1 of

164

1 2004 and September 1 of 2004 alone, and nowhere does he  
2 testify that he shared with them the terms and agreement  
3 of the Option Agreement as it relates to our intent to  
4 later modify the terms of the agreement.

5 In the Commission Agreement there is no  
6 suggestion, no wording, no nothing -- and Ms. Lundvall  
7 says it's an integrated agreement. The language at the  
8 bottom of page 2 says this is the parties' entire  
9 understanding. Again, that works to benefit both  
10 parties. We concur.

11 There is no language, therefore, within that  
12 simple three-page agreement that identifies that the  
13 terms Purchase Property, that the terms Purchase  
14 Property Price, that the terms Option Agreement, are  
15 ever subject to change in the future. There's no  
16 communications orally between the parties that the terms  
17 are ever subject to change in the future.

18 So whether or not it is true or not true that  
19 parties knew that the development plans may change in  
20 the future, what is clear, unrefuted is there's not a  
21 single piece of testimony or written evidence to suggest  
22 that Wolfram and Wilkes knew that the direction of  
23 construction was going to change from being virtually  
24 vertical along 93 highway to then virtually horizontal  
25 along the little sliver of property retained by

165

1 Coyote Springs that Mr. Whittemore called the boot and  
2 the reconfigured property going from west to east in  
3 that direction beyond the Parcel Property 1 line to the  
4 east.

5 In the maps, when you look at them, they are  
6 all most supportive of the plaintiffs' position in the  
7 form of grant, bargain and sale deeds for the Purchase  
8 Property, for the Option Property, Exhibits G-1 and G-2  
9 follow all of this, as did the rest of the exhibits.

10 Can we turn to the most important document in  
11 this case which is Exhibit 1, the Commission Agreement?

12 THE COURT: Exhibit?

13 MR. J.J. JIMMERSON: Exhibit 1. I believe that  
14 Ms. Lundvall also called it Exhibit L.

15 THE COURT: The Commission Agreement. I know  
16 what it is.

17 MR. J.J. JIMMERSON: I would just say as an  
18 aside, if we try this case again, Judge, let's don't  
19 have a duplication of exhibits.

20 THE COURT: I would have suggested that in the  
21 first place.

22 MR. J.J. JIMMERSON: I'm just saying both  
23 parties are kind of culpable for that, but I did find  
24 myself saying, What was the Exhibit L, and memorizing  
25 two sets of exhibits.

166

1 THE COURT: Usually that's why you do joint  
2 exhibits.

3 MR. J.J. JIMMERSON: We just didn't get it  
4 together. So I assume responsibility for that as well.

5 THE COURT: We worked it out. I have notes on  
6 both. So it's okay.

7 MR. J.J. JIMMERSON: Look at Exhibit 1 or  
8 Exhibit L, being the identical document, it's Option  
9 Agreement for the Purchase of Real Property and Joint  
10 Escrow Instructions dated June 1, 2004, as amended, the  
11 Option Agreement between Coyote Springs Investment, LLC,  
12 Coyote, and Pardee Homes of Nevada, Pardee.

13 Now, while this is a simple agreement, and it  
14 does contemplate the parties' entire understanding, it's  
15 a powerful agreement for what it says. First, just the  
16 RE tells you what is being referred to. It is expressly  
17 referencing the June 1, 2004 Option Agreement and the  
18 terms of that Option Agreement.

19 It was in the possession of Mr. Wilkes and  
20 Mr. Wolfram through their respective companies. They  
21 understood, as they negotiated this Commission Agreement  
22 in July and August of 2004, what the terms Purchase  
23 Property Price means, what the term Option Property  
24 means, what all the capitalized terms here meant, as  
25 defined by the Option Agreement for the Purchase of Real

167

1 Property and Joint Escrow Instructions dated June 1,  
2 2004, Exhibit 2, herein.

3 It's important that you understand this point,  
4 which I do -- I want to say it. I know you do, but I  
5 want to say it out loud. Purchase Property Price, by  
6 definition, does not mean \$84 million. The definition

7 of Purchase Property Price under Exhibit 2, the Option  
8 Agreement, is the price for Purchase Property.

9 And that's because Mr. Whittemore was hoping  
10 they would buy more. It was a fluid situation. You  
11 have the express provision that they could buy more  
12 property. So the Purchase Property Price is the price  
13 to buy Purchase Property. It's not defined and it's not  
14 equal to \$84 million.

15 I want you to understand these points as being  
16 particularly central to today's presentation. At the  
17 time of June 1, 2004, Pardee had the right to buy  
18 Purchase Property. They estimated a purchase about  
19 1,500 acres for \$66 million, which by Amendment 2,  
20 September 1, grew to \$84 million and 1,950 acres.

21 To buy more property would require the exercise  
22 of an option, sending notice and complying with the many  
23 steps that Ms. Lundvall made a big thing to do about  
24 what had to be done.

25 And she is saying as her defense for Pardee is

168

1 the failure to send a notice, the failure to open an  
2 escrow, the failure to have a deed, the failure to have  
3 escrow instructions, the failure to close an escrow, the  
4 failure to record a deed for Option Property, therefore,  
5 means they never bought Option Property. That's not  
6 true.

7 THE COURT: Can I just clarify what you are  
8 saying? When you say Option Property, you mean --

9 MR. J.J. JIMMERSON: Everything else.

10 THE COURT: -- single -- you mean everything  
11 else?

12 MR. J.J. JIMMERSON: No. I mean --

13 THE COURT: It's limited to -- I want to make  
14 sure because --

15 MR. J.J. JIMMERSON: I have been guilty of that  
16 for nine days, and my son told me at lunch I've been  
17 guilty for nine days. I'm referring to Pardee's  
18 acquisition of --

19 THE COURT: Single-family.

20 MR. J.J. JIMMERSON: -- single-family  
21 production residential lots in either -- because I just  
22 made a big point about it -- Purchase Property or either  
23 within Option Property -- and they have the right to do  
24 either -- requires one single method to do so under this  
25 contract, Option Agreement.

169

1 THE COURT: I understand. I just wanted to  
2 make sure. I knew that's what you were saying, but just  
3 for the record I wanted to make sure I'm not missing  
4 something.

5 MR. J.J. JIMMERSON: You are not at all.

6 The only way they can buy single-family

7 production residential property outside of the Purchase  
8 Property is through the mechanism shown to buy Option  
9 Property, paragraph 2.

10 Compare that to the Commission Agreement. The  
11 Commission Agreement entitles Mr. Wolfram and  
12 Mr. Wilkes, if you'll allow me to speak on behalf of  
13 Award and General in 2004, and now for themselves, to  
14 receive a commission irrespective of the method in which  
15 the defendants choose to acquire single-family  
16 production residential property. How do we know that?  
17 Because of the anti-circumvention or avoidance provision  
18 within the four paragraph of page 2.

19 And I believe if you listen to the testimony of  
20 Mr. Lash and Mr. Andrews, particularly Mr. Andrews  
21 yesterday afternoon through my examination and this  
22 morning, the nature of a Commission Agreement needs to  
23 be and has been testified to, that's different than this  
24 development agreement, Option Agreement, Exhibit 2.

25 A Commission Agreement for a real estate

170

1 commission involves the concept of procuring cause. And  
2 it generally refers that whoever is hiring the broker,  
3 in this case Pardee -- retaining, it wasn't employed, so  
4 retaining them -- agrees to pay a percentage of the  
5 purchase price for having located the property, brought  
6 the property to the buyer or seller, for having  
7 facilitated the sale of real estate, in this case, from  
8 Pardee's perspective, facilitating the purchase of real  
9 estate. That's the nature of the agreement.

10 That's why, as Mr. Andrews testified and  
11 Mr. Lash the same, but Mr. Andrews quite in detail, his  
12 familiarity with many, many brokers, and perhaps his  
13 disdain for them, because he doesn't appreciate how much  
14 they are paid or doesn't appreciate the quality of their  
15 services, but nonetheless, was very clear that they are  
16 typically paid as a percentage of the purchase price or  
17 sale price. This is no different than here.

18 The important point here is the Commission  
19 Agreement, Exhibit 1, captures our clients' rights to  
20 receive a commission irrespective of the method in which  
21 the buyer, Pardee, acquires it.

22 There is no limitation within this contract  
23 that says only if Pardee exercises its right to buy  
24 Option Property under paragraph 2 of Exhibit 2, Option  
25 Agreement of June 1, and only if it sends a notice of

171

1 exercise of Option Property and only if it opens up an  
2 escrow and only if it deposits money and only if it  
3 closes escrow and only if it records a deed and only if  
4 it uses a settlement statement and a title company will  
5 you be entitled to a commission if we, Pardee, construct  
6 or -- excuse me -- designate for use single-family

7 production residential property, residential lots, the  
8 word being "lots."

9 That is, I believe, the folly of the last  
10 minute gasp by Mr. Lash in changing his testimony here  
11 on Tuesday -- I'm sorry -- on Monday and Mr. Andrews'  
12 testimony here yesterday afternoon and this morning.

13 Because when you look at the agreement, as  
14 Mr. Lash testified to and as Mr. Lash testified on  
15 cross-examination to opposing counsel's questions, this  
16 document had several iterations, developed over a 60-day  
17 time period, July and August, it's signed about  
18 September 1. It might have been a couple days later.

19 And in the agreement it talks in terms of the  
20 structure of the agreement is mimicking the Option  
21 Agreement to the extent that it models the percentage of  
22 Purchase Property Price, which is what, the price of  
23 Purchase Property, which at that time was \$66 million,  
24 for which four percent of the first \$50 million would be  
25 granted and one and a half percent of the next

172



1 \$16 million would be paid to them if they acquire that  
2 property.

3 And then the (iii) is in respect to any portion  
4 of the Option Property purchased by Pardee pursuant to  
5 paragraph 2 of the Option Agreement, Pardee shall pay  
6 one and one and a half percent of the amount derived by  
7 multiplying the number of acres purchased by Pardee by  
8 \$40,000 times one and a half percent.

9 Now, understand, we heard Mr. Andrews say, you  
10 know, that -- Ms. Lundvall said, Did you think you were  
11 being fair?

12 And the answer was, We were generous to them.

13 Yet, if you recall the complexity of the whole  
14 comprehensive nature of the testimony, Mr. Lash says  
15 they typically paid four percent of their purchase price  
16 to their brokers. Here Mr. Lash negotiated a better  
17 price for himself, four percent to a limit of  
18 \$50 million, and then reduced substantially to one and a  
19 half percent of the balance of \$16 million.

20 And, indeed, when they added another  
21 \$18 million purchases to \$84 million, it was the same  
22 four percent to \$50 million and one and a half percent  
23 for the balance of \$34 million, as shown in Amendment 2,  
24 Exhibit 4. So the compensation was fair considering the  
25 unusual nature and size of this project.

173

1 As Mr. Andrews says, it's the biggest project  
2 Pardee has ever been involved in. And that's saying  
3 something because Pardee has enjoyed a good reputation  
4 over the years, certainly here in Nevada, for its  
5 development of single-family production residential  
6 homes.

7 In the course of the negotiations, as brought  
8 out by Ms. Lundvall in her examination of Mr. Lash,  
9 Mr. Lash concedes that Mr. Wolfram and Mr. Wilkes,  
10 through our law office, requested new language from one  
11 draft to another that prevented circumvention or  
12 avoidance of this obligation.

13 Keeping in mind that when the parties are  
14 negotiating Exhibit 1, the Commission Agreement, the  
15 only way that the parties understood by the plain words  
16 of the Option Agreement for them to acquire land was  
17 Purchase Property or Option Property. How do you  
18 acquire Option Property? Through the processes in  
19 paragraph 2, which are defined within that agreement.

20 So then when you look at the structure of this  
21 Commission Agreement, you have -- some of the mechanics  
22 are spoken about in the first paragraph, which is to say  
23 that they will be paid as Pardee makes payments to  
24 Coyote Springs monthly. And then as it relates to  
25 Option Property, they will wait, and they will wait

174

1 until they actually close escrow. To show some bona  
2 fides, Pardee will deposit that money, that commission  
3 into an escrow and, therefore, demonstrate the money is  
4 available to be paid over, but there's the need for  
5 Option Property to the wait until the parcel has been  
6 acquired, close escrow has occurred and deed recorded in  
7 Pardee's name.

8 The second paragraph is, of course, an  
9 important paragraph for this issue, Pardee shall provide  
10 to each of you a copy of each written option exercise  
11 notice given pursuant to paragraph 2 of the Option  
12 Agreement together with information as to the number of  
13 acres involved and the scheduled closing date. In  
14 addition, Pardee shall keep each of you reasonably  
15 informed as to all matters relating to the amount and  
16 due dates of your commission payments.

17 Mr. Lash conceded on Monday that commission  
18 payments, being the plural, applied equally to both  
19 commission payments received as a result of the  
20 \$84 million Purchase Property purchased as well as any  
21 monies received as a result of acquisition of Option  
22 Property for single-family production residential use.

23 You'll recall the testimony of Mr. Lash on  
24 October 28, 2013. I would like to just say to you that  
25 we did not understand and did not know of the RES 5

175

1 development, the tentative map, Exhibit 43, the 332 lots  
2 that encompass all of the Residential 5 and a portion of  
3 the multi-family purchase agreement as well as the  
4 exchange parcel.

5 And when I was asking the questions, because we  
6 didn't know where the trial went, I'm asking for  
7 posterity. I'm asking these questions for Mr. Wilkes'  
8 and Mr. Wolfram's heirs and assigns, spouses and  
9 children.

10 So I asked a series of questions about, Well,  
11 what happens -- because I knew the language in the first  
12 page of the Option Agreement which is designated or  
13 later designated for production residential property --  
14 what would happen in 2024, an arbitrary year? What  
15 would happen in 2024, Mr. Lash, if you had acquired  
16 property that you changed and designated later for  
17 single-family production residential use?

18 Answer, Well, I haven't given it much thought,  
19 but I think you would be entitled to a commission. That  
20 was one answer.

21 The next answer was, as we read to the Court, a  
22 much more specific determination, and that was that if  
23 we went to the point of going to the county and getting  
24 zoning -- the question was, In any event, because you do  
25 retain the right to change the use -- that certainly is

176

1 undisputed here -- and if you need to, to obtain the  
2 governmental approvals and zoning, that then would cause  
3 my clients to be entitled to dollars associated with  
4 that if you built residential; correct?

5 Answer: Correct.

6 That wasn't something I haven't given much  
7 thought. That was ten questions later, the same  
8 examination, the same consistent position. What is the  
9 need to change the testimony?

10 This Court has been -- and I appreciate the  
11 opportunity to practice in front of you -- this Court,  
12 and this record should reflect this, goes out of its way  
13 to benefit the parties as to credibility. It's your  
14 other personal style. You don't like a lot of  
15 theatrics, of which I'm guilty. You don't like a lot of  
16 game playing, and you are not crazy with the word "lie"  
17 or "cheat." Those are words that run hard on you, and  
18 you are very careful and judicious before you use words  
19 like that.

20 So you are willing to accept the credibility of  
21 Jim Wolfram and Walt Wilkes and assume or Accept  
22 credibility of Jon Lash, Harvey Whittemore, or Klif  
23 Andrews.

24 MS. LUNDVALL: Your Honor, now I need to also  
25 place another caution. There is additional case law

177

1 that speaks to the fact that you are not to personalize  
2 is the argument to the finder of fact. And, therefore,  
3 I don't think it appropriate for this counsel to be  
4 suggesting that, This is how I know the Court deals with  
5 certain circumstances.

6 MR. J.J. JIMMERSON: I am speaking to my  
7 observations of how this Court has conducted this trial.  
8 And responsively to opposing counsel's comments, I would  
9 have the obligation, I believe, if I felt the judge was  
10 acting in a way that needed to have a record made that  
11 it was inappropriate or improper or likewise giving each  
12 side the benefit of the doubt.

13 Because if we are successful in this case, I  
14 want a record that the Nevada Supreme Court can read  
15 that Judge Earley was fair to both parties. So there's  
16 no suggestion by opposing counsel in her brief later on  
17 two years from now that somehow Jimmerson got something  
18 over on the Court or that there was anything other than  
19 a fair rendition of verdict by the Court. So that's  
20 appropriate, in my judgment, to make a record. It's not  
21 something I'm belaboring.

22 I'm getting these objections in the middle of  
23 my closing argument. That's why.

24 THE COURT: I hope -- I will say I hope that if  
25 I did anything that you felt showed prejudice -- it's

178

1 difficult because I'm up here for a long time. If I did  
2 do something that in any way made you think I did  
3 something inappropriate or as favoring one side, I'll do  
4 like the jury instruction in front of the jury, I did  
5 not intend to convey any of that. And, likewise, if I  
6 have an observation, I tried very hard on credibility.  
7 So either way, I hope that you all know I did  
8 not do anything by my facial the wrong way, because I  
9 have not felt that way.

10 MS. LUNDVALL: And, Your Honor --

11 THE COURT: And I do try to judge everybody's  
12 credibility. Yes, I do. Your point is I don't like  
13 calling people liars, just because I think I want to  
14 judge the facts of the case based on the facts and the  
15 law.

16 MR. J.J. JIMMERSON: I will say that my  
17 comments will work both ways. If you find in favor of  
18 the defendants, these comments can be used by opposing  
19 counsel to suggest to the Nevada Supreme Court we got a  
20 fair shake and lost.

21 THE COURT: I understand where you are going,  
22 but I don't --

23 MS. LUNDVALL: Your Honor, from my perspective,  
24 I'll make a record for you. We have not suggested that  
25 there's been some type of influence outside the four

179

1 corners of this courtroom that Mr. Jimmerson has  
2 exerted.

3 What my objection was, and he cannot twist my  
4 objection, was the very standard objection that when an  
5 attorney, during closing argument, tries to personalize  
6 the remarks to the finder of fact, that is

7 inappropriate.

8 MR. J.J. JIMMERSON: I was not doing that. I  
9 appreciate the caution.

10 THE COURT: I see why you would think he was  
11 doing it that way, and I think he was trying to be more  
12 objective, but I understand your objection. And I did  
13 not take it that way, but I think, for the record, that  
14 was appropriate.

15 Let's go back to credibility, because I want to  
16 talk about credibility. I think that's why you were.

17 MR. J.J. JIMMERSON: I absolutely was.

18 The only major change of testimony in this case  
19 in nine days, plaintiffs to defendants, defendant's  
20 witnesses, plaintiffs' witnesses, was that of Mr. Lash.

21 What occurred between October 28, 2013 when he  
22 testified without our having discovered this issue  
23 involving Residential 5 was his best estimate of what he  
24 was to try to demonstrate the theme that you heard  
25 announced in the opening statement by the defense that

180



1 Pardee always does the right thing, those words, was to  
2 fairly, when faced with the terms of this Commission  
3 Agreement, which is what the subject was when it was  
4 being asked, was what did the circumvention mean? What  
5 does the word "circumvention" mean? What does "avoid"  
6 mean?

7 But on October 28th, it was in 2024, because we  
8 know you can change use -- and I went through this. He  
9 didn't change the testimony about use. We have the  
10 right to change use, he conceded. He didn't change that  
11 in his testimony. We have the right to change methods.

12 And then if you decide to change property  
13 that's later acquired -- excuse me, that's acquired by  
14 you and use it and designate it, affirmatively designate  
15 it, like an affirmative act, not a mistake and not some  
16 sort of inadvertent act, but when you go out of your way  
17 to make a designation so it's unqualified for  
18 single-family residential use, would they be entitled to  
19 commission, the answer is yes.

20 And that's the fair reading of the Commission  
21 Agreement. Because Pardee not only would send you a  
22 copy of the written option notice if they chose to  
23 acquire land, which was the only contemplated way on  
24 June 1 and on September 1, when the Commission Agreement  
25 was they were to do it this way, but as a fallback, as a

181

1 writing back to Mr. Jimmerson. There's no effort to  
2 communicate directly with each of the parties. So there  
3 is clearly a breach on that point alone.

4 But just as, perhaps, more importantly, but  
5 just as importantly, is the obligation to keep each of  
6 you reasonably informed as to all matters relating to  
7 the amount and due dates of your commission payments.

8 It is an incorrect interpretation on the part  
9 of Pardee to think that they can send commission  
10 payments, Exhibit A in evidence, and discharge fully its  
11 obligation under this paragraph.

12 It is also false for the defendants to say you  
13 can go look for deeds, but as we know, intended use is  
14 never found in any of these documents by anything  
15 delivered by them. And you certainly had the error made  
16 by Mr. Lash in his November 24, 2009 letter that he  
17 didn't designate that within the multi-family purchase  
18 agreement, there was already planned, already set forth  
19 a designated use of Residential 1, 2, 3, 4 and 5, and  
20 particularly 5, of the maps that show single-family  
21 homes. That's how this came to be.

22 I want to go back to those maps in a few  
23 minutes, but I want to stay on what's before you. What  
24 does "reasonably informed" mean, keeping each of you  
25 reasonably informed as to all matters, Mr. Lash?

183

1 catchall, as a broker seeking to protect the mischief of  
2 a party, whether it be intentional, whether it be  
3 inadvertent, whether it be mistake, whether it be in  
4 2024 and you forgot about the Commission Agreement --  
5 could happen. People will die. My clients will not be  
6 here in 2024, let alone 2044 -- that you are obliged,

7 Pardee, to keep each of you reasonably informed as to  
8 all matters relating to the amount and due dates of your  
9 commission payments.

10 I want to make it very clear that there's been  
11 a default, a clear default by Pardee in keeping Walt  
12 Wilkes informed. Other than one letter, two letters at  
13 the max, there's no effort on the part of Pardee to keep  
14 each of you reasonably informed.

15 The November 24, 2009 letter of Mr. Lash is  
16 written to Mr. Wolfram. Of course, Ms. Lundvall asked  
17 Mr. Lash, Why did you send it only to Mr. Wolfram?

18 The answer was, Well, I thought they were  
19 partners. I thought that, you know, one would  
20 communicate with the other.

21 This is a breach contract because there is no  
22 effort to send the November 24th letter, nor, what, 13  
23 out of the first 16 key exhibits that are exchanged  
24 between Mr. Lash and the plaintiffs, between  
25 Mr. Jimmerson and the defendants, between the defendants

182

1 Answer: Sufficient information being provided  
2 by Pardee to your clients, Mr. Jimmerson, so that they  
3 could on their own, independent of Pardee, confirm the  
4 intended use and what Pardee is doing. That was his  
5 answer. He confirmed it again on Monday. That was the  
6 exact testimony he gave at page 211 of his --

7 THE COURT: Of Monday or of before?

8 MR. J.J. JIMMERSON: The 28th of October, and  
9 he confirmed it again on Monday. I asked him the same  
10 question and he gave the same answer as to reasonably  
11 informed meaning independent verification.

12 And you recall I went so much further to say,  
13 In other words, there's not an obligation on the part of  
14 Wolfram and Wilkes to take your word for it?

15 Answer: That is right.

16 That is what was wrong with the November 24,  
17 2009 letter, Exhibit 15. First, contrary to Mr. Lash  
18 saying, I don't know how many maps we gave them, a very  
19 kind of reckless comment on Monday, there was only one  
20 map that Pardee ever gave the plaintiffs as contained as  
21 an attachment to Exhibit 15, the November 24, 2009  
22 letter.

23 And that map is inaccurate on its face because  
24 it fails to contain the single-family production  
25 residential use already designated by November 2009 of

184

1 RES 5 within the portion of the multi-family agreement  
2 adjoining the exchange parcel that we saw in Exhibit E  
3 of Exhibit 13. And that was the -- you recall, that was  
4 the map that turned --

5 THE COURT: I have it.

6 MR. J.J. JIMMERSON: -- this light on. Because  
7 when you look at Exhibit E, you saw the exchange parcel,  
8 the dark gray patch, and to the left was the sign  
9 Pardee. But in looking at the amendments, I couldn't  
10 see where Pardee acquired that land in the seven  
11 amendments.

12 And so when you look at the seventh amendment,  
13 Exhibit 12, you'll see it's by a separate agreement, the  
14 multi-family agreement referenced, not part of the  
15 \$84 million as shown on the Schedule 5 at Exhibit 12.  
16 And, therefore -- and you see that the lots are already  
17 drawn. They are already depicted as of June of 2009.  
18 The seventh amendment is April 24, 2009. The eighth  
19 amendment is June 2009, 60 days later, a little bit  
20 less.

21 The seventh amendment shows Exhibit B-6 and  
22 B-1, which I'll show you in a minute. And eighth  
23 amendment shows you Exhibit E, the exchange parcel, but  
24 right next to it is the already designated single-family  
25 home lots.

185

1 So Mr. Lash's change in testimony is a  
2 recognition that between October 29th, 2013, when  
3 Mr. Whittemore testified, and December 9, 2013, with the  
4 delivery on November 27th, 2013 of Exhibits 33 through  
5 43, of which 39, 40, 41 and 43 are admitted into  
6 evidence, that there was a need to change the testimony

7 because his testimony would be the designation of the  
8 single-family land would entitle our clients to an  
9 approximate \$31,000. If you use 50 acres, it's 30,000.  
10 If you use 53 acres, it's about \$32,000, what  
11 Mr. Andrews calls chump change.

12 Now, but notwithstanding the intended use and  
13 the designation, which still stands today -- it's the  
14 last map, it's the action of Pardee for this property --  
15 what I want you to understand is it was intended for  
16 single-family residence in 2009, in 2008.

17 One of the maps that we have not spent a lot of  
18 time on, but I did want you to turn to, please, if you  
19 would, is Exhibit 12 --

20 THE COURT: 12 or 13?

21 MR. J.J. JIMMERSON: 12, B-1. It's just before  
22 B-6.

23 THE COURT: Okay.

24 MR. J.J. JIMMERSON: I'm referring now  
25 specifically to the map at 1156, CSI-Wolfram 1156,

186

1 Exhibit B-1. If the Court, please, plainly for the  
2 Court's edification, is Residential 5 shown just to the  
3 right and at Denali Summit Parkway or Avenue.

4 May I approach the bench?

5 THE COURT: Yes.

6 MR. J.J. JIMMERSON: This is Tentative Map 2  
7 right here. That is the -- you can see it is already  
8 zoned, 2009, for single-family residential lots.

9 THE COURT: Did you say zoned for it?

10 MR. J.J. JIMMERSON: I misspoke. It is already  
11 designated. Forget the zoning. It's already  
12 designated, as defined by the Option Agreement,  
13 Exhibit 2, for single-family production residential  
14 lots. It's plain as day right there.

15 So what is crucial here is to understand why --  
16 not only do we explain and you can see it -- why there  
17 would be a motivation, whether it be true or not, a  
18 motivation for Pardee to change this one answer out of  
19 two long days of testimony by Mr. Lash, because he  
20 recognized that this property from the outset, at least  
21 April 24, 2009, if not earlier, had found this  
22 property -- already designated this property for  
23 single-family use, but didn't include it in the  
24 November 24, 2009 letter.

25 And when you look at the November 24, 2009

187

1 letter, it is carefully written, perhaps with aid of  
2 counsel, certainly by Mr. Lash, because nowhere in that  
3 letter does it say this map represents all of the  
4 property Pardee has designated for single-family  
5 production use. Nowhere will you find in a sentence in  
6 that letter.

7 What you find in that letter, when you look at  
8 Exhibit 15, is this is how -- this is the property we  
9 acquired with the \$84 million that we expended and gave  
10 to CSI. And, indeed, that is exactly what the letter  
11 says. This is the property we acquired. And it says  
12 the adjustment in price per acre for these  
13 nonresidential uses has increased the 1,950 acres  
14 originally described to the purchase and sale agreement,  
15 but has now changed the original price. Your commission  
16 is based on a percentage of the total price and not the  
17 number of acres, period, end quote.

18 That is an incorrect statement. If you find,  
19 as I believe it's now undisputed, that Option Property  
20 east of the Parcel 1 location was acquired by Pardee for  
21 single-family production residential property, then a  
22 different computation for which an accounting is  
23 warranted, under Count I of the Complaint, by Pardee to  
24 Mr. Wolfram and Mr. Wilkes to ascertain the number of  
25 acres, what the computation price would be, times

188

1 \$40,000 an acre, times one and a half percent, and then  
2 compare it to what was actually paid by them.

3 THE COURT: You are talking about the RES 5?

4 MR. J.J. JIMMERSON: No, I'm not. I'm talking  
5 about property outside of that parcel generally.

6 THE COURT: Do it again then. I'm sorry. You  
7 are saying --

8 MR. J.J. JIMMERSON: Let me stay on RES 5. You  
9 are right.

10 THE COURT: We've now switched.

11 MR. J.J. JIMMERSON: I did. Shame on me.

12 So what I'm saying to you is that the letter,  
13 either inadvertently or intentionally, does not disclose  
14 that on November 24, 2009, as evidenced by their  
15 acquisition in the seventh amendment, April 24, 2009,  
16 six months later, seven months later, that they had  
17 acquired property under the side agreement, multi-family  
18 agreement, that had already been designated for  
19 single-family use as shown by B-1 of Exhibit 7,  
20 Exhibit 12 -- the seventh amendment is Exhibit 12 -- and  
21 did not disclose it.

22 And it was that property, along with two  
23 others, that caused Mr. Wilkes to write his letter --  
24 Mr. Wolfram to write his letter to Jon Lash on April 21,  
25 2010, Exhibit 23, where he attaches his map, and he

189

1 references the other four parcels that he found under  
2 the name of Pardee for which there's no designated use.

3 And he says: Dear Jon, as we discussed on the  
4 phone, please find enclosed a map of purchases on  
5 Coyote Springs. As you can see, my map does not agree  
6 with your map on acreage purchased by Pardee. My

7 information came from county records. Please study the  
8 map, as I have your map. Then we can discuss the  
9 situation. Once we get the acreage settled, it is  
10 imperative we establish a format for future transactions  
11 on Coyote Springs. My attorney sent your attorneys a  
12 simple format that would take any title company only a  
13 few minutes to complete, but we never received a reply.  
14 Walt's family, my family, and Pardee could understand  
15 this document in the event something happened to any of  
16 us. I will contact you in a few days after you've had  
17 time to study the maps, Jim Wolfram.

18 And Mr. Wolfram then testified, After I sent  
19 him this letter, I did call Jon Lash, and Jon Lash was  
20 adamant that this was not subject to a commission, and  
21 he would not be providing the information.

22 In the letters between Stringer and Jimmerson,  
23 you see demands repeatedly by Mr. Jimmerson for the  
24 documents, and refusals by Mr. Stringer initially,  
25 despite a promise that he will provide it, and

190

1 Mr. Curtis, where they never provide information, just  
2 saying it doesn't apply, it's not part of the  
3 84 million, you are not entitled to commission, and  
4 we're not providing the documents.

5 That, by itself, Your Honor, is a breach of  
6 contract, Exhibit 2, of the implied covenant of good  
7 faith and fair dealing, and a breach of the contract to  
8 keep them reasonably informed as to all matters  
9 regarding their commission statements.

10 Again, how would our clients know what is in  
11 these agreements without the ability to confirm the  
12 same? That was Mr. Lash's words to objectively or  
13 objectify what a reasonable man's test, a reasonable  
14 woman's test would be to understand what does it mean to  
15 keep each of you reasonably informed as to all matters  
16 that relate to payment of commission payments to you.

17 And this can be obtained by a signing  
18 confidentiality agreement, which our clients would  
19 freely sign. There was a lack of care about  
20 confidentiality when they submitted the Amended and  
21 Restated Agreement, Exhibit 5, because it was deemed  
22 confidential, but sent by the title company.

23 And so the concept they are hiding behind,  
24 well, the documents were confidential, does not excuse a  
25 contractual obligation to keep them reasonably informed.

191

1 How would we know that all the property under the  
2 multi-family agreement is multi-family designated use  
3 property?

4 And according to Mr. Lash's letters and  
5 Mr. Curtis' letter and Mr. Stringer's letter, the answer  
6 is, You have to take our word for it. You have to trust  
7 us. We affirmatively and intentionally decline to  
8 provide you the documents.

9 It was only after a lawsuit is brought do you  
10 now have the right to obtain some documents, like the  
11 Amendments 1 through 8, and as Mr. Wolfram testified,  
12 particularly as it relates to Amendment 7, Amendment 7  
13 and 8 being the guts of it, he could know what was  
14 purchased, what was designated intended use for homes or  
15 not. That was never sent.

16 And further, we know that while Mr. Stringer  
17 testified in his deposition before you that he doesn't  
18 recall or didn't give me a promise to provide the  
19 detailed information that was set forth in my  
20 correspondence to him, he didn't respond for a period of  
21 approximately three months. In his deposition he  
22 testified, so you know, I don't recall that and I don't  
23 think I promised Mr. Jimmerson the documents that he  
24 specifies.

25 THE COURT: That's the depo I still have to

192

1 read?

2 MR. J.J. JIMMERSON: Right. But he did not  
3 write a letter saying back, Mr. Jimmerson, I received  
4 your letter wherein you state that I promised to provide  
5 the following nine categories of documents. I don't  
6 recall that or you are a liar or I didn't say that.  
7 None of that is forthcoming from Mr. Stringer or Pardee  
8 throughout any of this correspondence.

9 And the letters from Mr. Wolfram through the  
10 Jimmerson Hansen firm are replete and consistent with  
11 information requesting maps. We saw the affirmative  
12 rejection by Mr. Lash to provide maps. Requests for  
13 plat maps, rejected by Mr. Lash in his correspondence.  
14 And the request for escrow documents -- you know that  
15 none of the actual documents were ever delivered to  
16 plaintiffs?

17 If you had the escrow documents, you would have  
18 the APN number, you have the amount of money expended,  
19 you'd have the number of acres, you'd have a legal  
20 description, and you wouldn't be relying upon a deed  
21 that doesn't necessarily have acres. We went through  
22 several deeds that didn't have any acreage on it, which  
23 we know there's no intended use, and no explanation.

24 And, indeed, as you saw in Exhibit JJ and if  
25 you look at Exhibit MM, there's two additional efforts

193

1 on the part of Mr. Lash to affirmatively instruct  
2 Mr. Butler and another employee not to provide the  
3 information requested by Mr. Wolfram. Indeed, there's  
4 an exhibit here that talks in terms of Mr. Wolfram being  
5 troublesome for his repeated requests for information,  
6 using that term.

7 So while you've heard the defense by Pardee  
8 that there was no exercise of notice, clearly this  
9 Commission Agreement is much broader to capture any  
10 entitlement to commission.

11 THE COURT: I just want to make sure that is  
12 what you are saying. You are saying that it doesn't  
13 matter what label or how they purchased it, whether it  
14 was multi-family, whether it was under -- they paid CSI  
15 for multi-family or they paid it for commercial. Once  
16 they acquire it, if they designate it at any time in the  
17 future for single-family residence, it's your  
18 interpretation of the Commission Agreement that  
19 Mr. Wolfram and Mr. Wilkes will get a commission?

20 MR. J.J. JIMMERSON: That is true.

21 THE COURT: I thought that was it, but I really  
22 wanted to make -- we've kind of talked -- I don't want  
23 to say talked around it, but I wanted to make sure that  
24 is what you are saying.

25 And that's why you look to the terms of

194

1 designation when you were looking as opposed to  
2 purchase?

3 MR. J.J. JIMMERSON: Exactly. Because the  
4 Option Agreement, Exhibit 2, talks in terms of  
5 designated, is or later designated single-family  
6 production residential property.

7 THE COURT: A little different from -- okay. I  
8 just wanted to make sure I'm on the right page because I  
9 want very clear what your positions are, and I apologize  
10 to stop you.

11 MR. J.J. JIMMERSON: That's fine.

12 THE COURT: If I don't understand, I really  
13 want to make sure I'm crystal clear on the issues.

14 MR. J.J. JIMMERSON: There's at least --  
15 there's then three -- many obligations of Pardee to  
16 Wolfram and Wilkes under the Commission Agreement.  
17 Obviously, to pay the commission is one of them.

18 But secondly, you have an obligation to keep  
19 them, as an additional point --

20 THE COURT: Reasonably informed.

21 MR. J.J. JIMMERSON: -- reasonably informed.

22 And the third is the circumvention or  
23 avoidance. So those are --

24 THE COURT: Really, those are the three major  
25 issues?

195

1 MR. J.J. JIMMERSON: I think so. I think you  
2 are absolutely right.

3 THE COURT: I just want to make sure because  
4 there's been so much testimony. I really don't want to  
5 miss anything that you feel is --

6 MR. J.J. JIMMERSON: Those are, I believe, to  
7 be the three major points of the Commission Agreement.

8 THE COURT: So you were just talking about the  
9 reasonably informed?

10 MR. J.J. JIMMERSON: Now I'll speak to  
11 circumvention and avoidance. What's important here is  
12 under reasonably informed is you have a clear and mutual  
13 understanding by Pardee, through Lash, and plaintiffs,  
14 by Wolfram and Wilkes, of what it means.

15 Pre-litigation, pre-pressure to exaggerate, pre-pressure  
16 to fit your answers into some legally developed defense  
17 without the purview or the onset or complication of  
18 litigation. The pure intent of the parties is what I  
19 would say.

20 Then the fourth paragraph, For purposes of this  
21 agreement, the term Pardee shall include any successor  
22 or assign of Pardee's rights under the Option Agreement  
23 and Pardee's obligation to pay the commission to you at  
24 times and amounts described above shall be binding upon  
25 Pardee and its successors and assigns.

196

1 That inures to the benefit of Mr. Wolfram and  
2 Mr. Wilkes. It also explains that successors in  
3 interest of Pardee, whether it be a merged company,  
4 whether it be a company that is acquiring Pardee,  
5 whether it be Tri Pointe that's in the process  
6 potentially of buying Weyerhaeuser's interest, which then  
7 would include both of the Pardee subsidiaries we've  
8 talked about in this of California and of Nevada, would  
9 be obliged to honor the terms of this agreement.

10 And then it continues, Pardee, its successors  
11 and assigns, shall take no action to circumvent or avoid  
12 its obligation to you as set forth in this agreement.

13 THE COURT: Okay.

14 MR. J.J. JIMMERSON: That is a gold-plated  
15 sentence. Because it is not a bar against cheating.  
16 It's not a bar against fraud. It's a bar against taking  
17 action, any action -- the words "any action" -- shall  
18 take no action to circumvention or avoid its obligation  
19 to you as set forth in the agreement.

20 So the position of the defense has changed  
21 from, We have been doing the right thing -- the opening  
22 statement and the first seven or eight words out of  
23 Mr. Lash's mouth when I had cross-examination of him on  
24 the 28th of October -- to, Are you trying to cheat the  
25 plaintiffs, is now the questions being asked of both

197

1 Andrews and Lash in the last two days. That's a very  
2 different approach.

3 Because of the sensitivity that opposing  
4 counsel has to what was discovered of the admission made  
5 by Lash on behalf of his company to pay the chump change  
6 commission and of the recognition that there wasn't

7 clarity and/or honesty in the November 24th letter or  
8 the words of Mr. Lash or to that extent, to some extent,  
9 Mr. Whittemore relative to having acquired property for  
10 property already designated in April of 2009 as  
11 single-family property.

12 And the language -- you know, hindsight is a  
13 wonderful thing, but the language is really broad and  
14 all encompassing. Pardee, its successors and assigns,  
15 shall take no action to circumvention or avoid its  
16 obligations to you as set forth in this agreement.

17 It doesn't require us to prove fraud. It  
18 doesn't require us to prove mens rea. It's a bar  
19 against taking any action to circumvention or avoid its  
20 obligation.

21 Buying property originally designated for  
22 single-family production residential housing under the  
23 rubric of a multi-family contract, which access was  
24 intentionally denied by Pardee, knowing it was already  
25 designated in 2009 before you completed this purchase

198

1 and squared up all the property as single-family  
2 designated property, then to confirm that, when you  
3 confirm and deem this to be the epicenter, one of two  
4 epicenters of beginning construction for single-family  
5 production residential homes, that coupled with the one  
6 to the west of the Coyote Springs Parkway, and to go  
7 forward and inject yourself into the county planning  
8 commission process through affirmative action with the  
9 county commission sitting as the zoning commission on  
10 February 16, 2011, Exhibit 39 and 41, and the map,  
11 Exhibit 43, is an effort, whether intentional or not, to  
12 avoid or circumvent its obligation to you to pay a  
13 reasonable commission, as defined.

14 I don't have to prove intent. Ms. Lundvall  
15 doesn't win the day by convincing you that her witnesses  
16 didn't mean to cheat the plaintiffs. That's not the  
17 standard. That's not what was agreed upon. This is a  
18 breach of contract for failure to keep them reasonably  
19 informed. It is a breach of implied covenant of good  
20 faith and fair dealing for failure to do the same.

21 And the request for an equitable finding of  
22 accounting for you to tell us, using your sophisticated  
23 means, using your civil engineers on retainer to compute  
24 the curves and the straight lines and tell us how much  
25 property was outside of the Purchase Property 1, then

199

1 use that property calculation and, number two, to come  
2 clean, to recognize that under the name of the  
3 multi-family agreement you purchased 50-odd acres, about  
4 53 acres, 50 to 53 acres -- we see two different  
5 documents that show different numbers. One is 50, the  
6 other is 53 -- production residential property as  
7 defined in the Option Agreement, Exhibit 2, and that  
8 should be reasonably compensated for the same.

9 That's why I say to the Court, the Commission  
10 Agreement is different than the Option Agreement because  
11 the Commission Agreement is not only speaking to the  
12 nature of commissions, which is, I brought you this  
13 buyer, buyer wants this property desperately. It is a  
14 blank canvas. It excites his planners. It is an  
15 opportunity to be the new Del Webb, to be the new  
16 Summerlin, to be the new Green Valley, and even a much  
17 bigger one at that, and to have the exclusive right to  
18 single-family projects that you can't do and exercise  
19 your rights to be the exclusive developer of  
20 single-family production residential is circumvent or  
21 avoid your obligation to the broker so that you later  
22 designate the property as such and the Option Agreement  
23 expresses that.

24 We know that all 1,950 acres or all 3,600 acres  
25 within Parcel 1 was designated single-family residential

200

1 property -- not all of it, but the 1,950 acres were  
2 contemplated, but also if they were to expand that, they  
3 would also be buying single-family production  
4 residential.

5 THE COURT: Can I ask what is the plaintiffs'  
6 position then -- as we know, Mr. Andrews testified, We  
7 have no intention going forward right now with  
8 single-family.

9 What is the position if they never go forward  
10 on that RES 5 property as single-family residential, but  
11 they end up developing it and having it as multi-family?  
12 What is your position then on, if they pay a brokerage  
13 fee, what happens in that circumstance?

14 Because, as we know from all the testimony,  
15 it's -- they are free -- and you've acknowledged that --  
16 to change designations.

17 MR. J.J. JIMMERSON: I have.

18 THE COURT: At what point in the process do you  
19 feel the broker's fee is due? Just when it's  
20 designated?

21 MR. J.J. JIMMERSON: The answer is yes, but for  
22 this it's an easier question. I thought about this and  
23 my clients --

24 THE COURT: It's an actual question.

25 MR. J.J. JIMMERSON: I respect the Court's --

201

1 THE COURT: I'm sure you are going to address  
2 it, but that's in my mind.

3 MR. J.J. JIMMERSON: Thank you. I'll address  
4 it now.

5 A tentative map is just that. It's a tentative  
6 map. It is a statement, however, an intentional

7 statement made by applicant, in this case Pardee Homes,  
8 of its intended designation of this property for  
9 single-family production residential lots.

10 THE COURT: Okay.

11 MR. J.J. JIMMERSON: To answer your question  
12 directly, the contract, which is all we can base it  
13 upon, which is the Option Agreement, Exhibit 2, page 1,  
14 the last lines of paragraph B say if the property is or  
15 is later designated for single-family production  
16 residential use, they have a right to acquire it.

17 THE COURT: You are getting that language off  
18 Exhibit 1?

19 MR. J.J. JIMMERSON: Exhibit 2, page 1,  
20 paragraph B.

21 THE COURT: Let me write it down, Exhibit 2,  
22 page 1.

23 MR. J.J. JIMMERSON: Paragraph B.

24 THE COURT: Let me read this, which is or  
25 becomes designated -- that's how --

202

1 MR. J.J. JIMMERSON: That's the basis for --

2 THE COURT: That's your interpretation. Okay.

3 MR. J.J. JIMMERSON: This contract is  
4 referenced and, I mean, that's why I say the first thing  
5 on the page is RE: Option Agreement for the Purchase of  
6 Real Property and Joint Escrow Instructions. That's on  
7 page 1 of the Commission Agreement, referring to the  
8 agreement being incorporated there.

9 THE COURT: So your answer to my question is if  
10 they change it for another use, as soon as they --

11 MR. J.J. JIMMERSON: Designate it for --

12 THE COURT: Which is or becomes -- once it is  
13 designated, then the question is the -- okay. Then they  
14 have to pay the commission. If they don't end up using  
15 it for that, too bad. You paid the commission. It's  
16 gone and --

17 MR. J.J. JIMMERSON: Right.

18 THE COURT: And there's no reimbursement;  
19 right?

20 MR. J.J. JIMMERSON: Exactly. There's no  
21 reimbursement.

22 THE COURT: I just wanted to know what your  
23 position was. Okay.

24 MR. J.J. JIMMERSON: We're not here to be  
25 unfair to Pardee.

203

1 THE COURT: I'm not trying to infer. I'm just  
2 trying --

3 MR. J.J. JIMMERSON: I'm going to say the  
4 reason that this is easier for the Court to come to is  
5 not only did they make the designation -- by the way,  
6 they made the designation before they completed the

7 purchase of the \$84 million of property right. You see  
8 that in April of 2009. It's Amendment 7.

9 But in addition, and here's the most helpful  
10 fact to avoid any concerns from the Court, is it was  
11 already designated single-family before that. In other  
12 words, it wasn't designated in 2011 after the fact. It  
13 was designated in April of 2009, before they even  
14 expended the full \$84 million as a separate property, by  
15 definition, would be Option Property outside of the  
16 \$84 million of property that's shown in Exhibit 15, the  
17 Lash map. It was already single-family shown right from  
18 the beginning.

19 So it's not a situation where, as you say, they  
20 change their use now next year, and then, My gosh,  
21 Mr. Jimmerson, isn't it unfair to them that they have a  
22 commission unless they actually do build it? But the  
23 single answer is the contract doesn't get that way. The  
24 contract says is or becomes designated.

25 But as it relates to the facts of the

204



1 particular case, you are also aided by the fact that it  
2 was already knowingly designated, before 2009, when they  
3 knew they had to pay a designation, when they were  
4 paying commissions, but they bought this property under  
5 the name of multi-family.

6 THE COURT: What happens in the situation when  
7 we know they paid a commission to the brokers because  
8 they purchase it and single-family residential and then  
9 they were converting it to another use? Doesn't that --

10 MR. J.J. JIMMERSON: That's their choice.

11 THE COURT: That's their choice. The  
12 commission stays?

13 MR. J.J. JIMMERSON: Exactly.

14 THE COURT: Okay.

15 MR. J.J. JIMMERSON: Yes. And the reason for  
16 that is very simple. There's no language in the  
17 Commission Agreement to suggest that there would be a  
18 give-back or a reimbursement due to the decision-making  
19 of Pardee. Again, the decision of designation or  
20 redesignation is exclusively and unilaterally Pardee's.  
21 It's not something they seek or ask Wolfram or Wilkes to  
22 be a part of.

23 That is, in our judgment, the greatest weakness  
24 the defense argument, is they didn't involve the  
25 plaintiffs when they went from Option Agreement,

205

1 can change the agreement all they want. They just can't  
2 do it and defeat our clients' entitlement to a  
3 commission. That's all.

4 THE COURT: If the interpretation is it was  
5 defeating them, circumventing the agreement of paying  
6 them. All right.

7 MR. J.J. JIMMERSON: You can't conform their  
8 understanding of the new amendments to the old  
9 agreement. You cannot, by later actions between the two  
10 of them, Pardee and CSI, somehow affect the contract  
11 that existed between Wolfram and Wilkes and Pardee from  
12 the earlier agreement.

13 They certainly didn't get our clients' consent  
14 to supersede the agreement and replace it. Now, that's  
15 something the two of them can do all day long, but they  
16 can't undo the Option Agreement for purposes of today's  
17 trial. Do you understand? They can't say the agreement  
18 has no longer force and effect and, therefore, the  
19 Commission Agreement has no longer force and effect.

20 THE COURT: I don't think they were saying  
21 that.

22 MR. J.J. JIMMERSON: They were trying to  
23 suggest that no matter where they built, inside or  
24 outside Parcel 1, that they do it and call it Purchase  
25 Property. That's their defense. Their position is we

207

1 Exhibit 2, to Amended and Restated agreement, Exhibit 5.  
2 They intentionally excluded them and they  
3 didn't recognize -- let's take any intent out of it.  
4 They didn't recognize that in their changing of  
5 development strategy and changing of definitions of both  
6 Purchase Property and changing definition of Option  
7 Property, they didn't remember that those were defined  
8 terms under the original Commission Agreement.

9 And if they were going to do that, pick up the  
10 phone and just say, Listen, fellas, we want to change  
11 the direction which we're going to build. Is it okay  
12 with you? Can we make a deal? Maybe pay you an extra  
13 50,000 and call it square. None of that takes place.  
14 It's an attitude by Pardee, at least through their local  
15 office in Nevada, of a disdain for the brokers, and I'm  
16 not going to involve them in this. And there was a  
17 derogation of their contract. That's the mistake they  
18 made.

19 THE COURT: You think they had a duty, when  
20 they changed the underlying agreement, to get their  
21 permission or just --

22 MR. J.J. JIMMERSON: Absolutely. Get --

23 THE COURT: Get their permission to change that  
24 underlying agreement?

25 MR. J.J. JIMMERSON: No, not to -- no. They

206

1 never bought Option Property. We never exercised an  
2 option. We never gave a notice, therefore, we never  
3 bought Option Property. Therefore, we don't calculate  
4 the commission based upon the different formula.

5 THE COURT: Right. And you are not saying they  
6 bought Option Property. What you are saying is they  
7 bought -- well, you are calling it Option Property  
8 because it was built under the multi-family. You are  
9 using the designation part now to make it Option  
10 Property?

11 MR. J.J. JIMMERSON: Exactly right.

12 THE COURT: That's what you are doing?

13 MR. J.J. JIMMERSON: Right. Because it wasn't  
14 Purchase Property and because --

15 THE COURT: It was not Purchase Property. They  
16 know it wasn't --

17 MR. J.J. JIMMERSON: And it wasn't included in  
18 the \$84 million.

19 THE COURT: I'm only asking because I want to  
20 make sure I'm very clear, because it's very important to  
21 me that I'm clear what everybody's saying. And we all  
22 know we've gone through a long process here. So I don't  
23 mean to infer anything by my questions. I just want to  
24 make sure I understand. You understand that,  
25 Mr. Jimmerson --

208



1 MR. J.J. JIMMERSON: I do, Your Honor.  
2 THE COURT: -- what I'm doing?  
3 I can't make good decisions if I'm not really  
4 clear what you're saying. That's perfect.  
5 MR. J.J. JIMMERSON: What I'm saying is under  
6 the name of multi-family, the definitely bought property  
7 that, by definition, in either agreement was Option  
8 Property. That's all I'm saying.  
9 THE COURT: Because they changed it to multi,  
10 that's how -- I get it. That's how you hook up the  
11 Option Property. Okay. And that's your point of they  
12 don't have to go through the exercise option?  
13 MR. J.J. JIMMERSON: Also, it was not part of  
14 the Purchase Property. No matter where they built.  
15 THE COURT: Of course. It was part of the  
16 multi-family. I understand that. I'm just trying to  
17 understand your reasoning how you get there. I do  
18 understand it. I thought I did, but I wanted to make  
19 sure.  
20 MR. J.J. JIMMERSON: I just wanted --  
21 THE COURT: Then it hooks all together. I  
22 understand that.  
23 MR. J.J. JIMMERSON: When I asked Mr. Lash, Why  
24 didn't you send the November 24, 2009 letter to  
25 Mr. Wilkes, and the answer was -- Why did you exclude

209

1 Mr. Wilkes? Mr. Lash said there was no reason -- Lash,  
2 page 247, lines 10, 20 and 13.  
3 As I confirmed already, Mr. Wilkes and  
4 Mr. Wolfram did introduce, were the producing cause,  
5 Lash, at page 22 of his testimony, Would you agree that  
6 there has not been provided to Mr. Wolfram or Mr. Wilkes  
7 any writing that would designate all the uses of the  
8 property that's shown on the maps we've looked at?  
9 Answer: I believe that's true.  
10 And certainly it's not shown on the one and  
11 only map that you've seen that you provided within  
12 Exhibit 15?  
13 Answer: That's correct.  
14 Lash, page 275.  
15 If we go forward from here on out, whatever we  
16 purchase is truly Option Property for single-family, and  
17 we're more than happy to pay a commission. Lash,  
18 page 75 and also page 83.  
19 This is important because this was never  
20 recanted by Mr. Lash. So any future purchases from  
21 today going forward or any future redesignations, in our  
22 judgment, for the reasons we've articulated --  
23 THE COURT: That's the distinction?  
24 MR. J.J. JIMMERSON: Right.  
25 -- would be, of Option Property for

210

1 single-family use, single-family production use, would  
2 be commission.  
3 Now, you know, we've thought about it because  
4 we don't want a harsh result. One of the things we're  
5 looking for from you is orders that would require the  
6 accounting so they would provide to us the property in  
7 and out of Purchase Property and Option Property so we  
8 can see.  
9 But also, as I mentioned to you, to properly  
10 interpret the Commission Agreement, that there be some  
11 affirmative duty, as set forth here, to advise the  
12 clients when or if Pardee, as a company, or its  
13 successors and assigns, develops single-family  
14 production residential lots beyond that which they have  
15 purchased now in the future.  
16 THE COURT: And you used the word "develop"  
17 them? So does that mean purchase?  
18 MR. J.J. JIMMERSON: Acquire.  
19 THE COURT: The terms are very -- I have to be  
20 really precise.  
21 MR. J.J. JIMMERSON: If they acquire, if they  
22 purchase single-family production residential property  
23 in the future at that location, that they be -- that the  
24 plaintiffs --  
25 THE COURT: So you're using the word "acquire"?

211

1 MR. J.J. JIMMERSON: Or purchase.  
2 THE COURT: I know they mean the --  
3 MR. J.J. JIMMERSON: -- that they be  
4 affirmatively advised of the same.  
5 THE COURT: And you are looking for something  
6 different than what they have to already do when they  
7 open escrow and all that, if it's Option Property? You  
8 are going to be arguing to me something in addition to  
9 all that's already provided under have the Amended and  
10 Restated Option Agreement? Really, it was under the  
11 first one and it got incorporated. Right?  
12 MR. J.J. JIMMERSON: Yes. Because what has  
13 happened here, whether it be innocence or not, they  
14 acquired property, residential production real estate,  
15 under name of multi-family, unequivocally. There's no  
16 question.  
17 THE COURT: Wait a minute. Now you are using  
18 the word "acquired" and "purchased" together, but  
19 purchased isn't the same. They purchased it under the  
20 multi-family.  
21 MR. J.J. JIMMERSON: That's right.  
22 THE COURT: The terms are tough for me to  
23 follow. I want to --  
24 MR. J.J. JIMMERSON: They purchased 250 acres  
25 under an agreement that was called multi-family

212

1 agreement.

2 THE COURT: Which you haven't seen.

3 MR. J.J. JIMMERSON: 50 acres of the 250 acres  
4 was already designated single-family under  
5 the tentative -- excuse me. It was also before that.

6 If you look at Exhibit -- I just told you --  
7 B-1, that is Amendment 7 to Exhibit 5. That property,  
8 even in April of 2009, while they're performing the  
9 purchase and development of the Purchase Property, the  
10 \$84 million, in addition to that they bought  
11 approximately \$30 million worth of real estate.

12 If you take \$100,000 an acre times 300 acres,  
13 you get \$30 million. Of the 300 acres, 50 acres had  
14 already been designated, as shown by B-1 of Exhibit 12,  
15 residential property.

16 THE COURT: Okay. I see what you are referring  
17 to.

18 MR. J.J. JIMMERSON: And then if you look at  
19 Exhibit E --

20 THE COURT: Of the same exhibit?

21 MR. J.J. JIMMERSON: No. Exhibit 13.

22 THE COURT: Okay. I got it.

23 MR. J.J. JIMMERSON: The property to the left  
24 or to the west is the same property already drawn right  
25 here. This is part of the multi-family property, but

213

1 later, here in 2011, February 16, to get county

2 commission approval for its single-family.

3 That's what makes it so different than the  
4 possibility of changing tentative maps later on. I  
5 appreciate the Court is asking and understand that the  
6 Court wants to be fair to both sides. Maybe it wouldn't  
7 be fair to pay a commission unless they do go forward  
8 with that.

9 But in this particular case, you have a knowing  
10 purchase of property that has already, prior to  
11 completion of the expenditure of the \$84 million, buying  
12 separate property under a multi-family agreement that is  
13 intended, already designated, for single-family  
14 production residential use, and then confirmed two years  
15 later by going forward to the county and getting their  
16 tentative map approved for 332 lots.

17 That's why the equities, as well as the facts,  
18 clearly support the plaintiffs and are not supportive of  
19 the defense. It also explains the change in testimony,  
20 in our judgment. And that's the only claim of change of  
21 testimony by Mr. Lash, and it was occasioned by the fact  
22 we discovered this after Mr. Whittemore went over  
23 Exhibit E.

24 If you remember, the exchange parcel is what we  
25 went over on the 29th of October. And when we look at

215

1 it's already designated in 2009.

2 THE COURT: You are saying by the squares?

3 MR. J.J. JIMMERSON: By the squares.

4 THE COURT: I remember Whittemore talked to  
5 that.

6 MR. J.J. JIMMERSON: Also, you note that

7 Mr. Whittemore told us that this was the beginning  
8 point, that Pardee changed -- and it was confirmed by  
9 Mr. Lash and Mr. Andrews -- as to where they were going  
10 to build beginning, commence their single-family  
11 production residential building was here and one other  
12 place across the street, the Coyote Springs Parkway.

13 So when you look at this, you can see that  
14 that's why it's not unfair to charge them for this  
15 responsibility. Because not only did they designate  
16 within the meaning of the Option Agreement, paragraph B,  
17 page 1, is or becomes designated, which triggers the  
18 commission right on the spot, but it's not a situation  
19 of maybe they are going to change later on. Because  
20 this was from the beginning designed for single-family  
21 residential.

22 That they included multi-family was  
23 inappropriate. That they didn't pay an extra commission  
24 at that time was inappropriate. And their intent to  
25 treat it as single-family is confirmed by, two years

214

1 it, why are these properties single-family? And

2 Mr. Whittemore testified they are not part of the  
3 \$84 million. That's what he testified to.

4 THE COURT: Thank you.

5 MR. J.J. JIMMERSON: Now, let me just finish up  
6 and I'll be done here.

7 The letters I wanted to just show you. The  
8 Complaint we filed in December of 2010, Exhibit 00 in  
9 evidence, has simply been marked by myself as matching  
10 up to the exhibits and letters. And you have been read  
11 these letters until you are blue in the face. I don't  
12 intend to do that again.

13 But I did want to show you that this whole  
14 recent theme by Pardee that this is really just an  
15 unbridled, unabashed money grab by the plaintiffs, it's  
16 all about money -- Mr. Lash's testimony, I think, was  
17 generally credible. Mr. Whittemore testimony was  
18 generally credible. Mr. Wolfram's testimony was  
19 generally credible. Mr. Wilkes' testimony was generally  
20 credible.

21 But in this -- and I do take issue with both  
22 Mr. Lash and Mr. Whittemore's testimony, because when  
23 you read the Complaint and go through it, as we will  
24 now, you'll see it wasn't a money grab. The breach of  
25 contract is very different.

216

1 I mean, how many times have you seen in your  
2 lawsuits a lawsuit that says the breach of contract is  
3 the failure to provide information? I mean, it's an  
4 exception. I don't say it never happens. I'm saying  
5 that most of the time it's you breached the contract for  
6 which you've caused damage in excess of \$10,000.

7 So in this Complaint we have the background is  
8 we talked about they executed a Commission Letter of  
9 September 1, 2004, Exhibit 1. If we turn the page, it  
10 talks about their having been assigned their real estate  
11 companies' interest for which summary judgment is  
12 granted.

13 Paragraph 6, pursuant to the Commission Letter,  
14 they are entitled to be paid a commission for all real  
15 property sold under the Option Agreement. Pursuant to  
16 the Commission Letter, plaintiffs were to be fully  
17 informed of all sales. And I say "fully." The words  
18 are reasonably informed, and I quote it. And it says,  
19 Pardee shall keep each of you reasonably informed as to  
20 all matters relating to amount and due dates of your  
21 commission payments, Exhibit 1.

22 Then on April 23, 2009, plaintiffs sent to  
23 defendant documents which detail the purchase and sales  
24 of certain real property for which plaintiffs believe  
25 are part of property outlined in the Option Agreement

217

1 and, therefore, property for which they are entitled to  
2 receive a commission. A parcel map was also requested  
3 to identify which properties have been sold, Exhibit 24.  
4 Judge, this is a little bit of irony here.

5 April 23 is when the letter is dated and sent,  
6 presumably received on the 24th or 25th. That day, the  
7 next day, April 24, 2009, is the seventh amendment date  
8 to the Amended and Restated Option Agreement that  
9 specifically referenced Residential 5 and the  
10 single-family production residential as being part of  
11 the multi-family agreement.

12 That is why, when it comes to measuring the  
13 credibility, Mr. Lash was very careful to say in his  
14 letter, This is the property we've acquired using our  
15 \$84 million dollars, intentionally avoiding, in my view,  
16 the statement or representation, This is all of the  
17 single-family residential property we've acquired,  
18 because that would have been false.

19 His map did not include RES 5 as part of the  
20 documents. Part of the property that was shown in  
21 Exhibits -- Addendum 7 and 8 within Exhibits B-6, B-1,  
22 and Exhibit E of Exhibit 13.

23 Then the defendant replied to plaintiffs'  
24 letter of April 23, 2009 with a letter dated July 10,  
25 2009. The April 23 letter, Exhibit 24, memorializes the

218

1 request for documents that have been assuredly provided  
2 by Mr. Stringer to Mr. Jimmerson. It's not responded  
3 to, and then the response comes April of -- July 10,  
4 2009, Exhibit 21, which fails to produce a single  
5 document or include a single document, save and except  
6 to say you are not entitled to it.

7 And that doesn't meet the objective standard  
8 that both Mr. Lash and Mr. Wolfram and Wilkes reached  
9 when they signed the agreement on June 1, or as  
10 testified to by Mr. Lash and the plaintiffs here in  
11 trial the last nine days that there would be an ability  
12 to independently confirm the propriety of Pardee's  
13 actions in purchasing single-family production real  
14 estate for which our clients would be entitled to a  
15 commission.

16 Paragraph 10, plaintiffs again requested  
17 additional documents, Exhibit 18. After conversations  
18 with the plaintiffs, he sent a two-page letter, which is  
19 Exhibit 15.

20 Paragraph 12, plaintiffs relied upon  
21 plaintiffs' representations made on November 24th as  
22 being truthful and accurate. And paragraph 13, that  
23 they learned afterwards that it wasn't accurate.

24 Now, Exhibit 20 is the letter we reference here  
25 of May 17, 2010, from plaintiffs to defendants. And

219

1 you'll also see Exhibit 23, which is not referenced in  
2 this Complaint, but Exhibit 23 was Mr. Wolfram's map,  
3 which today Mr. Andrews, just this morning -- I guess it  
4 was yesterday afternoon, said, Yeah, his map matches,  
5 it's generally accurate.

6 But it included four parcels that Mr. Wolfram  
7 had found for which there had been no explanation, save  
8 and except in 2007 when Mr. Wolfram had called and said,  
9 You are overpaying me. And they wrote the letter back  
10 saying you owe us \$50,000. As we move along, we'll  
11 subtract a little bit here and there so we'll capture  
12 our \$50,000.

13 In that document, the second page, middle  
14 paragraph it says, And we bought other property through  
15 side agreements or through other agreements. But it  
16 didn't tell them what they bought and certainly didn't  
17 tell them that part of the property we bought under  
18 multi-family has already been designated single-family  
19 pursuant to both the Option Agreement, Exhibit 2, as  
20 well as the designation within their own workings,  
21 within their own plans, internal to Pardee for which our  
22 clients would not know.

23 And but for the fact that they then acted upon  
24 their earlier designation of April 24, 2009, the seventh  
25 amendment, declaring RES 5 residential single-family

220

1 production homes, two years later they went to the  
2 county and confirmed the same. Why was that? Because  
3 with the effect of the economy and, believe it or not, a  
4 water pressure table that we learned about, they would  
5 begin their construction there and not more northerly.

6 And, therefore, they were going to use both the  
7 exchange parcel and the other, which is 26.9 or 28.96  
8 acres and the other 53 acres to make up the 83-acre  
9 parcel for the commencement of single-family residential  
10 construction.

11 In the claims, I just want you to understand --  
12 I know you've read these before. Paragraph 17, first  
13 claim for accounting, plaintiffs have requested  
14 documents promised to them by defendant in the  
15 Commission Letter and have not received them.  
16 Specifically, they have requested the name of the  
17 seller, the buyer, the parcel numbers, the amount of  
18 acres sold, the purchase price, the commission payment  
19 scheduled and amount, title company contact information  
20 and escrow numbers, copy of close of escrow documents,  
21 and comprehensive maps specifically depicting this  
22 property sold and with parcel numbers specifically  
23 identified, end of quote.

24 Had that information been provided, this  
25 lawsuit would have been resolved by agreement between

221

1 the parties. This would have been discovered and we  
2 wouldn't have had a nine-day trial. This is what was  
3 not provided. This is what was promised by  
4 Mr. Stringer. This is what had been discussed with  
5 Mr. Wolfram and Mr. Lash, and Mr. Wolfram asked from  
6 Mr. Lash, that Mr. Lash, in his letter of November 24th,  
7 intentionally refused to provide.

8 And the proof is in the pudding. Our case  
9 might have been different had we not discovered the  
10 tentative map, except to say that, irrespective of  
11 finding that, the strength of the plaintiffs' case, as  
12 shown to you throughout the development of our case, the  
13 discovery, the motions for summary judgment that you  
14 heard and ruled upon, was it didn't -- you were in a  
15 superior position, Pardee, to provide information that  
16 you chose intentionally not to provide.

17 And if you are going to be reasonably informed  
18 and able to independently confirm the accuracy of your  
19 representations, you need to provide that information,  
20 which they didn't do.

21 Then the icing on the cake, though, is finding  
22 that they intentionally did not disclose 50 acres of  
23 prime residential production property that was going to  
24 be the first of the acreage developed. That is what  
25 made it so compelling, previously designated long before

222

1 this lawsuit was filed, and rendered Mr. Lash's letter  
2 of November 24th, seven months later, inaccurate in its  
3 representations. And I could be kind in just calling it  
4 inaccurate.

5 Breach of contract is the second claim for  
6 relief, for failure to bring -- look at what it says.  
7 Defendant has a duty to honor its contractual  
8 obligations. Defendant has failed and refused to  
9 perform the obligations pursuant to the terms and  
10 outlines of the commission letter.

11 In the previous paragraph, plaintiffs have  
12 requested documents promised to them by the defendants  
13 in the Commission Letter and have not received them.  
14 That's paragraph 22. As a result of defendant's breach  
15 of contract, we suffered damages in excess of \$10,000.  
16 Under Sandy Valley you have an entitlement to reasonable  
17 dollars when you expend money to obtain information like  
18 this, both in terms of prevailing party attorneys' fees,  
19 but also as money damages, as the Court has already  
20 ruled upon.

21 But notice, I would say, the wisdom and care of  
22 Jim Wolfram and Walter Wilkes. That is to say it's not  
23 a Complaint saying, You owe us money that you haven't  
24 paid us. You cheated us out of money. All the  
25 arguments we hear now in response to the newly

223

1 discovered information.

2 Here you have a most conservative Complaint  
3 that says, You didn't provide us the information. We're  
4 having to start a lawsuit and pay \$274 to file a  
5 Complaint and serve you to get the information you  
6 should have provided.

7 And while we got the information because of  
8 public knowledge, because of judicial notice, because of  
9 the balancing of admission at the late date for the  
10 reasons you've articulated, a fair statement can be  
11 made, Why didn't you move to compel?

12 But in terms of the agreement, the Commission  
13 Agreement, the defense is Jimmerson has to file a  
14 lawsuit and then a motion to compel before we will  
15 intentionally not provide documents and then have to  
16 provide documents. That's why it's a losing  
17 proposition.

18 Yes, Your Honor, I could have filed a motion to  
19 compel. You could have decided on it or not as the case  
20 may be, or the Discovery Commissioner then coming up to  
21 you. But under the obligation of the contract, that's  
22 not the requirement. That's not the burden of the  
23 plaintiffs.

24 It's the burden of the defendants to keep the  
25 plaintiffs reasonably informed as to all -- I would

224

1 suggest the word "all" means "all" -- matters as they  
2 relate to the commission payments. Those are words that  
3 the defense, no matter how they squirm, cannot get out  
4 from underneath, the consequence of those.

5 Even though they consider this amount chump  
6 change, it means the world to my clients, not for the  
7 dollars, not for the 30-odd thousand dollars and the  
8 attorneys' fees that we should win as prevailing party  
9 and money damages, as testified to by myself and in our  
10 other briefs, but because this is a 40-year process.

11 I listened to Mr. Andrews, and he may be right,  
12 and there may never be another purchase of single-family  
13 production residential in Coyote Springs by Pardee. It  
14 could very well be. I don't know. But neither does he.  
15 It is 30-plus more years to go between now and the end  
16 of this contract, and we don't know what's going to take  
17 place.

18 When a company has invested hundreds of  
19 millions of dollars, per Mr. Andrews, they are not  
20 walking away from this project. Now, do they only build  
21 on 1,950 acres? Do they only build on 1,950 acres or  
22 2,112 acres plus the 50 we've uncovered? I don't know.

23 But I know this: Our clients are entitled to a  
24 40-year lock of entitlement to commissions if they do  
25 build additional single -- or they designate, excuse me,

225

1 have done? Let's go through it. You could have seen  
2 the deeds.

3 And I went through the examination of Mr. Lash,  
4 Mr. Whittemore. The deeds that were shown many times  
5 don't show the acreage at all. Absolutely, the deeds  
6 don't show the designated use. And it's the designated  
7 use that is the triggering language within the Option  
8 Agreement, which is the predicate to the Commission  
9 Agreement, and Commission Agreement specifies that, we  
10 think.

11 It also doesn't tell you the exact location  
12 unless you can find a map. Maps aren't always recorded.  
13 Out of these 49 payments, there were only five maps,  
14 five takedowns over several years.

15 My client, by April of 2010, Exhibit 23, wrote  
16 to Mr. Lash saying, I've received your map and it's  
17 incomplete. Here are four additional parcels that  
18 you've acquired. Are you telling me that they don't  
19 include single-family residential use? Would you please  
20 tell me what the designated uses are?

21 He picks up the phone and calls him. Would you  
22 tell me what the uses are? And Mr. Lash won't take his  
23 call or says you are not entitled to it, I'm not sending  
24 the documents. And that's confirmed by multiple letters  
25 of Stringer and Curtis in July and August of 2009 --

227

1 single-family residential property. They already  
2 designated 2,112 acres, and they've already designated  
3 50 additional acres that we didn't know about until the  
4 middle of this trial.

5 That's why I say, in terms of when you hear  
6 this argument or question by Mr. Lash, I read the  
7 letters as asking for money -- there is a couple letters  
8 that say, We were the procuring cause, maybe we're  
9 entitled to a commission. It's true.

10 But most of the letters, of the 16 or 18  
11 letters you have before you, it is, I want information,  
12 I want information, I want -- he wasn't certain whether  
13 he was owed any money, but he was entitled to the  
14 information. They broke their agreement by not doing  
15 so, for which they are entitled to that.

16 And then the third claim is most compelling  
17 too. It's the implied covenant of good faith and fair  
18 dealing that runs with this contract and is set forth in  
19 paragraphs 27 through 30. They continue to have a duty  
20 of good faith fair dealing. They were asked for  
21 documents. They didn't provide the documents. And as a  
22 result, they are in breach.

23 When you listen to the words of opposing  
24 counsel -- I'll conclude with this -- that, Oh, you  
25 could have done to the deed and seen -- what could you

226

1 excuse me, 2010, prior to the lawsuit being brought in  
2 December.

3 So the defense of opposing counsel that we  
4 could have moved to compel doesn't meet the terms of the  
5 Commission Agreement, which is an affirmative obligation  
6 on the part of Pardee to keep their clients reasonably  
7 informed.

8 THE COURT: I understand the distinction.

9 Can I ask something real quick? When you went  
10 through the Complaint, are you saying to the Court now  
11 we aren't asking for money damages?

12 MR. J.J. JIMMERSON: We were not. We're asking  
13 for the damages associated with the --

14 THE COURT: Getting the information?

15 MR. J.J. JIMMERSON: The information.

16 THE COURT: Is that still your position now?  
17 Are you now adding more?

18 MR. J.J. JIMMERSON: I don't think we're adding  
19 anything.

20 Paragraph 25, if you look at paragraph 25, it  
21 says as a result of the breach -- defendant's breach of  
22 contract, plaintiffs have been forced to bring this  
23 matter to Court. They are entitled to an award of  
24 reasonable attorneys' fees and costs.

25 THE COURT: Thank you. I did want that

228

1 clarified.  
2 MR. J.J. JIMMERSON: So to answer your  
3 question, with the help of my son --  
4 THE COURT: The answer is yes.  
5 MR. J.J. JIMMERSON: Yes. We would like to  
6 have \$135,000 as shown by Exhibits 31A.  
7 THE COURT: Hold on. That's the attorneys'  
8 fees?  
9 MR. J.J. JIMMERSON: Yes. We're asking for  
10 \$30,000 or one and a half percent times 50 acres times  
11 40,000 an acre, which is certainly giving the defendants  
12 the best of it, because they paid 100,000 an acre, but  
13 we understood that as part of the 100,000 an acre,  
14 Mr. Andrews was clear to make it, We were buying the  
15 rights. Rights were different than the underlying  
16 property. It's just that Jon Lash says, If we're going  
17 to pay 100,000 an acre for the rights, let's get the  
18 property to match.  
19 THE COURT: So the testimony is they paid  
20 100,000 for it, but you are asking for a commission not  
21 off the 100,000?  
22 MR. J.J. JIMMERSON: Off the 40,000, which is  
23 the Option Agreement.  
24 THE COURT: Okay.  
25 MR. J.M. JIMMERSON: And Roman numeral III to  
229

1 the Commission Agreement.  
2 MR. J.J. JIMMERSON: Roman numeral III.  
3 THE COURT: Of the Commission Agreement, yeah,  
4 which is how -- if it was, if the Court determines it is  
5 Option Property, everybody agrees how it would be paid,  
6 certainly not anything to do with the 100,000.  
7 MR. J.J. JIMMERSON: The last point --  
8 THE COURT: What else?  
9 MR. J.J. JIMMERSON: That's it. So you got the  
10 prevailing party attorneys' fees. We're asking for  
11 \$135,000, plus 30,000 commissions, plus an order --  
12 THE COURT: That's what I need a little more.  
13 MR. J.J. JIMMERSON: -- an order that  
14 affirmatively obliges Pardee in the future for the  
15 length of the term, the 40 years counted back from 2004  
16 to 2044, that there be an obligation to notify the  
17 estates of Wolfram and Wilkes, if they are passed away,  
18 or them now while they are alive, of any future  
19 designation of single-family production residential in  
20 either the Purchase Property, which is now exhausted, or  
21 the Option Property.  
22 THE COURT: What I would like, could you give  
23 me what language? Because I certainly want that so I --  
24 I don't want to go outside what you want, and I  
25 certainly don't -- I want to be able to look at it, in  
230

1 terms of the defendant, whether that is what I want to  
2 give.  
3 MS. LUNDVALL: Your Honor, from this  
4 perspective -- I didn't mean to interrupt.  
5 THE COURT: You see where I'm going? I'm not  
6 saying I'll do it. But before you start -- I apologize.  
7 Before -- I just wanted to get this out anyway.  
8 I looked at the findings of fact and conclusions of law.  
9 As you know, this trial changed a little bit.  
10 MR. J.J. JIMMERSON: It sure did, a lot of it.  
11 MS. LUNDVALL: That's why we said revised.  
12 THE COURT: I got the -- I checked and it  
13 looked like, Ms. Lundvall, your second was identical to  
14 the first one.  
15 MS. LUNDVALL: Absolutely not, Your Honor.  
16 THE COURT: I hope I got the right second one  
17 then, because actually had my law clerk compare it. But  
18 I'll make sure that I got the revised one from you  
19 because --  
20 MS. LUNDVALL: Absolutely. We'll help you out.  
21 THE COURT: I was going to ask the same,  
22 obviously to help me out -- I could do this, but I don't  
23 have four months, as you can imagine, of revised. I  
24 thought yours was, but he looked at -- I had David look  
25 at it real quick, and he didn't think -- but he's been  
231

1 doing a double load here too, to be honest, while I'm  
2 here.  
3 So if it is revised, we'll -- the defendant's,  
4 we will look at it. And if for some reason it isn't, I  
5 will -- because that is very important to me.  
6 MS. LUNDVALL: Thank you, Your Honor.  
7 THE COURT: I was going to ask that when you  
8 closed your case. Because I don't want to sit here  
9 and -- I want to fashion, if I did do something like  
10 that, nothing more than you want. And if I have to deal  
11 with it, I want it --  
12 MS. LUNDVALL: I understand.  
13 THE COURT: And I want --  
14 MS. LUNDVALL: What I'm trying to do is to be  
15 responsive to --  
16 THE COURT: I was just going to say, how are  
17 you going to respond to it?  
18 MS. LUNDVALL: Well, to the suggestion that  
19 they are going to submit something to you later, how do  
20 I respond to something that's --  
21 THE COURT: Here's what I was --  
22 MS. LUNDVALL: That's what their obligation is  
23 during closing arguments, to tell the Court what it is  
24 they are asking for, so that I can have an adequate  
25 opportunity to respond to that.  
232

1 THE COURT: Okay. Here's what we could do: I  
2 will let supplemental briefing, if I need it, on  
3 something like that, because I agree. I don't want -- I  
4 understand you're in a position now, how are -- you  
5 can -- I worried about this all through trial because I  
6 knew this was coming up, how -- how to do that in  
7 fairness to both of you.  
8 MR. J.J. JIMMERSON: Here's --  
9 MR. J.M. JIMMERSON: May I offer a suggestion?  
10 THE COURT: I want to work with you both.  
11 And you have your closing. But since they are  
12 still in theirs, I want to make sure we have an  
13 agreement here. If not, then I'll just write down what  
14 he said. I don't know.  
15 MR. J.M. JIMMERSON: Most states across the  
16 country, when applying an accounting, have a separate  
17 proceeding. So to the extent that you would invite  
18 supplemental briefing or oral argument on what is  
19 necessary to produce for the accounting, you would allow  
20 that at a later date. And so your idea of supplemental  
21 briefing and whatnot, there would be that separate  
22 proceeding.  
23 THE COURT: I was wondering about that. I  
24 didn't have a chance to look at the case law. And I can  
25 see by Ms. Lundvall, no, I don't want to do that.

233

1 Because you don't feel, for an accounting,  
2 there should be a separate --  
3 MR. J.J. JIMMERSON: Here's what we need from  
4 the accounting.  
5 THE COURT: I'll write it down as best I can.  
6 Be specific.  
7 MR. J.J. JIMMERSON: It is undisputed that some  
8 portion of the 2,100 acres is to the east of Parcel 1,  
9 purchase Property, under Exhibit 2 here. Instead of  
10 building up here, as they indicated in both --  
11 THE COURT: I understand that.  
12 MR. J.J. JIMMERSON: Here's the point.  
13 THE COURT: Tell me what --  
14 MR. J.J. JIMMERSON: The accounting would be to  
15 use their engineers -- because Mr. Lash says you have to  
16 have an engineer to do this. Well, Mr. Wilkes and  
17 Mr. Wolfram don't have one and his wife does not have  
18 one. The engineers will tell us how many acres fell  
19 outside Parcel 1. That's one part of the accounting.  
20 THE COURT: You want them to provide to you how  
21 many acres that have already been purchased?  
22 MR. J.J. JIMMERSON: Correct.  
23 THE COURT: Which would include the 84 million  
24 Purchase Price Property and the multi-family and the  
25 commercial?

234

1 MR. J.J. JIMMERSON: Multi-family, Judge, would  
2 just be Residential 5.  
3 THE COURT: I'm not willing to go like this. I  
4 can tell you right now. I'm not going there.  
5 MR. J.M. JIMMERSON: That would be contingent  
6 upon your finding that the Purchase Property is  
7 defined --  
8 THE COURT: Is Parcel 1.  
9 MR. J.M. JIMMERSON: Exactly. You would have  
10 to make that finding and then our request --  
11 MR. J.J. JIMMERSON: That's the only finding  
12 you can make from our --  
13 THE COURT: I'm not sure. Can we do something?  
14 Tell me what you need if for -- if the Option Property  
15 is bought, what documents -- I'm not going to go through  
16 what -- what documents other than what is already given,  
17 they are given under the escrow instructions, that's all  
18 detailed in, you know, the Option Agreement and then  
19 it's been incorporated into the Amended and Restated  
20 Option Agreement. It has a list of things they get, as  
21 we know -- what, in addition to that, you would want the  
22 Court to order. Do you see where I'm going?  
23 MR. J.J. JIMMERSON: Affirmative notice and  
24 designation of use because --  
25 THE COURT: You want affirmative -- I want

235

1 to --  
2 MR. J.J. JIMMERSON: Affirmative notice of the  
3 acquisition of property intended for single-family  
4 production use and the use.  
5 THE COURT: Affirmative notice of everything  
6 that they acquire?  
7 MR. J.J. JIMMERSON: Of all acquisition of  
8 property intended for single-family use.  
9 THE COURT: Affirmative notice of Option  
10 Property?  
11 MR. J.J. JIMMERSON: Yes. Because everything  
12 they buy now is Option Property.  
13 THE COURT: Not under your agreement.  
14 MR. J.J. JIMMERSON: If it's intended for  
15 single-family production use, yes, it is.  
16 THE COURT: They know that already. I don't  
17 even have to --  
18 MS. LUNDVALL: I'm doing my best to sit in this  
19 chair.  
20 THE COURT: He's trying. Both of us -- we all  
21 understand.  
22 MR. J.M. JIMMERSON: We're going to want the  
23 following documents: We going to want all maps  
24 reflecting designation of use of all property that is  
25 purchased by Pardee.

236



1 THE COURT: Of all future property?  
2 MR. J.M. JIMMERSON: No. All current property  
3 that has been purchased.  
4 THE COURT: Do it again.  
5 MR. J.M. JIMMERSON: All maps reflecting --  
6 THE COURT: You want the information on what  
7 the multi-family is and what they've done on commercial?  
8 MR. J.M. JIMMERSON: Just where that property  
9 is located, where it's designated. So we are not asking  
10 for, you know, the price information. We're not asking  
11 for any -- we need to confirm that all of the property,  
12 okay --  
13 THE COURT: That's already owned by Pardee.  
14 MR. J.M. JIMMERSON: Exactly. How much of it  
15 is single-family residential versus the other  
16 properties. So to the extent --  
17 THE COURT: Because we have this real issue  
18 between designated, that would be -- because they may  
19 designate something tomorrow and change it. We have to  
20 be within the realm of reality here.  
21 Mr. Andrews here said, You know what, the one  
22 we did for RES 5 is probably not going to be renewed,  
23 and we're almost at the four years and that's gone.  
24 So that would be asking the Court to order, for  
25 Mr. Wilkes and Wolfram, all the details that they do

237

1 from -- I don't think that's --  
2 MR. J.M. JIMMERSON: I'm not talking about  
3 going forward.  
4 MS. LUNDVALL: Your Honor, if I may have a  
5 suggestion, if Counsel would identify what they want,  
6 then we would know what it is that they are asking you  
7 to order.  
8 THE COURT: That's what we started with and  
9 they were willing to do that. But, Ms. Lundvall, you  
10 said they have to do it now for the closing.  
11 MS. LUNDVALL: I do.  
12 THE COURT: Isn't that what we just went  
13 through?  
14 MS. LUNDVALL: That's what I'm trying to get  
15 from them.  
16 THE COURT: You know what, I am just going to  
17 cut this. I do want to have a chance to see specifics,  
18 because -- and you know what, in all honesty, I may have  
19 another hearing, and I want the defense to have a chance  
20 to respond to it. You can't respond to generalities.  
21 I want to get this lawsuit -- if I did do that,  
22 I'm not saying I would -- but I want things finalized  
23 for both of your positions now. I don't know if I'm  
24 going there, I'll be honest. I have no idea. But I  
25 want to know if I do go there, I don't want this to come

238

1 back.  
2 The last thing I want either for Pardee or  
3 Mr. Wilkes or Wolfram is to not understand each other's  
4 duty. I don't feel I'm in a position right now, where  
5 we are right now, to do that. I started listing  
6 questions last night of what we were going to do, and I  
7 had more questions than I had answers.  
8 MR. J.J. JIMMERSON: Well, then we maybe  
9 haven't done our best job.  
10 THE COURT: I mean for the order, not for the  
11 other, but for how to be fully informed. I've heard  
12 lots of testimony of what -- how -- why you weren't  
13 reasonably informed.  
14 MR. J.J. JIMMERSON: One of the reasons --  
15 THE COURT: But it was hard for me to get a  
16 handle on in the future what you feel you would need.  
17 In all honesty, I read through the testimony as best I  
18 could a little bit -- not a lot of time last night --  
19 because I knew this was coming today. And I couldn't  
20 get a handle on it, in all honesty. I don't know if I'm  
21 just not --  
22 MS. LUNDVALL: Can I get the list from  
23 plaintiffs as to what they claim that they believe they  
24 are entitled to?  
25 MR. J.J. JIMMERSON: I would -- okay. This is

239

1 the answer: What's in the Option Agreement, Exhibit 2,  
2 which includes the escrow instructions, a map, a deed --  
3 MS. LUNDVALL: Hold on. I'm making a list.  
4 You want escrow instructions. What kind of map?  
5 MR. J.J. JIMMERSON: A map depicting the  
6 property that is being designated or acquired.  
7 MS. LUNDVALL: And you want a deed?  
8 MR. J.J. JIMMERSON: Our Complaint is pretty  
9 good about what it is we need, really.  
10 MS. LUNDVALL: Respectfully, thank you as far  
11 as for giving me a list so I can respond to it.  
12 THE COURT: And the Court would appreciate it,  
13 because she needs to respond and I need to understand so  
14 there is no ambiguity, if we did go there, of what it  
15 is, because that -- I don't want any more lawsuits  
16 between you if we can avoid it. I'm sure both clients  
17 don't want that. This needs to be put to bed.  
18 And because we have this long-standing Option  
19 Agreement, that is a big concern to me. That is one  
20 thing you need to accomplish out of this lawsuit.  
21 MR. J.J. JIMMERSON: No question. The result  
22 of that from both sides is some sort of a recordation or  
23 recording with the county recorder's office of the  
24 Commission Agreement and whatever the Court orders here  
25 so that both sides know what has to be provided long

240

1 after everybody in this room is no longer in practice.  
2 THE COURT: I just know it has to be something  
3 that will have force and effect for over 40 years, since  
4 some of us may not be around.

5 MR. J.J. JIMMERSON: So what we request at  
6 paragraph 17 for the accounting is --

7 THE COURT: Why don't we do -- were you  
8 finished with your closing or did I stop you?

9 MR. J.J. JIMMERSON: No, no.

10 THE COURT: Let me -- you probably need a break  
11 too. If you want to work it out --

12 MS. LUNDVALL: No, no. From this standpoint, I  
13 think that I am entitled as far as to know what it is as  
14 far as a judgment that --

15 THE COURT: Absolutely.

16 MS. LUNDVALL: -- they are asking for from you.

17 THE COURT: I agree. I just thought you could  
18 work it out while I take a break or -- I'm not saying  
19 you're going to agree. I know where you are coming  
20 from. I'm not saying you agree, but let's, at least --

21 MR. J.M. JIMMERSON: We can't get agreement?

22 THE COURT: -- have them put specifics of what  
23 they want so you can respond to it and I can have an  
24 idea what they are asking for. And if that would help  
25 before you -- we need it before your closing. Then we

241

1 seller -- so it's the name of seller, Your Honor, the  
2 buyer, the parcel numbers, the amount of acres sold, the  
3 purchase price, the commission payments scheduled and  
4 amount, title company contact information and escrow  
5 numbers, a copy of all escrow documents including escrow  
6 instructions, comprehensive maps specifically depicting  
7 the property purchased or sold, and its designated use.

8 If there is a change in designated use,  
9 particularly a change to single-family residential  
10 production property --

11 THE COURT: If there's a change in designated  
12 use?

13 MR. J.J. JIMMERSON: A change in designated use  
14 to single-family production residential property,  
15 Pardee, its successors and assigns, shall affirmatively  
16 notify plaintiffs or the estates of plaintiffs at an  
17 address to be supplied by plaintiffs, with a copy to its  
18 counsel of record, of the change of designation, number  
19 of acres involved, and the purchase price, and the  
20 number of acres involved and its location.

21 THE COURT: And when you say plaintiffs have  
22 requested -- promised to them by defendant -- you are  
23 referencing any -- we know we don't have any more  
24 Purchase Price Property. Correct?

25 MR. J.J. JIMMERSON: Correct.

243

1 also need a break.

2 MS. LUNDVALL: Tell me what it is that you are  
3 asking for.

4 THE COURT: The Court is taking a break now and  
5 you let me know --

6 MR. J.J. JIMMERSON: We'll put it on the record  
7 when you return, Judge.

8 THE COURT: Everybody take a comfort break.  
9 (Whereupon, a recess was taken.)

10 THE COURT: Okay. Counsel, did we work  
11 anything out?

12 MR. J.J. JIMMERSON: I don't know that we  
13 worked anything out, but Ms. Lundvall asked that I read  
14 the language into the record. So I'll do that.

15 THE COURT: So this is what you are asking for  
16 an order?

17 MR. J.J. JIMMERSON: Yes. The vast majority of  
18 this is found at paragraph 17 of the Complaint,  
19 Exhibit 00.

20 THE COURT: Okay.

21 MR. J.J. JIMMERSON: And it is, Plaintiffs have  
22 requested documents promised to them by defendant -- and  
23 that's part of this, but I'm just reading it as the  
24 allegation -- in the Commission Letter and have not  
25 received them. Specifically requested the name of the

242

1 MS. LUNDVALL: So any Option Property, as  
2 defined by the Commission Agreement, paragraph 2.  
3 Right?

4 MR. J.J. JIMMERSON: Exactly.

5 THE COURT: Subsection 3.

6 MR. J.J. JIMMERSON: And we would just make

7 sure that all these requests are inured to the  
8 obligation of Pardee, its successors and assigns, and to  
9 the benefit of Wolfram and Wilkes, their successors and  
10 assigns.

11 MS. LUNDVALL: And with the qualification, I  
12 meant that's for the Option Property pursuant --

13 MR. J.M. JIMMERSON: We will follow up, of  
14 course, pursuant to the Court's request with the  
15 written.

16 THE COURT: And, Ms. Lundvall, they had given  
17 me -- they thought it was your revised one, and it was  
18 the same one. It was sitting -- it's my fault.

19 MS. LUNDVALL: No problem.

20 THE COURT: So they had two copies of the same  
21 thing. So evidently -- so you did give us a revised one  
22 and it has a CD-ROM on it.

23 MS. LUNDVALL: Yes, it does, Your Honor.

24 THE COURT: Somehow I got two of the same  
25 thing.

244

# PARDEE'S CLOSING ARGUMENT

1 Okay. So you have -- all right.  
2 MS. LUNDVALL: Is plaintiffs' counsel finished?  
3 THE COURT: I think so.  
4 You closed; right?  
5 MR. J.J. JIMMERSON: Yes, Your Honor.  
6 MS. LUNDVALL: Your Honor, before I even do my  
7 to-dos or do any general statements or express my thanks  
8 to you and your gracious staff, all of your gracious  
9 staff for its accommodations, what I want to do is to  
10 directly address the issue that was raised by  
11 Mr. Jimmerson concerning the R-5 property.  
12 THE COURT: Okay.  
13 MS. LUNDVALL: It is his theory that in  
14 December of 2005, Pardee applied for a tentative map,  
15 and on that tentative map we made requests for  
16 designations of single-family residential property. And  
17 it is also his contention that, in fact, we have already  
18 designated that single-family residential property.  
19 And he pointed you to Amendment No. 7, and he  
20 said look at the R-5 designation. That's what he said,  
21 R-5 designation. Okay? And then he went on to tell  
22 you, without any foundation whatsoever, what R-5 means.  
23 R-5 can be found at Clark County Code  
24 30.40.160.  
25 THE COURT: Clark County Code?

245

1 MR. J.J. JIMMERSON: Your Honor, I never said  
2 R-5. I said RES 5. R-5 is a zoning designation. It  
3 has nothing to do with this case, Residential 5.  
4 THE COURT: Hold on.  
5 MR. J.J. JIMMERSON: I never --  
6 THE COURT: Do you mind if I make sure I look  
7 at my notes?  
8 MS. LUNDVALL: I want this to be --  
9 MR. J.J. JIMMERSON: We never discussed zoning.  
10 The Court wouldn't even allow it.  
11 THE COURT: I have a note here, RES 5.  
12 MR. J.J. JIMMERSON: RES 5, short for  
13 Residential 5.  
14 THE COURT: Well, it's a designation I have  
15 seen with RES 1 on these maps between --  
16 MS. LUNDVALL: Now hold on. Please do not  
17 interrupt me.  
18 THE COURT: Let me see if there's any --  
19 MR. J.J. JIMMERSON: I object to the statement.  
20 THE COURT: Interesting, I have an R-5. So  
21 maybe he interchanged. I put RES 5 five times so far  
22 and one R-5. So did you mean RES 5?  
23 MR. J.J. JIMMERSON: Only, yes. Only RES 5, of  
24 course.  
25 MS. LUNDVALL: But that's okay, Your Honor.

246

1 Because you know what, he told you what RES 5, that he  
2 used interchangeably with R-5, meant.  
3 MR. J.J. JIMMERSON: I did not.  
4 THE COURT: Just tell me what he says RES 5  
5 was.  
6 MS. LUNDVALL: Please do not interrupt me as  
7 far as during my argument.  
8 THE COURT: In my notes --  
9 MR. J.J. JIMMERSON: Don't misstate something.  
10 I said RES 5, referring to the one parcel that was in  
11 the multi-family use. I never referenced a zoning  
12 designation. R-5 is a zoning designation for apartment  
13 buildings. This RES 5 is residential. You sell it as  
14 residential lots. I don't know where this is coming  
15 from. I never mentioned R-5 at all. RES 5 would be any  
16 reference I have as to RES 5. It's the only RES 5 in  
17 this entire trial.  
18 THE COURT: For the record, that's what I wrote  
19 down. One time I did do R-5, but -- do your closing  
20 how --  
21 MS. LUNDVALL: Thank you, Your Honor. But the  
22 point I want to try to make is this, is he told you that  
23 RES and R-5 meant single-family residential, that Pardee  
24 had already designated it single-family residential.  
25 That's what he told you and that's how, in fact, that he

247

1 used the foundation in a preface for claiming some type  
2 of entitlement to the tentative map application that was  
3 made in December of 2010.  
4 The RES 5 designation is found at the exhibits  
5 to Amendment No. 7, which is found at Tab 5. And we  
6 expressly asked Mr. Whittemore in any of those  
7 depictions on those maps, the reference is to  
8 multi-family land. Answer: Yes. You can go back and  
9 to look through his testimony.  
10 Moreover, the RES 5 that is depicted on these  
11 maps matches the R-5 designation that is multi-family  
12 land that is found at 30.40.160. And so, therefore, I  
13 think that that is a very important point that  
14 plaintiffs' counsel originally made, and that is the  
15 Court is entitled to take judicial notice of the Clark  
16 County codes, statutes, case law, anything from a legal  
17 perspective. So we would ask the Court to take a look  
18 at that.  
19 THE COURT: 30.40.160, Clark County Code.  
20 MS. LUNDVALL: Clark County Code.  
21 THE COURT: I want to make sure I have the  
22 right reference. That's R-5 designation.  
23 MS. LUNDVALL: That's correct. If you take a  
24 look at, there is a standard as far as agenda maps that  
25 is used by the Clark County Commission. In the lower

248

1 right-hand corner what they use is also as  
2 identification as residential districts. You are going  
3 to see the R-5 reference. Where is it under?  
4 Multi-family. That's a standard form that is used then  
5 by the Clark County Commission.

6 Now, from here, Your Honor, what I'd like to do  
7 is this, is to hand a copy to the Court as well as to  
8 opposing counsel our proposed findings of fact and  
9 conclusions of law.

10 THE COURT: This is the new one?

11 MS. LUNDVALL: That is the revised.

12 THE COURT: Okay, that I did just find it.

13 MS. LUNDVALL: One of the things, Your Honor,  
14 that I found is giving the closing remarks in a bench  
15 trial differs significantly from giving closing remarks  
16 to a jury.

17 THE COURT: Usually the trier of fact doesn't  
18 ask questions. And I don't know if that's appropriate  
19 or not, but sometimes you have to. I bet jurors -- they  
20 can, but they don't like writing it down. They get  
21 intimidated.

22 MS. LUNDVALL: The other thing that I found too  
23 is in doing closing remarks then to the bench is that  
24 the courts typically are more analytical. We all kind  
25 of move in progression. We move and we analyze in

249

1 linear fashion, and we look at things and we're trying  
2 to find checklists. Like essential elements, have they  
3 been demonstrated? Has proof of this issue been  
4 demonstrated in this trial?

5 And, therefore, what I intend to do is to  
6 fashion my remarks, my closing remarks, around our  
7 proposed findings and conclusions of law. I'm going to  
8 pull these up on the screen in addition to having the  
9 written document in front of the Court. The screen  
10 helps me go along. So Brian is going to simply follow  
11 me.

12 THE COURT: That's fine.

13 MS. LUNDVALL: What the Court is going to  
14 learn, what your court staff regrettably will learn, is  
15 it takes a little bit longer and it's not --

16 THE COURT: I promised both of you you could  
17 have as much time as long as we do it today. They're  
18 fine.

19 MS. LUNDVALL: And it's not as exciting. So  
20 I'm hoping everybody is able to stay awake at this late  
21 hour on a Friday afternoon.

22 THE COURT: I promise you, I will.

23 MS. LUNDVALL: If we pull up the first page,  
24 I'm going to start going through some of these things  
25 because they are not -- you need to blow up for me so I

250

1 can see these as they come up.

2 Some of these issues and some of these  
3 foundational proposed findings of fact there's no  
4 dispute for, and I'm going to run through these fairly  
5 quickly.

6 There's no question about that both Mr. Wolfram  
7 and Mr. Wilkes were real estate agents, who they work  
8 for. Moreover, there is no question that the Court has  
9 already ruled that they have standing then to bring this  
10 case.

11 THE COURT: That's under your A. It's almost  
12 like stipulated facts, although it doesn't say  
13 stipulated facts.

14 MS. LUNDVALL: But there is no dispute  
15 concerning these particular issues.

16 There's no issue that, in fact, in the 1990s  
17 Mr. Whittemore was the one that began developing the  
18 project that was to be known as Coyote Springs. We also  
19 know, and there's no dispute, that this included over  
20 43,000 acres of unimproved real property and where its  
21 location was.

22 Now turn to the next one, please. We also know  
23 that Pardee is a home builder, and you learned through  
24 the testimony then what a production home builder is,  
25 and they do business here in Nevada. Pardee, in this

251

1 reference, is shorthand for Pardee Homes of Nevada.  
2 They are the defendant then to this action.

3 Its parent company has been in business, as  
4 Mr. Lash testified, since 1921. And we also heard and  
5 we saw examples of Pardee's slogan of "Do the right  
6 thing." I'm going to talk about these in a little bit  
7 more detail.

8 But the two principal examples that I think the  
9 Court has seen how Pardee has done the right thing with  
10 these plaintiffs is, first and foremost, by entering  
11 into the Commission Agreement in the first place. Even  
12 though there was a dispute as to whether or not they  
13 were the procuring cause, Pardee went forward. Mr. Lash  
14 testified they went forward and entered into this  
15 Commission Agreement.

16 Second, you had another example from Mr. Lash,  
17 and that is that he gave them what he believed was more  
18 information than to which the contract, the Commission  
19 Agreement, entitled them to. When Mr. Wolfram, and  
20 Mr. Wolfram only, began asking questions, there was  
21 responses back to Mr. Wolfram, and there was additional  
22 information over and above what was set forth within the  
23 Commission Agreement that was sent to Mr. Wolfram.

24 Now, I don't think there's any dispute that  
25 Mr. Wilkes received that information. Why? Because we

252

1 know from both of them that they shared it back and  
2 forth with each other.

3 Next page, Brian. It was 2002 that both  
4 Mr. Wolfram and Mr. Wilkes indicated that they had  
5 become familiar with Mr. Whittemore.

6 Next page, we also know by that same time frame  
7 they had been acquainted with Mr. Lash, who was then  
8 responsible for land acquisition.

9 Page 6, please. On a previous occasion they  
10 had approached Mr. Lash with a potential development  
11 deal, and it was according, particularly, to Mr. Wilkes  
12 that he had testified that there had been other deals  
13 that they had entered into and that Pardee had paid them  
14 in full on those commissions. In other words, at the  
15 time that they began this relationship, they had no  
16 reason by which then to distrust Pardee or that Pardee  
17 was going to do them wrong in some fashion or another.

18 Number 7, the testimony, particularly, was from  
19 Mr. Wilkes is that while Mr. Wolfram was on vacation,  
20 they had learned that Mr. Whittemore had acquired his  
21 water rights. And they had contacted Mr. Lash asking  
22 him if he was interested in meeting with Mr. Whittemore  
23 concerning Coyote Springs. They also as far as then  
24 contacted Mr. Whittemore. There's no dispute concerning  
25 these particular facts.

253

1 If you go on to Item No. 8, is that,  
2 unbeknownst to Mr. Lash, Mr. Whittemore and Mr. Andrews  
3 had already begun a relationship. They had already  
4 developed a relationship, and they had already begun  
5 discussing Pardee's involvement at Coyote Springs. You  
6 heard from Mr. Whittemore that prior to this all hands  
7 meeting, he had already developed an interest in working  
8 with Pardee. You heard from Mr. Andrews that prior to  
9 this all hands meeting, that they had already -- that  
10 Pardee had already developed an interest in working with  
11 CSI, with Mr. Whittemore.

12 Now, why is it that I'm emphasizing this  
13 particular issue? Because the plaintiffs, they continue  
14 to push this idea that they were the procuring cause and  
15 somehow that that means something and it changes or  
16 modifies or suggests a different interpretation from the  
17 contract that they negotiated and entered into with the  
18 plaintiffs. Respectfully, it does not.

19 The procuring cause doctrine that the Court, as  
20 you indicated that you had done some research into this,  
21 is a doctrine whereby it was designed to protect brokers  
22 who had no written agreement. It's designed to protect  
23 brokers that basically got left out in the cold when  
24 they had put a buyer and a seller together and the buyer  
25 and the seller refused to pay them a commission. That's

254

1 how the procuring cause doctrine was developed.

2 But the procuring cause doctrine has made real  
3 clear that if, in fact, the parties go forward, in this  
4 case Pardee Homes of Nevada and the plaintiffs, and they  
5 consummate their relationship into a contract, it is the  
6 terms of that contract that prevail. And it is those  
7 terms of that contract that we are going to highlight  
8 during the course of my remarks to determine what the  
9 scope of the plaintiffs' responsibilities were to  
10 Pardee, as well as Pardee's responsibilities to the  
11 plaintiffs.

12 Both Mr. Wolfram and both Mr. Wilkes indicated  
13 that the parties' contractual obligations to each other  
14 were reduced to writing in this Commission Agreement.  
15 No more and no less. And, therefore, that's why I  
16 intend to focus on it.

17 And if there's any question about the fact that  
18 you cannot use, somehow, some other doctrine to make the  
19 duties bigger than what they are within the Commission  
20 Agreement, we would cite the Court then to the decision,  
21 and we cited this decision in previous submissions to  
22 the court, but the Highway Builders case versus Nevada  
23 Rebar. Nevada Rebar is probably one of the most  
24 important contract cases that our Nevada Supreme Court  
25 has issued. It is found at 128 Nevada Advanced Opinion,

255

1 page 36, 284 Pacific 3rd, page 377. It's a --

2 THE COURT: 284 Pacific 4th, right, P4?

3 MS. LUNDVALL: That's a good question. I think  
4 it's Pacific 3rd. Whatever is found in 2012. I'm  
5 pretty sure we're still in Pacific 3rd.

6 The basic holding from that case, Your Honor,

7 is this: That you cannot argue that, in fact, your  
8 agreement is more than what the parties had  
9 memorialized, particularly when they have an integrated  
10 clause in their contractual document. And there's no  
11 question about the fact that the Commission Agreement  
12 contains an integration clause.

13 Next topic, we go on and we talked about what  
14 is referred to as the all hands meeting. And one of the  
15 things I think that is important from this is the fact  
16 that what it was that Mr. Whittemore at that time was  
17 willing to sell to Pardee and what Pardee was willing to  
18 buy at that point in time.

19 And that issue then turns upon and it informs  
20 this argument that the plaintiffs made afterwards that  
21 somehow that they were entitled to additional  
22 commissions on the multi-family land, the commercial  
23 land, et cetera, because that's what their position was  
24 before the litigation began.

25 And so that's why I highlight this and that's

256

1 why I point it out. And that's why, based upon the  
2 undisputed facts that are before the Court, it was clear  
3 that the only thing that Pardee was interested in buying  
4 was the single-family production lots. The only thing  
5 that CSI was interested in selling was the single-family  
6 production lots.

7 At that meeting, there was no question about  
8 what happened, what lands were under negotiation.  
9 There's also no question between CSI and Pardee what was  
10 the result of their negotiations. There's no question  
11 between Pardee and CSI what the status of the lands  
12 were.

13 Both Mr. Whittmore, as well as Mr. Andrews  
14 told you there was a blank canvas out there. There was  
15 no mapping. There was no entitlements. They didn't  
16 know where the sewer provisions were. They didn't know  
17 where the roads were to be mapped. They didn't know  
18 where the golf course was going to be located, nothing.  
19 The parties were starting from ground zero. And I think  
20 that's important because there's been no contrary  
21 evidence as to what the slate looked like at that time  
22 that they began their negotiations.

23 There was also no dispute as to the obstacles  
24 that they were facing. We learned about the utility  
25 corridor and how that was going to change the

257

1 boundaries. We learned about the BLM configuration and  
2 how that was going to change the boundaries.

3 We learned about, bless his heart, Jack  
4 Nicklaus, and his -- everyone tried to put their best  
5 gloss on it and say how creative he was, but it also  
6 sounds like maybe he was a bit demanding. And he would  
7 say, My vision is I want my course to go up there. And  
8 guess what, the parties accommodated that and they  
9 changed and made their contours then of where the land  
10 and the mapping were going to be based upon  
11 Mr. Nicklaus.

12 You also heard about wildlife issues. You  
13 heard about utility issues. Those were all factors that  
14 were going to inform then the parties' future dealings  
15 and their future mappings and what they intended to do.

16 Number ten. There's no question about the fact  
17 that Pardee and CSI began several months of  
18 negotiations. Item No. 11 is that plaintiffs were not  
19 needed for any of those negotiations.

20 One of the things I think that's interesting  
21 is, both from Mr. Wolfram's perspective, from  
22 Mr. Wilkes' perspective, from Mr. Lash's perspective,  
23 from Mr. Whittmore's perspective, all of them testified  
24 to what is standard or custom within the industry, that  
25 if brokers are involved in putting parties together,

258

1 that they are not needed for any subsequent  
2 negotiations. They are not the attorneys. They are not  
3 the land use people. They are not the engineers. They  
4 are the people that make introductions.

5 Nobody disputed this from an evidentiary  
6 standpoint that, in fact, Mr. Wolfram and Mr. Wilkes  
7 were not needed for any of the negotiations that led up  
8 to the Option Agreement or anything thereafter. The  
9 only people that are contending that there's something  
10 wrong with that are plaintiffs' counsel. They've  
11 characterized it in their argument that there's  
12 something nefarious about that, but none of the evidence  
13 matches the argument.

14 Now turning to Item No. 12, the single meeting  
15 that they were in attendance at was the only meeting of  
16 the participation that the plaintiffs had in the  
17 original transaction which was memorialized into the  
18 Option Agreement. I don't think anybody fusses about  
19 that. Nobody has any dispute that, in fact, they  
20 attended the single meeting.

21 Mr. Wilkes talked about that maybe it took him  
22 about a week or so, collectively, to put all the  
23 information together, and that's what he had into the  
24 research aspect of it. Maybe that these guys had taken  
25 Pardee on as far as a couple day trips for looking at

259

1 other properties.

2 But as to the amount of time that they had into  
3 this transaction, when you compare and contrast to what  
4 they got out of this transaction, they did very well by  
5 themselves, and they have the opportunity in the future,  
6 particularly if our economy ever picks up, to do well in  
7 the future. And had our economy continued to go, they  
8 would have been in great shape.

9 But the facts are what they are and where we  
10 are at as far as within this circumstance and that is  
11 this: For the time invested that the plaintiffs have  
12 into this, from this standpoint, they have gotten  
13 benefit of the bargain and they have the opportunity to  
14 continue to receive the benefit of their bargain.

15 You heard from Mr. Andrews that this is by far  
16 the largest commission that Pardee has ever paid for a  
17 transaction here in Nevada.

18 Turning your attention then to Item No. 13,  
19 Finding No. 13, we talk about how that there was months  
20 of intensive negotiation. Nobody disputes that they  
21 entered into the Option Agreement. We have the Option  
22 Agreement designated as Item B. We know that the Option  
23 Agreement was amended twice. The first one you can find  
24 at Exhibit E. The second one you can find at Exhibit J.

25 Both the plaintiffs testified from the witness

260



1 stand that not only did they receive the Option  
2 Agreement, but they also received the two amendments.  
3 And the thing that I think is notable is who they  
4 received it from. And if I could, at this particular  
5 point, I'm going to skip ahead a little bit, but you are  
6 also going to see at Items P and you are going to see at  
7 Items Q where they also received a copy of the Amended  
8 and Restated Option Agreement.

9 Now, from where did they get those documents?  
10 They got them from the title company. So the issue  
11 becomes is what duty did the title company then have to  
12 give them that information? Title companies have  
13 independent duties to the parties that are part of their  
14 escrow.

15 Now I want to cite the Court particularly to  
16 the case, the Broussard case, which is kind of the  
17 penultimate case in Nevada that deals with and describes  
18 the fiduciary duties that an escrow officer has.  
19 Broussard, which is B-r-o-u-s-s-a-r-d, versus Hill, is  
20 found at 100 Nevada 325, 682 Pacific 2nd 1376, and it's  
21 a 1984 case. And that decision then is a decision that  
22 identifies the fiduciary duties and the obligations that  
23 an escrow officer and escrow company has.

24 Now, this is important in this context,  
25 Your Honor. As the Court saw in the different

261

1 iterations of the Commission Agreement -- and you will  
2 see as far as that different -- the draft of the  
3 Commission Agreement where the black lines were applied  
4 by the plaintiffs.

5 Where did they place their trust? Where did  
6 they place their reliance? Who did they count on to  
7 protect them? It was the escrow company. And that only  
8 makes sense, to be quite candid. These are individuals  
9 that work within the industry all the time. They work  
10 with escrow companies, with escrow officers all the  
11 time. They put -- and they insisted on special  
12 protections in their Commission Agreement to ensure that  
13 those escrow officers, who had a fiduciary duty to  
14 inform them of anything that may have impacted their  
15 Commission Agreement, gave them that information.

16 You heard Mr. Wolfram testify that he confirmed  
17 that his Commission Agreement, that his and Mr. Wilkes'  
18 Commission Agreement was with the escrow company. And  
19 it is demonstrative as to who gave copies of the Option  
20 Agreement, the amendments and the Amended and Restated  
21 Option Agreement to Mr. Wolfram and Mr. Wilkes.

22 And the one question that is probably going to  
23 be posed or at least a question that you may sit back  
24 and scratch your head a little bit, and you'd say, Why  
25 would the escrow company have given Mr. Wolfram and

262

1 Mr. Wilkes copies of the Amended and Restated Option  
2 Agreement? Why? Because the initial closing date  
3 changed and that impacted their Commission Agreement.  
4 So the single change that was going to impact them out  
5 of their Commission Agreement, they were informed of  
6 that by the escrow company.

7 And one of the things that I'm going to -- I'm  
8 now getting way ahead of myself when it comes to these  
9 findings of fact. But when you take a look at all of  
10 the relevant and all as far as the capitalized terms,  
11 you don't see any changes in the subsequent amendments.

12 And I'm going to go through that entire list  
13 with you and ask you to be able to compare the  
14 Commission Agreement with those capitalized terms  
15 against the subsequent amendments. And what you are  
16 going to learn is there have been no changes to those,  
17 and, therefore, there would have been no duty to give  
18 those to the plaintiffs. But like I said, I'm getting  
19 ahead of myself. So let me go back as far as to my  
20 general outline.

21 One of the things that I'd like to do at this  
22 point in time is to address a little bit of the legal  
23 theory or the theories that the plaintiffs have advanced  
24 as to why they are entitled to additional commissions.

25 We know from my tired blowup that, in fact,

263

1 that these are the three provisions that speak to the  
2 commission portions as far as of the Commission  
3 Agreement. And what I'm going to do is try to point  
4 out, and that is this, that from these three paragraphs,  
5 the theory that the plaintiffs have espoused is not  
6 found with these three paragraphs, which is the  
7 Commission Agreement.

8 And let me begin by pointing out this, is they  
9 contend that Parcel 1 under the Option Agreement was  
10 what Pardee was purchasing back in May of 2004. Now,  
11 everybody involved with Pardee says, Huh-uh, that wasn't  
12 what was going on. The representative of CSI that came  
13 in said, Huh-uh, that wasn't what was going on. And if  
14 you take a look as far as at the Option Agreement and go  
15 past the recitals in the Option Agreement, you can see  
16 that wasn't what was going on.

17 But most importantly, though, Your Honor, that  
18 is this: Under paragraph 1 and paragraph 2 that  
19 identify then the payments that were under Purchase  
20 Property, there is nothing that indicates that either  
21 the timing of the takedown of Purchase Property or the  
22 location of the Purchase Property was something that  
23 impacted their commission arrangement. Nothing within  
24 this. The location and the timing, let alone the number  
25 of acres is not even referenced in the payment

264

1 provisions of their Commission Agreement.

2 And so it's hard for me to understand how it is  
3 that the plaintiffs can contend that these two  
4 paragraphs that obligated Pardee to pay based upon  
5 Purchase Property Price, and then when we look at the  
6 second page as to the timing of those particular  
7 payments and how those payments were to track, the  
8 installment payments that were being made by Pardee to  
9 CSI, point by point by point, that's how they were being  
10 paid under 1 and 2, and it had nothing to do with  
11 specific takedowns, locations, amount of acreage,  
12 nothing.

13 But how would they have known, though? And let  
14 me -- I want to pose a rhetorical question. They  
15 suggest that, Well, we didn't know that Parcel 1 was not  
16 Purchase Property. We knew that in the original Option  
17 Agreement that Pardee was going to pay \$66 million, and  
18 if you look at paragraph 1, subsection D, what we know  
19 is that Pardee was going to pay \$44,800 per acre.

20 Now, if you run the math on that, it's really  
21 pretty simple. You take 3,602 acres that was identified  
22 as Parcel 1, you multiply that then by \$44,800 an acre.  
23 And what do you get, \$161 million, almost \$162 million.  
24 So just that simple calculation alone should have put  
25 them on notice that Parcel 1 was not Purchase Property.

265

1 And they had to dig farther then past the recitals into  
2 the Commission Agreement itself to have an understanding  
3 of what CSI and Pardee had agreed to do.

4 There are a number of places within the  
5 parties' agreement that, in fact, references the  
6 cooperative mapping and how the boundaries were going to  
7 change. I'm going to as far as give the Court a  
8 recitation of these number of different places. If you  
9 go through what is our Exhibit B, the Option Agreement,  
10 what you are going to see is that page 1, paragraph A,  
11 there is references to changing boundaries. Page 2,  
12 paragraph B, there's references to changing boundaries.  
13 Page 2, paragraph 1A, there's references to changing  
14 boundaries. Page 4, paragraph 1C, twice within that  
15 paragraph there's references to changing boundaries.  
16 Page 7, paragraph 2F, there's references to changing  
17 boundaries. Page 14 paragraph 4D, references to  
18 changing boundaries. Page 15, paragraph 4E; page 17,  
19 paragraph 4H; page 19, paragraph 6A; page 31,  
20 paragraph 12E.

21 In sum, if you read the entirety of the Option  
22 Agreement, you will see and reference what it is that  
23 Mr. Lash, Mr. Andrews, and Mr. Whittemore undisputedly  
24 testified what the parties not only expected to happen,  
25 but what they memorialized would happen.

266

1 And that was because they had a blank slate out  
2 there, that they knew that there was going to be  
3 cooperative mapping. They knew there needed to be  
4 certain assignments of duties to each other as part of  
5 that process, and they engaged in that process so as to  
6 be able then to identify what it was that Pardee was  
7 going to get in exchange for the \$84 million Purchase  
8 Property Price that they had agreed to and set forth  
9 within the four corners of their Option Agreement.

10 Now, if you take a look also then at the  
11 Amended and Restated Option Agreement. I'm not going to  
12 go through all of the same references, but if they had  
13 gone through that Amended and Restated Option Agreement,  
14 what you are going to see is that same thing.

15 Going to Finding No. 14, this speaks to the  
16 fact that what basically the land was at the time that  
17 they began the negotiations that consummated then in the  
18 Option Agreement. They talked about how there was no  
19 zoning, parceling, mapping, entitlements, permitting,  
20 et cetera.

21 The only thing Mr. Whittemore testified that  
22 had been done was that he had a development agreement  
23 that he had entered into with the county at that point  
24 in time. That was the only thing that had been done.  
25 As to the rest of all of this, all of that needed to be

267

1 done in the future.

2 Mr. Whittemore was looking for a co-developer.  
3 He got a co-developer in Pardee. And part of the Option  
4 Agreement identified the duties that Pardee was going to  
5 undertake as the co-developer. And one of those duties  
6 involved the mapping that we're talking about.

7 Also this finding makes reference for which  
8 that there has been undisputed testimony as to the  
9 different obstacles the parties faced for which that  
10 they knew the mapping and boundaries were going to  
11 change.

12 Turning your attention to Finding No. 15, in my  
13 opinion, the facts that underlie Finding No. 15 are  
14 undisputed, and I submit that they are undisputed to the  
15 Court, and I submit, Your Honor, that they are  
16 dispositive of two of the parties' claims.

17 Let me explain first how I believe that they  
18 are undisputed, and I'm going to go through these in  
19 detail. At the same time that Pardee was negotiating  
20 with Coyote Springs, Pardee was also negotiating with  
21 the plaintiffs concerning their finder's fees. Nobody  
22 disputes that.

23 Pardee and the plaintiffs extensively  
24 negotiated the Commission Agreement that bears the date  
25 of September 1 of 2004. Mr. Lash testified to that on

268

1 one side. Mr. Wolfram and Mr. Wilkes testified to that  
2 on the other side. They also testified that they were  
3 represented by Mr. Jimmerson throughout that process.

4 They also testified that they relied on  
5 Mr. Jimmerson to secure the best deal for them and that  
6 they were pleased with his efforts and they, themselves,  
7 elected and decided to accept the deal that he had  
8 negotiated. There is no dispute about that.

9 In addition, there's no dispute that these two  
10 individuals were knowledgeable real estate professionals  
11 and that they were well familiar with the documents that  
12 are typically involved in land development. Both of  
13 them identified that from the witness stand.

14 The obligations to each other, both sides  
15 testified, were reduced to the four corners of the  
16 Commission Agreement, and they acknowledge that it was  
17 an arm's length transaction. They placed no special  
18 reliance on Pardee akin to what you see in an insurance  
19 agreement.

20 Why is that important? It is important because  
21 without a special relationship, which is a legal term in  
22 a legal conclusion, without that special relationship  
23 between Pardee and the plaintiffs, their accounting  
24 claim fails, as well as their covenant of good faith and  
25 fair dealing claim.

269

1 And when we get into the legal conclusions that  
2 we're going to ask the Court to make, I will cite the  
3 Court then directly not only to the Court's previous  
4 orders where it was identified that those were essential  
5 elements of those particular claims. And, respectfully,  
6 we submit that these facts are undisputed, and without a  
7 special relationship between the plaintiffs and Pardee,  
8 then, in fact, their claim for accounting fails, as well  
9 as their claim for breach of the covenant of good faith  
10 and fair dealing.

11 Finding 16, no dispute that, in fact, Pardee  
12 went forward and negotiated the Commission Agreement,  
13 notwithstanding that Pardee had already done work then  
14 with CSI before that.

15 Finding No. 17, the Commission Agreement  
16 governs the payment of commissions and the provision of  
17 certain information related to their purchase. We know  
18 that it's a fully integrated document. We also know,  
19 from Mr. Wolfram, Mr. Wilkes, and Mr. Lash that there's  
20 no other deal between them. This is the sum total of  
21 their deal. And so the scope of their responsibilities  
22 and their obligations is found within that Commission  
23 Agreement.

24 It is also this Commission Agreement that they  
25 accuse Pardee of breaching. I asked Mr. Wolfram, This

270

1 case to you is principally about breach of contract?

2 Answer: Yes.

3 Mr. Wilkes, this case to you is principally  
4 about breach of contract? Answer: Yes.

5 And the contract that's at issue is your  
6 Commission Agreement? Answer yes, by both of those  
7 individuals.

8 And they also -- Mr. Wolfram in particular --  
9 went on to acknowledge that it's that breach of contract  
10 that underpinned their covenant of good faith and fair  
11 dealing as well as their accounting claim.

12 But their focus, from the plaintiffs'  
13 perspective, they looked at this case as a breach of  
14 contract case. And, therefore, I'm going to focus then  
15 pretty much the balance of my remarks on what is  
16 required then by the Commission Agreement.

17 We know from taking a look at Exhibit L, which  
18 is our Commission Agreement, Exhibit 1 for the  
19 plaintiffs, no dispute about that, that all of the  
20 capitalized terms then from the Option Agreement are  
21 what inform the construction then of the Commission  
22 Agreement. And so, in other words, if there's some  
23 question about the scope or the definition or something  
24 of that nature in the Commission Agreement, these  
25 gentlemen knew to go to the Option Agreement to look for

271

1 those.

2 Now, importantly, Your Honor, is if you take a  
3 look at the amendments, even the Amended and Restated  
4 Option Agreement, and if you take a look at Amendments 1  
5 through 8 to the Amended and Restated Option Agreement,  
6 the Court will see no changes to the definition of

7 Purchase Property Price. It will see no changes to the  
8 definition of Option Property. If you compare and  
9 contrast the Option Agreement to the Amended and  
10 Restated Option Agreement, there is no difference  
11 between the procedure under paragraph 2 by which the  
12 options were going to be exercised.

13 Now, why is that important? And I know that  
14 I'm going to sound like a broken record on this  
15 particular point, Your Honor, but when you go to (iii),  
16 (iii) doesn't say if Option Property is purchased.  
17 (iii) entitles these gentlemen to commission with  
18 respect to any portion of the Option Property purchased  
19 by Pardee pursuant to paragraph 2 of the Option  
20 Agreement.

21 And so I do believe that, in fact, a proper  
22 definition of Option Property includes this. But if  
23 there's any question that that's not what the parties  
24 intended, all you have to do is look at their agreement.  
25 They made it express within their agreement.

272

1 It's not just some type of an everything else  
2 approach that has been advocated and that has been urged  
3 upon you by plaintiffs' counsel. It is Option Property  
4 purchased pursuant to paragraph 2 of the Option  
5 Agreement. That helps the Court and informs the Court's  
6 interpretation of this Commission Agreement as to what  
7 the parties had agreed to, when were they going to  
8 receive a commission.

9 And I would note that there's nothing within  
10 these provisions or the balance of the agreement that  
11 says once Pardee acquires property of some fashion or  
12 another, that for which it has paid Purchase Property or  
13 it is bought in any other component and somehow changes  
14 the designation of the use of that property, that then  
15 we go back and we reshuffle the deck and we give them  
16 additional commissions.

17 We have to look at what the language is of the  
18 Commission Agreement. And there's nothing that the  
19 plaintiffs can point to, nothing within the Commission  
20 Agreement that they can point to that if there are  
21 subsequent changes that Pardee and CSI made to the use  
22 designations that, in fact, those subsequent changes,  
23 after the original transaction closed, that entitles  
24 them to more commissions.

25 The simple answer to that is, number one, it's  
273

1 not found within the four corners of the agreement. The  
2 second answer to that is, all right, when were they  
3 entitled to some type of payment?

4 We know that they have acknowledged that under  
5 (i) and (ii) that they've been paid in full. So then we  
6 have to go to (iii) and what does three say? I'm back  
7 to my broken record. It's Option Property purchased  
8 pursuant to paragraph 2 of the Option Agreement.

9 I got off on a little bit of a tangent. We  
10 were talking about how there were no changes to the  
11 definition of initial purchase closing settlement dates,  
12 deposits, parcel maps, option parcels, option closing,  
13 contingency periods. Those were all provisions found  
14 within the Commission Agreement.

15 And, moreover, if, for some reason, that there  
16 was some type of a concern because there had been a  
17 change to a definition from Option Property to the  
18 Amended and Restated Option Agreement, which we know  
19 that the parties had already started to do the process  
20 of mapping so that they were able to identify what that  
21 initial purchase was going to be, and it was 511 acres,  
22 the plaintiffs knew that.

23 They knew that there was a change from the  
24 Option Agreement that talked about this 3,600 acres that  
25 Mr. Whittemore described and the balance of the document  
274

1 described as it was going to be security for the parties  
2 and the Amended and Restated Option Agreement that had  
3 the first parcel identify as Purchase Property as 511  
4 acres. They knew of that change because they were given  
5 those documents.

6 Did they think it was a big deal? Apparently  
7 not. They never sent a letter to Mr. Lash or anyone at  
8 Pardee saying, What does this mean? They never called  
9 Mr. Lash in March of 2005 and said, What does this mean?  
10 They never contacted the escrow company and said, What  
11 does this mean? Why? Because it was irrelevant to how  
12 they were going to be paid. They were going to be paid  
13 on the Purchase Property Price, and we know that was  
14 \$84 million, and we know that there were installments  
15 that Pardee was going to make.

16 And we know that by taking a look at, and if  
17 the Court compares the installment schedule that's found  
18 on the second amendment, it's also echoed in the Amended  
19 and Restated Option Agreement. And if you take a look  
20 at what the aggregate payments, the aggregate deposits  
21 were, they total \$10 million. They got paid. Their  
22 first commission payment was on \$10 million.

23 And then they got paid 44 additional payments  
24 based upon the \$1.5 million monthly payments that Pardee  
25 was making to CSI. And, in addition, they got paid  
275

1 based upon the final three payments, which were  
2 \$2 million payments, installment payments that were  
3 being made from Pardee to CSI, and that's all set forth  
4 within the schedule.

5 And the thing that I think is important at this  
6 point, or at least I'll point it out at this point in  
7 time, is that we know that in 2007 that the plaintiffs  
8 were overpaid by the escrow company. We also know from  
9 Mr. Wolfram's testimony that he was able to discern from  
10 the information available to him at that time as to  
11 whether or not that he was being paid properly, and he  
12 determined that he was being overpaid.

13 And Mr. Wolfram identified that, in fact, what  
14 was available to him, the Option Agreement, the two  
15 amendments, the Amended and Restated Option Agreement,  
16 and the commissions that were being paid to him at that  
17 time, and he was able to discern and contact Pardee and  
18 say, I don't know for certain, but I think I'm being  
19 overpaid. And guess what, he was.

20 He, at that point in time, didn't know the  
21 locations of property. He didn't know the acreage. He  
22 didn't know land use designations. He didn't know  
23 anything about the takedowns. He offered you no  
24 testimony that he went down and looked for deeds or  
25 anything of that nature. What he knew is the schedule  
276

1 for payment of the Purchase Property Price set forth in  
2 the parties' agreement, and what he knew is based upon  
3 what he had received from the escrow company to discern  
4 if he was being paid properly for the amount and the due  
5 dates of his commissions.

6 Now, one of the things, while we're at this  
7 point in time, what I want to do is to echo what I  
8 offered to the Court in my opening statement about  
9 connect the dots. Let me tell you where I was going  
10 with those connect the dots, because I do think this is  
11 important.

12 Plaintiffs acknowledge and admit that they've  
13 been pain in full under paragraph 1 and paragraph 2. So  
14 we get down here to paragraph 3. And what is that  
15 procedure, what is that process then that was set forth  
16 pursuant to paragraph 2 of the Option Agreement. I  
17 walked Mr. Whittemore through that, and what I'd like to  
18 do then is to highlight that for purposes of my argument  
19 to you right now.

20 If you take a look at page 2 of Exhibit B,  
21 which is the Option Agreement, it gives you --  
22 Exhibit 2.

23 THE COURT: Okay. I got it.

24 MS. LUNDVALL: Exhibit B.

25 THE COURT: Of Exhibit 2?

277

1 after Pardee got property for the \$84 million it was  
2 spending with Pardee. The final purchase closing is the  
3 final closing that you'll see earlier defined in the  
4 agreement was the last parcel that Pardee would receive  
5 for its \$84 million. And then if, in fact, that they  
6 are going to purchase additional single-family land,  
7 then the Option Property and the definitions and the  
8 process and the procedure kick in.

9 So there's where you look particularly to learn  
10 that this is a linear transaction. It's not a  
11 transaction as described by the plaintiffs where it was  
12 Parcel 1 was Purchase Property and anything outside of  
13 Parcel 1 was Option Property. That's not how the  
14 parties defined it. That's not how CSI and Pardee  
15 defined it in their own agreement. They defined it in a  
16 linear fashion.

17 Pardee was going to spend \$84 million first.  
18 And if, after spending that \$84 million in Purchase  
19 Property Price and getting land, and if they needed  
20 additional single-family land after that, then they had  
21 the right, if CSI had designated single-family land, to  
22 send an exercise option.

23 The testimony unequivocally has been that that  
24 has not happened. Factually, that's what the undisputed  
25 evidence is before the Court.

279

1 MS. LUNDVALL: I think Exhibit 2 and Exhibit B  
2 are the same thing, the Option Agreement.

3 THE COURT: Right. I got the Option Agreement.

4 MS. LUNDVALL: All right. At page 2, we know  
5 that it requires a designation by CSI. How many times  
6 did we hear that? And so that part was found on page 2.

7 If you go to page 5, what you are going to see  
8 at page 5, beginning at paragraph 2, is that the first  
9 thing that is required is a written notice. That's the  
10 very first stage. After you get past the designation,  
11 you gotta have a written notice. And it says to whom  
12 it's supposed to be sent. That's paragraph number 17.

13 There's miscellaneous different procedures then  
14 that are set forth at B, C, D, E, F and G. But the one  
15 I think that is probably the most important for the  
16 Court to take a look at is at page 14, and you are going  
17 to see on page 14 -- let me see if I can identify where  
18 specifically on that page so the Court takes a look at  
19 that.

20 About halfway down that first paragraph that's  
21 found at the very top of page 14, and it speaks to after  
22 the final purchase closing the buyer timely exercises  
23 its option.

24 I asked Mr. Whittemore what did that mean. He  
25 said that the Option Property was going to be taken down

278

1 Equally factually from a business perspective  
2 is that Pardee has no need for additional single-family  
3 lands at Coyote Springs. You heard Mr. Andrews'  
4 testimony they probably have enough for a lifetime, at  
5 minimum his lifetime.

6 In addition, you heard Mr. Lash that said at  
7 the very minimum, under the best of circumstances,  
8 they've got inventory for at least 14 to 15 years. And  
9 so to the extent that they have enough inventory of the  
10 single-family land for which their business needs may  
11 dictate, it would be only after that point in time for  
12 which that this process from a business perspective may  
13 be kicked in.

14 And so to the extent let me continue going on  
15 then and marching through then what the process would  
16 be. If you take a look also on subsection D that is  
17 found on page 14, the Court will see that there is  
18 reference to an Option Property deed. It was a form of  
19 the deed that the parties had identified.

20 The form of that deed was one of the exhibits  
21 to Amendment No. 2, and it expressly states on the form  
22 of the deed Option Property. And if Pardee had  
23 exercised its option, if CSI had accepted that, if they  
24 had gone through the entirety of the transaction, they  
25 were to record that Option Property deed, that form, to

280

1 take the legal description and insert it into the form  
2 on that deed and make it a matter of public record.  
3 That is all set forth in the language that is found on  
4 page 14 under subsection D.

5 And the point to be made here is this: That  
6 Option Property deed, Your Honor, would have been a  
7 public document. So that if the plaintiffs wanted to  
8 discern if Pardee had purchased any Option Property,  
9 pursuant to paragraph 2, what would they have done?  
10 Mr. Andrews' testimony and, by logic, is the first thing  
11 that you would do is you would go to the public records  
12 and look for that Option Property deed.

13 There's none there. It doesn't exist. Why?  
14 Because as Mr. Whittemore, on behalf of CSI, as Mr. Lash  
15 and Mr. Andrews testified, Pardee has never exercised  
16 any option to purchase additional single-family lands  
17 pursuant to paragraph 2, had no need to do so.  
18 Therefore, there was no Option Property deed to be found  
19 in the public record.

20 If the Court also takes a look at additional  
21 procedures, you are going to see on page 15,  
22 subsection E, that speaks to the description being  
23 inserted into the form deed. There's additional  
24 procedures that are identified at page 16.

25 Equally important at page 17, subparagraph H,

281

1 it makes reference to the option memo and the addition  
2 or the edits and changes that need to be made to the  
3 option memo. On page 22, there's further discussion  
4 concerning the written notice, and on page 27 there's  
5 the description about the preparation of the tentative  
6 maps for purposes of the Option Property, none of which  
7 that exists.

8 So that process and that procedure was all very  
9 document intensive, as any land transaction is. Pardee  
10 wouldn't have been the only party that had that  
11 information. CSI would have had that information. The  
12 escrow company would have had that information.

13 They sent a subpoena to CSI. Didn't get any  
14 information on Option Property being purchased by  
15 Pardee. No exercise, no notice of exercise option, no  
16 escrow instructions, none of this process I've just  
17 described.

18 They sent a subpoena duces tecum then to the  
19 title company, asked for all of this information. It  
20 doesn't exist. There was nothing to give back to them.

21 You've also heard as far as how that in the  
22 public record there is no Option Property deed. So  
23 Pardee is not the only party that would have this  
24 information that would have memorialized if, in fact,  
25 that this paragraph would have been kicked in.

282

1 There are other parties, CSI and, at a minimum,  
2 the escrow company, and at a minimum the public record.  
3 All of those places have been searched and scoured.  
4 None of those places unearthed any information to  
5 support the fact that Pardee had purchased Option  
6 Property.

7 In other words, when Mr. Lash told Mr. Wolfram  
8 that there had not been any Option Property that had  
9 been purchased for which that they would have been  
10 entitled to a commission, he was telling them the truth.

11 Paragraph 21, please. Is that where I'm at?  
12 Brian, take me to 18.

13 THE COURT: You just went through 20 and we  
14 went through --

15 MS. LUNDVALL: I thought so.

16 THE COURT: You were on 21. I've been  
17 following it. If you look, you have your (i), (ii),  
18 (iii), and we just went through it. So the next would  
19 be starting on the Purchase Property.

20 MS. LUNDVALL: I do believe that the Court is  
21 accurate. 21, that's where I'm at, at least in my  
22 notes.

23 THE COURT: That's where I'm at. So hopefully  
24 I'm following.

25 MS. LUNDVALL: Paragraph 21, the term Purchase

283

1 Property Price was defined in the second amendment, and  
2 also it was defined in the Amended and Restated Option  
3 Agreement, \$84 million.

4 The due dates then for the commission -- and I  
5 think that this is important, Your Honor. Because one  
6 of the things that helps the Court in trying to

7 determine what do these mean, is when you look at -- and  
8 under standard contract interpretation, you are supposed  
9 to look at the entirety of the agreement in context, not  
10 supposed to pick out things here and there. You are  
11 supposed to look at it in its context.

12 So let's take a look then at when the due dates  
13 for the commissions were due under paragraphs (i) and  
14 (ii). If you go to page 2 then of the agreement, there  
15 hasn't been a lot of focus on this portion of the  
16 Commission Agreement, but it does inform the  
17 interpretation.

18 It speaks to Pardee shall make the first  
19 commission payment to you upon the initial purchase  
20 closing, and then it talks about what that is supposed  
21 to be with respect to the aggregate deposits. All  
22 right. What is all that referring to? It's all  
23 referring to that schedule that was found in the second  
24 amendment and the Amended and Restated Option Agreement  
25 as to the schedule of payments that Pardee was making to

284



1 CSI.

2 And then it talks about each additional  
3 commission payment pursuant to clause one and two goes  
4 concurrently with the applicable Purchase Property Price  
5 payment to Coyote. And that's where you go back right  
6 then to that same schedule I keep making reference to.

7 And that informs the Court then as to what  
8 Pardee obligated itself to under paragraphs (i) and  
9 paragraph (ii). There's nothing in the language about  
10 the due dates or the obligation to pay in the first  
11 place that makes any reference to acreage, location,  
12 where are the lands, if the lands had actually closed.

13 I think this is important as far as in respect  
14 to Mr. Wolfram. Mr. Wolfram had testified that this  
15 Commission Agreement was something that he had never  
16 dealt with before. Every other transaction in his  
17 professional life that he had dealt with, that there was  
18 some type of a deal that was cut between a buyer and a  
19 seller. Land closed. There was an exchange of deeds  
20 and he got paid. That's what his experience was. And  
21 I'm not going to discount that experience because that's  
22 what he understood.

23 But that's not the Commission Agreement his  
24 attorney negotiated for him. His attorney actually  
25 negotiated a much better deal than that for him.

285

1 Because at the time that the original aggregate deposits  
2 had been made, there had been \$10 million that had  
3 already been paid by Pardee to CSI and there had been no  
4 closings at all.

5 And when you take a look then at each one of  
6 those payments on a monthly basis when \$1.5 million was  
7 paid to CSI, there weren't any closings each month.

8 There weren't any acreages identified each month.

9 Nothing. There weren't any deeds that were exchanged.

10 As Mr. Lash has identified and as the documents  
11 and the records all reflect, there was only five  
12 closings. But how many commission payments and checks  
13 were there made? 49. The original, the 44, and the  
14 last three.

15 So what you end up with is nothing either about  
16 the language of the parties' agreement, let alone the  
17 performance of the parties under the agreement, suggests  
18 that these two clauses had anything to do with location,  
19 acreage, or the timing of the closings. And, therefore,  
20 that information was irrelevant to determining if Pardee  
21 had complied.

22 Now, turning the Court's attention then to  
23 paragraph 22, paragraph 22 speaks to paragraph 3. In  
24 paragraph 3 there's also, on page 2, additional language  
25 that informs the Court as to the interpretation of this

286

1 subparagraph 3. On page 2 the Court is going to see  
2 when Pardee was supposed to be making commission  
3 payments pursuant to clause 3, and that was upon the  
4 close of escrow on Pardee's purchase of the applicable  
5 portion of the Option Property.

6 Provided, however, in the event that the  
7 required parcel map creating the applicable option  
8 parcel has not been recorded, the commission shall be  
9 paid into escrow concurrently with Pardee's deposit of  
10 the Option Property Price, and the commission shall be  
11 paid directly then from escrow.

12 Break all this down and what this says is that  
13 Pardee was going to make a payment to CSI. In exchange  
14 it was going to get a piece of land. There was going to  
15 be a closing for which a deed would be recorded, and  
16 these gentlemen got paid at that point in time. It  
17 makes no reference, no reference whatsoever to if  
18 there's been some redesignation. If there's a tentative  
19 map that has been filed, there makes no reference to  
20 that whatsoever.

21 What the plaintiffs are asking you to do is  
22 something that you are prohibited from doing, and I know  
23 that no judge likes to hear something that we have  
24 limits. None of us like to know we have limits. But  
25 the case law is clear, you can't rewrite the parties'

287

1 agreement. This is what the parties had agreed to.  
2 This is what you are being asked to interpret. And to  
3 offer and to allow what the plaintiffs are asking for  
4 demands and requires you to rewrite their agreement.

5 Now, the thing I think that what I want to do  
6 is to identify then a couple of these theories or  
7 address a couple of the theories that the plaintiffs  
8 have offered along this particular line, and let me  
9 address these somewhat out of line.

10 The first one that Mr. Jimmerson talked about  
11 is that Parcel 1 was Purchase Property and so Option  
12 Property was everything else. If there's something  
13 outside those boundaries, they should be entitled to  
14 commissions here under (iii).

15 Number one, I want to suggest to the Court that  
16 if they genuinely believed that to be true, then  
17 Mr. Wolfram's testimony is equally to be believed. And  
18 that is this: He knows the locations. They know the  
19 locations of the land that Pardee actually took down.  
20 They know how much exists outside of Parcel 1. They  
21 apparently may not have the skill set to calculate what  
22 that acreage is, but they had all of the information or  
23 the tools available to allow someone who is qualified to  
24 do that.

25 Pardee doesn't employ all the engineers in the

288



1 world. They could have gone to an engineer. The  
2 assessor's office and recorder's office, they have  
3 people that make those calculations all the time. You  
4 go through the phone book and you can see all kinds of  
5 engineers that offer those services. They could have  
6 made that determination, but they did not.

7 So what does that mean? What it means -- well,  
8 let me back up. They had the tools available to them.  
9 They knew where the locations of the land were. They  
10 knew the locations of the parcel. They knew how much  
11 was outside. They knew the price that Pardee was  
12 supposed to pay for that under the schedule. They also  
13 knew the date by which that Pardee had acquired the  
14 lands, because that was found within the deeds. And,  
15 therefore, they could have calculated, not only the  
16 amount of commission they were due, but also how much  
17 interest on those commissions.

18 Did they bring those calculations to you? No.  
19 What have they done? They've failed in their burden of  
20 proof on the very first theory that they have offered to  
21 you.

22 Second, there's also a, Well, jeez, Your Honor,  
23 if you didn't like that theory, let me give you another  
24 one. And the other one that they wish to offer is this  
25 theory about somehow if Pardee changes the use

289

1 designation, then, in fact, we should be able to be  
2 entitled to a commission when there's been some type of  
3 a use designation change.

4 First and foremost, found nowhere within the  
5 four corners of the agreement. That's point number one.

6 Point number two is that we know from the  
7 testimony of Mr. Andrews that, in fact, those use  
8 designations have changed repeatedly across time and are  
9 likely to change again across time. So what that  
10 suggests to me is that this process is going to be  
11 constantly, Okay, we're going to give some money to the  
12 plaintiffs. But if we change the use designation, isn't  
13 the flip side of that then equally applicable, that they  
14 have to give some money back? Isn't that the flip side  
15 of their argument?

16 Every argument has both a positive side and it  
17 has a side that cuts back against you. And the argument  
18 that they advance would mean that if, in fact, Pardee  
19 changes some type of a use designation at a point in the  
20 future for which that they've already been paid  
21 commission, why wouldn't Pardee be entitled to that  
22 commission back if that theory was appropriate under the  
23 Commission Agreement?

24 We've already seen examples, Your Honor, that  
25 that's been done. Mr. Andrews gave you two examples.

290

1 He identified, remember, as far as on the boundary, that  
2 on Exhibit No. 15, that multi-family designations have  
3 been put up in that upper left-hand corner.

4 Brian, can you pull up 15 for me quickly? I'll  
5 show the Court what I'm talking about.

6 Your Honor, on 15, Mr. Andrews identified this  
7 parcel here that is in yellow has already been changed.  
8 They have moved multi-family designation up to this  
9 area. So in other words, the plaintiffs have already  
10 been paid a commission, we know, on these lands, and  
11 there's already been a change. So why, under their  
12 theory then, is the plaintiff not entitled to have to  
13 give something back?

14 Equally what we know is this: That he drew on  
15 the map, Exhibit 15, and labeled A and B, which were the  
16 exchange parcels that were the subject then of the  
17 beginning of the town center. And he identified how the  
18 buyer's exchange parcel, which is what Pardee had owned,  
19 was lands that were down here for which Pardee had  
20 already paid them a commission. What happened to those  
21 lands? They got moved to another area.

22 And so to the extent that they got moved then  
23 to the multi-family area, and so that designation is  
24 also another change for which the plaintiffs have  
25 already received payment and we moved use designations

291

1 off there. And so why is it that they wouldn't have to  
2 give it back?

3 And the logical answer to that, Your Honor, is  
4 this, is because if, in fact, this is going to be a  
5 moving target for the next 40 years, based upon any  
6 redesignations of use, and not -- not based upon what

7 the language of the parties' agreement was, it's a  
8 theory that does not hold water. And we respectfully  
9 submit that that theory does not entitle the plaintiffs  
10 to additional money.

11 It's the same component then of the earlier  
12 argument they made that they contended that multi-family  
13 property that we purchased and that Mr. Whittenmore made  
14 it abundantly clear that the lands that were the subject  
15 then of this exchange were multi-family lands that  
16 Pardee had already purchased. And we know from the  
17 testimony of Mr. Wolfram and everyone else that they  
18 weren't entitled to monies on the multi-family property.

19 So there's a swap then as far as those  
20 designations as part of what was happening then at the  
21 tentative map application process in December of 2010.  
22 So to the extent, Your Honor, that based upon the theory  
23 that they have espoused that somehow these  
24 redesignations or the parties going through their  
25 standard and their normal business development and

292

1 having genuine and realistic and needed business needs  
2 for these changes, that somehow that entitles them to  
3 additional commissions.

4 And what their argument is is that, based upon  
5 the language that says that Pardee can't circumvent or  
6 avoid its duties, is that somehow by taking legitimate  
7 business needs, for which that is the only evidence that  
8 this Court has -- the only evidence is that the reason  
9 the parties entered into the eighth amended agreement  
10 was to deal with the downturn in the economy, and that  
11 the only reason that they had for doing that were  
12 legitimate business reasons. It had nothing to do with  
13 trying to circumvent or avoid its obligation.

14 And I do think that it is important to take a  
15 look at what the definition of "circumvent" is because  
16 it also informs the definition of "avoid." And as the  
17 Court elicited from Mr. Lash, it was his understanding  
18 what that meant is that we couldn't do something bad.  
19 We couldn't try to do a bad act. We couldn't try to  
20 cheat them out of their commissions, and nor did we try  
21 to cheat them out of their commissions.

22 The lands that were at issue through the  
23 tentative map application were lands for which they had  
24 already been paid a commission, number one, and lands  
25 that were purchased pursuant to the multi-family

293

1 agreement for which they concede that they weren't  
2 entitled to any commissions upon.

3 Now, one of the things we've heard repeatedly  
4 throughout the course of this case is that between  
5 Pardee and CSI, we made a change to the definition of  
6 Option Property.

7 Brian, can you move on to 23 for me, please.  
8 23 gives you the definition of Option Property.  
9 You can see all the stuff that's in between. Where it's  
10 found is in Exhibit B. That definition is the exact  
11 same definition that is found -- go to 24 for me, Brian.  
12 It is the exact same definition that is found in  
13 Amendment No. 1 to the Option Agreement, Amendment No. 2  
14 to the Option Agreement, to the Amended and Restated  
15 Option Agreement, and all of the amendments thereafter.  
16 There has been no change to the definition of Option  
17 Property.

18 In addition, there has been no change to the  
19 process and procedure from Option Agreement to Amended  
20 and Restated Option Agreement pursuant to paragraph 2 as  
21 to how those lands would be acquired then by Pardee.

22 Finding No. 25, your Honor, we already talked  
23 about.

24 Number 26, I want to talk then about our  
25 performance under the Commission Agreement. If you go

294

1 to 26 for me, Brian.

2 We know that the plaintiffs were paid in full  
3 and on time on the \$84 million Purchase Property Price.  
4 That's a very simple process to take a look at  
5 Exhibit A. They were informed of the amount and the due  
6 dates of those commission payments, first through  
7 Stewart and then through Chicago Title. How do we know  
8 that? By looking at Exhibit A.

9 We also know, Your Honor, that the plaintiffs  
10 were able to discern when they had been overpaid and how  
11 they were going to fix that. Those additional exhibits  
12 then identify that.

13 We know from Mr. Wolfram's testimony that at  
14 one point in time his commission payments started to be  
15 electronically deposited into his account. So he didn't  
16 see this description detail. But we also know from his  
17 testimony that when he started asking questions, he was  
18 able to get all of the orders to pay commission. So he  
19 got all of those orders to pay commission that could be  
20 found at Exhibit A.

21 If you take a look, I think that we go  
22 through -- Brian, move forward a little bit for me.  
23 I'll get to it. Go back to the exhibit. I'll point it  
24 out to the Court what I'm talking about.

25 We know that Mr. Wolfram went to the escrow

295

1 company. He asked Frances Butler for a number of pieces  
2 of information. And when he asked for pieces of  
3 information, he asked Frances to send him copies of all  
4 the previous orders to pay commission. She did. She  
5 memorialized that. Mr. Wolfram testified, I received  
6 those.

7 So he has all of those orders to pay  
8 commission. Each and every one of those orders to pay  
9 commission memorialized the amount and the due date then  
10 under paragraphs one and two of the arrangement of their  
11 Commission Agreement.

12 Turning your attention then, and I'm going to  
13 go through this quickly because I don't think that it is  
14 excessively relevant, but I do think it does inform the  
15 Court as to what the mind-set was of Pardee going into  
16 this dispute.

17 And that was this: It started when Jon Lash  
18 sent the letter to the plaintiffs, both of them,  
19 Mr. Wolfram and Mr. Wilkes, that said this: You guys  
20 have been overpaid. This is how we're going to fix it.  
21 And, oh, by the way, we're taking down additional  
22 properties, and you guys aren't entitled to commissions  
23 on these other takedowns. We saw that letter and I  
24 think that letter, if my recollection serves me, is at  
25 Exhibit W.

296

1 And what did Mr. Lash get back from both  
2 Mr. Wolfram and Mr. Wilkes, they got back a letter that  
3 says, I don't know how you came to the conclusion that  
4 we're not entitled to commissions on these other  
5 properties. We believe we are. That's what they told  
6 him. And that letter is found at Exhibit Z.

7 And then what do you see? You see letters that  
8 are found at Exhibit 18, 19, 20 and 24. And what do  
9 those letters ask for? They ask for all of the  
10 documents that memorialized all of the transactions  
11 between Pardee and CSI.

12 Mr. Lash understood all of those to be  
13 referencing the other transactions for which that he had  
14 already told them that they weren't entitled to payment  
15 upon. That's what his testimony was. That's how he  
16 understood those, when they were asking for all, that's  
17 what they wanted.

18 He authorized the title company to give them  
19 all the single-family stuff, but not the other  
20 transactional documents. And, therefore, I believe that  
21 gives an explanation as to the mind-set that Pardee had  
22 into the dispute that arose between the parties.

23 And, Your Honor, one of the things that I would  
24 like to do, if you don't mind, because it is 5:15, I  
25 know that I've been going for about an hour and 15

297

1 minutes.

2 THE COURT: Do you need a break?

3 MS. LUNDVALL: I would like to take a very  
4 short comfort break, not only for the Court, but for  
5 your staff as well, if that's okay.

6 THE COURT: That's fine. A quick 15 minutes.

7 (Whereupon, a recess was taken.)

8 MS. LUNDVALL: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MS. LUNDVALL: We're on Finding No. 27, and  
11 what we had started to do was to go through Pardee's  
12 performance under the Commission Agreement. And I'm  
13 going to cover this portion because, to be honest with  
14 you, I'm a little bit confused throughout the course of  
15 this trial.

16 I don't know if there's money being sought. On  
17 one hand I'm being told that it's not. On the other  
18 hand now I'm hearing through closing argument that it  
19 is. So, therefore, I'm going to walk through then  
20 whether or not the facts, the evidence before the Court,  
21 to determine whether or not that there are additional  
22 monies owed to Mr. Wolfram and Mr. Wilkes. Because like  
23 I said, I'm getting mixed messages, and I'm not going to  
24 turn any stone unturned concerning this.

25 First and foremost, we know that the

298

1 provisions 1 and 2 were based upon the Purchase Property  
2 Price. And I pulled this quote out of the opening  
3 statement that the plaintiffs had given to the Court.  
4 And I can tell the Court specifically it's on page 14,  
5 if the transcripts are available to the Court, and if  
6 anyone wants to verify the accuracy of this.

7 THE COURT: I didn't read opening statements.  
8 I just read testimony.

9 MS. LUNDVALL: But you know, as far as the  
10 statements on behalf of an agent --

11 THE COURT: I understand.

12 MS. LUNDVALL: And I think that they also  
13 inform the Court.

14 In their opening statement what they  
15 acknowledged is that under the Purchase Property  
16 formula, they were entitled to a percentage of the  
17 Purchase Property Price. No quarrel about that  
18 whatsoever. Absolutely none.

19 Then they went on to say there is no benefit or  
20 additional commission for additional acreage being  
21 purchased if there's no corresponding increase in price.  
22 And we agree with that as well.

23 The Purchase Property Price under 1 and 2, as  
24 we've well seen how many times now, was \$84 million.  
25 That price didn't change across any of the amendments.

299

1 Once it had been amended pursuant to the second  
2 amendment to the Option Agreement and was restated then  
3 in the Amended and Restated Option Agreement, there was  
4 no changes to that \$84 million, no corresponding  
5 increase in price.

6 So under the acknowledgment from the plaintiffs  
7 themselves, that's what was determinative of if they  
8 were entitled to commissions under 1 and 2.

9 Moreover, we have the testimony of Mr. Wolfram  
10 and Mr. Wilkes themselves that they received all of  
11 their commissions timely under paragraph 1 and  
12 paragraph 2 of the Commission Agreement.

13 Let's go to the next finding then, Brian.

14 We know, if you take a look at Exhibit A and  
15 you total up all of those orders to pay commission,  
16 that's the amount you get. \$2,632,000. That, to me, is  
17 a lot of money, but that's what they received. It was  
18 split equally between Mr. Wolfram and Mr. Wilkes, and  
19 that's what Exhibit A reveals.

20 Go on, Brian.

21 The plaintiffs acknowledge that their  
22 commissions that were due under paragraphs (i) and (ii)  
23 were based on that price, not acreage or location. Both  
24 Mr. Wilkes, before he left the witness stand, and  
25 Mr. Wolfram in the very first day, acknowledged that the

300

1 acreage and the location of the property that Pardee  
2 acquired was not determinative of what their commissions  
3 were under (i) and (ii). They also admitted that  
4 they've been paid in full under (i) and (ii) of the  
5 Commission Agreement.

6 Brian, go to the next one, please.

7 We know from Pardee's perspective Mr. Lash had  
8 testified they did not pay more than \$84 million. We  
9 know that the lands were used for Purchase Property  
10 takedowns.

11 Turning your attention then to 31, please.  
12 CSI, from Harvey Whittemore's perspective, CSI, he  
13 confirmed, never received more than \$84 million as  
14 payment for those lands. And Mr. Whittemore also  
15 memorialized, as well as Mr. Lash, that all of the  
16 transactions had been memorialized in publicly recorded  
17 deeds.

18 Next, no commissions were due to the plaintiffs  
19 under (iii) unless the property purchase fell within the  
20 definition of Option Property purchase pursuant to  
21 paragraph two of the Option Agreement. I've already  
22 argued that to the Court, and I'm not going to repeat  
23 myself even though it's probably one of the most  
24 critical issues.

25 We believe that there are multiple documents

301

1 that would have memorialized such a transaction and that  
2 none of those documents exist. All of the tools were  
3 available by which to try to capture those documents.  
4 None of those documents were found. The plaintiffs were  
5 able to confirm that Pardee was telling them the truth  
6 that it had not purchased any Option Property.

7 Mr. Whittemore confirmed they had not purchased any  
8 Option Property.

9 33, Brian.

10 They also concede that the Commission Agreement  
11 describes the only commissions to which they were  
12 entitled. How do we know that? We have a fully  
13 integrated agreement.

14 Next provision, Brian.

15 We know that we've never exercised any options.  
16 If we had, there would be multiple public records that  
17 would memorialize the transaction. This is the argument  
18 I just made to the Court. Both the representatives of  
19 CSI and Pardee deny that any Option Property was  
20 purchased pursuant to paragraph 2 and, therefore, we  
21 don't owe any commissions to the plaintiffs under  
22 paragraph (iii) of the Commission Agreement.

23 Next one, Brian.

24 All right. This is where we get into, I don't  
25 want to say the meat of this dispute, but I think this

302

1 is where the plaintiffs have been a bit ambivalent. And  
2 what they've tried to suggest is that we owe them more  
3 information than what we contracted to provide to them.  
4 So I'm going to walk through in detail to the Court the  
5 interpretation that is found within the plain meaning of  
6 the Commission Agreement.

7 That paragraph has two sentences to it. We can  
8 all probably recite them from memory at this point in  
9 time. And I'm not going to repeat them, but we know the  
10 paragraph that's at issue. There's no other paragraph,  
11 there's no other provision, there's no other place  
12 within the Commission Agreement where Pardee promises to  
13 give information to the plaintiffs. This is it. It's  
14 the sum total. And this is really the meat of what the  
15 Court is being asked to interpret then as to whether or  
16 not that we had discharged our duty in this regard.

17 Go to the next one, Brian.

18 The first one, in my opinion, is easy. That  
19 first sentence, Pardee shall give you a copy of each  
20 written option exercise notice given pursuant to  
21 paragraph 2 together with the information about the  
22 number of acres involved and the scheduled closing date.

23 If there was no written option exercise notice,  
24 then there's nothing to give to the plaintiffs. If  
25 Pardee is not purchasing Option Property, there's

303

1 nothing to give them regarding acreage. If Pardee is  
2 not purchasing Option Property pursuant to paragraph 2,  
3 there is no scheduled closing date information by which  
4 to give them.

5 This, to me, is one of the hardest arguments I  
6 think to make as a defendant when you are trying to

7 prove a negative, and I respectfully submit that we have  
8 discharged that proof. Even though it's not our burden,  
9 we have affirmatively stepped to the plate to

10 demonstrate that, in fact, none of this exists because  
11 it did not happen. We didn't purchase any Option  
12 Property pursuant to paragraph 2, so there's no notice,  
13 no acreage, no closing dates to give them.

14 Turning your attention to the second. So now  
15 let's talk about to keep them reasonably informed under  
16 the sentence two. Go to the next one, Brian, for me. I  
17 think I start to lay out in detail then. All right.

18 So let's begin to identify the detail so that  
19 the Court can interpret then what does the language that  
20 says reasonably informed as to all matters relating to  
21 the amount and the due dates of your commission payment,  
22 because if you want to boil this case down to even its  
23 greater definition, that sentence is what it is. That's  
24 the sum total of what the parties are fussing about.

25 Respectfully, I would submit this: First and

304

1 foremost, related to the amount and the due dates of  
2 your commission payment, doesn't that assume that  
3 there's a commission payment that's due? If there's no  
4 commission payment due, then you don't have any  
5 information about the amount or the timing of that due  
6 date.

7 And so I think the common sense interpretation  
8 of that is that, first and foremost, the Court needs to  
9 determine, Was there a commission payment due? I don't  
10 think it hinges upon that, but I do think that that  
11 helps inform the Court as to its interpretation. What  
12 did the parties mean by the scope of that?

13 So let's look at what Pardee gave to the  
14 plaintiffs for the commissions that they were due. It  
15 gave them Exhibit A. We've talked about that ad  
16 nauseam. And so each and every time that Pardee made a  
17 payment of the Purchase Property Price to CSI, they got  
18 a commission. There was an order to pay commission.  
19 That order to pay commission then identified how it was  
20 being paid, why it was being paid, to whom it was being  
21 paid, the escrow number on there. All of that  
22 information is on the order to pay commission,  
23 Your Honor, for each and every one of those payments.  
24 That's why Exhibit A is so thick. That's why Exhibit A  
25 is so fat.

305

1 When we changed escrow companies from Stewart  
2 to Chicago, we advised them of that change, both  
3 Mr. Wolfram, both Mr. Wilkes. And that's found at  
4 Exhibit E. And thereafter Chicago Title continued to  
5 inform the plaintiffs then of the amount and the due  
6 dates of the commission. Chicago Title's orders to pay  
7 commission are also found at Exhibit A.

8 Can you go to the next one, Brian?

9 Now, if you take a look at when Pardee was  
10 supposed to make the first commission payment, it is  
11 informed by the Commission Agreement. It was supposed  
12 to be done at the initial purchase closing, and then  
13 each payment thereafter was concurrent with the payment  
14 being made pursuant to Amendment 2. That's what this  
15 language is, the very first portion of this.

16 And so if you take a look then at each  
17 commission payment first by Stewart and by Chicago,  
18 match it up then to the schedule, what you'll see then  
19 is that they were informed as to the amount and the due  
20 date of their commissions.

21 The commission checks themselves that the  
22 plaintiffs received, if they received a check -- now,  
23 the thing that I find interesting about this, a little  
24 bit, is that they did receive checks at the very  
25 beginning, and Mr. Wilkes continued to receive checks

306

1 all the way through. And you'll see that in Exhibit A.

2 There came a point when there was an electronic  
3 deposit for Mr. Wolfram, but that was for his  
4 preference, for his choice. And so he may not have  
5 seen, in essence, what the check stub was and this  
6 particular information, but he had the opportunity to  
7 see that information at the time it was being made. And  
8 at the very minimum, we know that all of those were  
9 given by Frances Butler directly to Mr. Wolfram so that  
10 he could confirm that he had been fully informed as to  
11 the amount and due dates of his payments.

12 We also know the evidence about when they were  
13 overpaid. We sent the letter explaining the  
14 overpayment. That's found at Exhibit W.

15 At that point in time there was an amended  
16 order to pay commission that fixed that. It articulated  
17 how that was going to be fixed. You go into the guts of  
18 Exhibit A at 95B, you'll see those amended orders. If  
19 you also take a look at Exhibit K, it's also  
20 memorialized in there.

21 In addition, we sent them a letter that  
22 informed them we had made our last payment. That's  
23 found at Exhibit GG. At that point in time -- and all  
24 of this information is being sent to both Mr. Wolfram  
25 and Mr. Wilkes.

307

1 It's Mr. Wolfram then that begins asking  
2 questions and he gets additional information. What  
3 additional information does he get? He gets a number of  
4 explanations in the form of letters from Mr. Stringer  
5 and Mr. Curtis that explain our interpretation, our  
6 understanding of how the Commission Agreement worked.

7 In addition, we went one step further, and we  
8 articulated to him at Exhibit 15 and said these are the  
9 lands we bought with that \$84 million, and we identify  
10 the specific locations of those.

11 And in addition, when Mr. Wolfram continued to  
12 ask questions, we authorized the title company to give  
13 him all the information dealing with the single-family  
14 land transactions. If you look at Exhibit II, you are  
15 going to see that instruction.

16 Now, at Exhibit JJ what you are going to see,  
17 also, is the inquiry that was made, Do we give him on  
18 the other transactions? Answer, No, only the  
19 single-family lands.

20 And then we go on and we talk about the deeds  
21 that underlie Pardee's acquisition of all the Purchase  
22 Property from CSI. You can see those at KK, at LL and  
23 at MM. And the most interesting thing I think about  
24 this particular exchange is this: What did the  
25 plaintiffs ask for? What did they ask for in

308

1 Exhibit 18, 19, 20 and 24? Those were the letters that  
2 were sent by Mr. Jimmerson asking for documentation.

3 And this is what he asked for, and the Court  
4 probably thought I was crazy as to a number of different  
5 witnesses that I asked this question, but I asked, On a  
6 deed can you find the seller, can you find the buyer,  
7 can you identify what the location of the lands are, can  
8 you identify the parcel maps, can you identify the  
9 parcel numbers, can you discern the price that is paid?  
10 Look at the stamp in the upper right-hand corner. Can  
11 you discern the escrow company? Can you discern the  
12 document numbers? You look at the letters that were  
13 sent that were requested of us, that's what they got  
14 back.

15 Equally important, Your Honor, Mr. Jimmerson  
16 stood here and told you that those letters asked for  
17 land use designations. That's what he told you. You  
18 scour those letters and you look for a request for land  
19 use designations and you don't find it anywhere.

20 Brian, can I get you to move forward? I'm  
21 hoping people are happy I'm turning a lot of these pages  
22 forward. Okay?

23 One of the things, too, is on this particular  
24 point, Your Honor, I wanted to interject here, it's a  
25 little bit outside these findings, but it responds to an

309

1 allegation that Mr. Jimmerson made in his closing  
2 remarks. He said that Mr. Lash testified at page 211 of  
3 his testimony that -- he said that Mr. Lash's testimony  
4 was that Wolfram and Wilkes were entitled to  
5 verification by having all of those land documents and  
6 land use designations and to be able to verify then  
7 these transactions.

8 I would direct the Court's attention then very  
9 specifically to that testimony. The question --

10 THE COURT: Which day was that? It was --

11 MS. LUNDVALL: The first day.

12 THE COURT: The first two weeks?

13 MS. LUNDVALL: That's right. The original  
14 first two weeks.

15 It is found on page 210, question by  
16 Mr. Jimmerson: Yes or no, was the provision of the  
17 second paragraph of the Commission Agreement, Exhibit 1,  
18 from Pardee's perspective, that Pardee would provide  
19 enough information so that Wilkes and Wolfram could --  
20 independent of taking your word for it -- confirm the  
21 accuracy of your representations?

22 Answer: Yes. We thought we did that.

23 Now, that's what his testimony was. When I  
24 asked him, What did you mean by you thought you did  
25 that? He said, Well, we gave them all of the orders to

310

1 pay commission. He identified all of the information  
2 that Pardee had given to them so that they could verify  
3 that Pardee was telling the truth. That's what Mr. Lash  
4 testified to, not something else.

5 And so if the Court has any questions  
6 concerning that, the Court does have the record that  
7 somebody has asked the court reporter then to  
8 transcribe.

9 THE COURT: The court reporters -- everything  
10 that everybody asked to have transcribed, I have it all.

11 MS. LUNDVALL: Thank you, Your Honor. And so  
12 the Court can be able to verify then the accuracy of the  
13 parties' --

14 THE COURT: I have it on my table.

15 MS. LUNDVALL: -- representations on this.

16 Turning your attention then to Finding No. 40,  
17 Finding No. 40 deals with the other land transactions.  
18 We described and the Court has heard testimony on that  
19 as we co-developed the Coyote Springs project, we began  
20 separate negotiations. Those separate negotiations had  
21 nothing to do with the plaintiffs' activities.

22 Pardee informed the plaintiffs, even before  
23 they asked, we told them we're engaging in these other  
24 transactions. We told them that there's multi-family  
25 transactions, commercial transactions, custom lot

311

1 transactions. We told them that. And the plaintiffs  
2 now acknowledge that they are not entitled to  
3 commissions on those other transactions.

4 Those other land designations include the golf  
5 course, commercial activity, custom lots, multi-family,  
6 and industrial. And Mr. Wolfram, in particular,

7 acknowledged that he was not entitled to commissions on  
8 those.

9 So I want to think about that in this context.  
10 Before this case began, we told the plaintiffs we were  
11 doing these other deals. We told them that they weren't  
12 entitled to commissions on those other deals. And they  
13 didn't believe us.

14 Now, as a result of this litigation, they've  
15 admitted from the witness stand they are not entitled to  
16 commissions on these other deals. So why would they be  
17 entitled to damages in any form to verify that Pardee  
18 was telling the truth? If you want to boil their case  
19 down to its bare essence, what they claim is that  
20 somehow they are entitled to damages for verifying that  
21 Pardee told the truth.

22 Equally, Your Honor, Pardee told the  
23 plaintiffs, We did not take down any Option Property.  
24 We did not engage in all the process and the procedures  
25 pursuant to paragraph 2. We, respectfully, submit we

312



1 have demonstrated we have not purchased any Option  
2 Property pursuant to paragraph 2 of the Option  
3 Agreement. And, therefore, we have proven that we were  
4 telling the plaintiffs the truth.

5 So, once again, my question is rhetorical, and  
6 rhetorical in this regard, how is it that the plaintiffs  
7 can claim an entitlement to damages for Pardee proving  
8 that it told them the truth before this litigation ever  
9 began?

10 What I want to do then is I'm going to try to  
11 very quickly go through these conclusions of law, and  
12 I'm going to do the level best I can to move as quickly  
13 as I can. The first conclusion of law deals with the  
14 essential elements for proving up a breach of contract.  
15 Now, I start with the breach of contract because that's  
16 what Mr. Wolfram and Mr. Wilkes said was the principal  
17 reason that they were bringing this case.

18 These are the four essential elements. I don't  
19 think there's any quarrel between the attorneys that  
20 these are the essential elements. Move forward.

21 Number one, we believe -- number two, we  
22 believe that the evidence proved that we did not commit  
23 a material breach of the Commission Agreement. We also  
24 believe that we have demonstrated, number three, that  
25 they did not suffer any damages.

313

1 Number four, now, the obligations between  
2 Pardee and the of plaintiffs are governed by the four  
3 corners of the Commission Agreement, which both sides  
4 have acknowledged. It's clear and unambiguous.

5 Number five, contracts are supposed to be  
6 construed in the written language and enforced as  
7 written. Number six, when a contract is clear,  
8 unambiguous and complete, the terms must be given their  
9 plain meaning and the contract must be enforced as  
10 written.

11 And concomitant to this, we didn't give the  
12 specific case citation, but I'm nearly positive the  
13 Court is familiar with this case law, the Court is not  
14 entitled to rewrite the parties' agreement. And,  
15 respectfully, given the demand that has been made by the  
16 plaintiffs, they are asking you to rewrite the parties'  
17 agreement. They are asking you to do something more  
18 than what the parties are contracted to each other.

19 Seven, we agree to pay commissions and provide  
20 information. Eight -- and if you keep going with me,  
21 Brian -- speaks to the plain language about payments  
22 under one and two. I've already given the Court our  
23 argument on that. Nine, only entitled to commissions on  
24 Option Property. We have not exercised any options to  
25 purchase Option Property. Finding No. 10, same argument

314

1 that I just made.

2 Finding No. 11, we paid in full and timely on  
3 the commissions on the \$84 million Purchase Property  
4 Price.

5 Finding 12, the plaintiffs acknowledge that  
6 their commissions were based upon the Purchase Property  
7 and not on the acreage. We've already argued that to  
8 the Court.

9 Finding 13, we argued that the Purchase  
10 Property price was \$84 million. 14, that that's what  
11 Pardee paid to CSI.

12 15 is that from the very beginning CSI and  
13 Pardee acknowledged that the specific boundaries of the  
14 Purchase Property and the Option Property may change for  
15 a variety of reasons. I went through all of those  
16 provisions, gave you the citations to the Option  
17 Agreement as to where the parties had included that.

18 And by provision then of those agreements to  
19 the plaintiffs, they too knew that those boundaries  
20 could change. We also heard unrefuted testimony as to  
21 what factors may impact those changing boundaries.

22 Finding 16, it is clear that those factors were  
23 out of CSI and Pardee's control concerning the changing  
24 of the boundaries. And as a result of those boundaries  
25 changing, so too did the potential boundaries for the

315

1 Option Property change. There's no dispute, I don't  
2 think, about that.

3 But the definitions of Option Property and the  
4 process by which that that Option Property was supposed  
5 to be taken down, that did not change. It is unrefuted  
6 that that did not change.

7 They've offered no evidence that CSI designated  
8 specific lands or that, in fact, we exercised any  
9 options for those lands.

10 17, Brian. This is starting to get a little  
11 redundant, but in drafting Court's proposed findings, I  
12 think sometimes they are a little bit redundant. We  
13 talk about paragraphs one and two. We've already argued  
14 that to the Court.

15 18, we talked about Option Property being  
16 pursuant to paragraph number 2. We've identified and  
17 we've articulated to the Court where you can find that  
18 multi-step process. That multi-step process would have  
19 resulted in a myriad of different written documents.  
20 Each and every one of those written documents would have  
21 been found in other third-party files. None of those  
22 documents were presented to this Court.

23 We brought the subpoenas. If you take a look  
24 at our exhibits, you'll see the subpoenas to the title  
25 companies, both to Chicago as well as Stewart. You are

316



1 going to see the subpoenas that went to CSI. We know  
2 that they subpoenaed these documents. We know that they  
3 had the opportunity to find them if they existed. They  
4 do not exist. They brought nothing to the Court's  
5 attention that memorializes the process and the  
6 procedure by which then if we would have purchased  
7 Option Property.

8 19, we also talked about the failure to provide  
9 information, and I'm going to try to go through this  
10 quickly because this is now, like I said, it's getting  
11 redundant.

12 20, Brian. This is simply a repeat then of the  
13 provision of the Commission Agreement. Respectfully, we  
14 believe that we have fulfilled all of our obligations  
15 under this particular provision.

16 22 speaks to paragraph two of the Option  
17 Agreement. Specifically it covers Pardee's right to  
18 purchase the Option Property.

19 Finding 23, Pardee has not purchased any Option  
20 Property. Pardee agrees with that. CSI agrees with  
21 that. There's no document that suggests otherwise. In  
22 essence, it is undisputed that Pardee has not purchased  
23 any Option Property to which that they would be entitled  
24 then to a commission.

25 Number 24, it was Pardee and the escrow

317

1 companies that kept the plaintiffs reasonably informed  
2 of the amount and due dates of their payments.

3 Number 25, they complain that they did not  
4 receive Amendments 1 through 8, but those amendments did  
5 not change or impact their commissions under (i) and  
6 (ii) of the Commission Agreement and nor did they

7 contain any option exercise notices. Each and every one  
8 of those amendments can be looked at and analyzed and  
9 the Court can confirm then that this is an accurate and  
10 true statement by taking a look at Exhibits 6 through  
11 13.

12 They did not change or alter the definitions  
13 contained within the Commission Agreement, and the  
14 plaintiffs did not complain -- what I'm referring to  
15 here -- I'm sorry. I lost my train of thought. It's  
16 getting late. And I'm going to be honest with you, my  
17 blood sugar starts to crash about this time of the day.  
18 So I'm going to push through this, and my apologies to  
19 everyone if I don't do as good a job as what I should.

20 They complained about not receiving the  
21 multi-family or the custom lot agreements, but they  
22 identified no entitlement to receipt of that  
23 information. That's what I meant there. We explained  
24 why it was that we did not give them that information.  
25 And, respectfully, we believe that that explanation was

318

1 reasonable and it was justified.

2 26, when they asked us, when they began  
3 questioning, we gave them information like maps, deeds,  
4 all of which were related to the Purchase Property  
5 acquisition.

6 The thing I think that the Court, hopefully,  
7 you might have a little fun with is learning some  
8 additional definitions. Mr. Wolfram kept saying, I  
9 needed a parcel map, I wanted a parcel map, a parcel  
10 map.

11 Well, Mr. Lash or Mr. Andrews identified what a  
12 parcel map is. And what is a parcel map? It's kept by  
13 the recorder's office and the assessor's office. How do  
14 we get our tax bill every year? If you own a home, you  
15 get a tax bill based upon information that is found in a  
16 parcel map that is recorded. Where do the APN numbers  
17 come from? From the recorder's office and the  
18 assessor's office. Why do they need this? Principally  
19 to tax us, so they get their property tax payments. All  
20 of that information is a matter of public record.

21 Turning your attention then to 27, this is the  
22 one that deals with the fact that how the plaintiffs now  
23 concede that, in fact, they are not entitled to any  
24 monies under the other transactions.

25 28, we told them how we didn't exercise any

319

1 options.

2 29, Mr. Stringer identified when we made the  
3 last of our payments, and we also pointed out in full  
4 that they've been paid.

5 30, we gave the Exhibit 15, which was the  
6 narrative of each Purchase Property acquisition

7 reference to the color maps. It had a breakdown of the  
8 amounts that were paid to CSI at each closing.

9 31, Pardee's obligation to inform the  
10 plaintiffs of any purchase if there was -- I think I  
11 have a typo here. But the point I'm trying to make here  
12 is this: If there was never any exercised options,  
13 there was never any purchase of Option Property, there  
14 was nothing we could give them in that regard. And that  
15 I guess is the point I'm trying to make in 31.

16 In sum, Your Honor, 32, we believe that we have  
17 demonstrated that there has not been a material breach  
18 of the Commission Agreement. And I think it's important  
19 then to take a look at what the case law requires. The  
20 case law requires a material breach. We believe that  
21 there's no breach whatsoever, let alone a material  
22 breach.

23 There's also an additional why where we  
24 believe, in fact, we're entitled to judgment on their  
25 breach of contract claim, and that is you don't have any

320

1 evidence before you that they've suffered damages  
2 because of a material breach of contract.

3 And let me explain what I mean to you by this.  
4 At paragraph 34, we gave the Court the case law that  
5 identifies that it is the party seeking to demonstrate  
6 breach of contract, and you have one of the essential  
7 elements is proving damages, and that burden falls upon  
8 the plaintiffs.

9 If you assume the truth of their theory, they  
10 had all of the information and the tools available to  
11 them to calculate under their own theory about Parcel 1  
12 was Purchase Property and Option Property exists outside  
13 of that. All of those tools were available and they  
14 could have done that calculation. They have not done  
15 that calculation and brought that evidence to the Court.

16 By their failure to do that, having all of the  
17 tools available to them, they have failed to demonstrate  
18 an essential element of their claim. They have failed  
19 to demonstrate damages and, therefore, respectfully,  
20 that's an additional reason as to why their breach of  
21 contract claim fails.

22 Now let me try to go quickly through some of  
23 these because I don't think we need to spend undue time  
24 on them. Let me take a very quick peek at 41. Brian,  
25 take me to 41, please.

321

1 We brought the Court's attention to the Highway  
2 Builders case and the Nevada Rebar case. So you do have  
3 the citation about -- and also at finding 42 we brought  
4 the Court the citation about how you cannot rewrite the  
5 parties' agreement. And the Court then has case law  
6 then to support that particular finding.

7 And, therefore, we submit that at 43, is that  
8 if you try to seek some type of a theory of recovery  
9 that goes beyond the four corners of the Commission  
10 Agreement, that they are not entitled to do so.

11 Let me try to highlight a couple of quick  
12 points under the breach of covenant of good faith and  
13 fair dealing claim, because I do believe it is important  
14 to understand the argument that I made to the Court  
15 before. It is based upon the case law. And that case  
16 law, under breach of the covenant of good faith and fair  
17 dealing or under the accounting, and the accounting  
18 order by the Court itself had identified that a special  
19 relationship, which was the argument that was advanced  
20 to the Court by the plaintiffs -- let me back up just a  
21 little bit.

22 We had moved for --

23 THE COURT: That was because they had  
24 information. Your client solely had the information to  
25 give them. Am I on the right page?

322

1 MS. LUNDVALL: Their argument was this, that  
2 there was a special relationship that existed between  
3 Pardee and the plaintiffs. And that special  
4 relationship then is what -- it's special term within  
5 the law.

6 THE COURT: It is. I'm aware of that.

7 MS. LUNDVALL: And it requires, in essence,  
8 then a finding by the Court. And if that special  
9 relationship, which is one of the essential elements of  
10 their claim for accounting --

11 THE COURT: And for --

12 MS. LUNDVALL: -- and for the breach of the  
13 covenant of good faith and fair dealing. And what we  
14 tried to do is to bring to the Court all of the legal  
15 foundation for this argument that I've just now tried to  
16 integrate into one.

17 Because this is an issue that arose all the way  
18 back when we were bringing to the Court's attention the  
19 Aluevich case. Aluevich was an attorney as far as she  
20 practiced up in Reno. She was a great gal, and she had  
21 an arrangement with Harrah's concerning a gift shop, and  
22 it was her argument that there was a covenant of good  
23 faith and fair dealing claim that she had against  
24 Harrah's. And because of the special relationship she  
25 had with Harrah's, it allowed her to recover damages

323

1 under that. It's an old, I think it's a 1970-something  
2 case, if my recollection serves me.

3 And our Nevada Supreme Court says no. Why?  
4 Because they were two sophisticated parties that were  
5 fully negotiating an agreement, and the result was not a  
6 contract of adhesion, similar to what you see in the

7 insurance context.

8 When all of us think about our insurance, do we  
9 negotiate anything with our insurance company?  
10 Particularly for health insurance now with Obamacare,  
11 are we ever going to get to negotiate anything? No.  
12 They're contracts of adhesion because we don't get to  
13 have input into the language of those contracts.

14 Our Nevada Supreme Court has been uniform, when  
15 you have contracting parties that come to the table with  
16 equal bargaining power and each party has the  
17 opportunity for input into the contract that is at  
18 issue, that it is not a contract of adhesion and,  
19 therefore, there is no special relationship between the  
20 parties.

21 And what do we have here? You have Pardee on  
22 one side negotiating with the plaintiffs, who are  
23 represented by Mr. Jimmerson, and we have different  
24 drafts, different reiterations, different revisions  
25 to the Commission Agreement. They had the opportunity

324

1 for input. That input is found in the Commission  
 2 Agreement.  
 3 Most particularly what we wanted the Court to  
 4 understand is they placed their faith, not in Pardee to  
 5 tell them what was going on, particularly under the  
 6 option portions of this, but placed their faith in the  
 7 escrow companies. And you are going to see then those  
 8 exhibits where the black lines occurred where they  
 9 inputted the escrow company protections into that  
 10 agreement, and it is still found within their Commission  
 11 Agreement, and that was input from the plaintiffs and  
 12 their attorney.  
 13 And you heard from both of them that they were  
 14 happy with their attorney. There's been no evidence to  
 15 suggest that they were not fully and properly and fairly  
 16 represented. Respectfully, Mr. --  
 17 THE COURT: I want to make sure I understand.  
 18 What you are arguing is to the reasonably informed as to  
 19 all matters relating to -- I should have it memorized --  
 20 as to the -- the reasonably informed that we're talking  
 21 about?  
 22 MS. LUNDVALL: It's here, Your Honor, at the  
 23 very bottom.  
 24 THE COURT: I know it's reasonably informed,  
 25 so -- as to all matters relating to commissions and

325

1 amounts --  
 2 MS. LUNDVALL: To the amount and --  
 3 THE COURT: Are you arguing to me that then the  
 4 escrow company had the responsibility to make sure under  
 5 this Commission Agreement that Mr. Wolfram and  
 6 Mr. Wilkes got that information? That's where they  
 7 placed their trust, not to Pardee? I'm trying to make  
 8 sure I'm getting where you are going.  
 9 MS. LUNDVALL: I think I understand where  
 10 the -- I don't want to confuse the Court, because we've  
 11 got two concepts here.  
 12 Number one, Pardee has a duty. Pardee  
 13 delegated that duty, we know, as far as with the amounts  
 14 and the due dates. All right?  
 15 THE COURT: They delegated it to escrow?  
 16 MS. LUNDVALL: To the escrow company.  
 17 THE COURT: Because they had -- okay.  
 18 MS. LUNDVALL: In addition, all the other  
 19 information that we gave to the plaintiffs.  
 20 THE COURT: Right.  
 21 MS. LUNDVALL: But the most important thing,  
 22 though, I'm trying to make is this point, is whether or  
 23 not that they placed special trust, special reliance on  
 24 Pardee.  
 25 THE COURT: And you are saying in negotiating

326

1 this contract -- that's where you are going?  
 2 MS. LUNDVALL: Yeah. In negotiating this  
 3 contract they demonstrated that they were not placing  
 4 their trust in Pardee to make sure that they got all the  
 5 information. They were placing their trust in the  
 6 escrow companies. And let me see if I can't --  
 7 because --  
 8 THE COURT: That's a new twist.  
 9 MS. LUNDVALL: To show the Court particularly  
 10 their black line --  
 11 THE COURT: I know we went through the black  
 12 line and it was explained to me in the testimony. The  
 13 black line was what was being inserted by Mr. Jimmerson.  
 14 I wasn't quite -- to be honest, I wasn't quite sure what  
 15 the significance necessarily was at the time. Now it's  
 16 being tied up. So I want to make sure -- I know it's  
 17 late.  
 18 MS. LUNDVALL: At Exhibit K you are going to  
 19 see the black line that the plaintiffs have put  
 20 together. Both Mr. Wolfram and Mr. Wilkes have  
 21 identified that those were their insertions.  
 22 THE COURT: I understood that from the  
 23 testimony. Okay.  
 24 MS. LUNDVALL: And at K, subsection 2, you are  
 25 going to see where they inserted the language as to how

327

1 the escrow shall be paid or the commission shall be paid  
 2 into escrow. All right? They also identified that the  
 3 commission shall be paid directly into escrow from the  
 4 proceeds of escrow.  
 5 So what I'm saying is this: They are the ones  
 6 that put these protections in there that the escrow  
 7 company was the party that was going to protect them in  
 8 the event that Pardee didn't do what it was supposed to  
 9 do. In other words --  
 10 THE COURT: But the escrow -- okay.  
 11 MS. LUNDVALL: The escrow company has an  
 12 independent duty to these guys.  
 13 THE COURT: I understand all that. But the  
 14 information that the escrow company gets comes from  
 15 Pardee.  
 16 MS. LUNDVALL: Precisely. Precisely,  
 17 Your Honor. And I'm following you exactly. And the  
 18 point being is that if Pardee had the escrow company do  
 19 a closing for Option Property, all of that is going  
 20 through escrow.  
 21 THE COURT: I follow you there, and we all know  
 22 everything that has to go with that.  
 23 MS. LUNDVALL: That's correct, Your Honor.  
 24 THE COURT: Get back to what you are arguing on  
 25 this special trust so I know where you are going with

328

1 that. I know it's late.  
2 MS. LUNDVALL: I'm going to go through these --  
3 THE COURT: How much longer?  
4 MS. LUNDVALL: I'm only going to be about ten  
5 more minutes, Your Honor.  
6 THE COURT: I don't want to cut you short. I'm  
7 just thinking if we have hours more, I have to be  
8 honest, I'm fading. It's very important to me that I  
9 hear your argument. But okay. I'm fine. I need a  
10 cookie. I get low blood sugar like Ms. Lundvall.  
11 MS. LUNDVALL: If you turn to page 55, it is a  
12 finding in the citation.  
13 THE COURT: Page 55, paragraph 55.  
14 MS. LUNDVALL: All right.  
15 THE COURT: Okay. I'm there.  
16 MS. LUNDVALL: So at 55 we start advising the  
17 Court how there needs to be some type of a special  
18 element of reliance or fiduciary duty to be able to  
19 establish the foundation for this special relationship.  
20 If I continue to go on --  
21 THE COURT: So I can read through your cases  
22 and follow it?  
23 MS. LUNDVALL: There we go.  
24 THE COURT: I'm more than willing to do all  
25 that.

329

1 THE COURT: At 55, 56, 57. And then we get to  
2 their claim for accounting.  
3 THE COURT: So that was all working with the  
4 breach of good faith and fair dealing. Okay.  
5 MS. LUNDVALL: That's correct. But there's a  
6 common denominator to their breach of covenant of good  
7 faith and fair dealing and their accounting claim.  
8 At Finding No. 63 we brought to the Court's  
9 attention from your order how that to prevail on a claim  
10 for an accounting, the plaintiffs must establish the  
11 existence of a special relationship.  
12 THE COURT: That came out of the order for  
13 the --  
14 MS. LUNDVALL: That came out of the order  
15 denying our motion for partial summary judgment. That's  
16 correct. So that was their burden of proof, to try to  
17 demonstrate that there was something special, legally  
18 special, about the relationship then between Pardee and  
19 the plaintiffs.  
20 And that's where, respectfully, Your Honor, you  
21 have no evidence before you whatsoever. The parties  
22 have explained each one of them was represented by  
23 counsel. Each one of them is a sophisticated  
24 contracting party. Each one of them had the opportunity  
25 and exercised the opportunity for input into the

330

1 Commission Agreement. The agreement itself discharges  
2 any fiduciary duty in the sense of, We're not partners,  
3 there's no joint venture between us, there's no  
4 employment relationship.  
5 THE COURT: Now I understand where you are  
6 going with that testimony. Okay.  
7 MS. LUNDVALL: All right. And so --  
8 THE COURT: I heard it. I just didn't get the  
9 hook-up. I do now. Okay.  
10 MS. LUNDVALL: And, respectfully, Your Honor,  
11 you've heard no evidence to suggest that there is  
12 something special, legally special, about the  
13 relationship.  
14 THE COURT: I know what that means. Okay.  
15 MS. LUNDVALL: We went through all of those  
16 findings and brought the Court all of that case law and  
17 you'll find that from 67 all the way through 77.  
18 THE COURT: Okay.  
19 MS. LUNDVALL: I'm not going to address as far  
20 as their issue concerning the attorneys' fees as special  
21 damages. We brought the Court our case law, what the  
22 findings have to be concerning that. And, respectfully,  
23 we submit that there's no evidence that would suggest  
24 that.  
25 And I go back to my argument that I made to

331

1 begin with and that being this: The only way that there  
2 are damages to which that they are entitled to is if  
3 they demonstrate that Pardee did something wrong.  
4 And what I submit to the Court is that they  
5 have two issues. They complained that we told them  
6 about these other transactions and that they weren't  
7 entitled to it. They now concede that they weren't  
8 entitled to any additional commissions. And, therefore,  
9 they have conceded that Pardee was telling them the  
10 truth.  
11 How is it that Pardee --  
12 THE COURT: So you are saying that for an  
13 accounting cause of action, that if getting the  
14 accounting, getting with the information they need, if  
15 they find out the other party is wrong, then they can  
16 get the money. But if they find out by getting all the  
17 information they didn't have before that they are right,  
18 they don't have any --  
19 MS. LUNDVALL: That's right.  
20 THE COURT: So they are at a huge risk. If  
21 they want the information and they don't know whether a  
22 party is right or wrong until they get the information,  
23 how else can they get it if it's not an accounting  
24 claim? I have to follow you a little bit better.  
25 MS. LUNDVALL: Let's go back to what the

332

1 parties contracted for.

2 THE COURT: Okay. I see where you are going.

3 Okay.

4 MS. LUNDVALL: So what I'm saying is what the  
5 parties contracted for, the information that we

6 contracted to give them was the notice --

7 THE COURT: Okay. That goes back to the breach  
8 of contract?

9 MS. LUNDVALL: That's right.

10 THE COURT: So you have to decide that in  
11 tandem?

12 MS. LUNDVALL: Exactly. We didn't make any  
13 other promises to give them any information. We didn't  
14 make any other promises that, We will provide you with  
15 this information. Absolutely nothing, Your Honor. Our  
16 obligation to give them information is informed by the  
17 four corners --

18 THE COURT: Of the document.

19 MS. LUNDVALL: -- of the document.

20 THE COURT: Can I ask you, in your position,  
21 that we all know the sentence, In addition, Pardee shall  
22 keep each of you reasonably informed as to all matters  
23 relating to the amount and due dates of your commission  
24 payments, your position is that's unambiguous? That  
25 reasonably informed as to all matters relating, your

333

1 interpretation is that's not ambiguous? That just means  
2 we have to give them the amounts and the due dates,  
3 period?

4 MS. LUNDVALL: All matters relating to the  
5 amounts and the due dates.

6 THE COURT: Okay.

7 MS. LUNDVALL: So then it gets to the Court's  
8 interpretation. What are all matters?

9 THE COURT: I understand what you are saying.

10 MS. LUNDVALL: Is it realistic to say we have  
11 to give them everything to confirm that we're telling  
12 the truth? I'm sorry, but I find that hard to imagine  
13 that a party like the plaintiffs can advocate in a case  
14 like this to say, All right, we admit we're not entitled  
15 to multi-family commissions, we are not entitled to  
16 commercial land transactions, the custom lots, we admit  
17 that, but you guys didn't give us the information about  
18 that.

19 Where is it that we promised to give them  
20 information about that? We didn't promise to give them  
21 that information. And so, therefore, how is it that  
22 when we tell them the truth, you punish a party like  
23 Pardee for telling the truth? Because that's what's  
24 going to happen. If, in fact, you find that they were  
25 entitled to this other information, even though we

334

1 contractually did not promise to give that to them, to  
2 confirm that we were telling the truth, you are  
3 punishing a party, a contracting party, for telling the  
4 truth.

5 I think the balance of our findings,

6 Your Honor --

7 THE COURT: A lot is case law I'm going to have  
8 to go through.

9 MS. LUNDVALL: -- are self-explanatory.

10 And what I'd like to do is to address the  
11 question that Mr. Wolfram posed to me when he was on the  
12 witness stand and that I would have liked very much to  
13 address when he was testifying, but as the Court well  
14 knows, I get to ask questions. I don't get the  
15 opportunity to give answers.

16 THE COURT: You don't testify.

17 MS. LUNDVALL: That's correct.

18 THE COURT: I understand.

19 MS. LUNDVALL: Closing argument is that.

20 Mr. Wolfram testified about all of the  
21 information that he had received and how all of that  
22 information fell within the four corners of what his  
23 attorney had asked for. He wanted to know the seller.  
24 He wanted to know the buyer. He wanted to know the date  
25 of the land transactions. He wanted to know the parcel

335

1 maps. He wanted to know the legal descriptions, how  
2 much was paid. All of that information was found in the  
3 deeds. All of that information was able to be given to  
4 him.

5 And what he said to me, he said, Why did I have  
6 to play detective?

7 The answer to that question, Your Honor, is  
8 directly related to the theme that I just advanced. He  
9 played detective to confirm that Pardee was telling the  
10 truth. He disbelieved us when we told him he wasn't  
11 entitled to commissions on the other transactions. He  
12 disbelieved us when we told him we had not taken down  
13 any Option Property. He played detective to confirm  
14 that we told him the truth.

15 And, therefore, respectfully, Your Honor, a  
16 party like Pardee cannot be punished or be found liable  
17 for either breach of contract, breach of the covenant of  
18 good faith and fair dealing, or an accounting when they  
19 have told the opposite contracting party the truth, and  
20 that there has been no evidence brought before this  
21 Court's attention that, in fact, that we lied to him,  
22 that we misled him, that we did not give him the  
23 information that we contracted to give to him or to  
24 Mr. Wilkes.

25 And, therefore, we respectfully submit,

336

1 Your Honor, that the money damages claim that the  
2 plaintiffs are asking for has not been demonstrated.  
3 The accounting claim has not been demonstrated. And in  
4 addition, this order that they have asked the Court to  
5 do demands that the Court rewrite the parties'  
6 agreement, and the Court is prohibited from being able  
7 to rewrite the parties' agreement.

8 There are two things that I would like to be  
9 able to close with at this point in time. And that is  
10 that, first and foremost, I am going to acknowledge that  
11 I think that it is tough to be in your position,  
12 especially after being a practicing attorney. You know  
13 the effort and the energy that goes into production of a  
14 case. And, therefore, it makes it hard to say somebody  
15 wins and somebody loses.

16 THE COURT: It does, but that's the system.

17 MS. LUNDVALL: That's the system.

18 THE COURT: That's what the law is.

19 MS. LUNDVALL: And what the plaintiffs have, I  
20 want to say suggested to the Court is they've been  
21 trying to kind of give a soft way to the Court by  
22 suggesting, All we want is information. But that  
23 information verifies that what we were doing was telling  
24 them the truth in the first place.

25 And, therefore, the soft way, which appears to

337

1 be kind of, you know, a soft way of not saying, I want  
2 big money damages or something like, but there are  
3 consequences that flow from those decisions. And the  
4 consequences are not consequences, respectfully, that we  
5 contend that Pardee should be charged with.

6 The last thing I would like to say to the Court  
7 and that is this, thank you.

8 THE COURT: You're welcome. It's been a  
9 pleasure to have all counsel here.

10 MS. LUNDVALL: Also to be able to say thank you  
11 to your staff, to your bailiff, thank you to opposing  
12 counsel for their worthy adversaries, but most of all  
13 thank you for your time.

14 THE COURT: It has been a pleasure and I do  
15 mean that.

16 MR. J.J. JIMMERSON: Thank you, Judge. May it  
17 please the court, Judge, out of respect for our son who  
18 has worked so hard on this case, I would like him to  
19 give our reply closing argument and some compelling  
20 reasons to find in favor of the plaintiffs.

21 MR. J.M. JIMMERSON: Your Honor, I will do my  
22 best to be brief.

23 Before I begin my formal remarks, I did want to  
24 address the RES 5, R-5 matter. If the Court would look  
25 to both plaintiffs' and defendant's exhibits,

338

1 specifically Plaintiffs' 39 and 41 and Defendant's  
2 Exhibit XX, you'll find a litany of references to how  
3 that parcel is zoned.

4 Using their own exhibit, their own piece of  
5 paper that they blew up to you, okay, where they said,  
6 Here's R-5 under multi-family, look up here, it says  
7 R-2. The same thing for the black-and-white version,  
8 the same thing for where it says zone R-2 on the  
9 application.

10 MS. LUNDVALL: Your Honor, that was not the  
11 argument that they made. The argument that they made  
12 was that the map --

13 MR. J.M. JIMMERSON: Am I allowed --

14 MS. LUNDVALL: -- originally depicted R-5  
15 designation, and we confirmed the designation as  
16 single-family residential through the tentative maps.

17 And what I pointed out to the Court is that it  
18 had never been designated as single-family land, that  
19 R-5 is a multi-family designation, and it came from an  
20 agreement that dealt with multi-family property being  
21 acquired.

22 THE COURT: I do understand the evidence.  
23 So -- I understand.

24 MR. J.J. JIMMERSON: I understand that,  
25 Your Honor, but, respectfully, I would like to be able

339

1 to give the statement to you without being interrupted  
2 constantly.

3 On that issue there was no evidence about  
4 anything being zoned R-5. There isn't a piece of paper.  
5 There's isn't witness testimony. The reason you got R-5  
6 is because it's RES 5. It is the fifth residential

7 portion of the multi-family deal. That's why we have  
8 R-5.

9 Had it been R-1 or RES 1, you would have gotten  
10 R-1. Had it been RES 2, it would have been R-2. And it  
11 was stated one time during the closing and that was it.  
12 Again, Exhibit 39 refers to it as R-2 and Exhibit 41  
13 also R-2.

14 Now on to the balance of the closing. I think  
15 it's fair to begin with how we got here, how we began  
16 with the allegations of breach for failure to give  
17 information, the contract and the covenant of good faith  
18 and fair dealing, and the need for a claim for an  
19 accounting.

20 Hindsight is always 20/20. And after months  
21 and years of discovery and argument and taking a closer  
22 look at everything, it's a lot easier to say all the  
23 information was out there.

24 First, let's just assume that the information  
25 Jim Wolfram had was the same as Walt Wilkes had, which

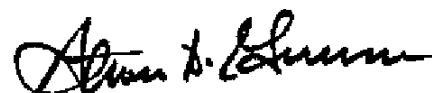
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# Exhibit 7

# Exhibit 7





CLERK OF THE COURT

**SUMM**  
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JAMES J. JIMMERSON, ESQ.  
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jjj@jimmersonhansen.com  
415 So. Sixth St., Ste. 100  
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Attorney for Plaintiffs  
James Wolfram and Walt Wilkes

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAMES WOLFRAM,  
WALT WILKES,

vs. Plaintiffs,

CASE NO.: A-10-632338-C  
DOCKET NO.: XXIII

PARDEE HOMES OF NEVADA,  
Defendant.

**AMENDED SUMMONS - CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ  
THE INFORMATION BELOW:**

PARDEE HOMES OF NEVADA  
c/o NATIONAL REGISTERED AGENTS, INC. OF NEVADA  
1000 East William Street - #204  
Carson City, NV 89701

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against  
you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is  
served on you, exclusive of the day of service, you must do the following:
  - (a) File with the Clerk of the Court, whose address is shown below, a  
formal written response to the Complaint in accordance with the rules of  
the Court, with the appropriate filing fee.
  - (b) Serve a copy of your response upon the attorney whose name and  
address is shown below.

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2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of any attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:  
JIMMERSON HANSEN, P.C.  
  
By J.J.J.  
JAMES J. JIMMERSON, ESQ.  
Nevada Bar No. 000264  
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JAMES WOLFRAM and WALT WILKES

STEVEN D. GRIERSON  
CLERK OF COURT

By: KADIRA BE  
Deputy Clerk  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155



AFFIDAVIT OF SERVICE

STATE OF NEVADA )  
 ) SS  
COUNTY OF CLARK )

David M. Briggs, being duly sworn, says: that at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received one - copy(ies) of the <sup>Amended</sup> Summons and <sup>Amended</sup> Complaint,                      on the 20th day of January, 2011, and served the same on the 9th day of February, 2011

                     Delivering and leaving a copy with Defendant                                      at that address of                                     .

                     Serving the Defendant                                      by personally delivering and leaving a copy with                                     , a person of suitable age and discretion residing at the Defendant's usual place of abode located at                                     .

                     Serving the Defendant Pardee Homes of Nevada by personally delivering and leaving a copy at 1000 E. Williams St., #204, Carson City, Nevada

(a) with                                      as                                     , an agent lawfully designated by statute to accept service of process;

(b) with Brianne Jibben, pursuant to NRS 14.010 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation file with the Secretary of State

                     Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid:

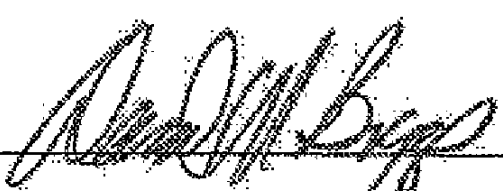
                     Ordinary mail  
                     Certified mail, return receipt requested

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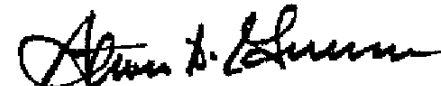
\_\_\_\_ Registered mail, return receipt requested addressed to  
Defendant \_\_\_\_\_ at Defendant's last  
known address of which is \_\_\_\_\_  
\_\_\_\_\_.

I declare under penalty of perjury under the law of the State of Nevada that the  
foregoing is true and correct.

EXECUTED this 9th day of February, 2011.

  
\_\_\_\_\_  
Signature of person making service

Corporate Intelligence Int'l  
707 S. 10<sup>th</sup> St.  
Las Vegas, NV 89101  
ST Lic# 595-595A

  
CLERK OF THE COURT

1 **COMP**  
2 JIMMERSON HANSEN, P.C.  
3 JAMES J. JIMMERSON, ESQ.  
4 Nevada Bar No. 000264  
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9 Attorney for Plaintiffs  
10 James Wolfram and Walt Wilkes

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 JAMES WOLFRAM,  
12 WALT WILKES,

13 Plaintiffs,  
14 vs.

15 PARDEE HOMES OF NEVADA,  
16 Defendant.

CASE NO.: A-10-632338-C  
DOCKET NO.: XXIII

AMENDED COMPLAINT

17 Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their  
18 undersigned counsel, James J. Jimmerson, Esq. of the law firm of Jimmerson Hansen, for  
19 their Complaint states as follows:

GENERAL ALLEGATIONS

20 1. At all times relevant hereto, Plaintiffs James Wolfram and Walt Wilkes are  
21 individuals who have resided in Clark County, Nevada.

22 2. That Plaintiff Wolfram has been assigned all of Award Realty's rights, title  
23 and interest in that certain Commission Letter dated September 1, 2004, and he is the real  
24 party in interest in this case.

25 3. That Plaintiff Wilkes has been assigned all General Realty's rights, title and  
26 interest in that certain Commission Letter dated September 1, 2004, and he is the real  
27 party in interest in this case.

28 4. At all times relevant hereto, Defendant Pardee Homes of Nevada ("Pardee")  
was a corporation registered in the state of Nevada.

1           5.     Plaintiffs predecessors in interest, Award Realty and General Realty and  
2 Plaintiffs and Defendant have a financial relationship. Plaintiffs were real estate brokers,  
3 dealing in real estate owned by Coyote Springs Investment LLC and being purchased by  
4 Defendant. The relationship between Coyote Springs Investment LLC and Defendant was  
5 governed by a certain Option Agreement for the Purchase of Real Property and Joint  
6 Escrow Instructions, dated in May of 2004 and later amended and restated on March 28,  
7 2005 ("Option Agreement"). Plaintiffs and Defendant entered into an agreement entitled  
8 "Commission Letter" dated September 1, 2004, which related to the Option  
9 Agreement and governed the payment of commissions from Defendant to Plaintiffs for real  
10 estate sold under the Option Agreement. For easy reference, Award Realty and General  
11 Realty and Plaintiffs, are concurrently referred to as "Plaintiffs" herein.

12           6.     Pursuant to the Commission Letter, Plaintiffs were to be paid a commission  
13 for all real property sold under the Option Agreement.

14           7.     Pursuant to the Commission Letter, Plaintiffs were to be fully informed of all  
15 sales and purchases of real property governed by the Option Agreement. Specifically, the  
16 Commission Letter stated:

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

23           8.     On or about April 23, 2009, Plaintiffs sent a letter to Defendant requesting  
24 documents, which detail the purchases and sales of certain real property for which  
25 Plaintiffs believe are part of the property outlined in the Option Agreement and, therefore,  
26 property for which they are entitled to receive a commission. A parcel map was also  
27 requested to identify which properties had been sold.

28           9.     Defendant replied to Plaintiff's April 23, 2009, letter with a letter dated July  
10, 2009. The July 10 letter failed to provide the documents requested by the Plaintiffs.

1           10.     Plaintiffs once again requested the documents from the Defendant in a letter  
2     dated August 26, 2009. In that letter, Plaintiffs alleged that failure to deliver the requested  
3     documents constituted a material breach of the Commission Letter.

4           11.     Defendant, after conversations with Plaintiffs, sent a two-page letter dated  
5     November 24, 2009, with four attachments: 2 maps, a spreadsheet, and a map legend.  
6     The letter attempted to explain the recent purchases or "takedowns" of real property by  
7     Pardee.

8           12.     Plaintiffs relied upon Defendant's representations made in the November 24,  
9     2009 letter as being truthful and accurate.

10          13.     Upon further inquiry, however, Plaintiffs have discovered that the  
11     representations made by the Defendant in the November 24, 2009, letter were inaccurate  
12     or untruthful. In response to their concerns, Plaintiffs sent another letter dated May 17,  
13     2010 to Defendants, asking for additional information and further documentation of all  
14     properties purchased by Defendant and sold by Coyote Springs Investment LLC. In that  
15     letter, Plaintiffs alleged that the representations made in the November 24, 2009, letter  
16     were believed to be inaccurate or untruthful after the Plaintiffs investigated the property  
17     transactions and records in the Clark County Recorder's Office and Clark County  
18     Assessor's Office. Plaintiffs further asked Defendant why it had instructed Francis Butler  
19     of Chicago Title not to release closing escrow documents regarding purchase of properties  
20     from Coyote Springs.

21          14.     Defendant responded to the May 17, 2010, letter with a letter dated June 14,  
22     2010. In that letter, Defendant denied breaching the covenants contained in the  
23     Commission Letter, but did not reply or address any particular concern, including, but not  
24     limited to: the discrepancy between the representations made by Defendant in the  
25     November 24, 2009, letter and information and records found in the Clark County  
26     Recorder's Office and the Clark County Assessor's Office, the request as to why closing  
27     escrow documents were being withheld, and the request for all relevant closing escrow  
28     documents.



15. To date there has been no further documentation produced by Defendant for the Plaintiffs regarding their concerns about the sales and purchases of real property by Defendant from Coyote Springs Investment, LLC.

## FIRST CLAIM FOR RELIEF

(Accounting)

16. Plaintiffs incorporate each of the allegations contained within paragraphs 1 through 15 above.

17. Plaintiffs have requested documents promised to them by Defendant in the Commission Letter and have not received them. Specifically, they have requested: the name of the seller, the buyer, the parcel numbers, the amount of acres sold, the purchase price, the commission payments schedule and amount, Title company contact information, and Escrow number(s), copy of close of escrow documents, and comprehensive maps specifically depicting this property sold and would, with parcel number specifically identified.

18. Plaintiffs are entitled to an accounting and copies of the documents and maps for all transfers of real property governed by the Option Agreement.

19. As a result of this action, Plaintiffs have been forced to bring this matter before the Court. Plaintiff has been damaged in a sum in excess of \$10,000.00.

20. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs.

## SECOND CLAIM FOR RELIEF

**(Breach of Contract)**

21. Plaintiffs incorporate each of the allegations contained within paragraphs 1 through 20 above as though said paragraphs are fully stated herein.

22. Plaintiffs have requested documents promised to them by the Defendant in the Commission Letter and have not received them.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No.: 72371**

Electronically Filed  
~~Feb 28 2018~~ 02:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

---

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

---

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

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**JOINT APPENDIX – VOLUME 80 OF 88**

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Attorneys for Appellant

**Chronological Index to Joint Appendix**

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>filed under seal</b>	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 – <b>sections filed under seal</b>	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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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



<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>filed under seal</b>	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 – <b>filed under seal</b>	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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/23/2013	Trial Exhibit J – <b>filed under seal</b>	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 – <b>filed under seal</b>	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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>filed under seal</b>	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – <b>filed under seal</b>	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – <b>filed under seal</b>	27	JA004311- JA004312

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/23/2013	Trial Exhibit 9 – <b>filed under seal</b>	27	JA004313- JA004319
10/23/2013	Trial Exhibit 10 – <b>filed under seal</b>	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – <b>filed under seal</b>	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – <b>filed under seal</b>	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – <b>filed under seal</b>	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 – <b>filed under seal</b>	32-33	JA004848- JA005227

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>filed under seal</b>	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 – <b>filed under seal</b>	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Transcript re Trial – <b>filed under seal</b>	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 – <b>section filed under seal</b>	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



<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>sections filed under seal</b>	54-56	JA008395- JA008922
06/30/2015	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	57-58	JA008923- JA009109

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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



<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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**

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>filed under seal</b>	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 – <b>sections filed under seal</b>	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



<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>section filed under seal</b>	48	JA007411-JA007456



<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>sections filed under seal</b>	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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/24/2013	Transcript re Trial	29-30	JA004463- JA004790
10/28/2013	Transcript re Trial – <b>filed under seal</b>	32-33	JA004848- JA005227
10/29/2013	Transcript re Trial – <b>filed under seal</b>	35	JA005264- JA005493
10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
12/09/2013	Transcript re Trial – <b>filed under seal</b>	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530
12/12/2013	Transcript re Trial – <b>filed under seal</b>	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 – <b>filed under seal</b>	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 – <b>filed under seal</b>	23	JA003632- JA003634



<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>filed under seal</b>	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 – <b>filed under seal</b>	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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 – <b>filed under seal</b>	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – <b>filed under seal</b>	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – <b>filed under seal</b>	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – <b>filed under seal</b>	28	JA004361- JA004453
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
10/23/2013	Trial Exhibit 6 – <b>filed under seal</b>	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – <b>filed under seal</b>	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – <b>filed under seal</b>	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – <b>filed under seal</b>	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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
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 28<sup>th</sup> day of February, 2018.

McDONALD CARANO LLP

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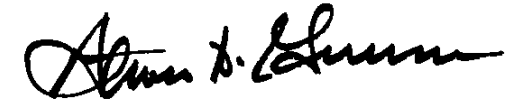
Attorneys for Appellant

## **CERTIFICATE OF SERVICE**

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

/s/ Beau Nelson

An Employee of McDonald Carano LLP



CLERK OF THE COURT

1 OPP

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14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 vs.

22 PARDEE HOMES OF NEVADA,

23 Defendant.

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

PLAINTIFFS' OPPOSITION TO  
PARDEE'S MOTION FOR ATTORNEY'S  
FEES AND COSTS

24 COMES NOW Plaintiffs JAMES WOLFRAM and ANGELA L. LIMBOCKER-  
25 WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES  
26 LIVING TRUST (hereinafter collectively "Plaintiffs"), by and through their counsel of  
27 record, JAMES J. JIMMERSON, ESQ. and MICHAEL C. FLAXMAN, ESQ. of the  
28 JIMMERSON LAW FIRM, P.C. hereby submit their Opposition to Defendant's, Pardee  
Homes of Nevada (hereinafter "Pardee"), Motion for Attorney's Fees and Costs. The  
basis for the Opposition is that the Defendant's Motion is filed without legal or factual  
basis, is devoid of merit, it distorts and twists the Court's Findings of Fact, Conclusions  
of Law, and Order filed June 15, 2014, and misrepresents the Court's Findings and  
Orders and final Judgment of May 16, 2016 in favor of Pardee.



1        This Opposition is based on the pleadings and papers on file, the attached  
2 Affidavit of James J. Jimmerson, Esq., attached hereto as **Exhibit 1**, the Memorandum  
3 of Points and Authorities attached hereto and arguments of counsel at the hearing of this  
4 Motion.

5                DATED this 21 day of June, 2016.

6                                Respectfully submitted by:

7                                THE JIMMERSON LAW FIRM, P.C.

8  
9                                By: 

10                                JAMES J. JIMMERSON, ESQ.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND STATEMENT OF FACTS**

Defendant Pardee writes in its Motion, "The significant issue in this case during trial was always Plaintiffs' claim to lost future commissions under the Commission Agreement." (Mot. at 17.) When did anyone, Plaintiff or Defendant, raise a claim for \$1.8 million of lost future commissions during trial? When did anyone, Plaintiffs or Defendant, request a Finding or Judgment of \$1.8 million? When was Plaintiffs' purported claim of \$1.8 million a "significant issue" for which defendant's counsel claim "90%" of Defendant Pardee's attorney's fees come from? As this Court is well aware, this case was never about lost commissions but was always about getting information. Now that Plaintiffs have been found to be entitled to a remedy, and awarded \$141,500.00 in damages from Defendant Pardee's breach of contract and breach of implied covenant of good faith and fair dealing entitling Plaintiffs to an accounting and to money damages in the sum of \$141,500.00, a year later, Defendant Pardee is attempting to rewrite history and characterize this case as one about dollars instead of documents.

This type of gamesmanship is par for the course for Pardee and can only be expected from a party that has maintained a "win-at-all-cost" mindset throughout all of the extensive post-trial motion practice. The tactics employed by Pardee are not subtle and the Court is well aware of the fact that Pardee has attempted to circumvent this Court's prior rulings in the hopes of securing a Judgment based on purported "facts" and "findings" that are nowhere to be found in the record. As is enumerated in this Court's May 16, 2016 Judgment, attached hereto as **Exhibit 2**, the Plaintiffs prevailed on each and every claim for relief brought forth in their original Complaints and in their subsequent two Amended Complaints. This Court is well aware of the procedural history leading up to and surrounding the above-entitled case. However, in hopes of putting this matter to rest and silencing Pardee's childish antics once and for all, a reiteration of the crux of the case and the relief sought by Plaintiffs needs to be, unfortunately, made crystal clear.

1 As this court is well aware, on December 29, 2010, Plaintiffs filed their Complaint  
2 seeking an accounting, breach of contract and breach of covenant of good faith and fair  
3 dealing against Pardee for Pardee's failure to keep Plaintiffs reasonably informed. The  
4 Plaintiffs were clear to state, from the outset of the case, that it did not know with certainty  
5 whether any additional commissions were due and owing to them. To that end, Plaintiffs  
6 never claimed, in any pleading or motion or opposition and or at trial, that they were  
7 entitled to \$1,800,000.00 in damages for "lost future commissions." The Court can read  
8 its own Findings of Facts, Conclusions of Law and Orders to know that Plaintiffs never  
9 made such a claim and Pardee most certainly did not secure a "Judgment" in its favor  
10 and against Plaintiffs for such a fabricated claim now being made by them. These three  
11 (3) claims remained the same throughout the litigation, and the court found in favor of  
12 Plaintiffs and against Pardee on all three claims. See the Courts' Findings of Fact,  
13 Conclusions of Law, and Orders at 17:23-27 and 18:1-9 dated June 25, 2014, attached  
14 hereto as **Exhibit 3**.

15 The litigation of this matter was necessitated by Pardee's breach of the  
16 Commission Agreement, wherein Pardee was obligated to keep Plaintiffs reasonably  
17 informed of any potential commissions which may have been owing to Plaintiffs pursuant  
18 to the agreement. Prior to the trial in the instant matter, which commenced on or about  
19 October 23, 2013, on April 29, 2013, Plaintiffs presented Defendant with an Offer of  
20 Judgment of \$149,000.00, inclusive of attorney's fees and interest incurred to the date  
21 of May 10, 2013, (when the Offer of Judgment expired) and exclusive of costs incurred.  
22 See Plaintiffs' Offer of Judgment, dated April 29, 2013, attached hereto as **Exhibit 4**.  
23 After being served with the Offer of Judgment on April 29, 2013, Pardee declined the  
24 offer which expired on May 10, 2013. Thereafter, the parties proceeded to trial, at which  
25 time Plaintiffs were awarded \$135,500.00 for attorney's fees and \$6,000.00 in  
26 compensatory damages, for a total judgment of \$141,500.00 plus legal interest as  
27  
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1 authorized under NRS 17.130 and NRS 99.040. To date, Pardee has failed to pay to  
2 satisfy the final Judgment against it.

3 To make matters even worse, Pardee, over the last year, has attempted to use  
4 this Court to avoid having to pay Plaintiffs the monies due and owing to them. Following  
5 extensive motion practice, this Court held a hearing on January 15, 2016, at which time  
6 the Court made the determination that Pardee's "Judgment" of June 25, 2015 failed to  
7 comport with any of the Court's prior rulings or findings. See Transcript from January 15,  
8 2016 Hearing at 115:19-116:25, attached hereto as **Exhibit 5**. By doing so, the Court  
9 put Pardee on notice that any statement along the lines of "Pardee has prevailed on a  
10 claim for relief of \$1.8 million" was without basis and, in it of itself, meritless.

11 Nevertheless, Pardee has filed the instant Motion, averring that, based upon a  
12 fabricated claim that was never served and/or tried, and was never found to be true by  
13 this Court in its Findings of Facts, Conclusions of Law and Order, they were the  
14 "prevailing party." While Pardee claims that they prevailed on the "central issue" of the  
15 litigation, which it characterizes as a claim for \$1.8 million, such a statement cannot be  
16 further away from the truth. As is seen by Plaintiffs' Offer of Judgment, the scope of the  
17 case was not the loss of future commissions owed to Plaintiffs but, instead, the failure to  
18 provide *information* that was withheld from Plaintiffs by Pardee. Therefore, because  
19 Plaintiffs prevailed on each claim in the Court's May 16, 2016 final Judgment and, thus,  
20 were victorious on the true central claims of the dispute being the lack of information  
21 provided to Plaintiffs, they must be deemed the prevailing party, entitled to attorney's  
22 fees pursuant to NRS 17.115 and NRCP 68.

## 23 **II. LEGAL ARGUMENT**

24 Pardee's Motion for Attorney's Fees and Costs should be denied as they are not  
25 entitled to any of their fees as a matter of law. A party prevails if it succeeds on the  
26 "significant issue in the litigation." *Moritz v. Hoyt Enterprises, Inc.* 604 So. 2d 807, 810  
27 (Fla. 1992). Moreover, a plaintiff may be considered the prevailing party for attorney's  
28

1 fee purposes if it succeeds on any significant issue in litigation which achieves some of  
2 the benefit it sought in bringing the suit. See *Hornwood v. Smith's Food King No. 1*, 105  
3 Nev. 188, 192, 772 P.2d 1284, 1287 (1989); see also *Women's Federal S & L Ass'n v.*  
4 *Nevada Nat. Bank*, 623 F.Supp. 429, 470 (D.Nev. 1985); see also *Valley Electric*  
5 *Association v. Overfield*, 106 P. 3d 1198, 121 Nev. 7 (2005) (stating a party can prevail  
6 under NRS 18.010 "if it succeeds on any significant issue in litigation which achieves  
7 some of the benefit it sought in bringing suit.").

8 Furthermore, the Court in *Valley Electric Association* ruled that "[t]he judgment  
9 must be monetary in nature, in order for a party be a "prevailing party" under the general  
10 attorney fee statute." *Id.* See also *Richard & Sheila J. McKnight 2000 Family Trust v.*  
11 *Barkett*, No. 2:10-cv-01617, 2011 U.S. Dist. LEXIS 141601, at \*16 (D. Nev. Dec. 5, 2011)  
12 ("Plaintiffs have prevailed, because they obtained a ruling in this case that not only  
13 awards them the monetary relief they sought, but also precludes Defendants' claims." ).  
14 Additionally, "[t]o be a prevailing party entitled to recover attorney fees and costs, a party  
15 need not succeed on every issue." See *Las Vegas Metropolitan Police Department v.*  
16 *Blackjack Bonding, Inc.*, 343 P.3d 608, 131 Nev. Adv. Op. 10 (2015); see also *Hensley*  
17 *v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that  
18 "a plaintiff [can be] deemed 'prevailing' even though he succeeded on only some of his  
19 claims for relief." ).

20 **A. Pardee Did Not Succeed on Any Significant Issue**

21 It strains credulity to argue that this case was first and foremost about non-  
22 payment of unpaid, hypothetical future commissions. An examination of the papers and  
23 pleadings in this case conclusively establishes that this case was about Pardee's failure  
24 to keep Plaintiffs informed, not the failure to pay unpaid, hypothetical future commissions.  
25 In every iteration of the Complaint, Plaintiffs expressly took issue with the non-disclosure  
26 of information; conversely, Plaintiffs never expressly alleged non-payment of  
27 commissions. Further, in Plaintiffs Opposition to Defendants' Motion for Summary  
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1 Judgment, from the beginning of this case, also through every deposition, through Motion  
2 practice, and from the beginning of trial on October 23, 2013, through its conclusion on  
3 December 13, 2013, this case was about Pardee's failure to keep the Plaintiff reasonably  
4 informed, and the damages incurred accordingly. Just before trial began, Plaintiffs  
5 summarized the nature of this action, stating:

6 The Commission Agreement requires Pardee to do two things: first, pay  
7 Plaintiffs a commission for Pardee's purchase of property under the Option  
8 Agreement; and second, keep Plaintiffs reasonably informed as to all  
9 matters related to the commission payments and to specifically notify  
10 Plaintiffs when Pardee buys any "Option Property" as defined in the Option  
11 Agreement. **It is the latter duty-the requirement to keep Plaintiffs**  
12 **reasonably informed as to matters related to the commission and, in**  
13 **particular, to provide Plaintiffs with copies of Option Notices when**  
14 **Pardee acquires Option Property from CSI-that Pardee has shirked,**  
15 **compelling Plaintiffs' action.**

16 \*\*\*

17 After over two and half years of attempts to get records from Pardee, and  
18 listening to the repeated refrain from Pardee representatives that Option  
19 Property had not been purchased, Plaintiffs filed suit against Pardee  
20 alleging that (1) Pardee breached its contract with Plaintiffs by failing to  
21 keep them reasonably informed and/or failing to provide Plaintiffs with  
22 notices of the purchase of Option Property; (2) Pardee breached the implied  
23 covenant of good faith and fair dealing in consistently giving Plaintiffs the  
24 run-around whenever the Plaintiffs asked for information they are entitled to  
25 under the Commission Agreement; and (3) Pardee owes Plaintiffs a duty to  
26 account to them with information regarding the transactions between  
27 Pardee and CSI pursuant to the Option Agreement.

28 Plaintiffs' Opposition to Defendants' Motion for Summary Judgment filed July 22, 2013,  
at 2-3 (*emphasis added*).

The Court will recall the substantial motion practice prior to trial. In addition to the  
Defendant's filed summary judgment motion discussed above, properly denied by the  
Court, the Court reviewed substantial briefing on the availability of attorney's fees as  
damages, and whether an accounting was a cause of action or just a remedy. Indeed,  
both of these issues required supplemental briefing from the parties and neither involved  
claims for unpaid commissions. These hotly contested issues reflect the true nature of

1 the case—that it centered on Pardee’s failure to appropriately inform Plaintiffs of its  
2 actions and purchase of land at Coyote Springs.

3 Notwithstanding the foregoing, even if the Court were to consider whether this  
4 case was primarily about unpaid commissions, which it should not, the Court should  
5 conclude that Plaintiffs never argued that they were presently owed \$1.8 million. Indeed,  
6 Plaintiffs explained that due to Pardee’s wrongful conduct, Plaintiffs could be denied up  
7 to \$1.8 million from the failure to pay future commissions. From Plaintiffs’ Opposition to  
8 Defendants’ Motion for Summary Judgment, Plaintiffs made this point clear:

9 As a result of Pardee’s failure to faithfully discharge its duties under the  
10 Commission Agreement, Plaintiffs have suffered significant damages. First,  
11 Plaintiffs have incurred substantial attorney’s fees in the course of enforcing  
12 their rights under the Commission Agreement. See Wolfram Dep. (Exhibit  
13 1) at 36:3-8. Second, Plaintiffs have expended a significant amount of time,  
14 effort, and energy attempting to discover the nature of the transactions  
15 between CSI and Pardee, which Pardee has a duty to disclose under the  
16 Commission Agreement Id. at 90:14-23. Third, Pardee’s attempt to redefine  
17 Option Property in the Amended and Restated Option Agreement and  
18 eliminate it from Clark County, takes away Plaintiffs’ right to commission  
payments from any future sales of Option Property in Clark County. There  
are approximately 3,000 acres still yet to be purchased by Pardee in Clark  
County. See Map at Exhibit 21. At the one and one-half percent (1.5%)  
commission rate in the Commission Agreement, Plaintiffs are being denied  
**potentially** \$1,800,000.00 in commission payments. See Commission  
Agreement (Exhibit 11) at p. 1.

19 *Id.* at 12 (emphasis added).

20 The claim by Pardee that this case was about \$1.8 million in unpaid commissions  
21 is as ridiculous as it is desperate. At no time did Plaintiffs claim that \$1.8 million was then  
22 due and owing by Pardee to Plaintiffs. Facing the prospect of having to pay damages on  
23 June 25, 2014, and attorney’s fees, Pardee has attempted to recast this case in order to  
24 seek recovery for its own attorney’s fees. In so doing, Pardee claims “90% of Pardee’s  
25 incurred attorney’s fees and costs relate to that defense against plaintiffs’ claims to lost  
26 future commissions.” (Lundvall Decl. at 14.) Ms. Lundvall’s declaration is disingenuous  
27 on its face, and again the fact that Defendant’s counsel can claim that they expended  
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1 90% of its time defending an issue that was never uttered by Plaintiffs or Pardee at trial  
2 is simply preposterous. Further, this claim is simply not supported by any facts.

3 For several reasons, 90% of Pardee's attorney's fees could not have related to  
4 unpaid future commissions. First, there was no mention of potential lost commissions  
5 until October 26<sup>th</sup>, 2012, as part of Rule 16.2 Supplement, almost 2 years after the  
6 commencement of this action. See Plaintiffs' Fifth Supplement to their Initial Disclosures.  
7 Before the Plaintiff's October 2012 disclosure, the issue of potential lost commissions  
8 had not been raised and yet Pardee had already incurred \$99,521.77 in attorney's fees—  
9 well in excess of 10% of its total fees. See Mot. at Ex. E at 438. On its face, the  
10 Defendant's counsel's Declaration to this Court is simply false. The Rule 16.2  
11 Supplemental disclosure was never file-stamped with the Court and was never a part of  
12 any production or any exhibit offered by either Plaintiffs or Defendants.

13 Second, Pardee incurred attorney's fees litigating issues completely unrelated to  
14 potential future commissions that may be due and owing in the future. For example, in  
15 the months of April and May 2013, the primary issue before the Court was whether  
16 Plaintiffs could file a Second Amended Complaint to further allege the entitlement to  
17 attorney's fees as damages—an issue completely unrelated to the denial of possible  
18 potential future commissions. During those two months, Pardee incurred \$36,017.74 in  
19 fees and costs. See Mot. at Ex. D at 101. In August and September of that year, the  
20 Court received briefing on motions in limine and the issue of whether an accounting was  
21 an independent cause of action or a remedy (the latter requiring supplemental briefing)—  
22 neither of which related to potential loss of commissions. During those two months  
23 alone, Pardee incurred over \$66,538.350 in attorney's fees and costs. *Id.* at 119. These  
24 are just two examples that refute Defendant's claims. Many more exist. Looking closely  
25 at the bills and the issues facing the Court throughout this action, the Court can only  
26 conclude that the vast majority of the time spent was deciding matters unrelated to the  
27 possibility of potential future commissions, which was not discussed at trial at all. Not  
28



1 only does this thoroughly refute Defendant's allegations, it confirms that 90% of the fees  
2 incurred were not related to the issue of future commissions, but that the core issue of  
3 the case was really about Plaintiffs' request, and entitlement, to be reasonably informed.

4 This Court can know, with certainty, what the parties believed the core issues to  
5 be throughout this case by reading the pleadings and papers of each party submitted to  
6 the Court throughout the case, their argument at times of hearings before this Court, and  
7 by the Court's Orders entered in this case. None of these filings, none of these hearings,  
8 none of these arguments focused upon any claim by the Plaintiffs of an entitlement to  
9 \$1,8 million dollars in damages for unpaid, future commissions. This is because, the  
10 Plaintiffs, having been kept in the dark by the Defendant and not reasonably informed,  
11 had no understanding how much money, if any, in unpaid commissions was due to them  
12 since the Court would have to make the determination of whether or not the Defendant  
13 would be permitted to build easterly outside the boundaries of Parcel 1, as defined within  
14 the Option Agreement of June 1, 2004, or not. Further, as Plaintiff, through counsel,  
15 repeatedly urged, after the Court made its determination with regards to liability and  
16 damages, an accounting would need to be conducted for the Defendant to account to  
17 the Plaintiffs as to how many acres were optioned, outside of Parcel 1, entitling the  
18 Plaintiffs to a commission under Plaintiffs' claims. That disclosure as to how many acres  
19 was built outside of Parcel 1 was unknown to the parties, and specifically unknown by  
20 Jon Lash, or any other Pardee witness when asked as they had not done the  
21 computation. One thing everyone did know was that Pardee had not built out 3,000 acres  
22 or anything close to it and, in fact, under Pardee's position, they had only built out the  
23 requisite acreage totaling \$84,000,000.00, upon which a commission had been paid, just  
24 for acreage designated single family production residential housing. Nothing more had  
25 been built by Pardee and, therefore, nothing further was owed by Pardee to Plaintiffs.  
26 Plaintiffs simply did not know the amount of acreage beyond Parcel 1 that had been  
27 taken down by Pardee, if any. The core issue in this case was whether or not the  
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1 Defendant had kept the Plaintiffs reasonably informed with regard to what they had taken  
2 down, where they had purchased the property, for what purpose had they purchased it,  
3 and whether a commission was due for the same or not. The warped and distorted effort  
4 on the part of the Defendant to now, more than two (2) years after the Findings of Fact,  
5 Conclusions of Law, and Order was entered by this Court on June 25, 2014, to twist the  
6 Court's findings to somehow suggest that the main issue in this case was past  
7 commissions totaling \$1.8 million is just shameful and frivolous.

8 And, if it were the central issue in the case upon which Defendant's counsel claims  
9 90% of her firm's time was spent on the issue, you would certainly think that it would be  
10 a central issue in either the opening statement of either party, or arguments throughout  
11 the trial, and certainly would be an issue at the time of final summations. A review of  
12 each parties' opening statement and each parties' final summation evidences that  
13 nowhere did Plaintiffs request of the Court a judgment in the sum of \$1.8 million for  
14 unpaid commissions that were then due and owing, nor did Defendant oppose any such  
15 request by arguing that \$1.8 million was not due and owing. The mention of \$1.8 million  
16 itself is not mentioned in any portion of the opening statements by either party, or the  
17 closing summations by either party. The opening statements of each party and the  
18 closing arguments of each party are attached hereto as **Exhibit 6**. It is incredulous for  
19 the Defendant to argue that 90% of its time was spent on an issue that was not  
20 significantly argued in either the opening statements or the closing arguments.

21 The central issue in the case was Defendant's failure to keep the Plaintiffs  
22 reasonably informed. As part of their failure to keep them reasonably informed,  
23 Defendant failed to keep the Plaintiffs informed with regard to where they had built, what  
24 purchases of property they had made from Coyote Springs, where it was located, and  
25 whether or not it constituted purchased property or Option Property. Only after the Court  
26 made the determination of whether or not it constituted Purchased Property as defined  
27 by the Option Agreement or option property, as defined by the Option Agreement of June  
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1 1, 2004, would the Court then be in a position to know, let alone the Plaintiffs be in a  
2 position to know, whether it was entitled to further commissions. At no time did Plaintiffs'  
3 counsel ask the Court to enter a judgment against the Defendants for \$1.8 Million.

4 Nonetheless, Pardee's claim that Plaintiffs somehow *lost* a monetary recovery  
5 that they had never claimed to be entitled to is not only grossly inaccurate, but is  
6 irrelevant in determining who the prevailing party is. This was to be a 40 year project.  
7 The Plaintiffs knew, and the Court knew, that both Plaintiffs could be long deceased  
8 before the Commission Agreement would expire or its effect would potentially expire.  
9 The Court and parties all knew, that Pardee had only begun its project, had not yet built  
10 a single home upon any of the lots that it had constructed, and had simply assembled  
11 property, and prepared their pads for future construction. The Plaintiffs entitlement to  
12 commissions would depend upon future events. Their entitlement would be based upon  
13 what would occur in the future, based upon the choices that Pardee made that were  
14 discussed within the Option Agreement of June 1, 2004, and incorporated by reference  
15 into the Commission Agreement of September 1, 2004. This is why an accounting was  
16 requested by the Plaintiffs in their Complaint, Amended Complaint and Second Amended  
17 Complaint. The Plaintiffs claims never changed. They were virtually identical from the  
18 Complaint filed December 29, 2010; the Amended Complaint, filed January 14, 2011;  
19 and, Second Amended Complaint filed June 6, 2013. At no time in any of those claims  
20 did the Plaintiff claim money damages in the amount of \$1.8 million or anything  
21 resembling to that. The only mention of \$1.8 million was in a hypothetical context in a  
22 Supplement Disclosure that were never filed with the Court; it is our reference as to what  
23 the intended commissions may come if the 3,000 acres over which Pardee has rights to  
24 designate single family production residential housing. And Defendant assumes that this  
25 was the "core" issue at trial? Plaintiffs must have been worried as they did not cite it at  
26 all at trial. The Plaintiffs complained they did not know and the Defendant owed them  
27 the obligation to reasonably inform them so that they would know. That is what this case  
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1 was about. A simple review of this Court's Findings of Facts, Conclusions of Law and  
2 Orders file-stamped June 25, 2014, confirms this fact. It is simply arrogant for the  
3 Defendant to try to argue that this case was about Plaintiffs' request for \$1.8 Million or  
4 Defendant's claim that they prevailed on that issue.

5 The overall monetary recovery in comparison to the total monies requested is also  
6 irrelevant in determining a "prevailing party" pursuant to the controlling case law. At the  
7 time of trial, Plaintiffs were unaware due to Defendant's failure to provide Plaintiffs with  
8 the necessary documentation related to the sale of land at Coyote Springs and only  
9 represented to this Court, by way of Plaintiffs' Eight Supplement to NRCP 16.1  
10 Disclosure of Witnesses and Documents, and thereafter, was followed by the same  
11 language. The Supplements that followed were never filed with the Court that they  
12 believed that if 3,000 acres were developed as it relates to the property and if 3,000  
13 acres were part of the option property, then, the Plaintiffs could be entitled to as much  
14 as \$1.8 million in commissions in the future. Defendant's claim that Defendant would be  
15 entitled to an award of attorney's fees because it was somehow the prevailing party, is  
16 preposterous. Had Defendant not breached their contractual obligation to keep the  
17 Plaintiffs reasonably informed, Plaintiffs would not have had to expend time and monies  
18 researching and/or litigating this issue. Furthermore, Defendant did not incur  
19 \$537,990.09 defending Plaintiffs' claim for unpaid commissions, let alone unpaid  
20 potential future commissions. Defendant spent whatever monies it claims, defending  
21 their improper behavior, their requirement to provide an accounting, and defending their  
22 breach of contract and their breach of implied covenant of good faith and fair dealing, all  
23 of which were specifically found by the Court to have occurred by the Court's final ruling  
24 in the body of its Findings of Facts, Conclusions of Law and Orders file-stamped June  
25 25, 2014. See Exhibit 2.

26 **B. Plaintiffs are the Prevailing Party as They Recovered Monetary Damages**  
27  
28

1           The Plaintiffs clearly meet the burden of establishing themselves as the prevailing  
2 party. In *Hornwood*, the Court ruled that the Plaintiff was the prevailing party once it was  
3 determined that the Plaintiff was entitled to damages in any amount. Accordingly, once  
4 this Court entered judgment in favor of Plaintiffs and awarded them damages, by law,  
5 the Plaintiffs were deemed the prevailing party because they succeeded on a "significant  
6 issue in the litigation which achieves some benefit in bringing the suit." Not only were the  
7 Plaintiffs in this action awarded damages in the amount of \$6,000.00 plus attorney's fees,  
8 they were also awarded an accounting by this Court, requiring Pardee to relinquish any  
9 information concerning the development of Coyote Springs in the future as it pertains to  
10 Plaintiffs' commissions on option property. See Findings of Fact and Conclusions of Law  
11 at 17:14-20, on file with the Court. Therefore, due to the monetary damages awarded to  
12 the Plaintiffs along with the claim for an accounting, it is clear that the Plaintiffs  
13 succeeded on the central issue—the overt and disingenuous lack of communication on  
14 the part of Pardee.

15           Moreover, as is clear by the Findings of Fact and Conclusions of Law filed on  
16 June 25, 2014, the Court found that Plaintiffs were not liable to Defendant on Defendant's  
17 counter-motion alleging breach of the implied covenant of good faith and fair dealing. See  
18 Findings of Fact and Conclusions of Law at 18:3-4. Over the course of the final Order,  
19 the Court reiterated that the Plaintiffs did not breach any obligation and that they acted  
20 in good faith at all times toward Pardee. In fact, all the findings of fault and Plaintiffs'  
21 claims for relief were placed on Pardee's shoulders. They were the ones who failed to  
22 provide amendments 1 through 8 to the Amended and Restated Option Agreement to  
23 the Plaintiffs. They were the ones who failed to communicate with the Plaintiffs after  
24 repeated attempts by Mr. Wolfram and Mr. Wilkes to obtain such valuable information.  
25 They were the ones who failed to satisfy any obligations they had under the Commission  
26 Agreement and, as such, they must not be rewarded for it in the form of attorney fees for  
27 a claim they *did not even win* nor was even made by the Defendants.

1       **C. Plaintiffs are the Prevailing Party under NRS 17.130 and Federal Rule 68**

2       Regarding the Plaintiffs' Offer of Judgment, NRCP 68(f) provides that if the offeree  
3 rejects an offer and fails to obtain a more favorable judgment:

- 4               (1) the **offeree cannot recover any costs or attorney's fees**  
5               and shall not recover interest for the period after the service  
6               of the offer and before the judgment; and  
7               (2) the **offeree shall pay the offeror's post-offer costs,**  
8               **applicable interest on the judgment from the time of the**  
9               **offer to the time of entry of the judgment and reasonable**  
10              **attorney's fees**, if any be allowed, actually incurred by the  
11              offeror from the time of the offer. If the offeror's attorney is  
12              collecting a contingent fee, the amount of any attorney's fees  
13              awarded to the party for whom the offer is made must be  
14              deducted from that contingent fee.

15       NRCP 68(f) (*emphasis added*).

16       Pursuant to NRCP 68(f), Defendant is not entitled to any award of attorney's fees  
17 or costs and is responsible for Plaintiffs' post-offer costs, applicable interest on the  
18 judgment and reasonable attorney's fees. Under Nevada law, if a party who rejects an  
19 offer of judgment fails to obtain a more favorable judgment, the court may not award to  
20 the party any costs or attorney's fees. See NRS 17.115(4)(a). The Court must determine  
21 if the offeree failed to obtain a more favorable judgment by comparing the amount of the  
22 offer with the principal amount of the judgment. See NRCP 68(g).

23       On April 29, 2013, Plaintiffs served Pardee with an Offer of Judgment in the  
24 amount of \$149,000.00, inclusive of attorney's fees and interest incurred to the date of  
25 April 29, 2013, and exclusive of costs incurred. See Plaintiffs' Offer of Judgment, dated  
26 April 29, 2013, at 4:14-16 attached hereto as **Exhibit 7**. Soon after being served with  
27 such an offer, Pardee declined the offer and the parties proceeded to trial, at which time  
28 Plaintiffs were awarded \$135,500.00 for attorney's fees and \$6,000.00 in compensatory  
damages, for a total judgment of \$141,500.00. See Exhibit "2" at 2:6-13.

      On February 9, 2011 the Defendant Pardee was served with the Amended  
Complaint and Amended Summons, attached hereto as **Exhibit 8**. Pursuant to NRS

1 17.115 and NRCP 68(f), Plaintiff uses that date of February 9, 2011 as the starting point  
2 in computing the interest of the Offer of Judgment, served on Pardee on April 29, 2013.  
3 As such, the timeframe between February 9, 2011 and April 29, 2013 amounted to eight  
4 hundred and ten (810) days. Using a 5.25% interest rate pursuant to NRS 17.130, the  
5 daily interest cost during that timeframe was \$21.43 per day, making the interest that  
6 was inclusive within the Offer of Judgment equal \$17,359.52. As such, the principal sum,  
7 exclusive of interest and costs, presented in Plaintiffs' Offer of Judgment amount to  
8 \$131,640.48. The principal sum, exclusive of interest and costs, awarded to Plaintiffs by  
9 this Court totaled \$141,500.00, well in excess of \$131,640.48.

10 As was noted by the Court in its Judgment, the final judgment of \$141,500.00 was  
11 exclusive of legal interest, and Plaintiffs are entitled to prejudgment interest on that  
12 figure. The timeframe between the date of service (February 9, 2011) of the Amended  
13 Complaint and Amended Summons to the entrance of the Final Judgment (May 16,  
14 2016) amounted to one thousand nine hundred and twenty-three (1923) days. Using a  
15 5.25% interest rate pursuant to NRS 17.130, the daily interest cost during that timeframe  
16 was \$20.35, making the total pre-judgment interest equal \$39,138.32. When added to  
17 the amount awarded to Plaintiffs, the total Judgment with applicable pre-judgment  
18 interest comes out to \$180,638.32. Therefore, either way the Court looks at it, whether  
19 it be taking the Judgment *plus* interest or *excluding* interest, both figures well exceed the  
20 Offer of Judgment that was extended to Pardee.

21 The undisputed fact that the Plaintiffs eclipsed the offer of judgment they extended  
22 to Pardee on April 29, 2013 proves once more that Plaintiffs are the prevailing party in  
23 the above-entitled dispute. If a party receives a judgment in excess of the purported offer  
24 of judgment, they are to be deemed the prevailing parties. *See Ewing v. Bissell*, 105 Nev.  
25 488, 493, 777 P.2d 1320, 1324 (1989). The Court in *Ewing* also ruled that because the  
26 Plaintiffs received a judgment that eclipsed their \$5,000.00 offer of judgment, no  
27 attorney's fees or costs would be assessed against them. *Id.* In the instant matter,

28

1 pursuant to the statutory authority and case law, Plaintiffs are to be considered the  
2 prevailing party.

3 Defendant's Motion cites no applicable case law to support their aversion that it  
4 was the prevailing party. There is no authority to cite that states that due to a denial of a  
5 significant monetary portion of Plaintiffs' claims for relief, that Plaintiffs should not be  
6 considered the prevailing party. As such, Defendants failed to address what would be  
7 the basis for the motion for attorney's fees and costs in their original moving brief, and  
8 instead may be waiting to respond to the authority on reply, when Plaintiffs do not have  
9 an opportunity to respond. Any such tactic would be improper. *See Meek v. Astrue*, No.  
10 1:09-cv-890, 2010 U.S. Dist. LEXIS 84208, at \*19 (S.D. Ind. Aug. 16, 2010) ("Plaintiffs  
11 cannot be allowed to reserve arguments for their replies and thereby sandbag the  
12 Commissioner who has no opportunity to respond."); *Hotz v. Pierce*, No. 3:08-cv-850,  
13 2013 U.S. Dist. LEXIS 42708, at \*36 (S.D. Ill. Mar. 26, 2013) ("A party's principal  
14 argument must appear in the opening brief, so that it may be answered. A litigant may  
15 not throw down a gauntlet in the opening brief and reserve its argument for the reply  
16 brief."), citing *Baeco Plastics v. Inacomp Fin. Servs.*, 1995 U.S. App. LEXIS 6527 (7th  
17 Cir. Mar. 29, 1995); *High Concrete Structures, Inc. v. New Enter. Stone & Lime Co.*, No.  
18 02-CV-0086, 2003 U.S. Dist. LEXIS 6605, at \*33 (E.D. Pa. Mar. 27, 2003) ("We insist  
19 that all parties raise their strongest arguments immediately and use reply briefs, when  
20 necessary, judiciously and concisely."); *Garcia v. Resurgent Capital Servs., LP*, No. C-  
21 11-1253, 2012 U.S. Dist. LEXIS 47837, at \*19-20 (N.D. Cal. Apr. 4, 2012); *Ahmed v.*  
22 *Mayorkas*, 719 F. Supp. 2d 1080, 1088 (N.D. Cal. 2009).

23 Based on the aforementioned statute, case law, and fact history of the case, it is  
24 evident that Pardee did not prevail on a single issue they had set out to achieve. The  
25 Findings of Fact and Conclusions of Law and Order filed by this Court makes it well  
26 known to both parties that Pardee failed to uphold their end of the bargain while Plaintiffs  
27 continually requested documents that might have affected their commission payments  
28




1 and affected a lawsuit that may not have been necessary at all had Defendant responded  
2 to its obligation properly. As the Court made clear, Plaintiffs had no choice but to file suit  
3 so as to circumvent Pardee's disingenuous actions of trying to withhold vital information  
4 from Plaintiffs themselves. Upon review of the Complaints and the Offer of Judgment  
5 itself, it is clear that this case was not about commissions lost but, instead, information  
6 withheld. Plaintiffs were wholly unaware of whether or not they were due future  
7 commissions and, as such, never requested a specific dollar amount, let alone \$1.8  
8 million as Pardee claims. It is regrettable that this motion needs to be filed and is part  
9 and parcel of Pardee's never ending effort to prevent Judgment from being concluded  
10 and collected.

11 **III. CONCLUSION**

12 Pursuant to the controlling case law, NRCP 68(f) and (g), NRS 18.010 and NRS  
13 17.115, and for the reasons set forth above, Plaintiffs respectfully request that the Court  
14 deny Defendant's Motion for Attorney's Fees and Costs. Defendant was not a prevailing  
15 party, and no Judgment has ever been entered by the Court against Plaintiffs and in  
16 favor Pardee as clearly set forth within the Court's Findings of Fact, Conclusions of Law  
17 and Order filed June 25, 2014 and the Court's final Judgment of May 16, 2016.

18 DATED this 21 day of June, 2016.

19 THE JIMMERSON LAW FIRM, P.C.

20  
21   
22 JAMES J. JIMMERSON, ESQ.  
23 Nevada State Bar No. 000264  
24 MICHAEL C. FLAXMAN, ESQ.  
25 Nevada State Bar No. 12963  
26 415 South Sixth Street, Suite 100  
27 Las Vegas, Nevada 89101  
28 Attorneys for Plaintiffs

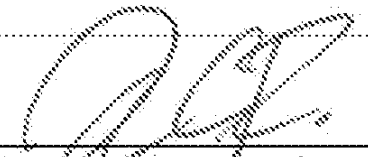
CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy **PLAINTIFFS' OPPOSITION TO PARDEE'S MOTION FOR ATTORNEY'S FEES AND COSTS** was made on the 21 day of June, 2016, as indicated below:

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

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

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

  
An employee of THE JIMMERSON LAW FIRM, P.C.

# Exhibit 1

# Exhibit 1

**AFFIDAVIT OF JAMES J. JIMMERSON, ESQ.**

STATE OF NEVADA     )  
  ) ss:  
COUNTY OF CLARK     )

JAMES J. JIMMERSON, ESQ., being duly sworn deposes and says:

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

2. As is evident in this Court's Findings and Fact and Conclusions of Law and Order of June 25, 2014, and in this Court's most recent May 16, 2016 Final Judgment, the Plaintiffs were found to have not breached any of their contractual duties and the Defendant was found to have breached the contract and breached the implied covenant of good faith and fair dealing, entitling Plaintiffs to an accounting. Prior to trial commencing on October 23, 2013, Plaintiffs served an Offer of Judgment on Pardee, dated April 29, 2013. After such Offer expired without acceptance on May 10, 2013, the parties proceeded to trial. On February 9, 2011 the Defendant Pardee was served with the Amended Complaint and Amended Summons. Pursuant to NRS 17.115 and NRCP 68(f), Plaintiff uses that date of February 9, 2011 as the starting point in computing the interest of the Offer of Judgment, served on Pardee on April 29, 2013. As such, the timeframe between February 9, 2011 and April 29, 2013 amounted to eight hundred and ten (810) days. Using a 5.25% interest rate pursuant to NRS 17.130,

1 the daily interest cost during that timeframe was \$21.43 per day, making the interest  
2 that was inclusive within the Offer of Judgment equal \$17,359.52. As such, the principal  
3 sum, exclusive of interest and costs, presented in Plaintiffs' Offer of Judgment amount  
4 to \$131,640.48. In comparison, Plaintiffs' were awarded a monetary judgment in the  
5 amount of \$141,500.00, which was well in excess of the principal sum of the Offer of  
6 Judgment proffered to Pardee on April 29, 2013.

7  
8 3. As such, whether the Court looks at the principal sum offered in the Offer of  
9 Judgment of \$131,640.48, and compares it to the Court's award of \$141,500.00 or the  
10 Court compares the Offer of Judgment, including interest, totaling \$149,000.00, as  
11 compared to the Judgment awarded by the Court to the Plaintiffs, including interest,  
12 totaling more than \$180,638.32, it is clear that the Plaintiffs' Order at time of trial  
13 exceeded the Offer of Judgment. As such, NRS 17.115 comes into play and  
14 Defendants, who claim they spent more than \$600,000.00 on this case, could have  
15 settled this case by simply paying the Plaintiffs \$149,000.00, which included more than  
16 \$17,000.00 in interest from February 9, 2011 through April 29, 2013. The Defendant's  
17 actions in not accepting Plaintiff's Offer of Judgment were patently unreasonable and,  
18 in my judgment, triggers the factors set forth in NRS 17.115 that requires the exercise  
19 of good faith with a mind towards resolving disputes. Plaintiffs are entitled to an award  
20 of attorney's fees pursuant to NRS 17.115 and NRCP 68.

21  
22  
23 4. Over the course of trial, my clients, to my recollection, never testified nor implied  
24 that they were claiming \$1.8 million in unpaid future commissions or that they were  
25 entitled to any such award. The subject simply was never raised during the trial by  
26 either side. Pardee's Motion is frivolous in my judgment. No claim for relief was ever  
27 prepared or asserted to such an effect, and no evidence at trial by exhibit or by  
28

1 testimony was ever offered regarding any \$1.8 million alleged entitlement. Plaintiffs  
2 contended that they were unaware of commissions owed to them due to Pardee's  
3 blatant lack of communication with Plaintiffs. The only claims Plaintiffs made, over the  
4 course of the litigation, were for an accounting, breach of contract, and breach of the  
5 implied covenant of good faith and fair dealing. They prevailed on each claim for relief  
6 as determined by the Court in its final Order of May 16, 2016.

7  
8 5. Upon review of Defense counsel's Declaration, in my opinion, it is not possible  
9 that Pardee's lawyers expended 90% of Pardee's fees on a so-called "claim" that was  
10 not made by Plaintiffs in either their Complaint, Amended Complaint, or Second  
11 Amended Complaint or at time of trial with this Court. In my opinion, such an assertion  
12 by Pardee is disingenuous. See the examples cited within our Opposing Brief as  
13 evidence for the fact that Pardee could not have, and did not, expend 90% of its time  
14 on a purported claim of \$1.8 million in unpaid, future, hypothetical or potential  
15 commissions. At time of trial, Pardee had not even purchased the additional 3000 acres  
16 that it had an option to purchase, let alone designate said unpurchased property for a  
17 particular use. That is why any computation of future commissions would necessarily  
18 be based on future events, future decision making, and future designation, none of  
19 which were known to the Plaintiffs at time of trial. As such, a calculation for \$1.8 million  
20 which is only found as an example of a possible obligation of the Defendant if all 3000  
21 acres were all purchased and all designated single-family production property, would  
22 any such number like that ever become possible. No claim was ever alleged or put  
23 forth regarding this type of calculation or figure. This trial was certainly not about that  
24 figure or those improbable future possibilities. In reality, the core issue in this case was  
25 simple and straightforward, namely, Plaintiffs' contention that Defendant Pardee failed  
26  
27  
28

1 to keep Plaintiffs reasonably informed. It is my judgment that the Court came to the  
2 same conclusion.

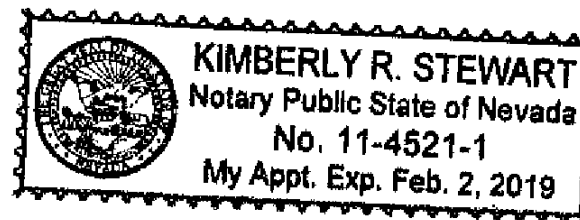
3 6. Because Plaintiffs succeeded on all claims brought forth in the Complaint,  
4 Amended Complaint, and Second Amended Complaint, it is not possible to deem  
5 Pardee as the prevailing party in this dispute, under the facts and law of the case as I  
6 understand them. No amount of posturing or sleight-of-hand by Defendant can alter  
7 this conclusion.  
8

9 FURTHER, AFFIANT SAYETH NAUGHT.

10  
11   
12 JAMES J. JIMMERSON, ESQ.

13 SUBSCRIBED AND SWORN to before me  
14 this 21<sup>st</sup> day of June, 2016.

15   
16 NOTARY PUBLIC in and for said  
17 County and State



# Exhibit 2

# Exhibit 2



1 ORDR

3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 JAMES WOLFRAM AND WALTER D. WILKES  
6 and ANGELA L. LIMBOCKER-WILKES  
7 LIVING TRUST, ANGELA L. LIMBOCKER-  
8 WILKES, TRUSTEE,

9 Plaintiffs,

10 vs.

11 PARDEE HOMES OF NEVADA,

12 Defendant.

CASE NO.: A-10-632338-C  
DEPT. NO.: IV Electronically Filed  
05/16/2016 02:03:58 PM

  
CLERK OF THE COURT

13 JUDGMENT

14  
15 On October 23, 2013, the above-referenced matter came on for bench trial before the  
16 Honorable Judge Kerry Earley. The Court, having reviewed the record, testimony of witnesses, the  
17 documentary evidence, stipulations of counsel, the papers submitted by the respective parties, and  
18 considered the arguments of counsel at trial in this matter, entered Findings of Fact and Conclusions  
19 of Law on June 25, 2014.

20  
21 In the Findings of Fact and Conclusions of Law, the Court ordered the parties to provide  
22 supplemental briefing within 60 days detailing what information Defendant Pardee homes of Nevada  
23 ("Pardee") and its successors and/or assigns should provide Plaintiffs James Wolfram and Walt  
24 Wilkes ("Plaintiffs") and their successors and/or assigns consistent with the Court's decision on the  
25 accounting cause of action.

26  
27 After reviewing the parties' supplemental briefing, the Court then entered an order on May  
28 13, 2015 reflecting its decision on the supplemental briefing (the "Accounting Order"). Having

KERRY L. EARLEY  
DISTRICT JUDGE  
DEPARTMENT IV

1 considered the entire record presented at trial, including testimony of witnesses, the documentary  
2 evidence, stipulations of counsel, the papers submitted by the respective parties, and the arguments  
3 of counsel at trial in this matter, and in accordance with the findings of fact and conclusions of law  
4 incorporated by reference in the May 13, 2015 Order and June 25, 2014 Order, this Court enters  
5 judgment as follows:

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS  
7 ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for breach of  
8 contract and breach of the implied covenant of good faith and fair dealing. Plaintiffs are entitled to  
9 damages from Pardee in an amount totaling \$141,500.00, of which \$6000.00 are consequential  
10 damages from Pardee's breach of the Commission Agreement and the remaining \$135,500.00 are  
11 special damages in the form of attorney's fees and costs.  
12

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS  
14 ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' cause of action for accounting.  
15 Pardee shall provide Plaintiffs with future accountings related to the Commission Agreement  
16 consistent with the Accounting Order entered by the Court on May 13, 2015.  
17

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS  
19 ENTERED in favor of Plaintiffs and against Pardee on Pardee's cause of action for the breach of  
20 implied covenant of good faith and fair dealing.  
21

22 The Court reserves jurisdiction over this Judgment regarding the issues of attorney's fees,  
23 costs, and legal interest, therefore, this Judgment may be amended upon entry of any further awards  
24 of interest, costs, and/or attorney's fees.

25 DATED: May 11, 2016.

26  
27   
28 KERRY L. EARLEY, DISTRICT COURT JUDGE

KERRY L. EARLEY  
DISTRICT JUDGE  
DEPARTMENT IV

**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date filed, I electronically served, sent by facsimile, emailed, or placed a copy of this order in the attorney's folder on the first floor of the Regional Justice Center as follows:

James J. Jimmerson, Esq. - The Jimmerson Law Firm  
Michael C. Flaxman, Esq. - The Jimmerson Law Firm  
Pat Lundvall, Esq. - McDonald Carano Wilson  
Rory T. Kay, Esq. - McDonald Carano Wilson



Kelly Tibbs  
Judicial Executive Assistant

KERRY L. EARLEY  
DISTRICT JUDGE  
DEPARTMENT IV

# Exhibit 3

# Exhibit 3

1 ORDR

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

  
CLERK OF THE COURT

4 JAMES WOLFRAM and  
5 WALT WILKES,

6 Plaintiffs,

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

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

Trial Date: October 23, 2013

10 AND RELATED CLAIMS

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

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

23  
24 **I. FINDINGS OF FACT**

25  
26 **A. THE PARTIES**

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

KERRY L. EARLEY  
DISTRICT JUDGE  
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5  
6                   31.     Pardee did purchase "Purchase Property Price" property from CSI for  
7 \$84,000,000.00. Plaintiffs have been paid in full their commissions on the \$84,000,000.00 Purchase  
8 Property Price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 8 II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

10          8.     Pardee has never exercised any such option.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **DECISION**

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

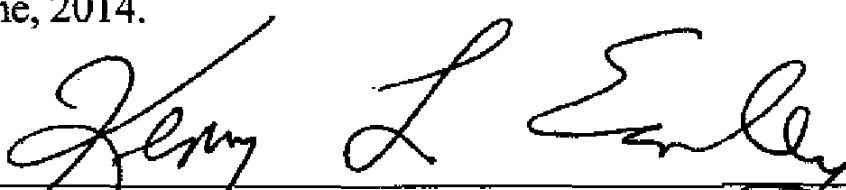
25 1. The Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for  
26 breach of contract, breach of the covenant of good faith and fair dealing, and its failure to account to  
27 Plaintiffs regarding the information concerning the development of Coyote Springs because it  
28

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

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

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

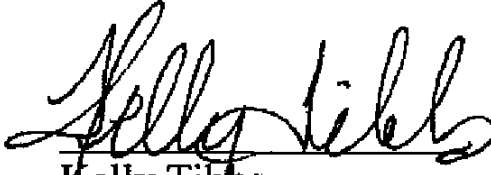
10  
11 DATED this 25 day of June, 2014.

12  
13   
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15  
16 **CERTIFICATE OF SERVICE**

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

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

21  
22   
23 Kelly Tibbs  
24 Judicial Executive Assistant

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

# Exhibit 4

# Exhibit 4

**OFFER**

JAMES J. JIMMERSON, ESQ.  
Nevada Bar No.: 00264  
LYNN M. HANSEN, ESQ.  
Nevada Bar No.: 00244  
JAMES M. JIMMERSON, ESQ.  
Nevada Bar No.: 12599  
JIMMERSON HANSEN, P.C.  
415 South 6<sup>th</sup> Street, Suite 100  
Las Vegas, Nevada 89101  
Tel No.: (702) 388-7171;  
Fax No.: (702) 388-6406  
[lmh@jimmersonhansen.com](mailto:lmh@jimmersonhansen.com)  
[jmj@jimmersonhansen.com](mailto:jmj@jimmersonhansen.com)  
Attorneys for Plaintiffs

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and WALK WILKES, )  
Plaintiffs, )  
vs. )  
PARDEE HOMES OF NEVADA, )  
Defendant. )

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

**PLAINTIFFS' OFFER OF JUDGMENT TO DEFENDANT  
PARDEE HOMES OF NEVADA**

PLEASE TAKE NOTICE that pursuant to Nevada Rule of Civil Procedure 68,  
Plaintiffs, JAMES WOLFRAM and WALK WILKES, make to Defendant, PARDEE  
HOMES OF NEVADA, the following Offer of Judgment:

In accordance with NRS 17.115 and NRCP 68, in exchange for Defendants'  
acceptance of this Offer of Judgment, and filing an Acceptance, thus directing the Clerk  
of the Court to enter judgment against Defendant in the above-captioned action,



1 Defendant Pardee Homes of Nevada will pay to Plaintiffs the total amount of One  
2 Hundred Forty Nine Thousand Dollars (\$149,000.00), inclusive of attorney's fees and  
3 interest incurred to date and exclusive of costs incurred (see *Fletcher v. Fletcher*, 89  
4 Nev. 540, 516 P.2d 103). As part and parcel of this Offer of Judgment, and as a  
5 condition to the same, if Defendant, Pardee Homes of Nevada ("Pardee"), accepts this  
6 Offer of Judgment, it also accepts the following conditions:  
7

- 8 1. All purchases of real property designated for detached production  
9 residential use, which includes, without limitation, all single-family  
10 detached production residential lots (which shall include lots of which  
11 custom homes are constructed), all land for roadways, utilities,  
12 government facilities, including schools and parks (which school and park  
13 sites are subject to the provisions of paragraph 7(c) of the Option  
14 Agreement for the Purchase of Real Property and Joint Escrow  
15 Instructions); open space required or designated for the benefit of the  
16 residential development pursuant to the master plan, a habitat  
17 conservation plan, or development agreement; drainage ways or any  
18 other use associated with or resulting from the development of the  
19 Purchase Property and each Option Parcel of the Option Property made  
20 in the future, shall be deemed Option Property under the terms of the  
21 Option Agreement for the Purchase of Real Property and Joint Escrow  
22 Instructions executed May, 2004, Bates stamp numbers PLTF0001-0080;  
23 and Pardee shall provide advanced notice of the pendency of an escrow,  
24 fourteen (14) days prior to close of escrow, to advise James Wolfram or  
25  
26  
27  
28

1 Walter Wilkes, their heirs, successors or assigns, of the impending  
2 purchase, of the date of close of escrow, and then to further advise them  
3 as to their entitlement to commissions under the terms of the Option  
4 Agreement. Notices to Mr. Wilkes and Mr. Wolfram, during their life shall  
5 be to them directly, with copies to their counsel, Jimmerson Hansen,  
6 P.C., James J. Jimmerson, Esq., and James M. Jimmerson, Esq., and  
7 following the passing of either one or both of the Plaintiffs, to their heirs  
8 and assigns to be designated at the appropriate time. Upon request by  
9 Mr. Wolfram, Mr. Wilkes, their counsel, or their future designees, Pardee  
10 shall provide true and complete copies of executed agreements or  
11 contracts concerning the purchase of real property between Pardee  
12 Homes of Nevada and Coyote Springs Investment LLC (or affiliated  
13 entities). Mr. Wolfram, Mr. Wilkes and their counsel understand that  
14 receipt of the requested documents may require consent to certain  
15 confidentiality agreements. Mr. Wolfram, Mr. Wilkes, and their counsel  
16 agree to be bound by the necessary confidentiality agreements.  
17  
18

- 19 2. The terms of the Commission Letter Agreement dated September 1,  
20 2004, shall remain in full force and effect and the Defendant, by  
21 accepting this Offer of Judgment, fully confirms and acknowledges its  
22 continuing obligation to provide to Mr. Wilkes and Mr. Wolfram a copy of  
23 each written option exercise notice given pursuant to paragraph 2 of the  
24 Option Agreement for the Purchase of Real Property and Joint Escrow  
25 Instructions, together with information as to the number of acres involved  
26  
27  
28

1 and the scheduled closing date. In addition, Pardee shall keep Mr. Wilkes  
2 and Mr. Wolfram reasonably informed as to all matters relating to the  
3 amount and due dates of their commission payments.

- 4 3. With respect to any portion of Option Property purchased by Pardee  
5 pursuant to this offer of Judgment, Pardee shall pay to Plaintiffs one and  
6 one-half percent (1 ½%) of the amount derived by multiplying the number  
7 of acres purchased by Pardee Homes of Nevada by Forty Thousand  
8 Dollars (\$40,000.00).  
9

10 This Offer of Judgment is made for the purposes stated in NRS 17.115 and in  
11 Nevada Rule of Civil Procedure 68 and, if accepted, Plaintiffs will direct the Clerk of the  
12 Court to enter a judgment against Defendant PARDEE HOMES OF NEVADA upon  
13 receipt of payment of the offered amount of One Hundred Forty Nine Thousand Dollars  
14 (\$149,000.00), inclusive of attorney's fees and interest incurred to date and exclusive  
15 of costs incurred.  
16

17 ///

18 ///

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25

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28

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

1 This Offer of Judgment shall remain open for acceptance for ten (10) days from  
2 the date of the service of this document.

3 DATED this 29<sup>th</sup> day of April, 2013.

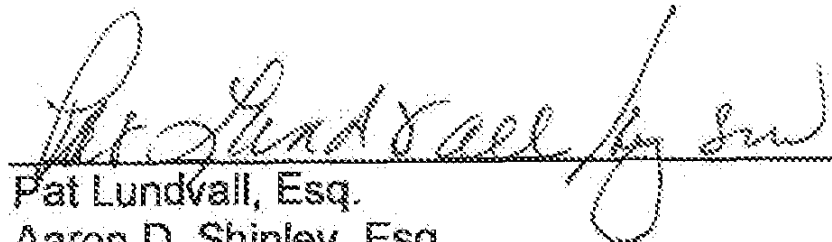
4 JIMMERSON HANSEN, P.C.

5  
6   
7 JAMES J. JIMMERSON, ESQ.  
8 Nevada State Bar No.: 00264  
9 LYNN M. HANSEN, ESQ.  
10 Nevada State Bar No.: 00244  
11 JAMES M. JIMMERSON, ESQ.  
12 Nevada State Bar No.: 12599  
13 415 South 6<sup>th</sup> Street, Suite 100  
14 Las Vegas, Nevada 89101  
15 Attorneys for Plaintiffs  
16 James Wolfram and  
17 Walt Wilkes  
18

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

RECEIPT OF ORIGINAL

Receipt of the foregoing PLAINTIFFS' OFFER OF JUDGMENT TO DEFENDANT  
PARDEE HOMES OF NEVADA by hand delivery is hereby acknowledged this 29 day  
of April, 2013.



Pat Lundvall, Esq.

Aaron D. Shipley, Esq.

MCDONALD CARANO WILSON, LLP

2300 W. Sahara Ave., Suite 1000

Las Vegas, NV 89102

Attorneys for Defendant

# Exhibit 5

# Exhibit 5

<p style="text-align: right;">Page 1</p> <p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 4 5 JAMES WOLFRAM, 6 PLAINTIFF, 7 vs. CASE NO. A632338 8 PARDEE HOMES OF NEVADA, 9 DEFENDANT. 10 11 12 REPORTER'S TRANSCRIPT 13 OF 14 PROCEEDINGS 15 16 BEFORE THE HONORABLE KERRY L. BARLEY DISTRICT COURT JUDGE 17 18 HELD ON FRIDAY, JANUARY 15, 2016 19 AT 10:00 A.M. 20 LAS VEGAS, NEVADA 21 APPEARANCES: 22 For the Plaintiff: JAMES J. JIMMERSON, ESQ. MICHAEL C. FLAXMAN, ESQ. 23 For the Defendant: PATRICIA K. LUNDVALL, ESQ. RORY T. KAY, ESQ. 24 25 Reported by: Loree Murray, CCR No. 426</p>	<p style="text-align: right;">Page 3</p> <p>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</p>
<p style="text-align: right;">Page 2</p> <p>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</p>	<p style="text-align: right;">Page 4</p> <p>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.</p>

<p style="text-align: right;">Page 5</p> <p>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.</p>	<p style="text-align: right;">Page 7</p> <p>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</p>
<p style="text-align: right;">Page 6</p> <p>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.</p>	<p style="text-align: right;">Page 8</p> <p>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</p>



<p style="text-align: right;">Page 9</p> <p>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.</p>	<p style="text-align: right;">Page 11</p> <p>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.</p>
<p style="text-align: right;">Page 10</p> <p>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 believe 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</p>	<p style="text-align: right;">Page 12</p> <p>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</p>

<p style="text-align: right;">Page 13</p> <p>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</p>	<p style="text-align: right;">Page 15</p> <p>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.</p>
<p style="text-align: right;">Page 14</p> <p>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</p>	<p style="text-align: right;">Page 16</p> <p>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</p>

<p style="text-align: right;">Page 17</p> <p>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.</p>	<p style="text-align: right;">Page 19</p> <p>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 --</p>
<p style="text-align: right;">Page 18</p> <p>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.</p>	<p style="text-align: right;">Page 20</p> <p>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</p>

<p style="text-align: right;">Page 21</p> <p>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</p>	<p style="text-align: right;">Page 23</p> <p>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</p>
<p style="text-align: right;">Page 22</p> <p>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.</p>	<p style="text-align: right;">Page 24</p> <p>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</p>

<p style="text-align: right;">Page 25</p> <p>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</p>	<p style="text-align: right;">Page 27</p> <p>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</p>
<p style="text-align: right;">Page 26</p> <p>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.</p>	<p style="text-align: right;">Page 28</p> <p>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.</p>

<p style="text-align: right;">Page 29</p> <p>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</p>	<p style="text-align: right;">Page 31</p> <p>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</p>
<p style="text-align: right;">Page 30</p> <p>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</p>	<p style="text-align: right;">Page 32</p> <p>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</p>

<p style="text-align: right;">Page 33</p> <p>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.</p>	<p style="text-align: right;">Page 35</p> <p>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 --</p>
<p style="text-align: right;">Page 34</p> <p>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</p>	<p style="text-align: right;">Page 36</p> <p>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</p>

<p style="text-align: right;">Page 37</p> <p>1 so by supplemental brief.</p> <p>2 That's your findings with regard to the first</p> <p>3 claim.</p> <p>4 You have to understand from this case, and I</p> <p>5 know you do, this was never a case of plaintiffs are</p> <p>6 entitled to commissions in the amount of blank dollars.</p> <p>7 Read the complaint, read the second -- first amended</p> <p>8 complaint and the second amended complaint, they all</p> <p>9 say the same thing, the breach of contract is the</p> <p>10 failure to provide the information that this special</p> <p>11 relationship and superior knowledge that Pardee had,</p> <p>12 and we don't know whether or not there's additional</p> <p>13 monies due and owing, and if there is we want them to</p> <p>14 be paid to us but we need that information. And that</p> <p>15 was consistent throughout the case. You couldn't have</p> <p>16 found a more conservative complaint by any plaintiff</p> <p>17 against any defendant.</p> <p>18 These plaintiffs are taking on the behemoth</p> <p>19 of Pardee. They filed a complaint because they had</p> <p>20 written four or five letters beforehand requesting the</p> <p>21 information and they were not provided it.</p> <p>22 Mr. Lash independently tells Chicago Title</p> <p>23 not to give information to Mr. Wolfram, and the Court</p> <p>24 makes that finding within its orders. So when you look</p> <p>25 at that, you have your Court's specific findings,</p>	<p style="text-align: right;">Page 39</p> <p>1 find breach of that. There was certainly a covenant</p> <p>2 that ran with this contract, and the covenant of good</p> <p>3 faith and fair dealing was not complied with by Pardee,</p> <p>4 I find a breach and I find the same damages of</p> <p>5 \$141,500, and you have entered the order that says so,</p> <p>6 and then you have the accounting in 60 days.</p> <p>7 So I want you to know how preposterous, it's</p> <p>8 the only word I thought of it can be, you know. I</p> <p>9 could be melodramatic. I don't want to do that. I</p> <p>10 want to be as professional as we all can be, but it's a</p> <p>11 preposterous claim this be inserted into a complaint.</p> <p>12 You don't make any findings, any findings that the</p> <p>13 defendant prevailed. You don't make any findings</p> <p>14 that's in this judgment that says that the Court has</p> <p>15 ordered judgment in favor of defendant and against the</p> <p>16 plaintiff on this issue at all. It's not referenced</p> <p>17 anywhere. Why? Because it was not an issue tried at</p> <p>18 trial.</p> <p>19 I have gone back and have provided to you in</p> <p>20 this record the proposed --, the opening statements --</p> <p>21 well, I've given you the entire transcript. We have</p> <p>22 the entire transcript. It's part of the record, the</p> <p>23 entire transcript. There's not one word of</p> <p>24 \$1.8 million or the plaintiffs' claim for \$1.8 million.</p> <p>25 and therefore, your Honor, you should enter a judgment</p>
<p style="text-align: right;">Page 38</p> <p>1 plaintiff prevails as to the accounting.</p> <p>2 Second claim for relief, breach of</p> <p>3 contracted, granted. I find that there was a contract,</p> <p>4 I find that the duties of the plaintiffs have been</p> <p>5 fully satisfied, I find the duties of the defendant</p> <p>6 were not satisfied and that they did not provide the</p> <p>7 information required to do so, and I find in favor of</p> <p>8 the plaintiffs.</p> <p>9 What damages do I award? I award the special</p> <p>10 damages pursuant to Sandy Valley of the time and effort</p> <p>11 of Mr. Wolfram pursuant to decisional law both in</p> <p>12 California and elsewhere that allows for that in the</p> <p>13 modest amount of \$6,000, and I allow \$135,500 in</p> <p>14 attorneys fees out of I think we requested about</p> <p>15 \$146,000 in attorney's fees, that I'm satisfied is</p> <p>16 directly and devoted and required only as the result of</p> <p>17 the failure of the defendant to provide the information</p> <p>18 it was obliged to do, and that's the judgment, \$141,500</p> <p>19 plus interest as we go forward.</p> <p>20 That's your findings on breach of contract,</p> <p>21 and you were very specific to find there was a breach,</p> <p>22 and you find the bad faith of the defendant with regard</p> <p>23 to the failure to provide this information.</p> <p>24 The third claim for relief, breach of the</p> <p>25 implied covenant of good faith and fair dealing, you</p>	<p style="text-align: right;">Page 40</p> <p>1 in favor of us to say that we defeated them on that</p> <p>2 issue.</p> <p>3 In the opening statement of Pat Lundvall</p> <p>4 doesn't reference one thing about, you know, your</p> <p>5 Honor, the plaintiffs are making a claim of</p> <p>6 \$1.8 million, and you need to make a finding against</p> <p>7 them. That wasn't an issue, because it was a</p> <p>8 theoretical mathematical calculation of all the rest of</p> <p>9 the 30,000 acres, all of it being designated as</p> <p>10 single-family production real estate, and all of it</p> <p>11 being built out for the next 35 years at the time of</p> <p>12 trial. Everybody understood that, and the testimony of</p> <p>13 Jim Wolfram from his deposition first given in 2011</p> <p>14 right through the present evidenced that.</p> <p>15 My opening statement is recorded in our</p> <p>16 briefs. It simply states, Judge, this is a case about</p> <p>17 a need for information and the damages that followed</p> <p>18 therefor.</p> <p>19 The trial, at the trial Mr. Wolfram took the</p> <p>20 witness stand on two different occasions, Mr. Wilkes</p> <p>21 went one time, and the Court may remember the</p> <p>22 difficulty that Mr. Wolfram had on the first day in</p> <p>23 terms of some of the questions that were asked, but he</p> <p>24 was on the stand for many, many hours. At no time did</p> <p>25 plaintiffs' counsel -- excuse me, defendant's counsel,</p>



<p style="text-align: right;">Page 41</p> <p>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</p>	<p style="text-align: right;">Page 43</p> <p>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</p>
<p style="text-align: right;">Page 42</p> <p>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.</p>	<p style="text-align: right;">Page 44</p> <p>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</p>

<p style="text-align: right;">Page 45</p> <p>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</p>	<p style="text-align: right;">Page 47</p> <p>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,</p>
<p style="text-align: right;">Page 46</p> <p>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.</p>	<p style="text-align: right;">Page 48</p> <p>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.</p>

<p style="text-align: right;">Page 49</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 51</p> <p>1 by that recollection.</p> <p>2 Thank you, ma'am.</p> <p>3 THE COURT: All right, Ms. Lundvall?</p> <p>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.</p> <p>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?</p> <p>18 MS. LUNDVALL: I would.</p> <p>19 THE COURT: So please, I really do want to  20 know this. Why did you not follow that?</p> <p>21 MS. LUNDVALL: All right, so let me, as far  22 as --</p> <p>23 THE COURT: Let's do that before we get to  24 substance, because that is very, very critical to this  25 Court.</p>
<p style="text-align: right;">Page 50</p> <p>1 denial of that in the Liu case, and my point is that  2 you were very much aware of that issue.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 52</p> <p>1 MS. LUNDVALL: All right. You entered your  2 findings of fact and conclusions of law first on  3 June 25th of 2015.</p> <p>4 THE COURT: I got that.</p> <p>5 MS. LUNDVALL: All right, so in that --</p> <p>6 MR. JIMMERSON: I think it was 2014,  7 Ms. Lundvall.</p> <p>8 THE COURT: It's 2014. 6/25/2014.</p> <p>9 MS. LUNDVALL: If that's not what I said, I  10 misspoke and my apologies.</p> <p>11 All right. In that findings, you requested  12 supplemental briefing.</p> <p>13 THE COURT: Absolutely.</p> <p>14 MS. LUNDVALL: Okay. So we did the  15 supplemental briefing.</p> <p>16 THE COURT: Uh-huh.</p> <p>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.</p> <p>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?</p> <p>25 MS. LUNDVALL: Correct.</p>

<p style="text-align: right;">Page 53</p> <p>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</p>	<p style="text-align: right;">Page 55</p> <p>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.</p>
<p style="text-align: right;">Page 54</p> <p>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 --</p>	<p style="text-align: right;">Page 56</p> <p>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</p>

<p style="text-align: right;">Page 57</p> <p>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</p>	<p style="text-align: right;">Page 59</p> <p>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</p>
<p style="text-align: right;">Page 58</p> <p>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</p>	<p style="text-align: right;">Page 60</p> <p>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</p>

<p style="text-align: right;">Page 61</p> <p>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</p>	<p style="text-align: right;">Page 63</p> <p>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</p>
<p style="text-align: right;">Page 62</p> <p>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</p>	<p style="text-align: right;">Page 64</p> <p>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</p>

<p style="text-align: right;">Page 65</p> <p>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</p>	<p style="text-align: right;">Page 67</p> <p>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.</p>
<p style="text-align: right;">Page 66</p> <p>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</p>	<p style="text-align: right;">Page 68</p> <p>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.</p>

<p style="text-align: right;">Page 69</p> <p>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</p>	<p style="text-align: right;">Page 71</p> <p>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 --</p>
<p style="text-align: right;">Page 70</p> <p>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</p>	<p style="text-align: right;">Page 72</p> <p>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 here 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.</p>



<p style="text-align: right;">Page 73</p> <p>1 MS. LUNDVALL: And I'm quoting from their</p> <p>2 opposition, and maybe it might make it easier for the</p> <p>3 Court to have a paper copy of our powerpoint.</p> <p>4 THE COURT: Sure, so I can follow it instead</p> <p>5 of looking up.</p> <p>6 MS. LUNDVALL: And I have a copy for</p> <p>7 Mr. Jimmerson as well.</p> <p>8 So anyway, so they opposed then our motion</p> <p>9 for summary judgment. They say this whole case is</p> <p>10 about what you call option property. They claimed that</p> <p>11 we had made purchases of option property, and the</p> <p>12 quantification of those purchases then yielded 1.8 in</p> <p>13 -- 1.8 million in commissions that we had not paid to</p> <p>14 them. That was their theory. That's what we defended</p> <p>15 against, that's what we prevailed upon at the time of</p> <p>16 the trial.</p> <p>17 All right, so let's go on then. What did we</p> <p>18 get nearly immediately after filing our motion for</p> <p>19 summary judgment? And part of our motion for summary</p> <p>20 judgment, very noticeably, had indicated that they had</p> <p>21 not quantified their damages in compliance with Rule</p> <p>22 16.1.</p> <p>23 THE COURT: Right.</p> <p>24 MS. LUNDVALL: Therefore, under the</p> <p>25 sanctioning provisions under 16.1, they should not be</p>	<p style="text-align: right;">Page 75</p> <p>1 All right. So then what we do is we get then</p> <p>2 to what they actually tried. Their supplement then</p> <p>3 gave us plenty of information as to what they were</p> <p>4 going to try at the time of trial. So let's get into</p> <p>5 then we talked -- I have a number of slides in here</p> <p>6 about how every single one of their Rule 16.1</p> <p>7 disclosures.</p> <p>8 Even disclosures that were given to us during</p> <p>9 the course of trial included this figure of</p> <p>10 \$1.8 million. It made it abundantly clear that they</p> <p>11 were seeking money damages in addition to additional</p> <p>12 information.</p> <p>13 And if you think about --</p> <p>14 THE COURT: Once they got the additional</p> <p>15 information, which started the lawsuit. They got it.</p> <p>16 MS. LUNDVALL: That's correct.</p> <p>17 THE COURT: Once they got it.</p> <p>18 MS. LUNDVALL: And so --</p> <p>19 THE COURT: I didn't see any of this, as you</p> <p>20 know, that's not evidence at trial. I only review the</p> <p>21 evidence at trial, but yes, okay.</p> <p>22 MS. LUNDVALL: But this is all part of the</p> <p>23 record then before the Court as to what the parties</p> <p>24 were doing as it relates then to this motion to amend</p> <p>25 as it relates to the prevailing party. We put all this</p>
<p style="text-align: right;">Page 74</p> <p>1 able to advance any quantification of their damages.</p> <p>2 And what did they do? They filed then their Rule 16.1</p> <p>3 disclosure, and for the first time then, after we filed</p> <p>4 our motion for summary judgment, they indicated that</p> <p>5 they calculate their damages to be in excess of 1.9.</p> <p>6 Now, I don't know about you, but any attorney</p> <p>7 that I know that gets a disclosure, a Rule 16.1</p> <p>8 disclosure of what the opposing side's damages are, we</p> <p>9 know that's what you're defending against.</p> <p>10 THE COURT: Okay.</p> <p>11 MS. LUNDVALL: That's what the case is about.</p> <p>12 That's what we're defending against, all right?</p> <p>13 So they made their disclosure and they</p> <p>14 identified how they calculated it. And it tracked the</p> <p>15 two calculations on the two theories that they were</p> <p>16 advancing.</p> <p>17 The first one was the loss of the</p> <p>18 commissions, and they gave calculations on that. And</p> <p>19 they go on and they talk about how we reclassified the</p> <p>20 lands as purchase property and option property, and we</p> <p>21 divested then the plaintiffs of any opportunity then to</p> <p>22 recover this \$1.8 million in commissions. That's what</p> <p>23 their theory holds. That's the theory they tried, and</p> <p>24 that's the theory, your Honor, that they lost, that you</p> <p>25 ruled against them upon.</p>	<p style="text-align: right;">Page 76</p> <p>1 information before you.</p> <p>2 THE COURT: You put all this information</p> <p>3 before me at trial?</p> <p>4 MS. LUNDVALL: No, no, no, I'm not suggesting</p> <p>5 that.</p> <p>6 THE COURT: No, no.</p> <p>7 MS. LUNDVALL: What I'm suggesting is --</p> <p>8 THE COURT: This is discovery. This is to</p> <p>9 put people on notice, you're right, as to what they may</p> <p>10 or what may happen at trial. There's things in 16.1</p> <p>11 that never come up at trial. You and I both know we</p> <p>12 could have this theory initially, and after discovery,</p> <p>13 we go, whoops, that's not the way we're going, so this</p> <p>14 is discovery, I understand that, so I just want to make</p> <p>15 sure -- I don't remember, and I went -- you didn't ask</p> <p>16 me to review 16.1.</p> <p>17 Did you put into evidence 16.1?</p> <p>18 MS. LUNDVALL: Absolutely. All of this is in</p> <p>19 as far in our oppositions to their various motion to</p> <p>20 strike.</p> <p>21 THE COURT: No, no, not for this, but at</p> <p>22 trial. Believe me, I read everything, but at trial did</p> <p>23 you have an exhibit of 16.1?</p> <p>24 MS. LUNDVALL: Absolutely not.</p> <p>25 THE COURT: All right. I just wanted to make</p>

<p style="text-align: right;">Page 77</p> <p>1 sure I didn't miss it, because that would concern me.</p> <p>2 MS. LUNDVALL: As a defendant, I'm not going</p> <p>3 to put in evidence --</p> <p>4 THE COURT: Of course not.</p> <p>5 MS. LUNDVALL: -- of what a plaintiff claims</p> <p>6 is their damages.</p> <p>7 THE COURT: Okay. Right, but at trial is</p> <p>8 what you're defending. You take what the burden of</p> <p>9 proof is and what they put on, and you do your defense</p> <p>10 according to the testimony of the plaintiffs and their</p> <p>11 exhibits. That's your burden, I understand completely,</p> <p>12 of what's done at trial.</p> <p>13 Okay, I'm on the same -- I'm following your</p> <p>14 reasoning.</p> <p>15 MS. LUNDVALL: All right. But I guess let me</p> <p>16 step back from this to make sure the Court understands</p> <p>17 the arguments that I'm making is --</p> <p>18 THE COURT: Yes.</p> <p>19 MS. LUNDVALL: Is that they told us what</p> <p>20 their theory was and what they were seeking to recover.</p> <p>21 For the attorney's fees we incurred in defending this</p> <p>22 case, it was based upon what they had disclosed to us,</p> <p>23 and those disclosures are all before the Court.</p> <p>24 And I'm gonna get to the trial where you're</p> <p>25 gonna see that, in fact, they continued in this, the</p>	<p style="text-align: right;">Page 79</p> <p>1 and that reclassification was really what they termed</p> <p>2 purchase property, and therefore they were entitled to</p> <p>3 a commission upon them.</p> <p>4 THE COURT: Wouldn't you agree with me, I</p> <p>5 just want to ask wouldn't you agree with me that a lot</p> <p>6 of questions was educating the Court and themselves on</p> <p>7 how, especially Mr. Whittemore, how did you treat</p> <p>8 Pardee, because they were not privy to this, and as you</p> <p>9 know, how this was done, how you decided to do the</p> <p>10 redesignation, how you decided to treat it, why you</p> <p>11 moved the boundaries, wouldn't you agree with me a lot</p> <p>12 of that information you're now basically saying to this</p> <p>13 Court, Oh, that was all to defeat their \$1.8 million</p> <p>14 claim, the damages they put in discovery, but a lot of</p> <p>15 it was to figure out, I felt, whether they were</p> <p>16 entitled to option property, not what the amount was</p> <p>17 yet, but to find out whether they were actually</p> <p>18 entitled based on third party, you know, that they</p> <p>19 weren't a part of, you know, that's a whole different</p> <p>20 thing to incorporate into a commission agreement.</p> <p>21 I'm sure this may not happen again, because</p> <p>22 they were not part of CSI, Coyote Springs and Pardee.</p> <p>23 A lot of questions, because I spent a long time on it,</p> <p>24 was trying to figure out whether they even have that</p> <p>25 theory.</p>
<p style="text-align: right;">Page 78</p> <p>1 same theory that they'd advanced.</p> <p>2 THE COURT: Okay.</p> <p>3 MS. LUNDVALL: Their theory was all the way</p> <p>4 back to their motion for summary judgment that said it</p> <p>5 all depends on what you call option property.</p> <p>6 THE COURT: Uh-huh.</p> <p>7 MS. LUNDVALL: Their theory that they tried</p> <p>8 to you was we had purchased option property. The</p> <p>9 theory we defended against was we didn't purchase any</p> <p>10 option property, and you agreed with us. And their</p> <p>11 quantification of that purchase was the \$1.9 million --</p> <p>12 it was actually 1.8. They add the additional component</p> <p>13 then for the attorney's fees that they incurred on the</p> <p>14 second portion of their theory.</p> <p>15 But going back then to what happened then at</p> <p>16 the time of the trial, all right, so we get to the</p> <p>17 witnesses. Mr. Wolfram gave nearly three days full of</p> <p>18 testimony, and Mr. Wilkes was there for about a half</p> <p>19 day, Mr. Whittemore. And these are the key witnesses,</p> <p>20 what I tried to highlight as to who the Court heard</p> <p>21 with the greatest frequency and the most information,</p> <p>22 and Mr. Whittemore had nearly three full days.</p> <p>23 And during the course of the trial, there was</p> <p>24 numerous questions about lost commissions and this</p> <p>25 theory about how we had reclassified option property</p>	<p style="text-align: right;">Page 80</p> <p>1 And that's why, I'll be honest, a lot of the</p> <p>2 questions -- because I'm being very -- I looked through</p> <p>3 it, and in honesty, a lot of it was just Mr. Jimmerson</p> <p>4 was trying to figure out how it was treated and what</p> <p>5 they did to see if it could go under his under the</p> <p>6 commission agreement.</p> <p>7 Do you agree with me or not, or do you think</p> <p>8 it was all I'm just, I'm gonna make them -- you know,</p> <p>9 because the questions were trying to understand,</p> <p>10 especially Whittemore, how did this work; Jon Lash, how</p> <p>11 did you do this, why did you do this, what happened on</p> <p>12 these amendments, you know, it was substantive to see.</p> <p>13 And I look at it and I did at the time, you</p> <p>14 know, I looked at it as the time of them trying to</p> <p>15 figure out whether -- which was the basis, whether they</p> <p>16 did owe anything, whether they did owe any under, I was</p> <p>17 gonna use the word "option," whether that actually,</p> <p>18 when they changed the boundaries and whether that</p> <p>19 actually was option. A lot of that was done, to me,</p> <p>20 when it was done at trial was questions to really find</p> <p>21 substance.</p> <p>22 And I see what you're saying, well, then, if</p> <p>23 it went the way they wanted, they would have had</p> <p>24 substance for their, they could have had evidence to</p> <p>25 this Court that they had \$1.8 million in damages,</p>

<p style="text-align: right;">Page 81</p> <p>1 correct?</p> <p>2 Do you guys agree would me on my questions?</p> <p>3 MS. LUNDVALL: Yeah, you've got two questions</p> <p>4 there, two principle questions there, and you say,</p> <p>5 Well, wasn't the trial about this.</p> <p>6 THE COURT: Yes.</p> <p>7 MS. LUNDVALL: But what I want you to think</p> <p>8 about is this: All the discovery was about that as</p> <p>9 well, all of the discovery that we went through with</p> <p>10 all the different witnesses, and they took Harvey</p> <p>11 Whittemore's deposition, they took Jon Lash's</p> <p>12 deposition, they took many depositions, no different</p> <p>13 than we did. All the way through discovery, we learned</p> <p>14 all this information.</p> <p>15 But what is a trial? Is a trial is --</p> <p>16 THE COURT: To prove.</p> <p>17 MS. LUNDVALL: Take it to the finder of fact.</p> <p>18 THE COURT: Correct.</p> <p>19 MS. LUNDVALL: And to convince --</p> <p>20 THE COURT: Convince me.</p> <p>21 MS. LUNDVALL: That's right, and to convince</p> <p>22 the finder of fact, so they weren't using trial as a</p> <p>23 discovery device. The weren't --</p> <p>24 THE COURT: I have to -- when they came up</p> <p>25 with that one, oh, my gosh, what was the one that they</p>	<p style="text-align: right;">Page 83</p> <p>1 commission agreement, and in his theory, had changed</p> <p>2 then as to whether or not they should get a commission</p> <p>3 based upon Pardee's purchases.</p> <p>4 He went on to say, talk about the three</p> <p>5 different provisions then of the commission agreement</p> <p>6 himself. He testified that the location and the</p> <p>7 boundaries of the parcels would determine what type of</p> <p>8 property was being purchased, and therefore, whether or</p> <p>9 not they were entitled to additional commissions.</p> <p>10 And then he went on then and talked about</p> <p>11 parcel maps as demonstrative evidence and how there was</p> <p>12 definite boundaries, in his opinion, to the purchase</p> <p>13 property and how if we went outside of certain</p> <p>14 boundaries, then, in fact, we were obligated to pay him</p> <p>15 commissions upon that.</p> <p>16 The Court will probably recall, I can</p> <p>17 visualize it as far as in your courtroom, we were here.</p> <p>18 He had huge maps with overlays. He talked about how we</p> <p>19 had purchased property that should be vertical, but we</p> <p>20 had developed in a horizontal fashion.</p> <p>21 THE COURT: Correct.</p> <p>22 MS. LUNDVALL: That, that, you know, should</p> <p>23 ring a bell as far as with the Court.</p> <p>24 THE COURT: I remember. I remember it all</p> <p>25 very well, the entire theory.</p>
<p style="text-align: right;">Page 82</p> <p>1 hadn't seen before?</p> <p>2 MR. JIMMERSON: Res. 5.</p> <p>3 THE COURT: Let me think it through --</p> <p>4 I'm sorry, Mr. Jimmerson -- on when they had bought it</p> <p>5 as multi -- I will tell you some of the information</p> <p>6 when I read it back, I felt, was -- and you can do</p> <p>7 discovery in trial. It's dangerous.</p> <p>8 MS. LUNDVALL: That's correct.</p> <p>9 THE COURT: It's a dangerous proposition, but</p> <p>10 I understand your argument.</p> <p>11 MS. LUNDVALL: But at the same token, your</p> <p>12 Honor, think about it from this perspective, that's</p> <p>13 what we were defending against, and that is what we</p> <p>14 were defending against and we prevailed on that. I</p> <p>15 want to go back to the fact we prevailed on that.</p> <p>16 MS. LUNDVALL: To go back and try to</p> <p>17 underscore Jim Wolfram's testimony. He was questioned</p> <p>18 very clearly about how he earned commissions, and it</p> <p>19 was his testimony that Pardee was obligated to pay him</p> <p>20 commissions on option property.</p> <p>21 And he went through all kinds of questions</p> <p>22 then through Mr. Jimmerson about the definitions from</p> <p>23 the documents on this purchase property price and</p> <p>24 option property. He testified that it wasn't fair that</p> <p>25 Pardee had executed amendments that affected his</p>	<p style="text-align: right;">Page 84</p> <p>1 MS. LUNDVALL: Their entire theory was if we</p> <p>2 went outside somewhat what they --</p> <p>3 THE COURT: What they labeled as option.</p> <p>4 MS. LUNDVALL: They wanted that all as option</p> <p>5 property.</p> <p>6 THE COURT: They said they defined it as</p> <p>7 option property under the agreement.</p> <p>8 MS. LUNDVALL: And that they thought they</p> <p>9 should get a commission then upon those purchases.</p> <p>10 THE COURT: If it had been deemed option, I</p> <p>11 understand.</p> <p>12 MS. LUNDVALL: All right.</p> <p>13 THE COURT: I understood the theory of the</p> <p>14 case.</p> <p>15 MS. LUNDVALL: And he said he believed he was</p> <p>16 entitled to additional commissions also on the custom</p> <p>17 lots. If you recall, there was an issue regarding the</p> <p>18 custom lots.</p> <p>19 THE COURT: Yes.</p> <p>20 MS. LUNDVALL: All right.</p> <p>21 THE COURT: Whether those would be</p> <p>22 single-family detached residential property, since they</p> <p>23 are single family, and the question is based on the</p> <p>24 agreement whether that could -- I agree.</p> <p>25 MS. LUNDVALL: All right. So he said he was</p>

<p style="text-align: right;">Page 85</p> <p>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</p>	<p style="text-align: right;">Page 87</p> <p>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</p>
<p style="text-align: right;">Page 86</p> <p>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 --</p>	<p style="text-align: right;">Page 88</p> <p>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 --</p>

<p style="text-align: right;">Page 89</p> <p>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?</p>	<p style="text-align: right;">Page 91</p> <p>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</p>
<p style="text-align: right;">Page 90</p> <p>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</p>	<p style="text-align: right;">Page 92</p> <p>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</p>

<p style="text-align: right;">Page 93</p> <p>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</p>	<p style="text-align: right;">Page 95</p> <p>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</p>
<p style="text-align: right;">Page 94</p> <p>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.</p>	<p style="text-align: right;">Page 96</p> <p>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</p>

<p style="text-align: right;">Page 97</p> <p>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</p>	<p style="text-align: right;">Page 99</p> <p>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</p>
<p style="text-align: right;">Page 98</p> <p>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.</p>	<p style="text-align: right;">Page 100</p> <p>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</p>

<p style="text-align: right;">Page 101</p> <p>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 --</p>	<p style="text-align: right;">Page 103</p> <p>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 --</p>
<p style="text-align: right;">Page 102</p> <p>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.</p>	<p style="text-align: right;">Page 104</p> <p>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</p>



<p style="text-align: right;">Page 105</p> <p>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.</p>	<p style="text-align: right;">Page 107</p> <p>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</p>
<p style="text-align: right;">Page 106</p> <p>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</p>	<p style="text-align: right;">Page 108</p> <p>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</p>

<p style="text-align: right;">Page 109</p> <p>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.</p>	<p style="text-align: right;">Page 111</p> <p>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</p>
<p style="text-align: right;">Page 110</p> <p>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,</p>	<p style="text-align: right;">Page 112</p> <p>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 --</p>

<p style="text-align: right;">Page 113</p> <p>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</p>	<p style="text-align: right;">Page 115</p> <p>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</p>
<p style="text-align: right;">Page 114</p> <p>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</p>	<p style="text-align: right;">Page 116</p> <p>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.</p>

<p style="text-align: right;">Page 117</p> <p>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</p>	<p style="text-align: right;">Page 119</p> <p>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</p>
<p style="text-align: right;">Page 118</p> <p>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.</p>	<p style="text-align: right;">Page 120</p> <p>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.</p>

<p style="text-align: right;">Page 121</p> <p>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</p>	<p style="text-align: right;">Page 123</p> <p>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</p>
<p style="text-align: right;">Page 122</p> <p>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</p>	<p style="text-align: right;">Page 124</p> <p>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.</p>

<p style="text-align: right;">Page 125</p> <p>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.</p>	<p style="text-align: right;">Page 127</p> <p>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</p>
<p style="text-align: right;">Page 126</p> <p>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</p>	<p style="text-align: right;">Page 128</p> <p>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</p>

<p style="text-align: right;">Page 129</p> <p>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</p>	<p style="text-align: right;">Page 131</p> <p>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,</p>
<p style="text-align: right;">Page 130</p> <p>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.</p>	<p style="text-align: right;">Page 132</p> <p>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</p>

<p style="text-align: right;">Page 133</p> <p>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</p>	<p style="text-align: right;">Page 135</p> <p>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</p>
<p style="text-align: right;">Page 134</p> <p>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</p>	<p style="text-align: right;">Page 136</p> <p>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.</p>



<p style="text-align: right;">Page 137</p> <p>1 THE COURT: Okay.</p> <p>2 MR. JIMMERSON: In the sense that we didn't</p> <p>3 win additional commissions. Okay, I mean I wasn't</p> <p>4 happy with that ruling, but that's what it was. But</p> <p>5 what was being discussed was the information.</p> <p>6 You see, where the defendant distorts this is</p> <p>7 they somehow say to you, We entirely spent 90 percent</p> <p>8 of our time defending against the money claim. Well,</p> <p>9 that wasn't this trial. They defended against the</p> <p>10 claim of accounting and breach of contract on damages.</p> <p>11 We spent all the time -- not damages, on the</p> <p>12 information.</p> <p>13 We spent all the time on what information was</p> <p>14 provided, and the defense argued that was sufficient to</p> <p>15 satisfy the requirement of the commission agreement</p> <p>16 letter to provide information, which the Court</p> <p>17 disagreed with. That's the thrust of this case.</p> <p>18 So I guess what I'm saying to you is when you</p> <p>19 win on accounting, when you win on breach of contract</p> <p>20 for failure to inform and you win \$141,500, and you</p> <p>21 lose some unknown amount of dollars, depending on what</p> <p>22 that may have been, to the east of Parcel 1, I mean was</p> <p>23 it \$50,000? Was it \$200,000? We don't know, because</p> <p>24 nobody quantified it, because we wouldn't know the</p> <p>25 number of acres to the east without an accounting.</p>	<p style="text-align: right;">Page 139</p> <p>1 testimony, Page 174, Lines 8 through 15 of the trial</p> <p>2 transcript.</p> <p>3 Our opening statement and our closing</p> <p>4 statement mirrors that point, that the evidence will</p> <p>5 demonstrate that he could have lost commissions, may</p> <p>6 have lost commissions, so we knew that, we believed we</p> <p>7 may have been entitled to that but we didn't know that.</p> <p>8 And there was so much discovery during the</p> <p>9 trial, because we didn't have access to Mr. Whittemore</p> <p>10 in the fashion that you did. You know, your</p> <p>11 questioning of him, okay, as well as some of the other</p> <p>12 witnesses, is very helpful, because they can, they can</p> <p>13 dance if I'm asking a question or opposing counsel is</p> <p>14 questioning, but when a judge asks you a question, you</p> <p>15 know, you tend to get a more honest, truthful response</p> <p>16 and a more, in this regard, comprehensive understanding</p> <p>17 of this, and the Court was probing him, if you look at</p> <p>18 the record.</p> <p>19 So all I'm getting at is we can't have</p> <p>20 revisionist history. Pardee cannot try to change what</p> <p>21 occurred, which was a struggle, a really hotly</p> <p>22 contested case. My compliments to the defense counsel</p> <p>23 with their eagerness. They certainly spent a lot of</p> <p>24 money on this case apparently in fees, but they didn't</p> <p>25 prevail, because their clients didn't do the right</p>
<p style="text-align: right;">Page 138</p> <p>1 Jon Lash I asked this specifically: How many</p> <p>2 acres are to the east of Parcel 1? I don't know,</p> <p>3 Mr. Jimmerson. Well, if he didn't know, no one's going</p> <p>4 to know, and that's what the second phase of this trial</p> <p>5 would have determined had you gone with that point.</p> <p>6 So I'm totally with defendants and with you</p> <p>7 to say that aspect of entitlement to additional</p> <p>8 commissions we lost, but that aspect had nothing to do</p> <p>9 with \$1.8 million, it had to do with the 30 acres</p> <p>10 Res. 5 and had to do with whether or not you allowed</p> <p>11 them to build east of the Parcel 1 boundary. That's</p> <p>12 it. That's what this trial was about.</p> <p>13 And when you read the deposition testimony --</p> <p>14 I'm sorry, when you read the trial testimony of</p> <p>15 Mr. Wolfram, and this was what was cross-examined by</p> <p>16 Ms. Lundvall, he testifies this: Plaintiff has --</p> <p>17 excuse me.</p> <p>18 Mr. Wolfram testifies: And this is, to me,</p> <p>19 the basis of my whole court case here. I don't, I</p> <p>20 don't care about money and all that stuff. My basis is</p> <p>21 that I've been breached on information. I should not</p> <p>22 have had to go to this particular map. There are other</p> <p>23 things too. Not my family could ever ever have tried</p> <p>24 to find out what's going on and do a map like this, I</p> <p>25 mean there is just not a chance, October 30th, 2013</p>	<p style="text-align: right;">Page 140</p> <p>1 thing. It's not the lawyers did right or wrong, their</p> <p>2 clients didn't do the right thing, as found by you.</p> <p>3 And I will tell you we're gonna have an issue</p> <p>4 on this judgment. This judgment has to say, has to</p> <p>5 mirror your findings. I have no problems saying that</p> <p>6 an unknown amount of money, an unquantified amount of</p> <p>7 money that the plaintiffs thought they may be entitled</p> <p>8 to were the Court to agree you can't redesignate to</p> <p>9 beat somebody out of commission, and you can't build</p> <p>10 east of the Parcel 1 without compensating them as</p> <p>11 option property, that would have been owed to them,</p> <p>12 but that, that is certainly the minor part of the case.</p> <p>13 The case was --</p> <p>14 THE COURT: But now you're going to the</p> <p>15 arguing of the prevailing, and I understand we both did</p> <p>16 it.</p> <p>17 MR. JIMMERSON: Right. I'm just saying, I'm</p> <p>18 demonstrating to you though --</p> <p>19 THE COURT: Right.</p> <p>20 MR. JIMMERSON: -- for purposes of today's</p> <p>21 motion, that any suggestion that they won any part of</p> <p>22 this case is false. They did defend successfully our</p> <p>23 claim for an unknown amount of commissions based upon</p> <p>24 their actions building east of the Parcel 1 or</p> <p>25 redesignating property that we discovered during trial.</p>

<p style="text-align: right;">Page 141</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 143</p> <p>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.</p> <p>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.</p> <p>11 THE COURT: Right.</p> <p>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.</p> <p>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</p>
<p style="text-align: right;">Page 142</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 144</p> <p>1 happen here is you will be given competing orders.</p> <p>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.</p> <p>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.</p> <p>14 Does that make sense?</p> <p>15 MR. JIMMERSON: I only --</p> <p>16 MS. LUNDVALL: Your Honor?</p> <p>17 MR. JIMMERSON: Can I just mention one other 18 thing?</p> <p>19 MS. LUNDVALL: What I would like to do is to 20 respond as far as to the comments.</p> <p>21 THE COURT: Are you finished, Mr. Jimmerson?</p> <p>22 MR. JIMMERSON: I do want to speak to the 23 stay for just a second.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. JIMMERSON: Judge?</p>

<p style="text-align: right;">Page 145</p> <p>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.</p>	<p style="text-align: right;">Page 147</p> <p>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 --</p>
<p style="text-align: right;">Page 146</p> <p>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</p>	<p style="text-align: right;">Page 148</p> <p>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</p>

<p style="text-align: right;">Page 149</p> <p>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?</p>	<p style="text-align: right;">Page 151</p> <p>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</p>
<p style="text-align: right;">Page 150</p> <p>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</p>	<p style="text-align: right;">Page 152</p> <p>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</p>

<p style="text-align: right;">Page 153</p> <p>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.</p>	<p style="text-align: right;">Page 155</p> <p>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.</p>
<p style="text-align: right;">Page 154</p> <p>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</p>	<p style="text-align: right;">Page 156</p> <p>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 --</p>

<p style="text-align: right;">Page 157</p> <p>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</p>	<p style="text-align: right;">Page 159</p> <p>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</p>
<p style="text-align: right;">Page 158</p> <p>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.</p>	<p style="text-align: right;">Page 160</p> <p>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</p>

<p style="text-align: right;">Page 161</p> <p>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</p>	<p style="text-align: right;">Page 163</p> <p>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</p>
<p style="text-align: right;">Page 162</p> <p>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 counter motions, 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 counter motions, 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 counter motions.  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.</p>	<p style="text-align: right;">Page 164</p> <p>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</p>

<p style="text-align: right;">Page 165</p> <p>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</p>	<p style="text-align: right;">Page 167</p> <p>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.</p>
<p style="text-align: right;">Page 166</p> <p>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,</p>	<p style="text-align: right;">Page 168</p> <p>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</p>



<p style="text-align: right;">Page 169</p> <p>1 of that.</p> <p>2 THE COURT: But he's going beyond service.</p> <p>3 MR. JIMMERSON: I'm not talking about</p> <p>4 service, I'm talking about --</p> <p>5 MS. LUNDVALL: This is what I'm talking</p> <p>6 about, is that if I'm going to send him a proposed</p> <p>7 judgment, I can do that through the service function on</p> <p>8 Wiznet.</p> <p>9 MR. JIMMERSON: But you didn't do that this</p> <p>10 year, you didn't do that in --</p> <p>11 THE COURT: Okay. You know what, it's real</p> <p>12 easy, I'm sorry.</p> <p>13 MS. LUNDVALL: And I will do that. That's</p> <p>14 the point I'm trying to make, and so it will accomplish</p> <p>15 what it is that he wants.</p> <p>16 THE COURT: You will serve it to that person?</p> <p>17 MS. LUNDVALL: I will do it through Wiznet,</p> <p>18 and whoever they have through Wiznet, they receive</p> <p>19 copies of it. So once again, it puts the ball in their</p> <p>20 court to have somebody register for --</p> <p>21 MR. JIMMERSON: No problem, we have</p> <p>22 registered everyone in this case.</p> <p>23 THE COURT: But you're going beyond that,</p> <p>24 you're going beyond other emails.</p> <p>25 Am I understanding you right?</p>	<p style="text-align: right;">Page 171</p> <p>1 offer this suggestion to you. I've made the</p> <p>2 representation that any emails, any letters, anything,</p> <p>3 we will send to Mr. Jimmerson through the serve</p> <p>4 function on Wiznet and so it gets to them. I've made</p> <p>5 that representation, and so that's a stipulation.</p> <p>6 THE COURT: You're using Wiznet for</p> <p>7 everything, like Mr. Jimmerson --</p> <p>8 MS. LUNDVALL: Absolutely.</p> <p>9 THE COURT: You're using --</p> <p>10 MS. LUNDVALL: Absolutely. You can use</p> <p>11 Wiznet for that function, absolutely.</p> <p>12 MR. JIMMERSON: Do you understand the game</p> <p>13 they're playing?</p> <p>14 MS. LUNDVALL: What I'm trying to do is to</p> <p>15 give the Court an out, because number one, you don't</p> <p>16 have a motion before you. Number two, you don't have</p> <p>17 any grounds before you, and I'm trying to make sure</p> <p>18 that there's no issue in your record that --</p> <p>19 THE COURT: Well, if you want to appeal me on</p> <p>20 this, have at it, Ms. Lundvall. I mean I have an issue</p> <p>21 in front of me that somebody -- and I can tell you the</p> <p>22 issue came because the stickler for the rules, the</p> <p>23 rules didn't happen on this judgment.</p> <p>24 MR. JIMMERSON: That's right.</p> <p>25 THE COURT: So I do have an issue. My</p>
<p style="text-align: right;">Page 170</p> <p>1 MR. JIMMERSON: Absolutely right.</p> <p>2 THE COURT: That's his oral motion, and I</p> <p>3 agree he just asked about service, and I agree.</p> <p>4 Who, instead of them doing it to you, and</p> <p>5 they're not going to -- on different communications,</p> <p>6 they are not going to have to do three people. You're</p> <p>7 telling them who you want any communication to go to.</p> <p>8 MR. JIMMERSON: Right, any emails, just send</p> <p>9 it to ks@jimmersonlawfirm.com.</p> <p>10 You know, we send everything to Ms. Lundvall</p> <p>11 and to Rory.</p> <p>12 Sorry, I don't remember your last name.</p> <p>13 They won't accommodate that, and they know I</p> <p>14 don't read it.</p> <p>15 THE COURT: Okay. It's very easy, if you</p> <p>16 want to -- I absolutely feel like, so we don't have any</p> <p>17 more misunderstandings, any emails on this case that</p> <p>18 you want to go to Mr. Jimmerson, do not send it to his</p> <p>19 email, send it to --</p> <p>20 MR. JIMMERSON: Ks@jimmersonlawfirm.com.</p> <p>21 THE COURT: Ks@jimmerson, and he cannot come</p> <p>22 to this Court and say he didn't get it.</p> <p>23 MR. JIMMERSON: Agreed.</p> <p>24 MS. LUNDVALL: And from this perspective, one</p> <p>25 of the things that I would suggest to the Court, let me</p>	<p style="text-align: right;">Page 172</p> <p>1 concern is how do I address it?</p> <p>2 If you're saying you don't do private email,</p> <p>3 every email you send goes through Wiznet?</p> <p>4 MR. JIMMERSON: That's not true.</p> <p>5 THE COURT: I just, I just want her to get on</p> <p>6 the record and tell me. Every email, whether it's,</p> <p>7 Mr. Jimmerson, I'm going to be late for court on</p> <p>8 January 14, so please don't start without me, that</p> <p>9 would go through Wiznet?</p> <p>10 MS. LUNDVALL: Prospectively, for this case,</p> <p>11 I will do that from this point forward.</p> <p>12 MR. JIMMERSON: I'm not asking her to do</p> <p>13 that. She does not need to do that.</p> <p>14 THE COURT: But if that accomplishes, if you</p> <p>15 will do that, then you have them on Wiznet, and then</p> <p>16 you can get five of them or whoever you have on Wiznet.</p> <p>17 We're done.</p> <p>18 MS. LUNDVALL: That's right.</p> <p>19 THE COURT: If that's what you'll do, that's</p> <p>20 fine.</p> <p>21 MS. LUNDVALL: Thank you, your Honor.</p> <p>22 THE COURT: We accomplished what we want.</p> <p>23 I'm fine.</p> <p>24 And then not only that one, but then if it's</p> <p>25 -- then we actually have a basis to trace that it went</p>

<p style="text-align: right;">Page 173</p> <p>1 through Wiznet.</p> <p>2 MS. LUNDVALL: Absolutely. That's my point.</p> <p>3 THE COURT: Well, I -- so based on that, I'm</p> <p>4 gonna order that. That's regarding plaintiffs' motion</p> <p>5 for ordering client, defendant, when serving electronic</p> <p>6 means, to serve three, what I'm going to say is that I</p> <p>7 am going to deny that -- no.</p> <p>8 MS. LUNDVALL: Yes, you are denying it.</p> <p>9 THE COURT: I'm just trying to think how I</p> <p>10 make sure I get in the ruling, denying it based on the</p> <p>11 ruling that you, prospectively, the defendant</p> <p>12 prospectively will serve all email through Wiznet.</p> <p>13 MS. LUNDVALL: Thank you, your Honor.</p> <p>14 MR. JIMMERSON: For this case.</p> <p>15 MS. LUNDVALL: For purposes of this case</p> <p>16 prospectively.</p> <p>17 THE COURT: For this case. This is the only</p> <p>18 case I have with you, so for this case, so we're very</p> <p>19 specific, yes. Okay.</p> <p>20 We have Pardee's motion for attorney's fees.</p> <p>21 This is Number 6. It is also moot, because it's based</p> <p>22 on the judgment of 6/15/2015.</p> <p>23 This is the prevailing party -- I understand.</p> <p>24 The notes from what you just gave me, I will put it</p> <p>25 with that. We can get into so many things, can we not,</p>	<p style="text-align: right;">Page 175</p> <p>1 THE COURT: Okay. You know what, I am going</p> <p>2 -- no, no. I'm going to deny it, and you can just --</p> <p>3 you have it all in your briefing, and you can refile it</p> <p>4 based on the new judgment.</p> <p>5 MR. JIMMERSON: Could we have a --</p> <p>6 THE COURT: I'm denying it as moot, and you</p> <p>7 can refile it.</p> <p>8 MR. JIMMERSON: For both parties, Judge, can</p> <p>9 we have the opportunity to say plaintiff and defendant,</p> <p>10 individually have 10 days to exchange proposed</p> <p>11 judgments to keep it on track?</p> <p>12 THE COURT: Yeah, however you want to do it.</p> <p>13 MR. JIMMERSON: I'm just suggesting it might</p> <p>14 be a fair time, because we plan on preparing one.</p> <p>15 THE COURT: If you think you need to clarify</p> <p>16 anything else on your exchange on judgments, I'm fine.</p> <p>17 Okay, Pardee's motion to retax memo of costs</p> <p>18 filed June 19th, that also applies to the June 15th,</p> <p>19 2015.</p> <p>20 MR. JIMMERSON: Yes, it does.</p> <p>21 THE COURT: So I'm gonna it as moot at this</p> <p>22 time, and let's see what happens, because it's the NRS.</p> <p>23 It goes back to the prevailing party thing.</p> <p>24 And plaintiffs' motion for attorney fees and</p> <p>25 costs, same thing, I'm gonna deny it as moot, and we'll</p>
<p style="text-align: right;">Page 174</p> <p>1 on this case?</p> <p>2 So this is denied only because it is moot.</p> <p>3 MS. LUNDVALL: Hold on, your Honor. From</p> <p>4 this prospective, are you denying these motions --</p> <p>5 THE COURT: No.</p> <p>6 MS. LUNDVALL: -- or are you holding them</p> <p>7 over for future --</p> <p>8 THE COURT: That's a good question. I was</p> <p>9 going to deny them as moot. Then you would have to</p> <p>10 refile them.</p> <p>11 MS. LUNDVALL: Then everything would have to</p> <p>12 be refiled, then there would be a new opportunity if</p> <p>13 you want to -- my suggestion to the Court is to simply</p> <p>14 continue these then.</p> <p>15 THE COURT: Well, but your motion is asking</p> <p>16 for a judgment of 6/15/2015.</p> <p>17 MS. LUNDVALL: Well, from this perspective,</p> <p>18 your Honor, though, no matter what is contained within</p> <p>19 the judgment, based upon what you've said today, our</p> <p>20 position being the prevailing party on the portion of</p> <p>21 the case, as we've talked about, we prevailed on a</p> <p>22 portion of this case.</p> <p>23 THE COURT: Okay. Just, just --</p> <p>24 MS. LUNDVALL: They prevailed on another one.</p> <p>25 That's all set forth.</p>	<p style="text-align: right;">Page 176</p> <p>1 go from there.</p> <p>2 What is the last thing then, you want to make</p> <p>3 sure on these from my ruling of the first motion on</p> <p>4 exchanging these new judgments, do you want to add you</p> <p>5 each --</p> <p>6 MR. JIMMERSON: I'm just suggesting that we</p> <p>7 exchange them within the next ten days, that's all.</p> <p>8 THE COURT: Oh.</p> <p>9 MR. JIMMERSON: So we keep it on track, and</p> <p>10 then you'll make -- and then maybe if we have a</p> <p>11 dispute, we would telephone you. I'm just suggesting a</p> <p>12 joint call and/or your law clerk and just say, Listen,</p> <p>13 we're not able to get this together ourselves, we need</p> <p>14 a hearing by the Court on competing orders. You will</p> <p>15 have two orders in front of you, and you may make a</p> <p>16 third of your own. I'm just saying that may be a fair</p> <p>17 way to --</p> <p>18 THE COURT: Well, what are your thoughts on</p> <p>19 that?</p> <p>20 MS. LUNDVALL: The Court has told us you have</p> <p>21 a standing order and you want us to comply with that</p> <p>22 standing order.</p> <p>23 THE COURT: Let's just do it.</p> <p>24 MS. LUNDVALL: So my suggestion is that we do</p> <p>25 it that way.</p>

<p style="text-align: right;">Page 177</p> <p>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</p>	<p style="text-align: right;">Page 179</p> <p>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.  18  19  20  21  22 Loree Murray, CCR #426  23  24  25</p>
<p style="text-align: right;">Page 178</p> <p>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</p>	

# Exhibit 6

# Exhibit 6

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4  
5 JAMES WOLFRAM, et al.,  
6 Plaintiffs,  
7 vs.  
8 PARDEE HOMES OF NEVADA,  
9 Defendant.  
10  
11  
12  
13  
14 REPORTER'S TRANSCRIPT OF BENCH TRIAL  
15 BEFORE THE HON. KERRY L. EARLEY, DISTRICT COURT JUDGE  
16 On Wednesday, October 23, 2013  
17 At 8:30 a.m.  
18  
19 APPEARANCES:  
20 For the Plaintiffs: JAMES J. JIMMERSON, ESQ.  
21 JAMES M. JIMMERSON, ESQ.  
22 LYNN M. HANSEN, ESQ.  
23 For the Defendant: PATRICIA K. LUNDVALL, ESQ.  
24 AARON D. SHIPLEY, ESQ.  
25 Reported by: Jennifer D. Church, RPR, CCR No. 568

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1 I N D E X  
2  
3 WITNESSES FOR THE PLAINTIFFS: PAGE  
4 JAMES WOLFRAM  
5 Direct Examination by Mr. J.M. Jimmerson 73  
6  
7 E X H I B I T S  
8 PLAINTIFFS' EXHIBITS IDENTIFIED RECEIVED  
9 1 through 14, 17, 21 --- 6  
10 (Received via stipulation as  
11 identified in Plaintiffs' Trial  
12 Exhibit Binders)  
13 25 Parcel Map, File 98, Page 57 124 127  
14 DEFENDANT'S EXHIBITS IDENTIFIED RECEIVED  
15 A through UU --- 6  
16 (Received via stipulation as  
17 identified in Defendant's Trial  
18 Exhibit Binders)  
19 \* \* \* \* \*  
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1 WEDNESDAY, OCTOBER 23, 2013, 8:30 A.M.  
2 LAS VEGAS, NEVADA  
3 -oOo-  
4 THE COURT: Good morning, Counsel. Welcome.  
5 MS. LUNDVALL: Good morning, Your Honor.  
6 MR. J.J. JIMMERSON: Good morning, Judge.  
7 THE COURT: We're ready to go. It's here,  
8 finally.  
9 MR. J.J. JIMMERSON: It is.  
10 THE COURT: Did you make your appearances for  
11 the record?  
12 MR. J.J. JIMMERSON: I believe we have. I'll  
13 do it again. Jim Jimmerson and Jim M. Jimmerson on  
14 behalf of the plaintiffs, also Lynn Hansen on behalf of  
15 the plaintiffs are present. And we have both James  
16 Wolfram and Walter Wilkes, plaintiffs, who are both  
17 present.  
18 MS. LUNDVALL: Good morning, Your Honor. Pat  
19 Lundvall and Aaron Shipley here from McDonald, Carano,  
20 Wilson, on behalf of Pardee Homes of Nevada. Brian  
21 Grubb is the gentleman who is my paralegal, and he will  
22 be running --  
23 THE COURT: He's the technical person.  
24 MS. LUNDVALL: He's the technical person.  
25 I also have two client representatives in the

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1 courtroom today. We have Chris Hallman, the gentleman  
2 in the blue blazer, and Jon Lash is in the gray blazer.  
3 THE COURT: He's had his deposition taken.  
4 MS. LUNDVALL: That, he has.  
5 THE COURT: Welcome.  
6 Ready to start?  
7 MR. J.J. JIMMERSON: We are, Your Honor.  
8 THE COURT: I was told you have some stipulated  
9 exhibits. Do you want to admit those now before we get  
10 started to make sure you can refer to them?  
11 MR. J.M. JIMMERSON: Yes, Your Honor. Prior to  
12 that we just needed to confirm one more set of  
13 stipulated. It's the Amendments 1 through 8 of the  
14 Amended and Restated Option Agreement.  
15 Pursuant to this Court's advice, I met with  
16 defense counsel and they provided the clean copies. We  
17 have submitted those clean copies as our exhibits, I  
18 believe, 6 through 13.  
19 THE COURT: Okay. And I have -- am I correct?  
20 I have that both parties have stipulated to Plaintiffs'  
21 Exhibits 1 to 14, which would include those. Is that  
22 correct? And 17 and 21?  
23 MR. J.M. JIMMERSON: Yes, Your Honor, that's  
24 right.  
25 THE COURT: And then Defendant's Exhibits A

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