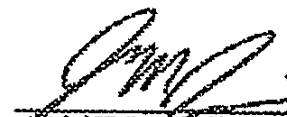


JIMMERSON HANSEN, P.C.
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Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 the right to amend and supplement this response as the investigation and discovery in this
2 case proceeds.

3 Dated this 27th February, 2013.

JIMMERSON HANSEN, P.C.


JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 000264
LYNN M. HANSEN, ESQ.
Nevada Bar No. 0244
JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
Attorney for Plaintiffs
James Wolfram and Walt Wilkes

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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' SEVENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 27th day of February, 2013, as indicated below:

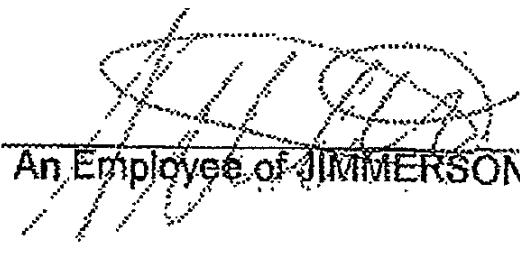
☒ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

By electronic service through the E-filing system

☒ By facsimile, pursuant to EDCR 7.26

By receipt of copy as indicated below

PAT LUNDVALL, ESQ.,
AARON D. SHIPLEY, ESQ.
McDONALD CARANO WILSON, LLP
2300 W. Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant
Pardee Homes of Nevada
Fax No.: 702-873-9966


An Employee of JIMMERSON HANSEN, P.C.

Sent 27/02/2013 - - to p12/17

ASSIGNMENT

Reference is made to the January 11, 2011 Assignment by Jay Dana, owner/broker of General Realty Group, Inc. and made on behalf of General Realty Group, Inc., a copy of which is attached hereto as Exhibit A. I, Mark Carmen, owner/broker of Las Vegas Realty Center, and on behalf of Las Vegas Realty Center, hereby assign to Walt Wilkes all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Pardee Homes, to the extent that Las Vegas Realty Center has any rights, title or interest in the same.

Dated: December 3, 2012

LAS VEGAS REALTY CENTER

By:


MARK CARMEN
OWNER/BROKER

PLTF10491

JA012923

Sent 27/02/2013 - - to p13/17

EXHIBIT "A"

EXHIBIT "A"

PLTF10492

JA012924

Sent 27/02/2013 - - to p14/17

FROM :

01/11/2011 14:53 17027264283

FAX NO. :

GENERALREALTYGROUP

Oct. 26 2012 02:58PM P5
PAGE 01

January 11, 2011

I, Jay Dana, Owner/Broker of General Realty Group INC, on behalf of General Realty Group, INC. hereby assign to Walter D. Wilkes and/or, Las Vegas Realty Center, Mark Carmen, Owner, Broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between General Realty and Pardee Homes

January 11, 2011

By: Jay Dana, Owner/Broker
General Realty Group, INC.

PLTF10485

PLTF10493

JA012925

Sent 27/02/2013 - - to p15/17

ASSIGNMENT

Reference is made to the December 20, 2010 Assignment by Jerry Masini, owner/broker of Award Realty and made on behalf of Award Realty, a copy of which is attached hereto as Exhibit A. I, Peter J. Dingerson, owner/broker of D&W Real Estate LLC, on behalf of D&W Real Estate LLC, hereby assign to James F. Wolfram all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Pardee Homes, to the extent that D&W Real Estate LLC has any rights, title or interest in the same.

Dated: December 3, 2012

D&W REAL ESTATE, LLC

By: 
PETER J. DINGERSON
OWNER/BROKER

6HS1001 assignment agr.

PLTF10494

JA012926

Sent 27/02/2013 - - to p16/17

EXHIBIT "A"

EXHIBIT "A"

PLTF10495

JA012927

Sent 27/02/2013 - - to p17/17

FROM :

FAX NO. :

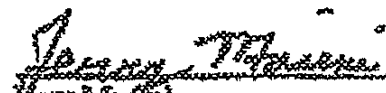
Oct. 26 2012 02:57PM PZ

December 20, 2010

I, Jerry Masini, Owner/Broker of Award Realty, on behalf of Award Realty, hereby assign to James F. Wolfman and/or D & W Real Estate LLC, Peter Dingsen, broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between Award Realty and Perico Homes.

December 20, 2010

By: Jerry Masini, Owner/Broker
Award Realty


Jerry Masini

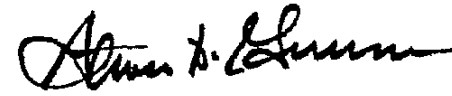
PLTF10486

PLTF10496

JA012928

Exhibit 6

Exhibit 6



CLERK OF THE COURT

1 **RIS**
2 PAT LUNDVALL (NSBN 3761)
3 AARON D. SHIPLEY (NSBN 8258)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1000
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9 lundvall@mcdonaldcarano.com
10 ashipley@mcdonaldcarano.com
11 Attorneys for Defendant
12 Pardee Homes of Nevada

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 JAMES WOLFRAM,
16 WALT WILKES

17 Plaintiffs,

18 vs.

19 PARDEE HOMES OF NEVADA,

20 Defendant.

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

**REPLY IN SUPPORT OF
DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE PLAINTIFFS' CLAIM FOR
ATTORNEYS' FEES AS AN ELEMENT
OF DAMAGES**

(MIL #1)

Hearing Date: September 23, 2013
Hearing Time: 8:30 a.m.

21 **AND RELATED CLAIMS**

22 Plaintiffs' Opposition ("Opposition") to defendant Pardee Homes of Nevada's
23 ("Pardee") Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an
24 Element of Damages (MIL #1) ("Motion") fails because under Nevada law attorneys'
25 fees cannot be recovered as an element of damages in this breach of contract case.

26 Plaintiff's claim that they are entitled to attorneys' fees as an element of their
27 damages is based on an alleged breach of the Commission Agreement. Plaintiffs claim
28 that Pardee failed to provide requested information to Plaintiffs -- information Pardee
contends had nothing to do with any commissions earned by Plaintiffs -- which forced

1 Plaintiffs to seek counsel and file suit. The problem with this premise is that while it
2 accurately describes the allegations of a typical breach of contract case, they are not
3 allegations involving the special limited circumstances described by the Nevada
4 Supreme Court which may warrant a claim for attorneys' fees as an element of
5 damages, rather than as a cost of litigation. Because this is a straight forward breach
6 of contract case, Plaintiffs should be barred from claiming and presenting evidence of
7 their attorneys' fees as an element of their alleged damages at trial.

8 In Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc., the seminal case
9 on this particular issue, the Nevada Supreme Court discussed the difference between
10 attorneys' fees as a cost of litigation and attorneys' fees as an element of damages.
11 See id., 117 Nev. at 955, 35 P.3d at 968-969. The court acknowledged that attorneys'
12 fees cannot be recovered as a cost of litigation unless authorized by agreement,
13 statute, or rule. See id., 117 Nev. at 956, 35 P.3d at 969 (internal citation omitted). "As
14 an **exception to the general rule**, a district court may award attorney fees as special
15 damages in **limited circumstances**." Horgan v. Felton, 123 Nev. 577, 583, 170 P.3d
16 982, 986 (2007) (emphasis added).


17 The Nevada Supreme court has clarified that attorneys' fees may be awarded as
18 special damages in only a narrow handful of circumstances, such as: third-party actions
19 involving title insurance or bonds, insurance or indemnity actions, slander of title
20 actions, malicious prosecution, trademark infringement, or false imprisonment. See
21 Sandy Valley, 117 Nev. at 957-58, 35 P.3d at 970; see also Horgan, 123 Nev. at 586-
22 87, 170 P.3d at 988-89; see also Reyburn Lawn & Landscape Designers, Inc. v. Plaster
23 Dev. Co., Inc., 127 Nev. Adv. Op. 26, ---, 255 P.3d 268, 279 n. 11 (Jun. 2, 2011).

24 As the Court is aware, this case involves a written contract which contains a
25 provision whereby the prevailing party may seek an award of its attorneys' fees. In
26 other words, the parties expressly agreed upon the circumstances under which
27 attorneys fees can be recovered. Therefore, unless this case fits a narrow exception to
28

1 the general rule, attorneys' fees may be sought as a cost of litigation at the conclusion
2 of trial through post-trial motion practice.

3 Plaintiffs argue that Nevada law allows attorneys' fees as special damages in
4 this case because "Plaintiffs were only able to get the documents and information they
5 were entitled to once they filed suit and were granted the tools of discovery to get some
6 of those records." See Opposition, at 8:18-21. Plaintiffs cite to the Sandy Valley and
7 Horgan decisions to support this position. This is a crude stretching of Nevada law. In
8 interpreting Sandy Valley, the Horgan decision is very careful to limit, not expand, the
9 types of cases that would warrant attorneys' fees as special damages. For example, an
10 action to quiet or clarify title does not rise to the level to warrant attorneys' fees as
11 damages. Horgan, 123 Nev. at 587, 170 P.2d at 988. Rather, attorneys' fees are
12 available only in slander of title cases. Id., 123 Nev. at 587, 170 P.2d at 988. As
13 quoted by Plaintiffs in the Opposition, the Horgan decision makes it clear that in order
14 to support the proposition that attorneys' fees are available as special damages, there
15 must be elements of "intentional malicious acts" and "calculated action" on the part of a
16 defendant that forced the plaintiff into litigation. 123 Nev. at 585-86, 170 P.2d at 987-88
17 (internal quotation omitted); see also Plaintiffs' Opposition, at 8:3-10.

18 Plaintiffs cannot prove, nor have they even alleged, that Pardee acted
19 intentionally or maliciously to hide information and documents from Plaintiffs. The
20 evidence in this case shows that Plaintiffs were provided with information and
21 commission payments until every dollar of the commissions owed to them under the
22 Commission Agreement was paid. Then, when Plaintiffs began inquiring about other
23 takedowns, Pardee explained to them (on multiple occasions) that no such exercise of
24 Option Property had occurred. Pardee believed it was acting within its contractual right
25 to do so. There has been no evidence produced in this case that shows that Pardee
26 acted in a calculated, intentional, or malicious manner when dealing with Plaintiffs. The
27 timely commission payments and multiple communications regarding the status of the
28 project indicate the opposite. Therefore, this is not the type of case that warrants

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1 attorneys' fees as special damages. Rather, the attorneys' fees provision in the
2 Commission Agreement allows for attorneys' fees and costs to the prevailing party,
3 which is a determination that out of necessity will be made post trial, not during the trial.
4 In sum, the Court should grant Pardee's Motion.

5 DATED this 16th day of September, 2013.

6 McDONALD CARANO WILSON LLP

7 /s/ Pat Lundvall

8 Pat Lundvall (#3761)
9 Aaron D. Shipley (#8258)
10 2300 West Sahara Avenue, Suite 1000
11 Las Vegas, Nevada 89102
12 *Attorneys for Defendant Pardee Homes of*
13 *Nevada*
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 **MCDONALD-CARANO-WILSON**
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PHONE 775-786-2000 • FAX 775-786-2028

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 16th day of September, 2013, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES** via U.S. Mail on the following:

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

/s/ Melissa Merrill
An Employee of McDonald Carano Wilson LLP

284380

Exhibit 7

Exhibit 7

7/7/2015

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=8787301&HearingID=169195126&SingleViewMode=Minutes>

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal](#)
[Search Refine](#) [Search Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE No. A-10-632338-C

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

§
§
§
§
§

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

PARTY INFORMATION

Counter Claimant Pardee Homes of Nevada

Lead Attorneys
Patricia K. Lundvall
Retained
702-873-4100(W)

Counter Defendant Wilkes, Walt

James Joseph
Jimmerson, ESQ
Retained
702-388-7171(W)

Counter Defendant Wolfram, James

James Joseph
Jimmerson, ESQ
Retained
702-388-7171(W)

Defendant Pardee Homes of Nevada

Patricia K. Lundvall
Retained
702-873-4100(W)

Plaintiff Limbocker-Wilkes, Angela L.

James Joseph
Jimmerson, ESQ
Retained
702-388-7171(W)

Plaintiff Wilkes, Walt

James Joseph
Jimmerson, ESQ
Retained
702-388-7171(W)

Plaintiff Wolfram, James

James Joseph
Jimmerson, ESQ
Retained
702-388-7171(W)

EVENTS & ORDERS OF THE COURT

04/26/2013 **Motion for Leave (8:30 AM)** (Judicial Officer Earley, Kerry)
04/26/2013, 05/15/2013
Plaintiffs Motion for Leave to file a Second Amended Complaint

Minutes

04/26/2013 8:30 AM

- Mr. Jimmerson indicated the requested amendments addressed Plaintiff's claims for special damages, specifically claims for attorney's fees. Furthermore, Mr. Jimmerson argued in support of the Motion, stating that the facts as pled established the necessity for attorney's fees under the provisions of Sandy

7/7/2015

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=8787301&HearingID=169195126&SingleViewMode=Minutes>

Valley. Ms. Lundvall argued in opposition, stating that the claims for attorney's fees as special damages were futile, as they were not recoverable. Additionally, Ms. Lundvall argued issues of prejudice against her clients, and the undue delay of bringing forth the claims. COURT Found there was no undue delay and no prejudice to the Defendant in bringing the claims for special damages. COURT ORDERED Motion CONTINUED to the Chamber's Calendar for a written decision; Counsel to provide supplemental briefing by May 10, 2013 on the issue of futility under the Motion for Leave to Amend. FURTHER ORDERED, Discovery reopened for the limited purpose of obtaining information as to whether the attorney's fees and costs incurred by James J. Jimmerson's firm were special damages, and whether Plaintiffs incurred individual time and effort damages.

04/26/2013 8:30 AM

05/15/2013 3:00 AM

05/23/2013 8:30 AM

08/19/2013 8:30 AM

Parties Present

Return to Register of Actions

Exhibit 8

Exhibit 8

A-10-632338-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

May 16, 2013

A-10-632338-C

James Wolfram, Plaintiff(s)

vs.

Pardee Homes of Nevada, Defendant(s)

May 16, 2013

3:00 AM

Minute Order

MINUTE ORDER
RE: PLAINTIFFS'
MOTION FOR
LEAVE TO FILE A
SECOND
AMENDED
COMPLAINT

HEARD BY: Earley, Kerry

COURTROOM:

COURT CLERK: Louisa Garcia

JOURNAL ENTRIES

- This matter was heard on April 26, 2013, after extensive oral argument by counsel for Plaintiffs and Defendant, the Court granted both parties leave to file supplemental briefs. The matter was subsequently placed on the Chamber Calendar of Department IV on May 15, 2013.

Upon review of the papers and pleadings on file in this matter, including Plaintiff's Supplement to Motion for Leave to File a Second Amended Complaint and Defendants' Supplemental Brief in support of its Opposition to Plaintiff's Motion for Leave to File a Second Amended Complaint, the Court finds as follows:

First, the Court notes that in the absence of any apparent reason involving undue delay, bad faith or dilatory motive on behalf of Plaintiffs, the leave to amend should be freely given. *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104 (1973). The Court finds no such reasons to be present in the instant case. Further, the Court ordered at the court hearing on April 26, 2013 that discovery is to be reopened for the limited purpose of Defendant obtaining information regarding any alleged attorney's fees as special damages as well as any alleged time and effort damages incurred by Plaintiffs. The Court granted Defendant the opportunity to conduct the aforementioned discovery to avoid any prejudice to Defendant.

PRINT DATE: 05/16/2013

Page 1 of 2

Minutes Date:

May 16, 2013

JA012939

A-10-632338-C

Second, the Court addressed the issue of whether Plaintiff's proposed amendment was futile because Plaintiff's request for attorney's fees as special damages is not viable pursuant to *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948 (2001).

The Sandy Valley case is the seminal case regarding the issue of whether attorney's fees may be considered as an element of special damages or as a cost of litigation. The Nevada Supreme Court held attorney's fees may be considered an element of special damages in those rare cases when they were reasonably foreseeable and the natural and proximate consequence of the injurious conduct. 117 Nev at 957. The above referenced general criteria in the Sandy Valley case allows the Court to determine in a specific case if a Plaintiff's damages could include attorney's fees as special damages. The Sandy Valley case and its progeny discuss specific types of claims that allow attorney's fees as special damages. However, even if a Plaintiff's claim does not fall under all of the specific types of claims cited in those cases, the general criteria in Sandy Valley is still determinative of whether a case is eligible for attorney's fees as special damages.

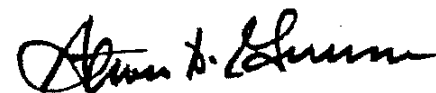
Based upon the foregoing, the Court does not find that the Plaintiff's Motion for Leave to File a Second Amended Complaint should be denied on the basis that the amendment sought is futile under Nevada law. Whether Plaintiffs during the trial of this matter provide evidence to fit the narrow circumstances of Sandy Valley and its progeny will be decided by the Court at the appropriate time.

Therefore, the Court GRANTS Plaintiff's Motion for Leave to File a Second Amended Complaint. Counsel for Plaintiffs is to prepare a proposed order and provide a copy to Defendant's counsel for approval as to form and content.

CLERK'S NOTE: A copy of this minute order distributed to the following parties via facsimile: James M. Jimmerson, Esq. and Patricia Lundvall, Esq. (LG 5/16/13)

Exhibit 9

Exhibit 9



CLERK OF THE COURT

1 **SB**
2 PAT LUNDVALL (NSBN 3761)
3 AARON D. SHIPLEY (NSBN 8258)
4 McDONALD CARANO WILSON LLP
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10 ashipley@mcdonaldcarano.com
11 Attorneys for Defendant
12 Pardee Homes of Nevada

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 JAMES WOLFRAM,
16 WALT WILKES

17 Plaintiffs,

18 vs.

19 PARDEE HOMES OF NEVADA,
20 Defendant.

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

21 **DEFENDANT'S SUPPLEMENTAL**
22 **BRIEF IN SUPPORT OF ITS**
23 **OPPOSITION TO PLAINTIFFS' MOTION**
24 **FOR LEAVE TO FILE A SECOND**
25 **AMENDED COMPLAINT**

Hearing Date: May 15, 2013
Hearing Time: In Chambers

26 Pardee Homes of Nevada ("Pardee" or "Defendant") submits the following
27 Supplemental Brief ("Brief") in Support of its Opposition ("Opposition") to the Plaintiffs'
28 Motion for Leave to File a Second Amended Complaint ("Motion"). This Brief is filed at
the direction of the Court from the hearing on the Motion held April 26, 2013 and is
limited to the single issue of whether Plaintiffs proposed amended complaint alleges
bad faith or other intentional misconduct by Pardee, as requested by the Court. This
Brief is supported by the following Memorandum of Points and Authorities, the
supporting exhibits to the Opposition, the papers and pleadings on file in this matter,
and any additional argument the Court may permit at the hearing of this matter.

///

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1 RESPECTFULLY SUBMITTED this 10th day of May, 2013.

2 McDONALD CARANO WILSON LLP

3
4 /s/ Aaron D. Shipley
5 Pat Lundvall (#3761)
6 Aaron D. Shipley (#8258)
7 2300 West Sahara Avenue, Suite 1000
8 Las Vegas, Nevada 89102
9 *Attorneys for Defendant Pardee Homes of Nevada*

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. LEGAL ARGUMENT**

12 **A. Legal Standard.**

13 As set forth in Pardee's Opposition, granting a party leave to amend under
14 NRCP 15(a) is not appropriate when the amendment would be futile. See Reddy v.
15 Litton Industries, Inc., 912 F.2d 291, 296-97 (9th Cir. 1990). Futility occurs when the
16 proposed amendment is frivolous or attempts to advance a claim that is legally
17 insufficient. See Allum v. Valley Bank of Nevada, 109 Nev. 280, 287, 849 P.2d 297,
18 302 (1993) (citation omitted) ("It is not an abuse of discretion to deny leave to amend
19 when any proposed amendment would be futile."). If the proposed amendment could
20 not withstand a motion to dismiss, then the amendment should be denied as futile. See
21 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and
22 Procedure Civ. 2d §1487 (2006). In this case, Plaintiffs' request for attorneys' fees as
23 special damages is insufficient under Nevada law and would not withstand a motion to
24 dismiss. Therefore, the Motion should be deemed futile and denied with prejudice.

25
26
27
28
///

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1 B. Plaintiffs' Proposed Second Amended Complaint is Futile
2 Because Nevada Law Does Not Permit the Recovery of Attorneys'
3 Fees as Special Damages in This Case.

4 Under Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc. and its
5 progeny, the recovery of attorneys' fees as special damages is extremely limited. 117
6 Nev. 948, 957, 35 P.3d 964, 969 (2001). And in Sandy Valley the court made clear that
7 "the mere fact that a party was forced to file or defend a lawsuit is insufficient to support
8 an award of attorney fees as damages." Id., 117 Nev. at 957, 35 P.3d at 970. Yet file a
9 lawsuit is exactly the only thing Plaintiffs claim they were forced to do. See Plaintiffs'
10 Opposition to Defendant's Motion for Summary Judgment, pp. 17-18 (plaintiffs argued
11 the only way to get the documents needed to determine if they were/were not entitled to
12 further commissions was to file a lawsuit).¹

13 As set forth in the Opposition, this case does not fit any of the narrow
14 circumstances contemplated by the Nevada Supreme Court allowing a party to recover
15 its attorneys' fees as special damages. In Horgan v. Felton, the court specifically
16 clarified that "[a]s an **exception to the general rule**, a district court may award attorney
17 fees as special damages in **limited circumstances**." 123 Nev. 577, 583, 170 P.3d
18 982, 986 (2007) (emphasis added). Plaintiffs here contend the limited circumstances
19 that apply to their case is they could not get all of the documents they wanted to confirm
20 they were not entitled to additional commissions. See Plaintiffs' Opposition to
21 Defendants Motion for Summary Judgment, 17:8-13. ("The essential piece of
22 information missing from the letter is the confirmation that the other transactions
23 between [Pardee and Coyote Springs Investment LLC] were not subject to the Option
24

25
26
27
28 ¹ Pardee disagrees vehemently with that contention.

1 Agreement: namely some disclosure of the other transactions sufficient to confirm to
2 Plaintiffs that they were not entitled to a commission for those transactions.")²

3 In Horgan, a quiet title action, the court made it clear that in order to support the
4 proposition that attorneys' fees are available as special damages, there must be
5 elements of "intentional malicious" and "calculated" acts on the part of a defendant that
6 forced the plaintiff into litigation. 123 Nev. at 585-86, 170 P.2d at 987-88 (internal
7 quotation omitted). Further, in Sandy Valley, the court stated that "actions for
8 declaratory or injunctive relief *may* involve claims for attorney fees as damages when
9 the actions were necessitated by the opposing party's *bad faith conduct*." 117 Nev. at
10 958, 35 P.3d at 970 (emphasis added). In this case with regard to Plaintiffs' request for
11 leave to amend their complaint a second time to add a claim for attorneys' fees as
12 special damages, the issue is whether the Plaintiffs have alleged or asserted in their
13 proposed amended complaint that Pardee engaged in intentional, malicious, calculated
14 and/or bad faith behavior that forced Plaintiffs into litigation. If not, their Motion must be
15 denied because the purported amendments are futile.

16 A review of the proposed Second Amended Complaint reveals that it is void of
17 any allegations that Pardee engaged in intentional, malicious, calculated or bad faith
18 behavior directed toward Plaintiffs. The proposed Second Amended Complaint
19 generically alleges that Pardee "failed to act in good faith and to the best of its ability,
20 and also failed to deal fairly with Plaintiffs, thereby breaching its duties to so conduct
21 itself and injuring Plaintiffs' rights to conduct its business and its ability to receive the
22 benefits of the Commission Letter." See proposed Second Amended Complaint, at ¶
23 30, a copy of which is attached to Plaintiffs' Motion as Exhibit 1. Plaintiffs argued at the
24 April 26, 2013, hearing that their cause of action for breach of the covenant of good
25

26
27 ² Pardee continues to be perplexed by Plaintiffs' position. By their argument Plaintiffs concede they were
28 not entitled to any commission from the other transactions between Pardee and CSI, but they only
wanted to be told or confirm that they were not entitled to further commissions. Such an argument is
obviously circular: Pardee allegedly breached a duty to inform by not informing Plaintiffs about a
transaction in which they were not entitled to commission?

1 faith and fair dealing is synonymous with a claim for bad faith, thereby satisfying their
2 pleading requirement regarding their claim that they are entitled to attorney fees as
3 special damages. This position contradicts Nevada law and is misleading to the Court.

4 In order to properly allege a contractual breach of the implied covenant of good
5 faith and fair dealing, the claimant must show that: (1) plaintiff and defendant were
6 parties to the contract; (2) the defendant owed a duty of good faith to the plaintiff; (3)
7 the defendant breached that duty by performing in a manner that was unfaithful to the
8 purpose of the contract; and (4) the plaintiff's justified expectations were thus denied.

9 See Perry v. Jordan, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995); Hilton Hotels Corp.
10 v. Butch Lewis Prod. Inc., 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991) ("Hilton I").
11 None of these elements (as pled by Plaintiffs) involve or concern intentional, malicious,
12 calculated or bad faith conduct. Moreover, these elements are drastically different than
13 the elements required to establish a claim for bad faith.

14 Nevada law states that "bad faith is not simply bad judgment or negligence."
15 Hulse v. Sheriff, Clark County, 88 Nev. 393, 398, 498 P.2d 1317, 1320 (1972). Rather,
16 a showing of bad faith "requires" that the party acting in bad faith actually held a
17 dishonest purpose or consciously committed a wrongdoing. See United States v.
18 Gilbert, 198 F.3d 1293, 1299 (11th Cir. 1999); Groder v. United States, 816 F.2d 139,
19 144 (4th Cir. 1987). Thus, the party seeking to assert "bad faith" must allege and prove
20 that the party was specifically acting with a dishonest purpose, consciously acting
21 improperly, or purposefully breached its duties. Id. Plaintiffs have the burden to both
22 allege and prove such, and must make this showing by clear and convincing evidence.
23 See Groder v. United States, 816 F. 2d 139, 142 (4th cir 1987); So. Comfort Builders,
24 Inc. v. United States, 67 Fed. Cl. 124, 154-155 (2005); see also Powell v. Foxall, 65
25 S.W.3d 756, 763 (Tex. App. 2001) (cited with approval by Jordan v. State ex. rel. Dep't
26 Motor Vehicles and Public Safety, 121 Nev. 44, 71 n.44, 110 P.3d 30, 41 n.44 (2005)).

1 When one compares the essential elements of these two separate claims it is
2 clear that Plaintiffs' contention that Pardee "failed to act in good faith and to the best of
3 its ability, and also failed to deal fairly with Plaintiffs" is legally insufficient to allege a
4 bad faith claim. Simply put, Plaintiffs proposed amended complaint makes absolutely
5 no mention of intentional or malicious or calculated or bad faith conduct by Pardee.
6 From the very beginning and continuing to date, this case has always been about two
7 differing interpretations of an admittedly clear and unambiguous agreement.
8 Therefore, the proposed Second Amended Complaint is futile and the Motion should be
9 denied.³

10 RESPECTFULLY SUBMITTED this 10th day of May, 2013.

11 McDONALD CARANO WILSON LLP

12
13 /s/ Aaron D. Shipley
14 Pat Lundvall (#3761)
15 Aaron D. Shipley (#8258)
16 2300 West Sahara Avenue, Suite 1000
17 Las Vegas, Nevada 89102
18 *Attorneys for Defendant Pardee Homes of*
19 *Nevada*
20
21
22
23
24
25
26
27

28 ³ Pardee has limited this brief to the single issue requested by the Court. Pardee continues to advance
all other reasons why Plaintiffs' motion should be denied.

McDONALD-CARANO-WILSON

300 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
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PHONE: 775-784-2000 • FAX: 775-784-1000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 10th day of May, 2013, I served a true and correct copy of the foregoing

DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

via U.S. Mail upon the following::

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

/s/ Melissa A. Merrill
An Employee of McDonald Carano Wilson
LLP

278280.2

Exhibit 10

Exhibit 10

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,)	
)	
PLAINTIFF,)	
)	
VS.)	CASE NO. A-10-632338-C
)	
PARDEE HOMES OF NEVADA,)	
)	
DEFENDANT.)	

 COPY

TRANSCRIPT
OF
TRIAL PROCEEDINGS
VOLUME I
BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE
HELD ON FRIDAY, DECEMBER 13, 2013
AT 8:30 A.M.

APPEARANCES:

For the Plaintiff:	JAMES J. JIMMERSON, ESQ.
	JAMES M. JIMMERSON, ESQ.
For the Defendant:	PATRICIA K. LUNDVALL, ESQ.
	AARON D. SHIPLEY, ESQ.

Reported by: Loree Murray, CCR No. 426

Loree Murray, CCR #426
District Court IV

I N D E X

PLAINTIFFS'

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EXHIBITS

IDENTIFIED

ADMITTED

PLAINTIFFS'

31 Copy of Billing Records

101

105

1 MS. LUNDVALL: No further questions, your
2 Honor.

3 MR. J.J. JIMMERSON: And I don't have
4 anything, Judge. Thank you.

5 THE COURT: Okay, thank you very much,
6 Mr. Andrews.

7 THE WITNESS: Thank you.

8 Here's your pen back.

9 THE COURT: Okay.

10 MR. J.M. JIMMERSON: Your Honor, can we take
11 our morning break?

12 THE COURT: Yes. I was ready for it too, but
13 I wanted to make sure if we could get him out of here,
14 we would not hold him up.

15 MR. J.M. JIMMERSON: Thank you.

16 (Brief recess.)

17 THE COURT: All right, do we have another
18 witness, or where are we?

19 MR. J.M. JIMMERSON: Yes, your Honor. We're
20 gonna call James J. Jimmerson to the stand.

21 THE COURT: I understand. Are you gonna --

22 MR. J.J. JIMMERSON: He's wanted to do this.

23 THE COURT: I was gonna say how long have you
24 waited to --

25 MR. J.J. JIMMERSON: 62 years.

1 MR. J.M. JIMMERSON: Pat, I'm calling in all
2 favors for the scope objections to be waived for five
3 minutes myself.

4 JAMES J. JIMMERSON,
5 having been duly sworn to tell the truth, the whole
6 truth, and nothing but the truth, was examined and
7 testified as follows:

8 THE CLERK: For the record, please state your
9 first and last name.

10 THE WITNESS: James J. Jimmerson,
11 J-i-m-m-e-r-s-o-n.

12 THE CLERK: Thank you.

13 THE COURT: He's gonna do some housekeeping.
14 Let's go.

15 THE WITNESS: Go ahead, Jim.

16 DIRECT EXAMINATION

17 BY MR. J.M. JIMMERSON:

18 Q. I don't know what to call him, Mr. Jimmerson?

19 A. There you go, that's about as good as it's
20 ever been.

21 Q. What's your current occupation?

22 A. An attorney at law.

23 Q. And how are you employed as an employee?

24 A. The firm Jimmerson Hansen, A Professional
25 Corporation, employs me. I'm the president and

1 secretary.

2 Q. And how long have you been at Jimmerson
3 Hansen?

4 A. 1983 or '84.

5 Q. And how long have you been practicing law?

6 A. 37 years.

7 Q. And give us a brief history of some of your
8 career highlights, awards, etc.

9 MS. LUNDVALL: You know, your Honor.

10 THE COURT: We'll stipulate.

11 MS. LUNDVALL: Is this gonna be relevant.

12 THE COURT: I'll stipulate for foundation.

13 Just, why don't you just do his qualifications for
14 saying what the hourly rate was, his knowledge on that.

15 Isn't that the substance basically?

16 THE WITNESS: Totally.

17 MR. J.M. JIMMERSON: Exactly.

18 THE COURT: I'm sure Ms. Lundvall will
19 stipulate he's qualified to practice law, he has the
20 experience to do what he does, but do what you want.

21 THE WITNESS: All right.

22 THE COURT: I want to hear your highlights.

23 THE WITNESS: I don't want to tell them to
24 you. I'm just kidding, that's fine.

25 THE COURT: I think I've watched them.

Loree Murray, CCR #426
District Court IV

1 OBY MR. J.M. JIMMERSON:

2 Q. I'll withdraw the question, Mr. Jimmerson.
3 What is your hourly rate you charged in this
4 matter?

5 A. \$550.

6 Q. Are you familiar with the market rate
7 generally for this type of litigation in Las Vegas?

8 A. Yes.

9 Q. And for your level of experience and
10 expertise, is this above market? Below market? At
11 market?

12 A. I think it's probably at market. It might be
13 a little lower. I've seen where other civil litigation
14 firms now are in the 6- to 800 an hour range.

15 Q. Okay. Do you supervise associates and other
16 staff in the course of this matter?

17 A. I did. I do.

18 Q. And do you believe, are they attached to an
19 hourly rate as well?

20 A. They are.

21 Q. And how do you assign that hourly rate?

22 A. I evaluate their length of experience as
23 lawyers, their skill irrespective of length of service,
24 their efficiency, if they're able to accomplish a great
25 deal in a shorter period of time, as opposed to taking

1 a lot of hours to accomplish what we think might take a
2 little shorter time.

3 So I look at their qualifications, I look at
4 their efficiency, I look at their dedication. And
5 there are factors under both Supreme Court Rule 1.5 and
6 a case many years ago in 1969 called Brunsell versus
7 Golden Gate National Bank that gives guidance to the
8 Court. There's also, in the family law world, a case
9 called Love versus Love, but between those sources.

10 There are some common factors that lawyers
11 and the Court look to toward setting reasonable fees
12 that are reasonably and necessarily incurred.

13 Q. And did you apply those factors as you set
14 your rates as it pertains to this case?

15 A. I do.

16 Q. And can you please flip to Exhibit 31A?

17 MS. LUNDVALL: Your Honor, all I have is 31.
18 Maybe counsel can give me a 31A.

19 THE COURT: Here's what I have as 31A.

20 Am I right?

21 MR. J.M. JIMMERSON: Yes, yes, your Honor.

22 Are we all on 31A now?

23 THE WITNESS: I will tell you the book
24 doesn't distinguish, Mr. Jimmerson, between 31 or 31A.

25 THE COURT: We were supposed to do this

1 insert over the pink.

2 THE WITNESS: We have the pink.

3 THE COURT: Do you have this?

4 THE WITNESS: Yes, ma'am, I do.

5 THE COURT: This is what I have.

6 MR. J.M. JIMMERSON: Yes, that's, that's 31A.

7 We did basically a substitute.

8 THE COURT: We did a substitute, so we need
9 the highlight in green.

10 Do you have it?

11 THE CLERK: I'll give him my copy here.

12 THE COURT: That book may not have it. We'll
13 give you the copy in the Court's exhibits. Okay, all
14 right. We can fix that.

15 Kristin said it must have happened when she
16 wasn't here.

17 MS. LUNDVALL: I agree, your Honor.

18 THE COURT: We'll stipulate.

19 BY MR. J.M. JIMMERSON:

20 Q. Mr. Jimmerson, what is that exhibit?

21 A. It is marked as Exhibit 31A. It is a portion
22 of the billings to Mr. Wolfram and Mr. Wilkes, pursuant
23 to our written fee agreements, for work that began in
24 November of 2010 through roughly mid June of 2013, that
25 focuses upon the work we did in this case prosecuting

1 the three claims in the complaint filed December of
2 2010.

3 Q. Is it a true and accurate copy of those
4 records?

5 A. I believe it is.

6 Q. Okay.

7 A. I personally reviewed this, obviously, before
8 I came here today.

9 Q. All right. Is that the bill that you would
10 send to Mr. Wolfram or Mr. Wilkes?

11 A. Yes, it has been sent --

12 Q. Okay.

13 A. -- to each of them.

14 Q. I can see there's highlights on that. Can
15 you, were those highlights part of the original bill
16 sent to the client, or were they added later?

17 A. No. They were added later.

18 Q. Why were they added later?

19 A. Well, we were trying to present, as part of
20 the plaintiffs' case in chief, the damages that would
21 speak to a couple of elements. One would be --

22 MS. LUNDVALL: Your Honor, I don't think this
23 witness is entitled to argue to the Court.

24 THE WITNESS: I'm not.

25 MS. LUNDVALL: I think he's entitled to

1 describe what the highlights are.

2 THE COURT: Explain the purpose of the
3 highlights.

4 MS. LUNDVALL: Thank you.

5 THE WITNESS: The purposes of the highlights
6 is to allocate the work that we believe is the totality
7 of work that is directed to the first claim for relief
8 from seeking an accounting from Pardee Homes of Nevada,
9 Inc.

10 BY MR. J.M. JIMMERSON:

11 Q. Are there highlights pertaining to other two
12 claims for relief?

13 A. The first claim for relief, I apologize. The
14 first claim for relief for accounting, the second claim
15 for relief is for the breach of the implied covenant of
16 good faith and fair dealing, and the third claim is
17 breach of contract for failure to keep them reasonably
18 informed.

19 MS. LUNDVALL: Your Honor, I'm going to move
20 to strike the last objection [sic]. The complaint is
21 itself -- the last piece of testimony. The complaint
22 itself would identify the specificity of the
23 allegations.

24 THE COURT: It would. I just want to orient,
25 because obviously they've broken it up, so for our

1 purposes, that's what you're doing.

2 THE WITNESS: And for the record, the
3 complaint is Exhibit O at trial.

4 Go ahead.

5 MR. J.M. JIMMERSON: I would like to move
6 this into evidence as Exhibit 31A.

7 THE COURT: Any objection, Ms. Lundvall?

8 MS. LUNDVALL: Your Honor, our objection
9 would be based upon relevance, but I believe that the
10 Court has already dealt with this issue, so there would
11 be a conditional admission.

12 THE COURT: I'm gonna go ahead and admit it.
13 You have your record on the issue.

14 MS. LUNDVALL: I do. Thank you.

15 THE COURT: You're not waiving anything by --

16 MS. LUNDVALL: Thank you, your Honor.

17 THE COURT: It's admitted. 31A is admitted.

18 BY MR. J.M. JIMMERSON:

19 Q. Have you come to a conclusion as to a
20 calculation of attorney fee damages as it pertains to
21 the accounting claim?

22 A. Yes.

23 Q. Okay. And how did you arrive at that
24 conclusion? What was the formula you applied?

25 A. I focused upon the task undertaken and

1 whether it had a direct relationship to accounting and
2 work needed to process our claim for accounting, "our
3 claim," meaning Mr. Wolfram and Mr. Wilkes. I, for
4 those specific tasks, I assigned a 100 percent charge.
5 If I charged \$250 for that day's entry, I would charge
6 a hundred percent for that. That is in yellow.

7 In addition, I added to that one third of the
8 unyellowed amount, which I call the white entries, just
9 simply black and white entries, because of the three
10 counts, we just associated one third for the accounting
11 counts of those unyellowed numbers, and the total is a
12 little over \$135,000 between the entire period of
13 November 2010 through June, the middle of June 2011,
14 which would put it essentially before we began the
15 trial.

16 Go ahead.

17 Q. Mr. Jimmerson, do you see that there is a set
18 of pink or purple highlights?

19 A. I do.

20 Q. Okay. And what do those apply to?

21 A. Those are specifically the breach of the
22 implied covenant of good faith and fair dealing and
23 breach of contract regarding failure to provide, to
24 keep the clients reasonably informed. On subpoenas and
25 custodians of records depositions, and a finite pinpointed

1 effort for those matters only totaling 7,600 and
2 change, but \$7,600.

3 Q. Okay. Do you believe that --

4 A. And let me add, the \$7,600 is part of the
5 135,000, it's not to be added on.

6 THE COURT: Okay. So the pink highlighted
7 ones are not to be added on, they've already been
8 assigned?

9 THE WITNESS: They were \$7,600 for purposes
10 of what we felt we had to do to obtain this information
11 under Counts 2 and 3, but they're part of the 135,000.
12 We aren't seeking a ago duplication.

13 THE COURT: That's what the highlights are?

14 THE WITNESS: That's correct.

15 BY MR. J.M. JIMMERSON:

16 Q. Have you supervised or been a participant in
17 the work since the drafting of the complaint in this
18 matter?

19 A. Yes.

20 Q. And has that supervision or participation
21 been continued to the present?

22 A. It has.

23 Q. Do you believe that these charges are a fair
24 and, fair and reasonable in light of the factors that
25 you discussed?

1 A. I do.

2 Q. Do you believe Mr. Wolfram and Mr. Wilkes
3 have received fair value for the charges?

4 A. I do.

5 MR. J.M. JIMMERSON: That's all I have, your
6 Honor.

7 THE COURT: Okay. I need to understand --
8 why don't you do cross-examination. I'm sorry.

9 CROSS-EXAMINATION

10 BY MS. LUNDVALL:

11 Q. Let me see if I can't understand your
12 testimony. Anything in yellow, you're asking for in
13 total; is that correct?

14 A. Yes. As aimed for the accounting claims,
15 Ms. Lundvall.

16 Q. Anything in black and white, you are dividing
17 that by three and asking for that?

18 A. That's right, as part of the accounting
19 claim.

20 Q. And anything in purple, that you're not
21 asking for?

22 A. No. Purple is what I call the breach of
23 contract for the keep reasonably informed information
24 and breach the implied covenant.

25 THE COURT: It's just for subpoenas, depos,

1 A. I do.

2 Q. Do you believe Mr. Wolfram and Mr. Wilkes
3 have received fair value for the charges?

4 A. I do.

5 MR. J.M. JIMMERSON: That's all I have, your
6 Honor.

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9 CROSS-EXAMINATION
10 BY MS. LUNDVALL:

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12 testimony. Anything in yellow, you're asking for in
13 total; is that correct?

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15 Ms. Lundvall.

16 Q. Anything in black and white, you are dividing
17 that by three and asking for that?

18 A. That's right, as part of the accounting
19 claim.

20 Q. And anything in purple, that you're not
21 asking for?

22 A. No. Purple is what I call the breach of
23 contract for the keep reasonably informed information
24 and breach the implied covenant.

25 THE COURT: It's just for subpoenas, depos,

Exhibit 11

Exhibit 11

1 ORDR

2
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
14 JUDGMENT

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

Exhibit 12

Exhibit 12



JON E. LASH
Sr. Vice President
(310) 475-3525 ext. 251
(310) 446-1295

September 1, 2004

Mr. Walt Wilkes
General Realty Group, Inc.
10761 Turquoise Valley Dr.
Las Vegas, Nevada 89144-4141

Mr. Jim Wolfram
Award Realty Group
10761 Turquoise Valley Dr.
Las Vegas, Nevada 89144-4141

Re: Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of June 1, 2004, as amended (the "Option Agreement") between Coyote Springs Investment LLC ("Coyote") and Pardee Homes of Nevada ("Pardee")

Gentlemen:

This letter is intended to confirm our understanding concerning the pending purchase by Pardee from Coyote of certain real property located in the Counties of Clark and Lincoln, Nevada pursuant to the above-referenced Option Agreement. Except as otherwise defined herein, the capitalized words used in this Agreement shall have the meanings as set forth in the Option Agreement.

In the event Pardee approves the transaction during the Contingency Period, Pardee shall pay to you (one-half to each) a broker commission equal to the following amounts:

- (i) Pardee shall pay four percent (4%) of the Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the remaining Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the Option Property purchased by Pardee pursuant to paragraph 2 of the Option 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).

PH 000135

JA012970

Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 2

Pardee shall make the first commission payment to you upon the Initial Purchase Closing (which is scheduled to occur thirty (30) days following the Settlement Date) with respect to the aggregate Deposits made prior to that time. Pardee shall make each additional commission payment pursuant to clauses (i) and (ii) above concurrently with the applicable Purchase Property Price payment to Coyote. Thereafter, Pardee shall make each commission payment pursuant to clause (iii) above concurrently with the close of escrow on Pardee's purchase of the applicable portion of the Option Property; provided, however, that in the event the required Parcel Map creating the applicable Option Parcel has not been recorded as of the scheduled Option Closing, as described in paragraph 9(c) of the Option Agreement, the commission shall be paid into escrow concurrently with Pardee's deposit of the Option Property Price into Escrow and the commission shall be paid directly from the proceeds of said Escrow.

Pardee shall provide to each of you a copy of each written option exercise notice given pursuant to paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date. 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.

In the event the Option Agreement terminates for any reason whatsoever prior to Pardee's purchase of the entire Purchase Property and Option Property, and Pardee thereafter purchases any portion of the Entire Site from Seller, at the closing of such purchase, Pardee shall pay to you a commission in the amount determined as described above as if the Option Agreement remained in effect.

For purposes of this Agreement, the term "Pardee" shall include any successor or assignee of Pardee's rights under the Option Agreement, and Pardee's obligation to pay the commission to you at the times and in the manner described above shall be binding upon Pardee and its successors and assigns. Pardee, its successors and assigns, shall take no action to circumvent or avoid its obligation to you as set forth in the Agreement. Nevertheless, in no event shall you be entitled to any commission or compensation as a result of the resale or transfer by Pardee or its successor in interest of any portion of the Entire Site after such property has been acquired from Seller and commission paid to you.

In the event any sum of money due hereunder remains unpaid for a period of thirty (30) days, said sum shall bear interest at the rate of ten percent (10%) per annum from the date due until paid. In the event either party brings an action to enforce its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs.

This Agreement represents our entire understanding concerning the subject matter hereof, and all oral statements, representations, and negotiations are hereby merged into this Agreement and are superseded hereby. This Agreement may not be modified except by a written instrument signed by all of us. Nothing herein contained shall create a partnership, joint venture or employment relationship between the parties hereto unless expressly set forth to the contrary. The language of this Agreement shall be construed under the laws of the State of Nevada according to its normal and usual meaning, and not strictly for or against either you or Pardee.

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JA012971

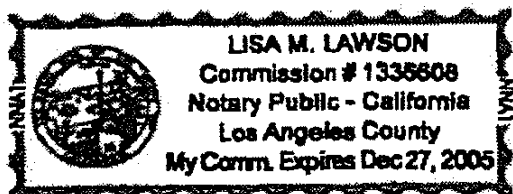
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 3

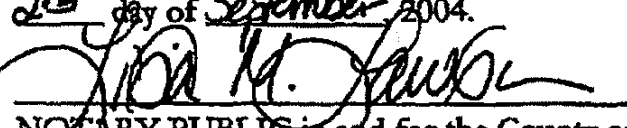
Our signatures below will represent our binding agreement to the above.

Sincerely,

PARDEE HOMES OF NEVADA,
a Nevada corporation

By: 
Jon E. Lash
Senior Vice President

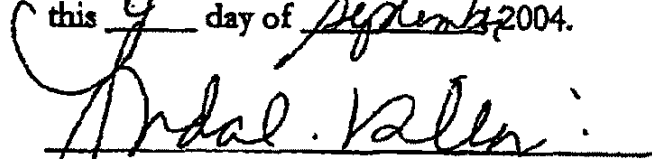


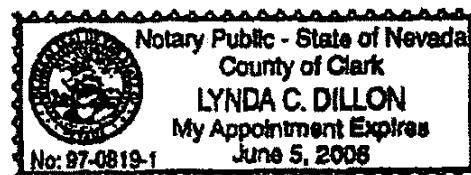
SUBSCRIBED and SWORN to before me this
2nd day of September 2004.

NOTARY PUBLIC in and for the County of
Los Angeles, State of California

Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By: 
Walt Wilkes

SUBSCRIBED and SWORN to before me
this 1 day of September 2004.

NOTARY PUBLIC in and for the County
of Clark, State of Nevada



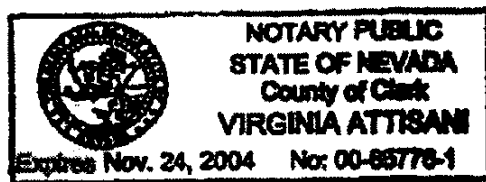
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 4

AWARD REALTY GROUP

By: *Jim Wolfram*
Jim Wolfram

SUBSCRIBED and SWORN to before me
this 6 day of SEPT, 2004.

Virginia Attisani
NOTARY PUBLIC in and for the County
of Clark, State of Nevada



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Exhibit 13

Exhibit 13

<div>Page 1</div> <div>1 DISTRICT COURT</div> <div>2 CLARK COUNTY, NEVADA</div> <div>3</div> <div>4</div> <div>5 JAMES WOLFRAM,</div> <div>6 PLAINTIFF,</div> <div>7 vs.</div> <div>8 PARDEE HOMES OF NEVADA,</div> <div>9 DEFENDANT.</div> <div>10</div> <div>11</div> <div>12 REPORTER'S TRANSCRIPT</div> <div>13 OF</div> <div>14 PROCEEDINGS</div> <div>15</div> <div>16 BEFORE THE HONORABLE KERRY L. EARLEY</div> <div>17 DISTRICT COURT JUDGE</div> <div>18 HELD ON FRIDAY, JANUARY 15, 2016</div> <div>19 AT 10:00 A.M.</div> <div>20 LAS VEGAS, NEVADA</div> <div>21 APPEARANCES:</div> <div>22 For the Plaintiff: JAMES J. JIMMERSON, ESQ.</div> <div>23 MICHAEL C. FLAXMAN, ESQ.</div> <div>24 For the Defendant: PATRICIA K. LUNDVALL, ESQ.</div> <div>25 RORY T. KAY, ESQ.</div> <div>Reported by: Loree Murray, CCR No. 426</div>	<div>Page 3</div> <div>1 them up. I have no idea what the calendar says. I</div> <div>2 quit looking at it, it was so confusing to me, counsel,</div> <div>3 so I will start with how I've done the orders so you</div> <div>4 can kind of follow what the Court's doing.</div> <div>5 The first one I have, since some of them were</div> <div>6 duplicates, I have plaintiffs' motion to strike</div> <div>7 judgment entered June 15th, 2015, pursuant to NRCP</div> <div>8 52(b) and NRCP 59 as unnecessary and duplicative orders</div> <div>9 of final orders entered on June 25th, 2 thousand -- I</div> <div>10 don't know if that's the right date -- June 25th, 2014,</div> <div>11 and May 13th, and such that the, that judgment that was</div> <div>12 entered on the 6/15/2015 was punitive -- no, fugitive.</div> <div>13 I'm starting with that, because that's a</div> <div>14 procedural one. To me, that was a little bit easier,</div> <div>15 so if we want to start with that, and I did look at</div> <div>16 NRCP 58(a), Mr. Jimmerson.</div> <div>17 MR. JIMMERSON: Yes, your Honor.</div> <div>18 THE COURT: And I, I will tell you I do agree</div> <div>19 that we do need a judgment. It does require the entry</div> <div>20 of a judgment in this case. Convince me otherwise,</div> <div>21 because I read through all the motions, and I did</div> <div>22 extensive research as best I could on my own to see,</div> <div>23 you know, when it came up, Hey, was the, was my order,</div> <div>24 my findings of fact, conclusions of law order that was</div> <div>25 entered on 6/25/2014, plus, as we know, the</div>
<div>Page 2</div> <div>1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 15, 2016</div> <div>2 10:00 A.M.</div> <div>3</div> <div>4 * * * * *</div> <div>5 THE COURT: Good morning, counsel.</div> <div>6 MR. JIMMERSON: Good morning.</div> <div>7 MS. LUNDVALL: Good morning, your Honor.</div> <div>8 THE COURT: Thank you very much for letting</div> <div>9 me do this session today. I was in the middle of a</div> <div>10 triple kidnapping. I thought it was unfair to you and</div> <div>11 kind of unfair to the Court because I had worked on all</div> <div>12 this, but I just could not give you the time in the</div> <div>13 middle of that, so thank you for letting me reset it.</div> <div>14 MS. LUNDVALL: I'm hoping it wasn't you that</div> <div>15 was being kidnapped.</div> <div>16 THE COURT: Not at all. We were in the trial</div> <div>17 for a while, three weeks, but it was one of those cases</div> <div>18 we were trying to complete before Christmas. We made</div> <div>19 it, whatever, so we were just out of time. And typical</div> <div>20 in criminal, you did not know it was going to go</div> <div>21 forward but it did.</div> <div>22 Okay, here's what I've done, I have put these</div> <div>23 motions in the order that I think they should go in.</div> <div>24 Bear with me and make sure.</div> <div>25 I've gone through them all, but I have broken</div>	<div>Page 4</div> <div>1 supplemental one which was required because I had asked</div> <div>2 for that on the supplemental briefing regarding the</div> <div>3 future accounting, and that was entered on 5/13/2015,</div> <div>4 and had this judgment was subsequent, but you tell me.</div> <div>5 I do believe under NRCP 58(a) that a judgment</div> <div>6 was required.</div> <div>7 MR. JIMMERSON: Right.</div> <div>8 THE COURT: Do you agree with me? Or if I'm</div> <div>9 off, tell me why.</div> <div>10 MR. JIMMERSON: Thank you, Judge.</div> <div>11 THE COURT: Yes. I want to start there.</div> <div>12 MR. JIMMERSON: I do not agree with you, but</div> <div>13 thank you very much.</div> <div>14 THE COURT: So I'm not doing substance. We</div> <div>15 don't go to the substance yet. I really want to --</div> <div>16 MR. JIMMERSON: I read you loud and clear.</div> <div>17 THE COURT: I worked very hard to do issue by</div> <div>18 issue, and I'm sure you feel the same way, because we</div> <div>19 could be here -- okay, so I want to be very clear on</div> <div>20 the record I'm not going to the substance, I'm strictly</div> <div>21 doing it as whether it is, a judgment, would be a</div> <div>22 fugitive document under NRCP 58(a).</div> <div>23 MR. JIMMERSON: Thank you, Judge.</div> <div>24 THE COURT: Okay. I'm not trying to be --</div> <div>25 loud and clear I guess is good.</div>

<p>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>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>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>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 NRC 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 NRC 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</p> <p>2 ever gone through, I'll be honest, because, you know,</p> <p>3 you work so hard, and, you know.</p> <p>4 MR. JIMMERSON: Right. So I can explain to</p> <p>5 you --</p> <p>6 THE COURT: It's a tough job. You work so</p> <p>7 hard because I, as any judge would do, this was so</p> <p>8 important --</p> <p>9 MR. JIMMERSON: So you understand.</p> <p>10 THE COURT: -- that this be done right for</p> <p>11 both of you, very much so. Whether you agree how I do</p> <p>12 it or not, I certainly have put the time in and am</p> <p>13 trying very hard to do what's fair for both of you, as</p> <p>14 I'm supposed to. That's my job.</p> <p>15 MR. JIMMERSON: You bet.</p> <p>16 THE COURT: I'm not asking that you say, Good</p> <p>17 Job, Earley, you're doing your job. That is my job.</p> <p>18 But right or wrong, I will tell you I have invested the</p> <p>19 time that I know was required, not only for all the</p> <p>20 motions prior for the trial, but for all of this.</p> <p>21 MR. JIMMERSON: Well, this motion certainly</p> <p>22 is --</p> <p>23 THE COURT: You're not having a judge that</p> <p>24 doesn't get it. I get.</p> <p>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</p> <p>2 amendments to evidence that Pardee had the right to go</p> <p>3 horizontally to the east and not vertically to the</p> <p>4 north within Parcel 1. That's something we obviously</p> <p>5 didn't agree with, but that was your findings.</p> <p>6 THE COURT: That was my findings from looking</p> <p>7 at the evidence, absolutely.</p> <p>8 MR. JIMMERSON: But the important, the</p> <p>9 pertinent part as a result of that is, as you correctly</p> <p>10 characterized and analyzed what the issues were, there</p> <p>11 was never a claim by Jim Wolfram or Walt Wilkes at</p> <p>12 trial or in their depositions that they had an existing</p> <p>13 obligation owed to them by Pardee of \$1.8 million or</p> <p>14 any number that even resembled such a number.</p> <p>15 His only claim for damages when he was asked</p> <p>16 about that by Pardee's counsel, Ms. Lundvall was, I</p> <p>17 spent, you know, hours trying to find information. I</p> <p>18 used \$80 an hour. The Court awarded \$75 an hour, and</p> <p>19 so I'm entitled to \$7,200. The Court awarded \$6,000,</p> <p>20 and then the Court --</p> <p>21 THE COURT: That was based on the evidence.</p> <p>22 MR. JIMMERSON: Right. And the Court looked</p> <p>23 upon the testimony that I offered, as provided by the</p> <p>24 Supreme Court rules, of approximately \$146,500. The</p> <p>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</p> <p>2 appropriate. Certainly it was not something the Court</p> <p>3 did. The Court found actually otherwise, the reverse</p> <p>4 of that, in your order.</p> <p>5 Just so you understand, the \$1.8 million is</p> <p>6 based upon a theoretical purchase of all the remaining</p> <p>7 property and assuming that all of it's designated by</p> <p>8 Pardee as single family over the next 30 years. That's</p> <p>9 how you got the \$1.8 million. This case wasn't about</p> <p>10 \$1.8 million. It was exactly what you said.</p> <p>11 We believed, which you found differently, but</p> <p>12 we believed they only had the right to build within</p> <p>13 Parcel 1, and if they went east of Parcel 1 it would be</p> <p>14 the exercise of option property.</p> <p>15 THE COURT: And that would have been past</p> <p>16 damages.</p> <p>17 MR. JIMMERSON: Exactly. And the amount of</p> <p>18 those acres was unknown to us, because we didn't know</p> <p>19 how much was to the east of the line on the east side</p> <p>20 of Parcel 1, and that's why we were asking for the</p> <p>21 accounting.</p> <p>22 Now, you resolved that against the</p> <p>23 plaintiffs --</p> <p>24 THE COURT: I did.</p> <p>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</p> <p>2 that there were no further commissions due and owing</p> <p>3 because the Court found they had the right to build</p> <p>4 east horizontally. I'm with you.</p> <p>5 THE COURT: I was very detailed in my</p> <p>6 findings of fact and conclusions of law and order.</p> <p>7 MR. JIMMERSON: And the last part of that</p> <p>8 was, as you know, during the course of the trial and</p> <p>9 having listened to the testimony of Lash, Andrews, and</p> <p>10 Whittemore, we double checked the County Commission</p> <p>11 records and found that they had redesignated a</p> <p>12 multi-family parcel, Res. 5, if you remember the map.</p> <p>13 THE COURT: To single.</p> <p>14 MR. JIMMERSON: To single-family production</p> <p>15 real estate, and you ruled against us again there.</p> <p>16 THE COURT: I did.</p> <p>17 MR. JIMMERSON: Where you said --</p> <p>18 THE COURT: Based on the evidence.</p> <p>19 MR. JIMMERSON: -- that the redesignation</p> <p>20 would not entitle the plaintiffs to those damages.</p> <p>21 THE COURT: Right.</p> <p>22 MR. JIMMERSON: And as you've seen in both</p> <p>23 the proposed findings that the plaintiffs submitted as</p> <p>24 well as the testimony that Res. 5 was in the ballpark</p> <p>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.</p> <p>2 This was given to me by my law clerk at the</p> <p>3 time. I said, Where's the approval for form and</p> <p>4 content, I'm not even looking at it without approval to</p> <p>5 form and content. It was given back. This is why</p> <p>6 there was a time delay.</p> <p>7 Then I said not only do you -- I want</p> <p>8 approval as to form and content, I also want to make</p> <p>9 sure that it is in compliance with my orders of</p> <p>10 5/13/2015 and my findings of fact of 6/25/2014, because</p> <p>11 that's my standing order.</p> <p>12 I will tell you it came back to me, and I</p> <p>13 don't know, and I will tell you exactly what happened.</p> <p>14 It did not have that. I said, No, I will not sign</p> <p>15 this. In fact, I actually, and I will tell you for the</p> <p>16 record, was very uncomfortable with some of these</p> <p>17 sections on Page 2, because I thought, Wait a minute,</p> <p>18 and I, I'm gonna be very honest here, that's why I want</p> <p>19 it to form and content, to make sure, because I, I</p> <p>20 looked at the some of this, I go, Wait a minute, and I</p> <p>21 was -- and I don't know if my staff person either</p> <p>22 misunderstood, because it was -- misunderstood a</p> <p>23 communication or was misinformed, I don't know</p> <p>24 Ms. Lundvall, and I was told before I signed it, No,</p> <p>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</p> <p>2 approved, and I will tell you never again. I have a</p> <p>3 new standing -- I will not even look at orders. They</p> <p>4 are not even given to me, after this incident, unless I</p> <p>5 have it approved to form and content or I have either</p> <p>6 competing orders or a letter from both sides saying,</p> <p>7 Here's what we disagree with, so that I can put it</p> <p>8 together, because this is exactly what happens.</p> <p>9 So I don't know what happened. I will tell</p> <p>10 you I never got the cover letter, which can happen, you</p> <p>11 know. What's given to me is the order, and I don't</p> <p>12 even know what's in the cover letter. What's given to</p> <p>13 me is the order.</p> <p>14 What my distress is about and I own, I did</p> <p>15 not enforce my procedure. My frustration thing is that</p> <p>16 I do rely on people to comply with the standing order,</p> <p>17 and I'm very frustrated. I'm very, I don't know, I</p> <p>18 don't know what happened, but I will tell you I don't</p> <p>19 make a distinction on something like a judgment.</p> <p>20 To me this is so critical, Ms. Lundvall,</p> <p>21 after all the work we did on this trial, all the work</p> <p>22 we did on all those motions, and I'll be honest, all</p> <p>23 the work this Court did to really do what I felt was</p> <p>24 fair on the findings of fact, conclusions of law and</p> <p>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,</p> <p>2 And does he have any objection?</p> <p>3 Because I, for the record, once -- once</p> <p>4 again, if he's aware, and my idea of "aware" is he has</p> <p>5 reviewed it and gotten back with the person who's</p> <p>6 proposing it and has no objections. That's how I</p> <p>7 understood it, because that's how -- I mean the</p> <p>8 frustration is I so, I so go by that rule,</p> <p>9 Ms. Lundvall.</p> <p>10 And the one time I didn't, you know, I fell</p> <p>11 asleep at my own procedure and not saying, You know</p> <p>12 what, I want this in writing, but I usually, if it is</p> <p>13 done this way, I want it in writing.</p> <p>14 I'll be honest, because it was you and</p> <p>15 Mr. Jimmerson and I have such high respect, I felt like</p> <p>16 it must have been, he must have been aware of it and</p> <p>17 said to you, I'm fine, or I would not have signed it.</p> <p>18 And I'm telling you, as a judge, I take</p> <p>19 responsibility that I did not enforce my procedure and</p> <p>20 get it in writing. I took oral information from my</p> <p>21 staff. I have to own that, and I own that, and I, I</p> <p>22 will tell from my -- I'm not perfect. I'm obviously</p> <p>23 not perfect. I try to have procedures, and you know</p> <p>24 why, so things like this will not happen.</p> <p>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</p> <p>2 seeing a judgment did not surprise me, it's the content</p> <p>3 that this would have happened, you know.</p> <p>4 So your thought was I didn't -- you felt like</p> <p>5 if a cover letter came to me that you sent it to him,</p> <p>6 then it was up to the Court to call and see if he had,</p> <p>7 and also Mr. Jimmerson to call us, right, or call you?</p> <p>8 MS. LUNDVALL: Precisely, your Honor.</p> <p>9 THE COURT: All right.</p> <p>10 MS. LUNDVALL: We had taken your orders and</p> <p>11 we had reduced them then to a judgment.</p> <p>12 THE COURT: No, your version of the judgment,</p> <p>13 I can see that very much.</p> <p>14 MS. LUNDVALL: And so from that perspective,</p> <p>15 and we sent those then along with the cover letter to</p> <p>16 the Court explaining what it was that we had done.</p> <p>17 THE COURT: Okay.</p> <p>18 MS. LUNDVALL: And we, and we had copied that</p> <p>19 letter to Mr. Jimmerson, so to the extent that there's</p> <p>20 an accusation that somehow, that we did something in</p> <p>21 bad faith, that we were trying to have --</p> <p>22 THE COURT: I don't find that at all, that's</p> <p>23 why I said I own the responsibility. I can see very</p> <p>24 well why I had those standing orders, and let me tell</p> <p>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.</p> <p>2 THE COURT: Okay.</p> <p>3 MS. LUNDVALL: You exchanged with him the</p> <p>4 fact that if you had agreed with his theory about the</p> <p>5 purchases of option property, then there would have</p> <p>6 been monies that would have been due and owing.</p> <p>7 THE COURT: If I had had the testimony.</p> <p>8 MS. LUNDVALL: If you --</p> <p>9 THE COURT: If I'd had the testimony, which I</p> <p>10 didn't.</p> <p>11 MS. LUNDVALL: And it was --</p> <p>12 THE COURT: And you know what I was gonna do,</p> <p>13 Ms. Lundvall, I was gonna then have to do an accounting</p> <p>14 for it because I had absolutely no-- I didn't get to</p> <p>15 there, because I had no information on what it would</p> <p>16 have been.</p> <p>17 MS. LUNDVALL: Precisely. He set up his case</p> <p>18 in a two-part step. He set up his case alleging two</p> <p>19 different forms of breach of contract. The first --</p> <p>20 THE COURT: I agree, two different theories</p> <p>21 of liability.</p> <p>22 MS. LUNDVALL: Yes.</p> <p>23 THE COURT: For the breach.</p> <p>24 MS. LUNDVALL: Two different theories of</p> <p>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</p> <p>2 were not aware of. He was not aware of any of that</p> <p>3 before he filed the lawsuit, don't you agree,</p> <p>4 Ms. Lundvall? He was not aware of the facts on moving</p> <p>5 easterly on the option, that theory, or he wasn't aware</p> <p>6 that they had sold, you know, first was it multi-family</p> <p>7 and then changed them -- well, yes, it was, remember,</p> <p>8 to multi and then single family, but I didn't find them</p> <p>9 single-family detached residential property, as you</p> <p>10 know.</p> <p>11 So I look at the case, I'll be honest, it was</p> <p>12 definitely a claim to get information, and then once he</p> <p>13 got the information, whether, based on that commission</p> <p>14 agreement, he had any other claims. I truly believe</p> <p>15 that, that this how it happened.</p> <p>16 MS. LUNDVALL: And you, as far as discussed</p> <p>17 with him in the course of this very hearing that if I</p> <p>18 had agreed with your theory concerning the purchases of</p> <p>19 option property, then, in fact, there would have been</p> <p>20 additional commissions that were due and owing.</p> <p>21 THE COURT: Past ones. Not future, past</p> <p>22 ones.</p> <p>23 MS. LUNDVALL: And he acknowledged that and</p> <p>24 he admitted that.</p> <p>25 THE COURT: Okay.</p>
<p style="text-align: right;">Page 66</p> <p>1 property, and therefore, that there would be</p> <p>2 commissions that were due and owing.</p> <p>3 His second theory was that there was</p> <p>4 insufficient information that was given to the</p> <p>5 plaintiffs.</p> <p>6 THE COURT: Okay, I would reverse that.</p> <p>7 MS. LUNDVALL: All right.</p> <p>8 THE COURT: In fairness, the first theory,</p> <p>9 when you look at the first, he didn't even have -- and</p> <p>10 let's be fair here, his first claim was to get</p> <p>11 information because of those amendments that were</p> <p>12 missing, as we know. We all went through them. Was it</p> <p>13 eight of them?</p> <p>14 MR. JIMMERSON: It was eight.</p> <p>15 THE COURT: Okay. And you had given, this is</p> <p>16 my recollection of the testimony, one and two but not</p> <p>17 -- some of them but not all of them prior to the case,</p> <p>18 so when you look at the case, he did the accounting and</p> <p>19 he did the original claim for breach because they</p> <p>20 didn't have information to find out if any more was due</p> <p>21 and owing. Once through discovery the amendments came</p> <p>22 and the different information came, only through</p> <p>23 discovery in this case, then he looked at the</p> <p>24 amendments and then said, Wow, I feel I have another --</p> <p>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,</p> <p>2 the point being made here is he lost on that.</p> <p>3 THE COURT: He lost on a theory of liability,</p> <p>4 but he didn't lose on a claim. That doesn't -- and</p> <p>5 you're trying to say that because he lost on that, that</p> <p>6 makes you the prevailing party?</p> <p>7 MS. LUNDVALL: Let me as far as see if I can</p> <p>8 as far as initially, because one, just because one of</p> <p>9 the things that I wanted to do then is to be able to</p> <p>10 walk the Court then through the history then of this</p> <p>11 case, so the Court --</p> <p>12 THE COURT: Oh, okay. I'm aware of it, but I</p> <p>13 would be glad to be walked again.</p> <p>14 MS. LUNDVALL: Well, what I want to do is to</p> <p>15 make sure that you understand that his theory and he</p> <p>16 was asking for money damages from the very beginning</p> <p>17 until all the way to the end, and he lost on that</p> <p>18 theory, your Honor. And the point that we had tried to</p> <p>19 make is that that loss on that theory, the flip side of</p> <p>20 that is a win to Pardee.</p> <p>21 THE COURT: No. You have to say the win</p> <p>22 makes you the prevailing party over him being the</p> <p>23 prevailing party over the other claims.</p> <p>24 MS. LUNDVALL: So what I'm trying to do is to</p> <p>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</p> <p>2 \$1.8 million case?</p> <p>3 MS. LUNDVALL: Absolutely not, your Honor,</p> <p>4 because one of the things you're gonna see as far as</p> <p>5 all the way through is they asked for money damages,</p> <p>6 they quantified that amount at 1.8, and --</p> <p>7 THE COURT: Okay. No, I agree, if you're</p> <p>8 saying, -- so you feel the quantify of what they wanted</p> <p>9 for damages was 1.8 million, and you're gonna show me</p> <p>10 where the evidence came in in trial and how that was</p> <p>11 argued at trial, right?</p> <p>12 MS. LUNDVALL: So, in fact, let's start with</p> <p>13 their complaint.</p> <p>14 THE COURT: Okay.</p> <p>15 MS. LUNDVALL: Their complaint alleged that</p> <p>16 there was a financial relationship, that pursuant to</p> <p>17 the commission letter that they were to be paid a</p> <p>18 commission, and they prayed for compensatory damages in</p> <p>19 excess of \$10,000.</p> <p>20 THE COURT: We all know that's true.</p> <p>21 MS. LUNDVALL: The second amended complaint</p> <p>22 then made the same allegations. It was the same basic</p> <p>23 allegations. In other words, they asked for money</p> <p>24 damages once again.</p> <p>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</p> <p>2 into those two particular sections, all right?</p> <p>3 THE COURT: Right.</p> <p>4 MS. LUNDVALL: They opposed our motion for</p> <p>5 summary judgment, and in opposing our motion for</p> <p>6 summary judgment, they highlighted this theory that</p> <p>7 they, that they advanced all the way through trial, is</p> <p>8 it all depends upon what you call option property.</p> <p>9 THE COURT: Uh-huh.</p> <p>10 MS. LUNDVALL: They went on to say that we</p> <p>11 had made a significant purchase of option property,</p> <p>12 that we had purchased option property, and, in fact,</p> <p>13 they went on to say that the damages that flowed from</p> <p>14 our purchases of option property were being, that they</p> <p>15 were being denied \$1.8 million in commissions. This is</p> <p>16 their opposition.</p> <p>17 So it's not something that I fabricated, it's</p> <p>18 not something that I made up, it's not something that I</p> <p>19 pulled out of thin air, it's not something that I have</p> <p>20 deceptively tried to put before the Court. This is</p> <p>21 their theory. That's what we defended against.</p> <p>22 THE COURT: Okay. And when was that said? I</p> <p>23 looked in the -- continue your presentation.</p> <p>24 MS. LUNDVALL: All right. We filed a motion</p> <p>25 for summary --</p>
<p style="text-align: right;">Page 70</p> <p>1 Their first 16.1 disclosure, Mr. Jimmerson makes a big</p> <p>2 deal out of the fact that they didn't serve me with any</p> <p>3 interrogatories, they didn't send any requests for</p> <p>4 production. I don't have to. Rule 16.1 obligates them</p> <p>5 to set forth their damage theory and the amount of</p> <p>6 their damages.</p> <p>7 THE COURT: Right.</p> <p>8 MS. LUNDVALL: So we relied upon that, and</p> <p>9 that's what they, that's what they said to us.</p> <p>10 THE COURT: I understand NRCP 16.1.</p> <p>11 MS. LUNDVALL: Their first four disclosures</p> <p>12 under rule 16.1, they just made the broad claim that</p> <p>13 they were entitled to all damages that flowed from the</p> <p>14 breach of the commission agreement, okay?</p> <p>15 THE COURT: Okay.</p> <p>16 MS. LUNDVALL: So then what we did is we</p> <p>17 filed a motion for summary judgment. If you go back</p> <p>18 and take a look at our motion for summary judgment, we</p> <p>19 break out their case into the two theories that they</p> <p>20 had advanced at that point in time during discovery,</p> <p>21 number one is that we owed them more money in</p> <p>22 commissions, and that number two, we had breached, and</p> <p>23 that we had breached the agreement then by not paying</p> <p>24 them those additional monies, and number two, that, in</p> <p>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.</p> <p>2 MR. JIMMERSON: It was never part of the</p> <p>3 trial.</p> <p>4 MS. LUNDVALL: Our motion for summary</p> <p>5 judgment --</p> <p>6 THE COURT: Mr. Jimmerson, in fairness,</p> <p>7 Ms. Lundvall has her chance to make here record too,</p> <p>8 all right? That's not fair.</p> <p>9 MS. LUNDVALL: We filed our motion in October</p> <p>10 of 2012. My prediction is, is that the opposition that</p> <p>11 they failed would have been then in November of 2012.</p> <p>12 THE COURT: Okay.</p> <p>13 MS. LUNDVALL: And my recollection is that</p> <p>14 the Court issued an order on that in February of 2013,</p> <p>15 something along that line.</p> <p>16 So if, in fact, if you want --</p> <p>17 THE COURT: I have one in March. Well, I</p> <p>18 have 10/23. That wouldn't have been it, so probably my</p> <p>19 March 14th of 2013. I went through all the orders.</p> <p>20 MS. LUNDVALL: And so as I indicated, my</p> <p>21 prediction is that opposition could be found then in</p> <p>22 the November of 2012 time frame.</p> <p>23 THE COURT: Okay.</p> <p>24 MS. LUNDVALL: And I'm quoting --</p> <p>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 2 opposition, and maybe it might make it easier for the 3 Court to have a paper copy of our powerpoint. 4 THE COURT: Sure, so I can follow it instead 5 of looking up. 6 MS. LUNDVALL: And I have a copy for 7 Mr. Jimmerson as well. 8 So anyway, so they opposed then our motion 9 for summary judgment. They say this whole case is 10 about what you call option property. They claimed that 11 we had made purchases of option property, and the 12 quantification of those purchases then yielded 1.8 in 13 -- 1.8 million in commissions that we had not paid to 14 them. That was their theory. That's what we defended 15 against, that's what we prevailed upon at the time of 16 the trial. 17 All right, so let's go on then. What did we 18 get nearly immediately after filing our motion for 19 summary judgment? And part of our motion for summary 20 judgment, very noticeably, had indicated that they had 21 not quantified their damages in compliance with Rule 22 16.1. 23 THE COURT: Right. 24 MS. LUNDVALL: Therefore, under the 25 sanctioning provisions under 16.1, they should not be</p>	<p style="text-align: right;">Page 75</p> <p>1 All right. So then what we do is we get then 2 to what they actually tried. Their supplement then 3 gave us plenty of information as to what they were 4 going to try at the time of trial. So let's get into 5 then we talked -- I have a number of slides in here 6 about how every single one of their Rule 16.1 7 disclosures. 8 Even disclosures that were given to us during 9 the course of trial included this figure of 10 \$1.8 million. It made it abundantly clear that they 11 were seeking money damages in addition to additional 12 information. 13 And if you think about -- 14 THE COURT: Once they got the additional 15 information, which started the lawsuit. They got it. 16 MS. LUNDVALL: That's correct. 17 THE COURT: Once they got it. 18 MS. LUNDVALL: And so -- 19 THE COURT: I didn't see any of this, as you 20 know, that's not evidence at trial. I only review the 21 evidence at trial, but yes, okay. 22 MS. LUNDVALL: But this is all part of the 23 record then before the Court as to what the parties 24 were doing as it relates then to this motion to amend 25 as it relates to the prevailing party. We put all this</p>
<p style="text-align: right;">Page 74</p> <p>1 able to advance any quantification of their damages. 2 And what did they do? They filed then their Rule 16.1 3 disclosure, and for the first time then, after we filed 4 our motion for summary judgment, they indicated that 5 they calculate their damages to be in excess of 1.9. 6 Now, I don't know about you, but any attorney 7 that I know that gets a disclosure, a Rule 16.1 8 disclosure of what the opposing side's damages are, we 9 know that's what you're defending against. 10 THE COURT: Okay. 11 MS. LUNDVALL: That's what the case is about. 12 That's what we're defending against, all right? 13 So they made their disclosure and they 14 identified how they calculated it. And it tracked the 15 two calculations on the two theories that they were 16 advancing. 17 The first one was the loss of the 18 commissions, and they gave calculations on that. And 19 they go on and they talk about how we reclassified the 20 lands as purchase property and option property, and we 21 divested then the plaintiffs of any opportunity then to 22 recover this \$1.8 million in commissions. That's what 23 their theory holds. That's the theory they tried, and 24 that's the theory, your Honor, that they lost, that you 25 ruled against them upon.</p>	<p style="text-align: right;">Page 76</p> <p>1 information before you. 2 THE COURT: You put all this information 3 before me at trial? 4 MS. LUNDVALL: No, no, no, I'm not suggesting 5 that. 6 THE COURT: No, no. 7 MS. LUNDVALL: What I'm suggesting is -- 8 THE COURT: This is discovery. This is to 9 put people on notice, you're right, as to what they may 10 or what may happen at trial. There's things in 16.1 11 that never come up at trial. You and I both know we 12 could have this theory initially, and after discovery, 13 we go, whoops, that's not the way we're going, so this 14 is discovery, I understand that, so I just want to make 15 sure -- I don't remember, and I went -- you didn't ask 16 me to review 16.1. 17 Did you put into evidence 16.1? 18 MS. LUNDVALL: Absolutely. All of this is in 19 as far in our oppositions to their various motion to 20 strike. 21 THE COURT: No, no, not for this, but at 22 trial. Believe me, I read everything, but at trial did 23 you have an exhibit of 16.1? 24 MS. LUNDVALL: Absolutely not. 25 THE COURT: All right. I just wanted to make</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>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>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>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>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</p> <p>2 stay, so my request is that we have the opportunity to</p> <p>3 allow that stay to be in place for any new judgment</p> <p>4 until there may be resolution then of any of the</p> <p>5 outstanding motions to amend that may result, any</p> <p>6 additional motion practice that may result by reason of</p> <p>7 a new judgment.</p> <p>8 MR. JIMMERSON: Your Honor, the rules call</p> <p>9 for a stay for ten business days from the date that a</p> <p>10 judgment is entered, so there is that protection for</p> <p>11 that two-week time period, including weekends, to the</p> <p>12 defendant. Afterwards, the defendant must post a bond</p> <p>13 or there is the right to collect under Rule 62 and --</p> <p>14 THE COURT: Well, didn't Judge Bonaventure</p> <p>15 hear and put a stay in effect?</p> <p>16 MR. JIMMERSON: He put a stay until you --</p> <p>17 THE COURT: So you know what, I'm gonna</p> <p>18 comply with --</p> <p>19 MR. JIMMERSON: Until these issues are</p> <p>20 resolved?</p> <p>21 THE COURT: I'm going to comply with Judge</p> <p>22 Bonaventure. I'm going to do what Judge Bonaventure</p> <p>23 did, because I want to make sure when this judgment is</p> <p>24 done that everybody gets their chance to do their</p> <p>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.</p> <p>2 Let's make sure this is all clear.</p> <p>3 MR. JIMMERSON: I would like to do a brief</p> <p>4 reply.</p> <p>5 MS. LUNDVALL: What I want to make sure is</p> <p>6 that the record is clear.</p> <p>7 THE COURT: Yes.</p> <p>8 MS. LUNDVALL: I believe the Court has</p> <p>9 indicated that any new judgment that you intend to</p> <p>10 order, to enter, that Judge Bonaventure's order of a</p> <p>11 stay pending resolution of any post-judgment motions --</p> <p>12 THE COURT: Regarding the judgment.</p> <p>13 MS. LUNDVALL: -- continues to be in place.</p> <p>14 THE COURT: It is.</p> <p>15 MS. LUNDVALL: Thank you.</p> <p>16 THE COURT: That is my ruling.</p> <p>17 MS. LUNDVALL: Thank you.</p> <p>18 MR. JIMMERSON: May I have --</p> <p>19 THE COURT: I did want to give -- I cut you</p> <p>20 off on the reply. We kind of got ahead, but yes, I</p> <p>21 want you to be able to reply to Ms. Lundvall's.</p> <p>22 MR. JIMMERSON: I just have a short reply.</p> <p>23 THE COURT: That's fine. I'm taking it all</p> <p>24 in.</p> <p>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.</p> <p>2 MS. LUNDVALL: Thank you, your Honor.</p> <p>3 THE COURT: And all the other post-trial that</p> <p>4 results from the judgment, those can all still happen,</p> <p>5 and I know they're going to, depending on -- but I want</p> <p>6 this judgment cleared up, because I looked at it</p> <p>7 because it does, it does stay you executing your money,</p> <p>8 Mr. Jimmerson.</p> <p>9 I did look at what Judge Bonaventure did. I</p> <p>10 understand it, so I am going to do that.</p> <p>11 MS. LUNDVALL: Okay.</p> <p>12 THE COURT: And I want to make that as part</p> <p>13 of the order for denying -- granting, I am sorry,</p> <p>14 granting the motion to amend this judgment of</p> <p>15 June 15th, 2015.</p> <p>16 MR. JIMMERSON: Is it your intention, Judge,</p> <p>17 as I'm listening to your remarks, thank you, is it your</p> <p>18 intention to defer the other motions that are pending</p> <p>19 for resolution today until a final judgment is entered</p> <p>20 by you?</p> <p>21 THE COURT: Yes. I will be honest, I worked</p> <p>22 on them all, but I can still work on them, but I</p> <p>23 realized they all flow from this judgment.</p> <p>24 MR. JIMMERSON: They do.</p> <p>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</p> <p>2 findings must be intense, but it doesn't justify</p> <p>3 distorting the record.</p> <p>4 Let's talk as lawyers and judges here. This</p> <p>5 lawsuit was brought by a complaint, and there were two</p> <p>6 amendments, so you have a complaint, you have an</p> <p>7 amended complaint and a second amended complaint, and</p> <p>8 the only differences in the complaints was there was a</p> <p>9 clarification of the assignment from the general realty</p> <p>10 companies to the individuals, and then there was the</p> <p>11 permission to plead as attorney's fees special damages,</p> <p>12 but the nature of the claims were identical.</p> <p>13 In that complaint, in the complaint and the</p> <p>14 amended complaints, all the complaints, is just simply</p> <p>15 all that is stated is --</p> <p>16 MS. LUNDVALL: And your Honor, may I clarify</p> <p>17 one thing?</p> <p>18 THE COURT: Sure.</p> <p>19 MS. LUNDVALL: You've made your ruling on the</p> <p>20 motion to amend. Are we now moving into the motion for</p> <p>21 attorney's fees?</p> <p>22 THE COURT: No.</p> <p>23 MR. JIMMERSON: No. I'm doing a reply.</p> <p>24 THE COURT: What I did is I, unfortunately,</p> <p>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.</p> <p>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?</p> <p>12 MR. JIMMERSON: Thank you.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>11 THE COURT: That was your theory from the 12 beginning. I understand that.</p> <p>13 MR. JIMMERSON: Right.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>15 THE COURT: Right.</p> <p>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.</p> <p>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.</p> <p>2 THE COURT: Right, I remember.</p> <p>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.</p> <p>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.</p> <p>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. JIMMERSON: 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>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>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>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 14

Exhibit 14

1 ORDR

2
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
DEPT. NO.: IV Electronically Filed
04/26/2016 10:42:33 AM


CLERK OF THE COURT

13 ORDERS FROM JANUARY 15, 2016 HEARINGS

14
15 These matters came before the court for oral argument on January 15, 2016 for the following
16 motions: Plaintiffs' Motion to Strike "Judgment" entered June 15, 2015 Pursuant to NRCP 52(b) and
17 NRCP 59 et al.; Plaintiff's Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's
18 Judgment Entered on June 15, 2015 et al.; Plaintiff's Motion for Attorney's Fees and Costs;
19 Plaintiff's Motion for Order Requiring Defendant, When Serving By Electronic Means, to Serve
20 Three Specific Persons; Defendant's Motion for Attorney's Fees and Costs; Defendant's Motion to
21 Retax; Defendant's Motion to Amend Judgment; and Plaintiff's Countermotion for Attorney's Fees
22 and Costs.

23
24 James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. appeared on behalf of Plaintiffs
25 James Wolfram and Angela L. Limbocker-Wilkes as trustee of the Walter D. Wilkes and Angela L.
26 Limbocker-Wilkes Living Trust and Plaintiff James Wolfram being present, and Pat Lundvall, Esq.
27 and Rory T. Kay, Esq. appearing on behalf of Defendant, Pardee Homes of Nevada.
28

The Court, having reviewed the papers and pleadings on file herein, and heard the arguments

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

1 of counsel, and for good cause appearing, hereby issues the following Findings of Fact, Conclusions
2 of Law, and Order.

3 THE COURT HEREBY FINDS that it did not consider its prior Orders from June 25, 2014
4 and May 13, 2015 as final judgments pursuant to NRCP 58(a) and had contemplated that it would
5 enter a final judgment after the parties had fully briefed the supplemental issue of future accounting.

6 THE COURT FURTHER FINDS that the Judgment entered on June 15, 2015 was erroneous,
7 did not comport with the Court's prior findings and Orders, and did not encompass what was
8 presented at Trial in this matter.

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to
10 Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary
11 and Duplicative Orders of Final Orders Entered on June 25, 2014 And May 13, 2015, And As Such,
12 Is A Fugitive Document, is DENIED.
13

14 IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion Pursuant
15 to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment Entered On June 15, 2015 et al., is
16 GRANTED. Further, the June 15, 2015 Judgment is hereby STRICKEN.
17

18 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Court expects to enter
19 a final judgment pursuant to NRCP 58(a) once the parties have submitted a proposed judgment or
20 competing proposed judgment for the Court's review. Should the parties decide it necessary to
21 submit competing proposed judgments for the Court's review, each party shall explicitly enumerate
22 in a cover letter to the Court both the efforts made by the parties in attempting to reach an agreement
23 on the proposed judgment and the issues that precluded the parties from reaching an agreement on
24 the language to be contained in the proposed judgment.
25

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court's Order
27 entered July 10, 2015 shall remain in full force and effect. That Order stays any execution upon a
28 final judgment until ten (10) days after written notice of entry of orders resolving all parties post-

1 judgment motion, including any motions to amend or alter the final judgment and motions resolving
2 the parties' competing claims for attorney's fees and recoverable costs, or until further order of the
3 Court.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for
5 Order Requiring Defendant, When Serving by Electronic Means, to Serve Three Specific Persons is
6 DENIED in consideration of Defendant's counsel's concession that any and all Orders, Judgments,
7 and/or electronic communications submitted by Defendant's counsel prospectively be served upon
8 Plaintiff's counsel and staff via Wiznet.
9


10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for
11 Attorney's Fees and Costs is DENIED as moot in consideration that the Court has stricken the June
12 15, 2015 Judgment.
13

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to
15 Amend Judgment is DENIED as moot in consideration that the Court has stricken the June 15, 2015
16 Judgment. Plaintiff's Countermotion for Attorney's Fees is also DENIED as moot.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to
18 Amend Judgment is DENIED as moot in consideration that the Court has stricken the June 15, 2015
19 Judgment.
20

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to
22 Retax is DENIED as moot in consideration that the Court has stricken the June 15, 2015 Judgment.

23 DATED: April 25, 2016.
24

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KERRY L. EARLEY, DISTRICT COURT JUDGE

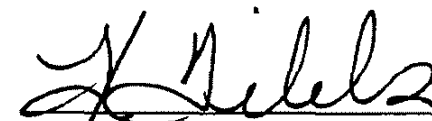
KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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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

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

JOINT APPENDIX – VOLUME 81 OF 88

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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

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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
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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
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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

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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

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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
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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
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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

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

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04/07/2017	Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	86	JA013660- JA013668
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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
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07/18/2013	Plaintiffs' Motion in Limine To Permit James J. Jimmerson, Esq. To Testify Concerning Plaintiffs' Attorney's Fees and Costs (MIL #25)	17	JA002732- JA002771
06/29/2015	Plaintiffs' Motion Pursuant to NRCp 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment – sections filed under seal	54-56	JA008395- JA008922
03/14/2016	Plaintiffs' Motion to Settle Two (2) Competing Judgments and Orders	70	JA011168- JA011210
06/21/2016	Plaintiffs' Opposition to Defendant, Pardee Homes of Nevada's, Motion to Amend Judgment and Plaintiffs' Countermotion for Attorneys' Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	81	JA012813- JA013024
08/06/2013	Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment	17	JA002830- JA002857

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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

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01/17/2013	Plaintiffs' Reply in Further Support of Their Counter Motion for Partial Summary Judgment	13	JA002102- JA002144
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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
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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

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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

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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
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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

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09/23/2013	Transcript re Hearing	18	JA002875- JA002987
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10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
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10/23/2013	Trial Exhibit B – filed under seal	23	JA003545- JA003625
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10/23/2013	Trial Exhibit D	23	JA003629- JA003631
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10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
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10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
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10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
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10/23/2013	Trial Exhibit AA	27	JA004101- JA004102
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10/23/2013	Trial Exhibit CC	27	JA004104
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10/23/2013	Trial Exhibit EE	27	JA004106- JA004113
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10/23/2013	Trial Exhibit JJ	27	JA004125
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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
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Dated this 28th day of February, 2018.

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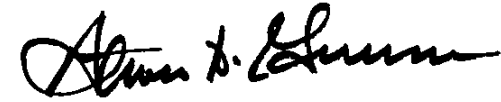
Attorneys for Appellant

CERTIFICATE OF SERVICE

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

/s/ Beau Nelson

An Employee of McDonald Carano LLP



CLERK OF THE COURT

OPPC

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

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

COMES NOW, Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-
WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES
LIVING TRUST (hereinafter collectively "Plaintiffs"), by and through their counsel of
record, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON
LAW FIRM, P.C., and hereby submits their Opposition to Defendant, Pardee Homes of
Nevada's (hereinafter "Pardee"), Motion to Amend Judgment and Countermotion for
Attorney's Fees and Costs pursuant to EDCR 7.60 and NRS 18.010 as Pardee's Motion
is filed in bad faith.

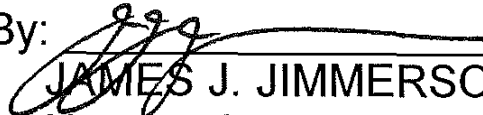
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1 This Opposition and Countermotion is based on the pleadings and papers on file,
2 the Affidavit of James J. Jimmerson, Esq. attached hereto as **Exhibit 1**, the documents
3 attached hereto and arguments of counsel at the hearing on this Motion and
4 Countermotion. The Plaintiffs further request such other and further relief as the Court
5 deems proper in the premises.
6

7 DATED this 21 day of June, 2016.

8 Respectfully submitted by:

9 THE JIMMERSON LAW FIRM, P.C.

10
11 By: 
12 JAMES J. JIMMERSON, ESQ.
13 Nevada State Bar No. 000264
14 MICHAEL C. FLAXMAN, ESQ.
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18 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

It is a shame and a waste of this Court's time that this Court must, once again, adjudicate the same arguments and hear the same story from Pardee. It is clear by this point that Pardee will do and say just about anything, despite this Court's clear and concise rulings and findings to the contrary, to distort the record and misrepresent the actual history of the case. This "win-at-all-cost" mindset has vexatiously multiplied these proceedings and dragged on the litigation for far too long. A cursory review of the history of this case clearly shows that Pardee has filed four (4) written briefs, opposed by Plaintiffs, regarding the very same arguments they now present. This Court has extensively addressed and considered the very same arguments that Pardee once again attempts to renew, under the guise that the 2014 *Liu* case somehow denies this Court the authority to award Plaintiffs their attorney's fees as special damages. Outrageously, Pardee does this in the face of this Court's specific Findings of Fact and Conclusions of Law and Order ("FFCLO"), filed June 25, 2014 and attached hereto as **Exhibit 2**, *which specifically cites the Liu case*. See Exhibit 2 at 14:24-27.

Most, if not all, of Pardee's instant Motion is just a gross regurgitation of facts that Pardee has already previously tried to persuade this Court of in its first Motion to Amend Judgment, filed July 2, 2015. What is most egregious about Pardee's instant Motion is that Pardee again attempts to distort the facts and history of the case so as to try to convince this Court that *they* were the prevailing party in this action. Nothing could be further from the truth and it is improper, to say the least, that this Court must entertain this ludicrous notion once again. This Court must send a clear message to Pardee amidst Pardee's vexatious and unwarranted motion practice. Considering the parties have extensively argued and briefed these very arguments, it would be just and fair for this Court to sanction Pardee and award Plaintiffs their attorney's fees and costs for having to defend, yet again, these baseless assertions.

1 Pardee's request for this Court to amend its findings and judgment in this case is
2 based on two (2) separate contentions, which are discussed in detail herein below. First,
3 Pardee argues that Plaintiffs are not able to recover their attorney's fees as special
4 damages because this case was a "standard breach of contract case." See Motion at
5 10:27-28. Secondly, Pardee contends that this Court erred in omitting language
6 reflecting Plaintiffs' purported "failure" to recover any additional claimed commissions
7 from Pardee, which they allege to be the "most substantial issue of the case" in Pardee's
8 perspective. See Motion at 2:3-6. The Court can and should easily determine, without
9 any argument from counsel, that Pardee's arguments regarding Plaintiffs' "claim" for \$1.8
10 million is entirely without merit. However, when adjudicating the issue surrounding
11 Plaintiffs' award of attorney's fees as special damages, the procedural history of the case
12 is imperative in understanding how false Pardee's claims actually are.

13 Plaintiffs' filed their original Complaint on December 29, 2010. An Amended
14 Complaint was filed on January 14, 2011 and the Second Amended Complaint was filed
15 on June 6, 2013, a copy of which is attached hereto as **Exhibit 3**. All three (3)
16 Complaints were the same in that they allege three (3) Claims for Relief—(1) Pardee's
17 breach of contract for failing to keep the Plaintiffs reasonably informed, (2) Pardee's
18 breach of the implied covenant of good faith and fair dealing, and (3) Plaintiffs' request
19 for an accounting. These three (3) causes of action remained unamended throughout
20 this litigation.

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

28 Further, on March 1, 2013, Pardee filed a Motion in Limine to Exclude Plaintiffs'

1 Claim for Attorneys' Fees as an Element of Damages (MIL#1), a copy of which is
2 attached hereto as **Exhibit 5** and a Reply thereto that is attached hereto as **Exhibit 6**.
3 Pardee's entire argument was based on *Sandy Valley* and *Horgan*. *Id.*

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

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

22 On May 16, 2013, this Court, after considering the extensive oral argument of
23 counsel presented on April 26, 2013, and the May 10, 2013 supplemental briefings by
24 the parties, granted Plaintiffs' Motion for Leave to File a Second Amended Complaint
25 which included special damages. See Exhibit 4. Consistent with the Court Minutes, the
26 Order Granting Plaintiffs' Motion for Leave to File a Second Amended Complaint, which
27 was filed on June 5, 2013, specifically included the following findings:
28

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

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

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

28 See Exhibit 8, page 2 (emphasis added).

The trial proceeded in this matter, and on December 13, 2013, Plaintiffs provided evidence supporting their claim for an award of attorney's fees as special damages. See excerpt of the December 13, 2013 Transcript of Trial Proceedings, Volume I attached hereto as **Exhibit 10**. In addition to oral testimony, Plaintiffs provided Exhibit 31A (Exhibit "O" at trial), which Plaintiffs "were trying to present, as part of the plaintiff's case in chief, the damages that would speak to a couple of elements..." *Id.* at 103:19-21. The Court requested clarification of the highlighted portions of the exhibit in which James J. Jimmerson, Esq. provided testimony that said highlights supported the first claim for relief for accounting, the second claim for relief for breach of the implied covenant of good faith and fair dealing, and the third claim for breach of contract for failure to keep

1 Plaintiffs reasonably informed. *Id.* at 104:5-18. The Court admitted Plaintiffs' Exhibit 31A,
2 Trial Exhibit "O." *Id.* at 105. Mr. Jimmerson presented full testimony, proving entitlement
3 to the award of attorney's fees as special damages, which this Court addressed and
4 considered as relating to Plaintiffs' attorneys' fees totaling "a little over \$135,000." *Id.* at
5 105-106:12 through 108.

6 Following a three (3) week trial, commencing on October 23, 2013 and ending on
7 December 13, 2013, the Court took the matter under submission. In the interim, while
8 under submission, the Nevada Supreme Court issued the *Liu vs. Christopher Holmes,*
9 *LLC* decision. The Court having read the *Liu* decision, concluded that Plaintiff is entitled
10 to include a portion of its attorney fees as money damages. The Court read and
11 understood the holding of *Liu* and found that it supported the Court's decision for granting
12 Plaintiffs' their money damages. See Exhibit 2 at 14:26-27. As such, the citing of *Liu* by
13 Pardee as a "new" law is not accurate in any sense, since the Court, on its own, read
14 *Liu*, considered it, and incorporated the same within its FFCLO, filed June 25, 2014. The
15 Court can see the desperation and bad faith of Pardee in its meritless efforts to fabricate
16 the facts and distort the record in hopes of achieving a result it did not and has not
17 received time and time again.

18 On June 25, 2014, the Court's FFCLO was entered and it was found that Pardee
19 had breached its written Commission Letter Agreement of September 1, 2004, by failing
20 to keep the Plaintiffs reasonably informed. Specifically, the Court found that, pursuant
21 to the Commission Agreement, Pardee owed to Plaintiffs an obligation and duty to keep
22 the Plaintiffs reasonably informed with regard to Pardee's purchase of real estate
23 designated for single-family residential use, which Pardee willfully failed to do. As a
24 result of this breach of contract, Pardee caused Plaintiffs damages in the total sum of
25 \$141,500.00, composed of \$6,000.00 in time expended by Plaintiff, James Wolfram, and
26 \$135,500.00 in attorney's fees that the Court awarded as special damages.

27 Specifically included in the FFCLO, under "Conclusions of Law" was the following:
28

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

22 *Id.* at 14:14-28 (emphasis added).

23 Based on the foregoing history of this matter, Plaintiffs are dumfounded as to why
24 Pardee is still maintaining the positions that (1) Plaintiffs are not entitled to attorney's
25 fees as special damages and (2) Pardee is the prevailing party in this matter. As
26 discussed *inter alia*, this Court has ruled on numerous occasions that Plaintiffs have the
27 ability to claim attorney's fees as special damages because, among other reasons, the
28 cases outlined by Pardee, namely *Sandy Valley* and *Liu*, are not meant to serve as an
exhaustive list of the situations in which a party can claim attorney's fees as special
damages. The attorney's fees awarded to Plaintiffs in the amount of \$135,000.00 in this
Court's FFCLO and this Court's most recent May 16, 2016 Judgment, attached hereto
as **Exhibit 11**, represent the foreseeable, actual and proximate damages of the injurious
conduct on the part of Pardee. Not only does this award and this Court's findings
demonstrate that the Plaintiffs are the prevailing party in this action, but it also shows
that Plaintiffs satisfy the requirements under *Sandy Valley* and *Liu* to claim attorney's
fees as special damages. As such, this Court must deny Pardee's instant Motion to
Amend Judgment as it is meritless and without legal and/or factual basis.

1 **II. LEGAL ARGUMENT**

2 NRCp 52(b) permits the trial court to “amend its finds or make additional finds and
3 to amend the judgment accordingly.” NRCp 59(e) allows the trial court to “alter or amend
4 the judgment.” Normally, parties seeks relief under Rules 52 or 59 “after a bench trial or
5 where summary judgment has been granted.” *Gutierrez v. Ashcroft*, 289 F. Supp. 2d
6 555, 561 (D.N.J. 2003). Nevada has long recognized that a judgment must conform to
7 the evidence actually offered at trial. See *Finnegan v. Ulmer*, 31 Nev. 523, 104 P. 17, 18
8 (1909); see also *Bream v. Nevada Motor Co.*, 51 Nev. 100, 269 P. 606, 607 (1928).

9 A. Plaintiffs Should be Awarded Attorney’s Fees as Special Damages and the
10 Court Did Not Err in That Regard

11 The entire basis for Pardee’s current motion to amend is that this Court did not
12 have the opportunity to review and apply the law from a Nevada Supreme Court, to wit,
13 *Liu v. Christopher Homes, LLC*, 103, Nev. Adv. Op. 17, 321 P.3d, 875 (2014), that was
14 decided after the trial concluded in this matter. First and foremost, Pardee has provided
15 no legal authority regarding the applicability of case law determined after the closure of
16 trial on this matter. Regardless, a mere perusal of this Court’s FFCLO of June 25, 2014
17 reveals that this Court did actually address and cite to the *Liu* case as the basis for the
18 award of attorney’s fees as special damages to Plaintiffs. See Exhibit 2, 14:24-27.

19 After Pardee had the opportunity to extensively argue *Sandy Valley*, the Court
20 specifically set forth in its conclusions of law under the FFCLO that the award of
21 attorney’s fees and costs in the amount of \$135,500.00 as special damages was being
22 awarded because “[t]he above-referenced facts allow this Court to award reasonable
23 attorney’s fees and costs as special damages.” See *Liu v. Christopher Homes, LLC*, 103,
24 Nev. Adv. Op. 17, 321 P.3d, 875 (2014); *Sandy Valley Assoc. v. Sky Ranch Owners*
25 *Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001).” Thus, after the Court considered all evidence
26 on the very issue of attorney’s fees as special damages, and taking into account the
27 legal authority provided in both *Sandy Valley* and *Liu*, the Court awarded Plaintiffs these
28 special damages.

1 As the parties extensively argued this very issue at pre-trial and trial stages,
2 Pardee is wrongfully seeking another bite at the proverbial apple under the guise that
3 the 2014 *Liu* decision somehow affects this Court's determination to award special
4 damages to Plaintiffs. Knowing that the June 25, 2014 FFCLO specifically references
5 both the *Liu* and *Sandy Valley* cases as a basis for the award of special damages,
6 Pardee falsely claims that this "Court could not benefit from Liu's protracted discussion"
7 regarding the circumstances allowing an award of special damages, as Liu was not
8 decided "until almost a year later, on March 27, 2014." See Pardee's Motion, page 11,
9 footnote 3. Considering this Court's decision was made after and specifically cited the
10 *Liu* case, Pardee's actions are without basis and are, indeed, meritless.

11 It is simply an entire waste of this Court's limited time and the parties' resources
12 to have to address this matter once again, when the *Liu* decision does *nothing* to
13 undercut, limit, or change the *Sandy Valley* decision such that this Court should or could
14 reconsider the award of special damages to Plaintiffs. In fact, the *Liu* decision confirmed
15 the *Sandy Valley* decision and only clarified *Horgan's* partial abrogation of *Sandy Valley*.
16 See *Liu v. Christopher Homes, LLC*, 321 P.3d 875, 130 Nev. Adv. Op. 17 (2014), See
17 also *Sandy Valley*, 117 Nev. at 948 and *Horgan*, 123 Nev. at 577, 170 P.3d at 982. In
18 *Liu*, the trial court, relying on *Horgan*, denied Liu's specially pleaded request to recover
19 attorney fees, concluding that because the breach of contract related to title to real
20 property, and because Liu failed to allege and prove slander of title, Liu could not recover
21 the attorney fees sought as special damages. *Liu* 321 P. 3d at 876. The Nevada
22 Supreme Court reversed this decision and clarified *Horgan* in conjunction with *Sandy*
23 *Valley*.

24 The Nevada Supreme Court took the opportunity to explain that *Horgan* "must be
25 read as a whole, without particular portion read in isolation, [so] as to discern the
26 parameters of its holding." *Id.* at 878. The Court further discussed that *Horgan* did not
27 hold that a party in any matter relating to real property must prevail on a slander of title
28 claim in order to recover attorney fees as special damages, and rather, that the court

1 contemplated the ability to recover attorney fees as special damages that were incurred
2 in an action to clarify or remove a cloud on a title. *Id.* at 878-879.

3 While Plaintiff Liu did not incur attorney fees by asserting equitable or declaratory
4 relief claims to clarify or remove a cloud on a title, Liu was a third-party who pled to
5 recover attorney fees as special damages incurred in defending against a breach of
6 contract action. Thus, the court determined that “a party to a contract may recover from
7 a breaching party the attorney fees that arise from the breach that caused the former
8 party to accrue attorney fees in defending himself or herself against a third party’s legal
9 action.” *Id.* at 880. Thus, the Nevada Supreme Court merely clarified the *Sandy Valley*
10 decision by reconciling the same with the *Horgan* decision, as follows:

11 In light of the above, *Sandy Valley* permits, and *Horgan* does
12 not bar, Liu’s claim to recover attorney fees as special
13 damages that were purportedly sustained in defending herself
14 against K&D’s suit, which was allegedly caused by CHR’s
15 breach of the Agreement. Accordingly we hold that the district
16 court erred in relying on *Horgan* to conclude that Liu cannot
17 recover attorney fees as special damages.

18 *Id.*

19 The *Liu* Court, in reversing the trial court’s decision to deny Liu’s claim for
20 attorney’s fees as special damages, asserted that “*Horgan* does not apply to preclude
21 such recovery here.” *Id.* at 876, 881. Further, the Nevada Supreme Court commented
22 on the dissent, setting forth in footnote 3 as follows:

23 The dissent disagrees with our conclusions, relying on a
24 concurrence in *Horgan* which noted that there are claims,
25 other than slander of title, under which a party can recover
26 attorney fees as special damages, such as “actions for
27 malicious prosecution, abuse of process, wrongful
28 attachment, trademark infringement, false imprisonment or
arrest.” 123 Nev. at 587, 170 P.3d at 988–89 (Maupin, J.,
concurring). **The dissent appears to conclude that
because the *Horgan* concurrence did not include a
breach of contract claim within its list, it is persuasive
authority that attorney fees that arise from a breach of
contract cannot be recovered as special damages. We
disagree. We do not read the *Horgan* concurrence as
conveying a comprehensive and exclusive list of claims**

1 **on which a party can recover attorney fees as special**
2 **damages.** Rather, the Horgan concurrence stressed that the
3 Horgan opinion did not preclude the recovery of attorney fees
4 as special damages in circumstances other than those
5 presented in that appeal. *Id.* In so doing, it offered examples
6 of claims under which one may recover attorney fees. *Id.*
7 Thus, like the Horgan concurrence, we conclude that Horgan
8 does not bar the recovery of attorney fees in circumstances
9 that are not addressed in Horgan, such as the circumstances
10 that are present in this appeal.

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

12 Pardee misapplies the *Liu* discussions and falsely claims that recovery of attorney
13 fees as special damages in a breach of contract claim may “only” be recovered when the
14 breach causes the former party to incur fees in a legal dispute brought by a third party.
15 See Pardee’s Motion at 1:24-26. Contrary to Pardee’s contentions, in discussing the
16 Horgan court’s decision, the *Liu* court noted that there was no “retreat from *Sandy*
17 *Valley*’s conclusion that a party to a contract may recover, as special damages, the
18 attorney’s fees that arise from another party’s breach of contract when the breach causes
19 the former party to incur attorney fees in a legal dispute brought by a third party.” *Id.* at
20 880, citing *Horgan v. Felton*, 123 Nev. 577, 579, 583-86, 170 P.3d 982, 983, 986-88
21 (omitting from its discussion *Sandy Valley*’s language that concerns the recovery of
22 attorney fees as special damages that arise from a breach of contract). How Pardee
23 falsely transformed the above quote to claim this is a new basis for the Court to now
24 deny Plaintiffs their award of attorney’s fees as special damages is legally unsound.
25 Clearly, the *Liu* decision only dealt with one limited example of a case that allowed such
26 a recovery and not the “only” case in which attorney’s fees may be recovered as special
27 damages. Otherwise, if this was the holding, then *Sandy Valley* would have been
28 abrogated. Rather, *Liu* served to expand upon the limitations and abrogation that *Horgan*
29 placed upon *Sandy Valley*.

30 The faulty basis for Pardee’s argument is that Plaintiffs’ award is erroneous as it
31 does not allegedly fall under one of the three (3) limited circumstances set forth in *Sandy*
32 *Valley* and *Liu*. While *Sandy Valley* provides that the mere fact that a party is forced to

1 file suit is not enough to support attorneys' fees as an element of damages and discusses
2 three (3) specific scenarios where fees as special damages would be appropriate. At no
3 point in this discussion does the court suggest, much less determine, that these are the
4 only circumstances where an award of fees as special damages would be allowed. See
5 *Sandy Valley*, 117 Nev. at 957-58, 35 P.3d at 970. Nothing in *Sandy Valley* or its progeny
6 suggests that the only actions qualifying for attorney fee damages are limited to those
7 three specific circumstances. In fact, *Works v. Kuhn*, 103 Nev. 65, 732 P.2d 1373 (1989),
8 which was cited within the *Sandy Valley* decision, does not involve the claims listed in
9 *Sandy Valley* and thus, disproves the limitation argument. See *Works v. Kuhn*, 103 Nev.
10 65, 732 P.2d 1373 (1989). In *Works*, the court granted fees "to defray the expenses and
11 costs that respondents have incurred in retaining counsel to represent them..." in an
12 appeal concerning claims for breach of accord and satisfaction and malicious
13 prosecution. See *Works*, 103 Nev. at 69. If the *Sandy Valley* Court intended to restrict
14 the causes of action qualifying for attorney fee damages, it would not have cited *Works*
15 with approval.

16 The circumstances in which Plaintiffs are entitled to an award of attorney's fees
17 as special damages under *Sandy Valley* has not changed since the parties extensively
18 argued this very same issue before this Court issued its Minute Orders from April 26,
19 2013 and May 16, 2013 (Exhibits 7 and 8, respectively). *Liu*, citing *Sandy Valley*,
20 confirmed that attorney fees may be recovered when they are pled as such pursuant to
21 NRCP 9(g) and are proven to be a "natural and proximate consequence of the injurious
22 conduct." See *Liu* 321 P. 3d at 878. Under *Sandy Valley*, "when attorney fees are
23 considered an element of damages, they must be the natural and proximate
24 consequence of the injurious conduct." See *Sandy Valley* 117 Nev. at 957, 35 P.3d at
25 969. Plaintiffs' Second Amended Complaint adequately pled Plaintiffs' claim for attorney
26 fees as special damages, which was subsequently proven at trial.

27 Plaintiffs' Complaint is replete with allegations demonstrating how Pardee's
28 injurious conduct naturally and proximately caused Plaintiffs' expenditure of attorney's

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

13 Plaintiffs' claims set forth in their original Complaint and the subsequent Amended
14 Complaints involved a breach of the implied covenant of good faith and fair dealing, as
15 well as equitable or injunctive relief regarding the accounting, all stemming from Pardee's
16 bad faith. Under *Sandy Valley*, "actions for declaratory or injunctive relief may involve
17 claims for attorney fees as damages when the actions were necessitated by the opposing
18 party's bad faith conduct." See *Sandy Valley*, 117 Nev. at 958. Nevada law is clear that
19 claims for breaches of the implied covenant of good faith and fair dealing are "bad faith"
20 claims, no matter if they are claims founded on either contract or tort principles.

21 Over the course of a three (3) week trial, after which the Court took the matter
22 under advisement, Plaintiffs proved the above allegations, resulting in an award of
23 \$135,500.00 in attorney's fees as special damages as set forth in the Court's FFCLO. In
24 the face of these findings, the Court made a determination that Plaintiffs were owed a
25 Judgment in the amount of \$141,500.00, composed of \$135,500.00 in attorney's fees as
26 special damages and \$6,000.00 of time that Mr. Wolfram expended at a reasonable rate
27 of \$75.00 per hour, for over eighty (80) hours that he spent to communicate with Pardee
28 in an effort to obtain information that Pardee was contractually obligated to provide, but

1 failed to do so, as the Court so found. In addition, the Court heard the testimony of
2 Plaintiffs' counsel, Mr. Jimmerson, who testified that the efforts directly associated with
3 Mr. Jimmerson's law firm to acquire the information from Pardee, and the Court found
4 the sum of \$135,000 to be reasonable and necessary. The Court's specific findings were
5 based on both *Sandy Valley* and *Liu*, and therefore, this Court has already considered
6 and addressed the *Liu* decision when it awarded Plaintiffs' attorneys fees as special
7 damages, making Pardee's entire motion to amend in this regard vexatious and frivolous.

8 B. The Court Did Not Err in Omitting Language Regarding a Phantom Claim for
9 \$1.8 Million in Lost Commissions

10 A review of the Court's June 25, 2014 Findings of Fact, Conclusions of Law, and
11 Order and its May 16, 2016 final Judgment reveals that as to each of the Plaintiffs' three
12 (3) claims within its original Complaint and as maintained through its Amended
13 Complaint and ultimately through its second Amended Complaint, this Court determined
14 there was a breach by Pardee for each of the three (3) claims for relief that were properly
15 pled by Plaintiffs from the outset. This case was about gaining information and was
16 conservatively pled by Plaintiffs, who were forced to file a lawsuit only because of the
17 consistent and willful refusal of Pardee to keep Plaintiffs reasonably informed as the
18 Commission Agreement required during the course of Pardee's development of their
19 residential home construction at Coyote Springs. Only if, by virtue of the failure of Pardee
20 to keep Plaintiffs' reasonably informed, it was discovered that Plaintiffs believed that
21 Pardee had exercised its option to acquire additional land outside of the boundaries of
22 the original takedown of properties, additional commissions may have been due.

23 The Court did not err in failing to include in its final Judgment of May 16, 2016 that
24 Pardee had "succeeded" in defending against Plaintiffs' "claim" for \$1.8 million in lost
25 commissions, as no such "claim" has ever existed. As is set forth in Plaintiffs' Opposition
26 to Pardee's Motion to Retax, this Court must put a stop to these bad faith efforts on the
27 part of Pardee. Pardee still maintains this position that Plaintiffs claim they were entitled
28 to receive additional commissions and that over 90% of the trial in this case was devoted

1 to Plaintiffs' failed "theory" that Pardee had purchased "Option Property." Even as
2 recently as the January 15, 2016 Hearing, this Court made it clear to both sides what it
3 believed the crux of this case to be about:

4 THE COURT: [...] So I look at this case, I'll be honest, it was
5 definitely a **claim to get information**, and then once he got
6 the information, whether, based on that commission
7 agreement, he had any other claims. I truly believe that.

8 THE COURT: [...] The **basis of this suit was to get an**
9 **accounting and see what the information was**, and then
10 once they [Plaintiffs] got it, to see if they have money
11 damages. That's what there this disconnect. And I understand
12 why they had to do, because you did, you did a motion you
13 didn't comply with 16.1, **you didn't give us a damage figure**,
14 and then guess what, **and they had to**.

15 THE COURT: [...] I look at claims as causes of action, okay?
16 [...] I understand there were two theories of liability for the
17 breach of contract. What **I don't understand is you're**
18 **saying so a theory of liability is the same as a cause of**
19 **action or a claim?**

20 MS. LUNDVALL: Well, what –

21 THE COURT: Because really **what you prevailed on is**
22 **defeating one theory of liability**.

23 See Transcript of January 15, 2016 Hearing at 67:11-15, 88:15-23, 111-20-112:15,
24 attached hereto as **Exhibit 13** (emphasis added).

25 In its Motion, Pardee claims that, during trial, Plaintiffs pursued their theory that
26 additional commissions were due and owing to them by questioning witnesses about
27 Plaintiffs' commissions under the Commission Agreement and Pardee's reclassification
28 of land under the Option Agreement. The one underlying notion that Pardee is missing,
despite having gone through the trial testimony of the Plaintiffs, Harvey Whittemore, and
the opening and closing statements of counsel, and heard this Court's direct and explicit
statements at the January 15, 2016 hearing, is that there is a fundamental difference
between a theory of liability and a claim for relief. Throughout the hearing on January 15,
2016, Pardee's main argument was that they were, somehow, defending against this

1 “claim” for \$1.8 million throughout the course of the litigation. Their entire reasoning and
2 basis for that was that the quantification of damages, set forth in Plaintiffs’ Supplemental
3 NRCP 16.1 Disclosures, was what Pardee was defending against. At the time of the
4 January 15, 2016 hearing, this Court was correct to point out that, although Plaintiffs may
5 have quantified their damages in their NRCP 16.1 Disclosures, which was done at
6 Pardee’s request in their Motion for Summary Judgment, that quantification was included
7 only to put Pardee “on notice:”

8 THE COURT: **This is discovery.** This is to put people on notice,
9 you’re right, as to what they may or what may happen at trial. You
10 and I both know **we could have this theory initially**, and after
11 discovery, we go, whoops, that’s not the way we’re going, so this is
12 discovery [...] – you **didn’t ask me to review 16.1**. Did you put into
13 evidence 16.1?

14 MS. LUNDVALL: Absolutely. All of this is in as far in our oppositions
15 to their various motion to strike.

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

18 MS. LUNDVALL: **Absolutely not.**

19 *Id* at 76:8-24 (emphasis added).

20 Not only is this Court aware, as the above excerpt demonstrates, that there is a
21 distinct difference between a “claim for relief” and a “theory of liability,” but also that
22 Pardee did not find it necessary to admit *any* of the NRCP 16.1 Disclosures, which they
23 are now relying upon as a basis for their Motion to Amend, into evidence at the time of
24 trial. This omission of evidence at trial only serves to prove Plaintiffs’ point that the main
25 issue at the time of trial was not a claim for \$1.8 million in lost commissions, but the lack
26 of information afforded to the Plaintiffs throughout the relationship they had with Pardee
27 as it pertains to the Commission Agreement. Put simply, \$1.8 million was never an issue
28 in this matter. As Pardee was quick to point out in their Motion to Amend, Nevada has
“long recognized that a judgment must conform to the evidence actually offered at trial.”
See Motion at 13:17-19. Using Pardee’s own words and relying on the Court’s own
statements and findings made in the January 15, 2016 hearing, the Order from which is

1 attached hereto as **Exhibit 14**, one could easily ascertain the backwardness of Pardee's
2 instant motion.

3 Despite Pardee's statements to the contrary, it is impossible for any party to this
4 action, or this Court, to make a determination that Plaintiffs sought an award of \$1.8
5 million in lost commissions. The following exchange between Pardee's counsel and this
6 Court at the January 15, 2016 Hearing cements that contention:

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

9 THE COURT: **And they quantified that at trial 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, your Honor –

13 THE COURT: **They didn't say 1.8. I looked for it.**

14 See Exhibit 13 at 102:5-15 (emphasis added).

15 Pardee, as it has done on numerous occasions, attempts to rely upon its phony
16 "Judgment" of June 15, 2015, which was procured through nefarious means, to make
17 the claim that Pardee successfully defended against Plaintiffs "claim" for \$1.8 million in
18 lost commissions and that, by doing so, they are the prevailing party in this action. This
19 Court is well aware and can remember that during the January 15, 2016 Hearing, it made
20 it crystal clear that "[the] judgment entered June 15, 2015 [...] is an erroneous judgment"
21 and that the Court believed it to be not "in compliance with [its] orders." See Exhibit 13
22 at 115:19-116:25. The Court elaborated and stated that it "did not believe the 1.8 million
23 is a fair quantification of the damages that were [...] presented at trial. *Id.* Given this
24 Court's own rulings, it is evident that the Court did not err in deleting the language
25 included by Pardee in its first Judgment of June 15, 2015 that indicated Pardee's
26 "successful defense" of Plaintiffs' claims to additional commissions.

27 Now, given that Pardee (1) did not admit into evidence at trial any of the NRCP
28 16.1 Disclosures that have been repeatedly referenced and (2) now knows that this Court
is aware and has confirmed unequivocally that Plaintiffs *never* said \$1.8 million in any
context before, during, or after trial, this Court must ask itself: How is it that Plaintiffs

1 devoted 90% of the trial to the issue of additional commissions and, more important, how
2 is it that Pardee expended 90% of its fees in defending against the same? Looking
3 closely at the issues facing the Court throughout this action, the Court can only conclude
4 that the vast majority of the time spent was deciding matters unrelated to the possibility
5 of potential future commissions, which was not discussed at trial at all. Not only does this
6 thoroughly refute Pardee's allegations, it confirms that 90% of the fees incurred were not
7 related to the issue of future commissions, but that the core issue of the case was about
8 Plaintiffs' request, and legal entitlement, to be reasonably informed. As such, this Court
9 is under no legal or factual obligation to amend its Judgment of May 16, 2016 to conform
10 to Pardee's attempts to distort the record and spin the outcome of the case to be in their
11 favor. Instead, this Court must summarily deny Pardee's instant motion and award
12 Plaintiffs their attorney's fees and costs incurred for having to defend against this
13 frivolous motion.

14 **III. COUNTERMOTION FOR ATTORNEYS' FEES IN THE AMOUNT OF \$6,170.00**

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

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

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

21 (2) Fails to prepare for a presentation.

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

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

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

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

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

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

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

9 Considering this Court has extensively heard, addressed and disposed of the very
10 same arguments that Pardee attempts to renew in its current Motion to Amend, with four
11 (4) previous written court filings by Defendant (Exhibits 4, 5, 6, and 9) and oral argument
12 (Exhibits 7-8), as well as this Court's specific reference to the *Liu* case in the FFCLO as
13 the basis for the special damages award (Exhibit "2" at 14:24-27), Pardee's entire Motion
14 herein is vexatious, frivolous and unwarranted, such that Plaintiffs are deserving of
15 attorneys' fees under EDCR 7.60 and NRS 18.010, to wit, in the amount of \$6,170.00 as
16 requested. See Affidavit of James J. Jimmerson, Esq. attached hereto as Exhibit 1.

17 With respect to determining the reasonableness of counsel's services, certain
18 factors must be addressed, known as the *Brunzell* factors. *Brunzell v. Golden Gate*
19 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). As to the qualities of the advocate, the
20 James J. Jimmerson, Esq. is an AV rated, Preeminent Lawyer, with many further
21 accolades. As to the "character and quality of the work performed," we ask the Court to
22 find our work in this matter to have been adequate, both factually and legally, in which we
23 have diligently reviewed the applicable law, explored the relevant facts, and have properly
24 applied one to the other. Finally, as to the result reached, this remains to be determined
25 when the Court rules on the present matter but, based on this Court's prior statements in
26 the most recent hearing on January 15, 2016, the Plaintiffs expect Pardee's Motion to be
27 summarily denied. As was the case before, during and after trial, in preparation of the
28 drafting of Plaintiffs instant Opposition, the case law was thoroughly researched and

1 briefed, the facts were thoughtfully presented, and ample substantiation was provided.
2 Based on the foregoing, the Court should award Plaintiffs their attorney's fees in the
3 amount \$6,170.00 pursuant to NRS 18.010 and EDCR 7.60 for having to defend against
4 such an unwarranted and baseless Motion on the part of Pardee.


5 **IV. CONCLUSION**

6 For the reasons stated herein, Plaintiffs respectfully request this Court deny
7 Pardee's Motion to Amend Judgment and award them their attorney's fees in the
8 amount of \$6,170.00 for having to defend against the same.

9 DATED this 21 day of June, 2016.

10 Respectfully submitted by:

11 THE JIMMERSON LAW FIRM, P.C.

12 By: 
13 JAMES J. JIMMERSON, ESQ.
14 Nevada State Bar No. 000264
15 MICHAEL C. FLAXMAN, ESQ.
16 Nevada State Bar No. 12963
17 415 South Sixth Street, Suite 100
18 Las Vegas, Nevada 89101
19 Attorneys for Plaintiffs
20
21
22
23
24
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27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE JIMMERSON LAW FIRM, P.C., and that on this 21 day of June, 2016, I caused a document entitled **PLAINTIFFS' OPPOSITION TO DEFENDANT, PARDEE HOMES OF NEVADA'S, MOTION TO AMEND JUDGMENT and COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRS 18.010 AND EDCR 7.60** to be served as follows:

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

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

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, Nevada 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, being duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada, and I am a shareholder of 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, except for those matter stated on information and belief, and to those matters, I believe them to be true.

2. I am lead counsel on the above-entitled matter for the Plaintiffs, and I know the amount of efforts that has been spent to prepare Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment, filed June 1, 2015. Considering this Court has extensively heard, addressed and disposed of the very same arguments that Pardee attempts to renew in its current Motion to Amend, with four (4) previous written court filings by Defendant and oral argument, as well as this Court's specific reference to the *Liu* case in its Findings of Fact, Conclusions of Law and Order, filed June 25, 2014, as the basis for the special damages award, I believe Pardee's entire Motion herein to be vexatious, frivolous and unwarranted. As such, Plaintiffs are deserving of attorneys' fees under EDCR 7.60 and NRS 18.010 in the amount of \$8,000.00 as requested.

3. Joshua C. Reisman, a law clerk for The Jimmerson Law Firm, P.C., spent at least 26 hours researching, drafting, and reviewing Plaintiffs' Opposition to Pardee's Motion

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

1 to Amend Judgment at a rate of \$100.00 per hour, resulting in an approximate total of
2 \$2,600.00. In addition, the undersigned spent at least 6 hours at the rate of \$595.00
3 per hour, in reviewing and correcting and amending drafts of Plaintiffs' Opposition to
4 Pardee's Motion to Amend, in addition to the amount of costs through the date and
5 time of preparation of this Affidavit. Additional work in reviewing and analyzing the
6 *Sandy Valley, Liu, and Horgan* case law, which Judge Earley correctly studied, was
7 also undertaken. The work expended and the hours incurred in having to defend
8 against Pardee's instant Motion warrants this Court to award Plaintiffs' counsel their
9 attorney's fees in the amount of \$6,170.00.
10

11 4. I incorporate the argument within the Plaintiffs' Opposition, specifically the law
12 with regard to compensating counsels for services when warranted. *Brunzell v. Golden*
13 *Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) and its progeny. These fees
14 and costs are reasonable and are necessarily incurred.
15

16 FURTHER, AFFIANT SAYETH NAUGHT.
17

18 
19 JAMES J. JIMMERSON, ESQ.

20 SUBSCRIBED AND SWORN to before me
21 this 21st day of June, 2016.

22 
23 NOTARY PUBLIC in and for said
24 County and State

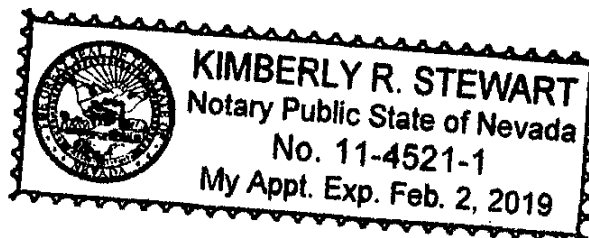


Exhibit 2

Exhibit 2


CLERK OF THE COURT

1 ORDER

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 JAMES WOLFRAM and
5 WALT WILKES,

6 Plaintiffs,

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

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

Trial Date: October 23, 2013

10 AND RELATED CLAIMS

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

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

24 **I. FINDINGS OF FACT**

25 **A. THE PARTIES**

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

10 8. Pardee has never exercised any such option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **C. PLAINTIFFS' CLAIM FOR AN ACCOUNTING**
14

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

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

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

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

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

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

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

21 DECISION

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

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


KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

10
11 DATED this 25 day of June, 2014.

12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15
16 CERTIFICATE OF SERVICE

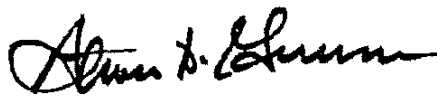
17 I hereby certify that on June 25, 2014, I mailed, electronically served, or placed a copy of
18 this order in the attorney's folder on the first floor of the Regional Justice Center as follows:

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

22
23 
24 Kelly Tibbs
25 Judicial Executive Assistant

Exhibit 3

Exhibit 3


CLERK OF THE COURT

1 SAC
2 JIMMERSON HANSEN, P.C.
3 JAMES J. JIMMERSON, ESQ.
4 Nevada Bar No. 000264
5 jjj@jimmersonhansen.com
6 JAMES M. JIMMERSON, ESQ.
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8 Nevada Bar No. 12599
9 415 So. Sixth St., Ste. 100
10 Las Vegas, NV 89101
11 (702) 388-7171
12 Attorney for Plaintiffs
13 James Wolfram and Walt Wilkes

DISTRICT COURT

CLARK COUNTY, NEVADA

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

SECOND AMENDED COMPLAINT

18 Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their
19 undersigned counsel, James J. Jimmerson, Esq. of the law firm of Jimmerson Hansen
20 P.C., for their Complaint states as follows:

GENERAL ALLEGATIONS

- 22 1. At all times relevant hereto, Plaintiffs James Wolfram and Walt Wilkes are
23 individuals who have resided in Clark County, Nevada.
24 2. That Plaintiff Wolfram has been assigned all of Award Realty's rights, title
25 and interest in that certain Commission Letter dated September 1, 2004, and he is the real
26 party in interest in this case.
27
28

1 3. That Plaintiff Wilkes has been assigned all General Realty's rights, title and
2 interest in that certain Commission Letter dated September 1, 2004, and he is the real
3 party in interest in this case.

4 4. At all times relevant hereto, Defendant Pardee Homes of Nevada ("Pardee")
5 was a corporation registered in the state of Nevada.

6 5. Plaintiffs' predecessors in interest, Award Realty and General Realty, and
7 Plaintiffs and Defendant have a financial relationship. Plaintiffs were real estate brokers,
8 dealing in real estate owned by Coyote Springs Investment LLC and being purchased by
9 Defendant. The relationship between Coyote Springs Investment LLC and Defendant was
10 governed by a certain Option Agreement for the Purchase of Real Property and Joint
11 Escrow Instructions, dated in May of 2004 ("Option Agreement") and later amended and
12 restated on March 28, 2005. Plaintiffs and Defendant entered into an agreement entitled
13 "Commission Letter" dated September 1, 2004, which related to the Option Agreement and
14 governed the payment of commissions from Defendant to Plaintiffs for real estate sold
15 under the Option Agreement. For easy reference, Award Realty and General Realty and
16 Plaintiffs, are concurrently referred to as "Plaintiffs" herein.

17 6. Pursuant to the Commission Letter, Plaintiffs were to be paid a commission
18 for all real property sold under the Option Agreement.

19 7. Pursuant to the Commission Letter, Plaintiffs were to be fully informed of all
20 sales and purchases of real property governed by the Option Agreement. Specifically, the
21 Commission Letter stated:

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

26 8. On or about April 23, 2009, Plaintiffs sent a letter to Defendant requesting
27 documents, which detail the purchases and sales of certain real property for which
28

1 Plaintiffs believe are part of the property outlined in the Option Agreement and, therefore,
2 property for which they are entitled to receive a commission. A parcel map was also
3 requested to identify which properties had been sold.

4 9. Defendant replied to Plaintiffs' April 23, 2009, letter with a letter dated July
5 10, 2009. The July 10 letter failed to provide the documents requested by the Plaintiffs.

6 10. Plaintiffs once again requested the documents from the Defendant in a letter
7 dated August 26, 2009. In that letter, Plaintiffs alleged that failure to deliver the requested
8 documents constituted a material breach of the Commission Letter.

9 11. Defendant, after conversations with Plaintiffs, sent a two-page letter dated
10 November 24, 2009, with four attachments: 2 maps, a spreadsheet, and a map legend.
11 The letter attempted to explain the recent purchases or "takedowns" of real property by
12 Pardee.

13 12. Plaintiffs relied upon Defendant's representations made in the November 24,
14 2009 letter as being truthful and accurate.

15 13. Upon further inquiry, however, Plaintiffs have discovered that the
16 representations made by the Defendant in the November 24, 2009, letter were inaccurate
17 or untruthful. In response to their concerns, Plaintiffs sent another letter dated May 17,
18 2010 to Defendants, asking for additional information and further documentation of all
19 properties purchased by Defendant and sold by Coyote Springs Investment LLC. In that
20 letter, Plaintiffs alleged that the representations made in the November 24, 2009, letter
21 were believed to be inaccurate or untruthful after the Plaintiffs investigated the property
22 transactions and records in the Clark County Recorder's Office and Clark County
23 Assessor's Office. Plaintiffs further asked Defendant why it had instructed Francis Butler of
24 Chicago Title not to release closing escrow documents regarding purchase of properties
25 from Coyote Springs.

26 14. Defendant responded to the May 17, 2010, letter with a letter dated June 14,
27 2010. In that letter, Defendant denied breaching the covenants contained in the
28 Commission Letter, but did not reply or address any particular concern, including, but not

1 limited to: the discrepancy between the representations made by Defendant in the
2 November 24, 2009, letter and information and records found in the Clark County
3 Recorder's Office and the Clark County Assessor's Office, the request as to why closing
4 escrow documents were being withheld, and the request for all relevant closing escrow
5 documents.

6 15. To date there has been no further documentation produced by Defendant for
7 the Plaintiffs regarding their concerns about the sales and purchases of real property by
8 Defendant from Coyote Springs Investment, LLC.

9 **FIRST CLAIM FOR RELIEF**

10 **(Accounting)**

11 16. Plaintiffs incorporate each of the allegations contained within paragraphs 1
12 through 15 above.

13 17. Plaintiffs have requested documents promised to them by Defendant in the
14 Commission Letter and have not received them. Specifically, the have requested: the
15 name of the seller, the buyer, the parcel numbers, the amount of acres sold, the purchase
16 price, the commission payments schedule and amount, Title company contact information,
17 and Escrow number(s), copy of close of escrow documents, and comprehensive maps
18 specifically depicting this property sold and would, with parcel number specifically
19 identified.

20 18. Plaintiffs are entitled to an accounting and copies of the documents and
21 maps for all transfers of real property governed by the Option Agreement.

22 19. As a direct, natural and proximate result of Defendant's failure to account to
23 Plaintiffs, Plaintiffs have been forced to retain an attorney to prosecute this action.
24 Plaintiffs have therefore been damaged in the amount of the fees and costs expended to
25 retain the services on their attorney and are entitled to an award of reasonable attorney's
26 fees as special damages.

27 20. As a direct, natural and proximate result of Defendant's failure to account to
28 Plaintiffs, Plaintiffs have been forced to spend a significant amount of time and effort

1 attempting to get the information owed to them from alternative sources. Plaintiffs have
2 therefore been damaged in the amount of their fair hourly rate in attempting to acquire the
3 information and documents owed to them.

4 21. As a result of this action, Plaintiffs have been forced to bring this matter
5 before the Court. Plaintiff has been damaged in a sum in excess of \$10,000.00.

6 **SECOND CLAIM FOR RELIEF**

7 **(Breach of Contract)**

8 22. Plaintiffs incorporate each of the allegations contained within paragraphs 1
9 through 20 above as though said paragraphs are fully stated herein.

10 23. Plaintiffs have requested documents promised to them by the Defendant in
11 the Commission Letter and have not received them.

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

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

20 26. As a direct, natural and proximate result of Defendant's breach of contract,
21 Plaintiffs have been forced to spend a significant amount of time and effort attempting to
22 get the information owed to them from alternative sources. Plaintiffs have therefore been
23 damaged in the amount of their fair hourly rate in attempting to acquire the information and
24 documents owed to them.

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

27 **THIRD CLAIM FOR RELIEF**

28 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

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

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

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

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

16 32. As a direct, natural and proximate result of Defendant's breach of the implied
17 covenant of good faith and fair dealing, Plaintiffs have been forced to spend a significant
18 amount of time and effort attempting to get the information owed to them from alternative
19 sources. Plaintiffs have therefore been damaged in the amount of their fair hourly rate in
20 attempting to acquire the information and documents owed to them.

21 33. As a direct and proximate result of Defendant's breach of the covenant of
22 good faith and fair dealing, Plaintiffs have been damaged in a sum in excess of
23 \$10,000.00.

24 ///

25 ///

26 ///

27

28

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 • Facsimile (702) 388-1162

WHEREFORE, Plaintiffs pray as follows:

1. For the documents promised to them including, but not limited to, an accurate parcel map with Assessor's Parcel numbers, and an accounting of all transfers or title or sales.

2. For general damages in a sum in excess of \$10,000.00.

3. For special damages in a sum in excess of \$10,000.00

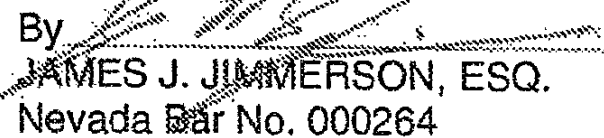
3. For cost of suit.

4. For reasonable attorney's fees.

5. For such further relief as the Court deems proper.

DATED this 6th day of June, 2013.

JIMMERSON HANSEN, P.C.

By 
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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of SECOND AMENDED COMPLAINT was made on the 6th day of June, 2013, as indicated below:

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

☐ By electronic service through the E-filing system

☐ By facsimile, pursuant to EDCR 7.26

☐ By receipt of copy as indicated below

PAT LUNDVALL, ESQ.,
AARON D. SHIPLEY, ESQ.
McDONALD CARANO WILSON, LLP
2300 W. Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant
Pardee Homes of Nevada


An Employee of JIMMERSON HANSEN, P.C.

Exhibit 4

Exhibit 4


CLERK OF THE COURT

1 **OPPS**
2 PAT LUNDVALL (NSBN 3761)
3 AARON D. SHIPLEY (NSBN 8258)
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11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

DISTRICT COURT
CLARK COUNTY, NEVADA

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR LEAVE TO
FILE A SECOND AMENDED
COMPLAINT**

Hearing Date: April 26, 2013
Hearing Time: 8:30 a.m.

18 Pardee Homes of Nevada ("Pardee" or "Defendant") submits the following
19 Opposition ("Opposition") to the Plaintiffs' Motion for Leave to File a Second Amended
20 Complaint ("Motion"). This Opposition is supported by the following Memorandum of
21 Points and Authorities, supporting exhibits, the papers and pleadings on file in this
22 matter, and any argument the Court may permit at the hearing of this matter.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 RESPECTFULLY SUBMITTED this 8th day of April, 2013.

2 McDONALD CARANO WILSON LLP

3
4 /s/ Aaron D. Shipley
5 Pat Lundvall (#3761)
6 Aaron D. Shipley (#8258)
7 2300 West Sahara Avenue, Suite 1000
8 Las Vegas, Nevada 89102
9 *Attorneys for Defendant Pardee Homes of Nevada*

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 One year after the deadline to file motions to amend pleadings, nearly five
13 months after the close of discovery, and within 60 days of the current trial date,
14 Plaintiffs filed the instant Motion requesting leave to file a Second Amended Complaint.
15 Yet, it is clear that the Motion and the proposed amended complaint are rife with the
16 same deficiencies previously identified by Pardee in its Motion in Limine to Exclude
17 Attorneys' Fees as an Element of Damages (MIL #1). Even under NRCP 15(a)'s liberal
18 standard, leave to amend to allow Plaintiffs to add an additional element of damages at
19 this extremely late date would greatly prejudice Pardee. Discovery closed months ago
20 and Pardee never received an opportunity to conduct any discovery on the topic of the
21 Plaintiffs' new claim that they are entitled to present their attorneys' fees as special
22 damages at trial. Further, Pardee did not have the opportunity to retain an expert to
23 review Plaintiffs' counsel invoices for their attorneys' fees and to develop an opinion as
24 to the reasonableness thereof. Without the benefit of discovery and an expert witness,
25 Pardee would be unable to adequately defend against the Plaintiffs' presentation of this
26 purported element of their damages at trial. This would be severely prejudicial to
27 Pardee.

28 Beyond these procedural problems, the proposed amendments to the complaint
would be futile because attorneys' fees cannot be rightfully claimed as an element of

1 consequential or special damages in the context of this case. Rather, the issue of
2 attorneys' fees and costs ought to be dealt with at the conclusion of trial through motion
3 practice, not at trial. This case is not the type of rare exception to the general rule that
4 the Nevada Supreme Court has contemplated. In other words, in this case attorneys'
5 fees ought to be handled and decided as a cost of litigation rather than as an element
6 of damage. Therefore, Plaintiffs' Motion should be denied because the proposed
7 purpose of the Second Amended Complaint is futile because it is contradicts Nevada
8 law.

9 **II. BRIEF STATEMENT OF RELEVANT FACTS.**

10 By now the Court is familiar with the facts and procedural history in this case.
11 Therefore, only a brief statement of relevant procedural facts is provided for purposes
12 of this Opposition. Plaintiffs filed their original complaint on December 29, 2010.
13 Subsequently, Plaintiffs filed their Amended Complaint on January 14, 2011. The
14 deadline for all parties to file motion to amend pleadings or add parties was March 14,
15 2012. See Scheduling Order filed on November 8, 2011, a copy of which is attached
16 hereto as **Exhibit A**. That deadline did not change despite the parties' stipulation to
17 extend the discovery period 60 days, which was submitted on August 29, 2012. See
18 Stipulation and Order to Extend Discovery Deadlines, a copy of which is attached
19 hereto as **Exhibit B**. The extension was only for the limited purpose of completing
20 depositions. Id. at p.1. All other due dates and deadlines remained the same. Id. at
21 p.2 (¶4). Discovery closed on October 29, 2012. Id.

22 Now, over one year past the deadline to seek leave of the Court to amend their
23 complaint yet again, Plaintiffs filed the instant Motion. Having refused to properly modify
24 their pleading in a timely fashion, Plaintiffs request leave to file a Second Amended
25 Complaint that comports with the Plaintiffs' ever changing and new theory of the case.
26 The Plaintiffs did not put forth this new theory of damages until their fifth supplemental
27 disclosure of witnesses and documents, which was served on October 26, 2012—three
28 days before the discovery cutoff. See Plaintiffs' Fifth Supplement to NRCP 16.1

1 Disclosure of Witnesses and Documents, at p. 7-8, a copy of which is attached hereto as
2 **Exhibit C** (without attached exhibits). In effect, this ambush attack made it impossible for
3 Pardee to conduct any discovery whatsoever regarding this newly advanced theory of
4 Plaintiffs' alleged damages. This is problematic because their new theory of damages
5 requires that they plead with specificity and present their claims for attorneys' fees at trial
6 rather than in post-trial motion practice. If the Court allowed Plaintiffs to proceed in this
7 fashion, Pardee would, in effect, be forced to defend Plaintiffs presentation of damages
8 at trial without the benefit of any discovery or an expert witness. By definition, this would
9 be prejudicial to Pardee.

10 The Court must require plaintiffs to proceed on their first Amended Complaint.
11 The Court should deny Plaintiffs' Motion because it seeks to allow Plaintiffs in this action
12 to have an unfair advantage. But even if the Court were to ignore Plaintiffs' eleventh hour
13 tactics, the Court should also deny the motion as futile because Plaintiffs are not entitled
14 to an award of their attorneys' fees as an element of their alleged damages under
15 Nevada law.

16 **III. LEGAL ARGUMENT**

17 **A. Legal Standard.**

18 Pursuant to NRCP 15(a) a party may amend its pleadings "by leave of court ...
19 and leave shall be freely given when justice so requires." The decision to grant or deny
20 the motion to amend lies with the discretion of the district court. University & Cmty.
21 Coll. Sys. v. Sutton, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004). While NRCP 15(a)
22 provides that leave to amend should be "freely given," a denial is warranted if undue
23 delay, bad faith, or dilatory motives on the part of the movant are involved. See Kantor
24 v. Kantor, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000); see also Stephens v. S. Nevada
25 Music Co., 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Also, leave to amend is not
26 appropriate when the amendment would be futile. See Reddy v. Litton Industries, Inc.,
27 912 F.2d 291, 296-97 (9th Cir. 1990). Futility occurs when the proposed amendment is
28 frivolous or attempts to advance a claim that is legally insufficient. See Allum v. Valley

1 Bank of Nevada, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993) (citation omitted) ("It is
2 not an abuse of discretion to deny leave to amend when any proposed amendment
3 would be futile."). Likewise, if the amendment could not withstand a motion to dismiss,
4 then the amendment should be denied as futile. See 6 Charles Alan Wright, Arthur R.
5 Miller & Mary Kay Kane, Federal Practice and Procedure Civ. 2d §1487 (2006).

6 The proposed Second Amended Complaint is Plaintiffs' third bite at the apple.
7 As the Ninth Circuit has found, a "district court's discretion to deny leave to amend is
8 particularly broad where plaintiff has previously amended the complaint." Sisseton-
9 Wahpeton Sioux Tribe of Lake Traverse Indian Reservation, N.D. & S.D. v. United
10 States, 90 F.3d 251, 355 (9th Cir. 1996) (upholding district court's denial of leave to
11 amend) (quoting Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990)). The
12 proposed Second Amended Complaint remains as it was – well short of pleading a
13 claim for attorneys' fees as damages with any sort of viable specificity. Further,
14 Plaintiffs' claim that it is entitled to an award of their attorneys' fees as special damages
15 is legally insufficient under Nevada law.

16 Plaintiffs' Motion should be denied because: (1) it is untimely and highly
17 prejudicial; and (2) their claim for attorneys' fees as an alleged element of their
18 damages in the context of this case is futile and unfounded under Nevada law.

19 **B. Plaintiffs' Motion Should be Denied Because it is Untimely and**
20 **Highly Prejudicial to Pardee.**

21 Plaintiffs' Motion should be denied because it is untimely, and therefore, highly
22 prejudicial to Pardee. Even under NRCP 15(a)'s liberal standard, leave to amend to
23 add an entirely new theory of damages to be presented at trial must be denied because
24 it would not serve justice. The deadline for all parties to seek leave to amend pleadings
25 or add parties was March 14, 2012. That deadline was never extended. Further,
26 discovery closed on October 29, 2012. Now, over one year past the deadline, Plaintiffs
27 have filed the instant Motion with the intention of putting forth an entirely new theory of
28 damages at trial. This alone should warrant denial of Plaintiffs' Motion in its entirety.

Beyond the grossly late filing, the leave requested by Plaintiffs is highly prejudicial to Pardee. The Plaintiffs' did not put forth their new theory of damages until their Fifth Supplement to NRCP 16.1 Disclosure of Witnesses & Docs, which was served on October 26, 2012. See Exhibit C. This was three days before the discovery cutoff. In doing this, Plaintiffs made it impossible for Pardee to conduct any discovery regarding this newly advanced theory concerning damages. Pardee did not have the benefit of addressing this topic in any real detail during the depositions of either of the Plaintiffs. Further, Pardee did not have the opportunity to consult or retain an expert witness to review Plaintiffs' counsel's late produced invoices and concerning the reasonableness of these alleged damages. Put simply, Pardee will be put in the position of having no witnesses or adequate defense to Plaintiffs' attempts to put forth their attorneys' fees as an element of their damages at the trial in this matter. Putting Pardee in this position would be extremely prejudicial, and would amount to an unfair ambush attack on the part of Plaintiffs. For these reasons alone the Motion should be denied.

C. Plaintiffs' Motion Should be Denied Because Nevada Law Does Not Permit the Recovery of Attorneys' Fees as Damages in This Case.

Plaintiffs' Motion should be denied because Plaintiffs' claim for their attorneys' fees as an element of their alleged damages is futile under Nevada law in context of this breach of contract case. Plaintiffs argue that they have suffered special damages in the form of their attorneys' fees. However, neither the original Complaint nor the Amended Complaint pled attorneys' fees as a specific element of damages as required under Nevada law. See Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc., 117 Nev. 948, 35 P.3d 964, (2001). Now, on the eve of trial, Plaintiffs are attempting to modify their Complaint a second time in an attempt to salvage their new theory of their alleged damages.

In Sandy Valley, the seminal case on this particular issue, the Nevada Supreme Court discussed the difference between attorney fees as a cost of litigation and attorney fees as an element of damages. See id., 117 Nev. at 955, 35 P.3d at 968-969. The

1 court acknowledged that attorney fees cannot be recovered as a cost of litigation unless
2 authorized by agreement, statute, or rule. See id., 117 Nev. at 956, 35 P.3d at 969
3 (internal citation omitted). “As an **exception to the general rule**, a district court may
4 award attorney fees as special damages in **limited circumstances**.” Horgan v. Felton,
5 123 Nev. 577, 583, 170 P.3d 982, 986 (2007) (emphasis added).

6 In 2011 the Nevada Supreme Court succinctly summarized the development of
7 Sandy Valley and its progeny as follows:

8 In Sandy Valley Associates v. Sky Ranch Estates, we distinguished
9 between attorney fees as a cost of litigation and as special damages. 117
10 Nev. 948, 955–60, 35 P.3d 964, 968–71 (2001), *receded from on other*
11 *grounds as stated in Horgan v. Felton*, 123 Nev. 577, 579, 170 P.3d 982,
12 983 (2007). Attorney fees that are a cost of litigation arise from an
13 agreement, statute, or rule authorizing the fees, whereas attorney fees
14 that are considered special damages are fees that are foreseeable arising
15 from the breach of contract or tortious conduct. Id. at 956, 35 P.3d at 969.
16 In Shuette v. Beazer Homes Holdings Corp., we supplemented Sandy
17 Valley by explaining that fees as special damages “constitute a rather
18 **narrow exception** to the rule prohibiting attorney fees awards absent
19 express authorization.” 121 Nev. 837, 862, 124 P.3d 530, 547
20 (2005)(emphasis added).

21 Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc., 127 Nev. Adv.
22 Op. 26, ---, 255 P.3d 268, 279 n. 11 (Jun. 2, 2011).

23 The Nevada Supreme court has clarified that attorneys’ fees may only be
24 awarded as special damages in only a handful of circumstances, such as: third-party
25 actions involving title insurance or bonds, insurance or indemnity actions, slander of title
26 actions, malicious prosecution, trademark infringement, or false imprisonment. See
27 Sandy Valley, 117 Nev. at 957-58, 35 P.3d at 970; see also Horgan, 123 Nev. at 586-
28 87, 170 P.3d at 988-89.

Therefore, under Sandy Valley and its progeny, the question regarding whether
attorneys’ fees may be considered as an element of damages in those rare cases is
whether they were “reasonably foreseeable” and the “natural and proximate
consequence of the injurious conduct.” 117 Nev. at 957, 35 P.3d at 969. “[T]he mere

1 fact that a party was forced to file or defend a lawsuit is insufficient to support an award
2 of attorney fees as damages." Id., 117 Nev. at 957, 35 P.3d at 970.

3 This is a breach of contract case which involves a contract with a prevailing party
4 attorneys' fees provision. Therefore, unless this case fits a narrow exception to the
5 general rule, attorneys' fees may be sought as a cost of litigation at the conclusion of
6 trial in post-trial motions practice. The fact that the Commission Agreement at issue in
7 this case contains an attorneys' fees provision does not automatically imply that
8 litigation was reasonably foreseeable and/or the natural and proximate consequence of
9 injurious conduct. Frankly, Plaintiffs cannot show that there has even been any
10 injurious conduct in this case. Plaintiffs acknowledge they have been compensated in
11 full under the terms of the Commission Agreement. When boiled down, Plaintiffs' only
12 remaining claim is that Pardee has allegedly failed to provide Plaintiffs with documents
13 and information pertaining to option exercises that have never transpired. This is hardly
14 considered a reasonably foreseeable and proximate consequence of the Commission
15 Agreement.

16 Plaintiffs argue that Nevada law allows attorneys' fees as special damages in
17 this case because "Plaintiffs were only able to get the documents and information they
18 were entitled to once they filed suit and were granted the tools of discovery to get some
19 of those records." See Motion, at 8:17-21. Plaintiffs cite to the Sandy Valley and
20 Horgan decisions to support this position. This is a crude stretching of Nevada law. In
21 interpreting Sandy Valley, the Horgan decision is very careful to limit, not expand, the
22 types of cases that would warrant attorneys' fees as special damages. For example, an
23 action to quiet or clarify title does not rise to the level to warrant attorneys' fees as
24 damages. Horgan, 123 Nev. at 587, 170 P.2d at 988. Rather, attorneys' fees are
25 available only in slander of title cases. Id., 123 Nev. at 587, 170 P.2d at 988. As
26 quoted by Plaintiffs in the Motion, the Horgan decision makes it clear that in order to
27 support the proposition that attorneys' fees are available as special damages, there
28 must be elements of "intentional malicious" and "calculated" acts on the part of a

1 defendant that forced the plaintiff into litigation. 123 Nev. at 585-86, 170 P.2d at 987-88
2 (internal quotation omitted); see also Plaintiffs' Motion, at 8:3-10.

3 The instant case does not fit the narrow circumstances contemplated by the
4 Nevada Supreme Court in Horgan. Plaintiffs cannot prove, nor have they even alleged,
5 that Pardee acted intentionally or maliciously to hide information and documents from
6 Plaintiffs. The facts of this case show otherwise. Plaintiffs were provided with
7 information and commission payments until every dollar of the commissions owed to
8 them under the Commission Agreement was paid. Then, when Plaintiffs began
9 inquiring about other takedowns of Option Property, Pardee explained to them (on
10 multiple occasions) that no such exercise of Option Property had occurred. There has
11 been no evidence produced in this case that shows that Pardee acted in a calculated,
12 intentional, or malicious manner when dealing with Plaintiffs. The timely commission
13 payments and multiple communications regarding the status of the project indicate the
14 opposite. Therefore, this is not the type of case that warrants attorneys' fees as special
15 damages. Rather, the attorneys' fees provision in the Commission Agreement allows
16 for attorneys' fees and costs to the prevailing party, which is a determination that out of
17 necessity will be made post trial, not during the trial.

18 For all the foregoing reasons, the Motion should be denied because the
19 amendment sought to be approved is futile under Nevada law.

20 **D. Plaintiffs' Motion Should be Denied Because It Fails to Plead**
21 **Attorneys' Fees as Special Damages With the Requisite Specificity.**

22 Aside from the substantive defects in the Plaintiffs' purported Second Amended
23 Complaint, the Motion should be denied because it is procedurally defective. The
24 Nevada Supreme Court also recognizes that when parties seek attorneys' fees as a
25 cost of litigation, documentary evidence of the fees is presented generally by post-trial
26 motion. In contrast, however, when attorneys' fees are claimed as foreseeable
27 damages arising from tortious conduct or a breach of contract, they are considered
28 special damages and must be pled in the complaint pursuant to NRCP 9(g). See

1 Sandy Valley, 117 Nev. at 956, 35 P.3d at 969. "When attorney fees are alleged as
2 damages, they must be specifically pleaded and proven by competent evidence at trial,
3 just as any other element of damages." 117 Nev. at 957, 35 P.3d at 969. Further, "the
4 party claiming fees as damages must prove the fees as to each claim." 117 Nev. at
5 960, 35 P.3d at 971.

6 If the context of the case warrants the presentation of attorneys' fees as element
7 of damages, then the plaintiff must plead such with Rule 9(g) specificity in order to allow
8 the alleged damages to be properly litigated. In this case, the proposed Second
9 Amended Complaint still fails to meet the requisite specificity. Plaintiffs have simply
10 added the same boilerplate language under each cause of action alleging that as a
11 "direct, natural and proximate result" of Pardee's actions, "Plaintiffs have been forced to
12 retain an attorney" and have "been damaged in the amount of fees and costs expended
13 to retain the services..." See generally Exhibit 1 to the Motion, at ¶¶ 19, 25, and 31.
14 There are no allegations of the attorneys' time spent, billable rate, or overall damage
15 amount. More glaring, there are no allegations to specific the amount of damages
16 specific to **each claim** as required by Nevada law. Because of all these deficiencies
17 the Motion should be denied.


18 **IV. CONCLUSION**

19 This Court should deny Plaintiffs' Motion for Leave to File Second Amended
20 Complaint because the request for leave is untimely, the purported amendment is futile
21 under Nevada law, and if leave is granted Pardee would suffer unfair prejudice.

22 RESPECTFULLY SUBMITTED this 8th day of April, 2013.

23 McDONALD CARANO WILSON LLP

24
25 /s/ Aaron D. Shipley
26 Pat Lundvall (#3761)
27 Aaron D. Shipley (#8258)
28 2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

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PHONE 775-788-2000 • FAX 775-788-2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 8th day of April, 2013, I served a true and correct copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT** by e-service through the Wiznet e-filing system utilized by the Eighth Judicial District Court, Clark County, Nevada:

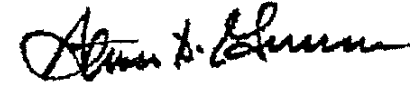
James J. Jimmerson
Lynn M. Hansen
James M. Jimmerson
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

/s/ Melissa A. Merrill
An Employee of McDonald Carano Wilson
LLP

275253

EXHIBIT A

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CLERK OF THE COURT

DSO

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, WALT WILKES,
Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO. A632338
DEPT NO. IV

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: Breach of contract

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): 9/26/11

TIME REQUIRED FOR TRIAL: 5-7 days

Counsel for Plaintiffs:

Amanda J. Brookhyser, Esq., Jimmerson Hansen

Counsel for Defendant:

Aaron D. Shipley, Esq., McDonald Carano Wilson

Counsel representing all parties have been heard and
after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before
8/28/12.

2. all parties shall file motions to amend pleadings or
add parties on or before 3/14/12.

DISCOVERY
COMMISSIONER

EIGHTH JUDICIAL
DISTRICT COURT

RECEIVED

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3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 3/14/12.

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 5/16/12.

5. all parties shall file dispositive motions on or before 9/28/12.

Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

Within 60 days from the date of this Scheduling Order, the Court shall notify counsel for the parties as to the date of trial, as well as any further pretrial requirements in addition to those set forth above.

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

Motions for extensions of discovery shall be made to the Discovery Commissioner in strict accordance with E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.


. . .
. . .
. . .
. . .

DISCOVERY
COMMISSIONER

EIGHTH JUDICIAL
DISTRICT COURT

1
2 Unless otherwise ordered, all discovery disputes (except
3 disputes presented at a pre-trial conference or at trial) must
4 first be heard by the Discovery Commissioner.

5 Dated this 7 day of November, 2011.

6
7 
8 DISCOVERY COMMISSIONER

9 CERTIFICATE OF SERVICE

10 I hereby certify that on the date filed, I placed a copy
11 of the foregoing DISCOVERY SCHEDULING ORDER in the folder(s)
12 in the Clerk's office or mailed as follows:

13 Amanda J. Brookhyser, Esq.
14 Aaron D. Shipley, Esq.

15 
16 COMMISSIONER DESIGNEE
17
18
19
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27
28

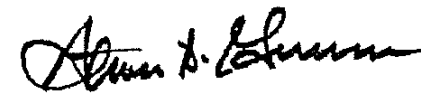
DISCOVERY
COMMISSIONER

EIGHTH JUDICIAL
DISTRICT COURT

EXHIBIT B

ORIGINAL

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CLERK OF THE COURT

1 **DISC**
2 PAT LUNDVALL
3 Nevada Bar No. 3761
4 AARON D. SHIPLEY
5 Nevada Bar No. 8258
6 McDONALD CARANO WILSON LLP
7 2300 West Sahara Avenue, Suite 1000
8 Las Vegas, Nevada 89102
9 (702) 873-4100
10 (702) 873-9966 Facsimile
11 lundvall@mcdonalddcarano.com
12 ashipley@mcdonalddcarano.com
13 *Attorneys for Defendant*
14 *Pardee Homes of Nevada*

DISTRICT COURT

CLARK COUNTY, NEVADA

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**STIPULATION AND ORDER
TO EXTEND DISCOVERY
DEADLINES**

(First Request)

(Discovery Commissioner)

17 IT IS HEREBY STIPULATED AND AGREED by and among JAMES WOLFRAM and
18 WALT WILKES ("Plaintiffs") and Defendant PARDEE HOMES OF NEVADA ("Pardee" or
19 "Defendant") that the discovery deadline be extended 60 days for the limited purpose of taking
20 the depositions of Linda Jones, Jon Lash and Harvey Whitmore.

21 In accordance with EDCR 2.35, good cause exists for this extension because Plaintiffs
22 are still waiting for a third party, Coyote Springs, Inc. ("CSI"), to produce documents in
23 response to Plaintiffs' subpoena. Plaintiffs contend that they cannot conduct and complete the
24 depositions of the aforementioned witnesses until CSI produces the requested documents and the
25 parties have had adequate time to review them. Continuing the current discovery deadline is in
26 the interest of the parties and judicial economy. Thus, the parties request a sixty (60) day
27
28

McDONALD CARANO WILSON
100 WEST LIBERTY STREET, 10TH FLOOR - RENO, NEVADA 89501
PO BOX 1670 - RENO, NEVADA 89505-1670
PHONE 775-788-2000 - FAX 775-788-2020

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

1 extension from the August 28, 2012 discovery cutoff date to complete the limited discovery
2 identified herein.

3 1. Completed Discovery: Plaintiffs and Defendant each provided initial disclosures.
4 Subsequently, Defendants deposed each of the Plaintiffs. The parties have each exchange and
5 responded to each other's written discovery requests. Plaintiffs have issued several third-party
6 subpoenas requesting the production of documents.

7 2. Discovery that Remains to be Completed: Plaintiffs would like to take three
8 remaining depositions: Linda Jones, Jon Lash and Harvey Whitmore. The parties also reserve
9 the right to propound additional written discovery limited in scope as to any new issues of fact
10 raised in the documents produced by CSI.

11 3. Reasons Why Remaining Discovery Has Not Been Completed: Plaintiffs contend
12 that they cannot conduct and complete the depositions of the aforementioned witnesses until CSI
13 produces the requested documents and the parties have had adequate time to review them.

14 4. A Proposed Schedule for Completing Remaining Discovery: The parties propose
15 a 60 day extension of the discovery deadline to October 28, 2012. All other discovery deadlines
16 dates are to remain the same. 29

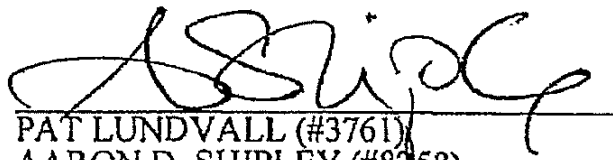
17 5. The Current Trial Date: Trial is presently scheduled for a five-week non-jury
18 stack beginning November 13, 2012. This matter previously received preferential status pursuant
19 to NRS § 16.025. The parties request a continuance of the current trial date for a period of not
20 less than 60 days.

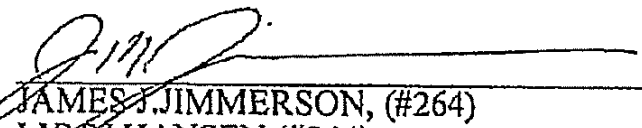
21 DATED this 23rd day of August, 2012

DATED this 23rd day of August, 2012

22 McDONALD CARANO WILSON LLP

JIMMERSON, HANSEN, P.C

23
24 
25 PAT LUNDVALL (#3761)
26 AARON D. SHIPLEY (#8258)
27 2300 West Sahara Avenue, Suite 1000
28 Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

23
24 
25 JAMES J. JIMMERSON, (#264)
26 LYNN HANSEN (#244)
27 JAMES M JIMMERSON (#12599)
28 415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

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2 identified herein.

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4 Subsequently, Defendants deposed each of the Plaintiffs. The parties have each exchange and
5 responded to each other's written discovery requests. Plaintiffs have issued several third-party
6 subpoenas requesting the production of documents.

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15 a 60 day extension of the discovery deadline to October 28, 2012. All other discovery deadlines
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18 stack beginning November 13, 2012. This matter previously received preferential status pursuant
19 to NRS § 16.025. The parties request a continuance of the current trial date for a period of not
20 less than 60 days.


21 DATED this ____ day of August, 2012

DATED this 23rd day of August, 2012

22 McDONALD CARANO WILSON LLP

JIMMERSON, HANSEN, P.C

23
24 PAT LUNDVALL (#3761)
25 AARON D. SHIPLEY (#8258)
26 2300 West Sahara Avenue, Suite 1000
27 Las Vegas, Nevada 89102
28 *Attorneys for Defendant Pardee Homes of Nevada*


JAMES J. JIMMERSON, (#264)
LYNN HANSEN (#244)
JAMES M. JIMMERSON (#12599)
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

A-10-632338-C

ORDER

TRIAL DATE TO BE SET

IT IS SO ORDERED this 27th day of August, 2012. ON OR AFTER 1/14/13

Discovery Commissioner

Submitted by:

McDONALD CARANO WILSON LLP

Patricia Lundvall #10162

PAT LUNDVALL (#3761)

AARON D. SHIPLEY (#8258)

2300 West Sahara Avenue, Suite 1000

Las Vegas, Nevada 89102

Attorneys for Defendant Pardee Homes of Nevada

McDONALD-CARANO-WILSON

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EXHIBIT C

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

1 **SUPP**
2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No. 000264
4 LYNN M. HANSEN, ESQ.
5 Nevada Bar No. 0244
6 JAMES M. JIMMERSON, ESQ.
7 Nevada Bar No. 12599
8 JIMMERSON HANSEN, P.C.
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11 Tel No.: (702) 388-7171; Fax No.: (702) 380-6406
12 jij@jimmersonhansen.com
13 lmh@jimmersonhansen.com
14 jmi@jimmersonhansen.com

15 Attorney for Plaintiffs
16 *James Wolfram and Walt Wilkes*

17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 JAMES WOLFRAM AND WALT WILKES

20 Plaintiffs,

21 vs.

22 PARDEE HOMES OF NEVADA,

23 Defendant.

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

24 **PLAINTIFFS' FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF**
25 **WITNESSES AND DOCUMENTS**

26 COME NOW Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their
27 attorneys, Lynn M. Hansen, Esq., and James M. Jimmerson, Esq., of the law firm of
28 Jimmerson Hansen, P.C., and hereby submits the following Fifth Supplement to list of
witnesses and production of documents, as follows (*new items in bold*):

///

///

///

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

I.
WITNESSES

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

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

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

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

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

3. Frances Butler Dunlap
Chicago Title Company
Las Vegas, Nevada

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

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

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

- 1 5. PARDEE HOMES OF NEVADA
2 Person Most Knowledgeable
3 McDonald Carano Wilson LLP
4 100 West Liberty Street, 10th Floor
5 Reno, Nevada 89501
6 (775) 788-2000

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

- 11 6. Jon Lash
12 c/o McDonald Carano Wilson LLP
13 100 West Liberty Street, 10th Floor
14 Reno, Nevada 89501
15 (775) 788-2000

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

- 18 7. Clifford Anderson
19 c/o McDonald Carano Wilson LLP
20 100 West Liberty Street, 10th Floor
21 Reno, Nevada 89501
22 (775) 788-2000

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

- 25 8. Harvey Whitmore
26 c/o Coyote Springs
27 Address Unknown

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

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

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

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

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

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

3 11. Peter J. Dingerson
4 D&W Real Estate
5 5455 S. Durango Dr., Ste 160
6 Las Vegas, NV 89113

7 Mr. Dingerson is the owner of D&W Real Estate and is expected to testify
8 regarding the facts and background of this case.

9 12. Jay Dana
10 General Realty Group
11 6330 S. Eastern Ave Ste 2
12 Las Vegas, NV 89119

13 Mr. Dana is the owner of General Realty Group Inc. and is expected to testify
14 regarding the facts and background of this case.

15 13. Jerry Masini
16 Award Realty Corp.
17 3015 S. Jones Blvd.
18 Las Vegas, NV 89146

19 Mr. Masini is the owner of Award Realty and is expected to testify regarding
20 the facts and background of this case.

21 Plaintiffs reserve the right to call any and all witnesses who may be disclosed or
22 deposed throughout the course of discovery.

23 Plaintiffs reserve the right to call any and all of Defendant's witnesses; and

24 Plaintiffs reserve the right to call any and all rebuttal witnesses.

25 Plaintiffs' experts, if any, as yet unidentified.

26 Plaintiffs reserve the right to supplement this list of witnesses as discovery
27 progresses and until the time of trial in this case.

28 II.

DOCUMENTS

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

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

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

- 9 A. Option Agreement for the Purpose of Real Property and Joint Escrow
10 Instructions dated May 2004 (Bates No. PLTF0001-0080);
- 11 B. Amended and Restated Option Agreement for the Purchase of Real Property
12 and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-
13 0152);
- 14 C. Two Assignments of Real Estate Commission and Personal Certification
15 Agreement (Bates No. PLTF0153-0157A)
- 16 D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes
17 regarding the attached Commission letter dated September 1, 2004, (Bates No.
18 PLTF0158-0162);
- 19 E. Amendment No. 2 to Option Agreement for the Purchase of Real Property and
20 Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- 21 F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No.
22 PLTF0175-0179);
- 23 G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer,
24 Esq., (Bates No. PLTF0180-0187);
- 25 H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer,
26 Esq., (Bates No. PLTF0188-0191);
- 27 I. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq.,
28 (Bates No. PLTF0192-0193);
- J. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E.
Curtis, (Bates No. PLTF0194-0196);
- K. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates
No. PLTF0197-0202);
- L. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No.
PLTF0203-0205);
- M. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash,
(Bates No. PLTF0206-0209);

- 1 N. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq.,
2 (Bates No. PLTF0210-0211);
- 3 Bates Nos. PLTF0212-0244 are the duplicative documents produced in
4 Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 5 7. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces
6 Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 7 8 Documents produced by Chicago Title in response to Plaintiffs' Subpoena
8 Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 9 9. Documents produced by Coyote Springs Investments in response to Plaintiff's
10 Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 -
11 CSI_Wolfram0003004), attached hereto;
- 12 10. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 -
13 PLTF10417), attached hereto;
- 14 11. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached
15 hereto;
- 16 12. Non-Party Coyote Springs Investments, LLC's Supplement and Amended
17 Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates
18 PLTF10420-PLTF10424, attached hereto.
- 19 13. Chicago Title Company's previously bates stamped documents no. PLTF
20 1424 through PLTF 10414 (on bottom right of documents bates stamped)
21 and rebated as bates nos: Cht 00001 through Cht 08998 (on bottom left of
22 documents bates stamped), including the Custodian of Records Subpoena
23 to Chicago Title Company including the executed Certificate of Custodian
24 of Records bates stamped as Cht 08997.
- 25 14. Stewart Title Company's previously bates stamped documents no. PLTF
26 0245 through PLTF 1423 and rebated as bates nos: Stwt 0001 through
27 1202. Documents Stwt 0699 and Stwt 0731 are copy coversheets and were
28 inadvertently bates stamped.
15. Copy of Plat Map recorded in the Clark County Recorder's Office in Book
138, page 51, bates PLTF 10427 through PLTF 10438.
16. Copy of Parcel Map recorded in the Clark County Recorder's Office in File
116, page 35, bates PLTF 10439 through PLTF 10440.
17. Copy of Parcel Map recorded in the Clark County Recorder's Office in File
117, page 18, bates PLTF 10441 through PLTF 10443.
18. Copy of Plat Map recorded in the Clark County Recorder's Office in Book
140, page 57, bates PLTF 10444 through PLTF10456.
19. Copy of Parcel Map recorded in the Clark County Recorder's Office in File
113, page 55, bates PLTF 10457 through PLTF 10462.
20. Copy of Parcel Map recorded in the Clark County Recorder's Office in File
98, page 57, bates PLTF 10463 through PLTF 10468.
21. Copy of redacted billing sheets representing attorney's fees charged by

- 1 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,
2 bates PLTF 10469 through PLTF 10481.
- 3 22. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
- 4 23. Assignment of Rights, Title and Interest from Jay Dana on behalf of
5 General Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates
6 PLTF 10485.
- 7 24. Assignment of Rights, Title and Interest from Jerry Masini on behalf of
8 Award Realty to James Wolfram, dated December 20, 2010, bates PLTF
9 10486.
- 10 25. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health
11 of Walt Wilkes, bates PLTF 10487.

12 Plaintiffs reserve the right to any and all documents the Defendants disclosed by any
13 parties or used at any depositions.

14 Plaintiffs reserve the right to any and all other relevant documents to this matter.

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

17 **III.**

18 **COMPUTATION OF DAMAGES**

19 Plaintiffs calculate their damages to be in excess of \$1,900,000.00 associated with
20 the Defendant's breach of contract and the Defendant's failure to faithfully meet their
21 obligations to the Plaintiffs.

22 There are two primary components to this calculation. The first component is the
23 loss of future commissions from future sales or takedowns of property located in Clark
24 County, subject to the September 1, 2004 Commission Letter Agreement. There
25 appears to be at least 3,000 acres of property, defined as Option Property under the
26 Option Agreement effective June 1, 2004, currently owned by Coyote Springs
27 Investment, LLC in Township 13 South, Range 63 East M.D.M., Clark County, Nevada.
28 Under the Option Agreement effective June 1, 2004, these 3,000 acres can be purchased
by Pardee and designated as Production Residential Property—a purchase and
designation that would entitle Plaintiffs to a 1.5% commission on a per-acre price of
\$40,000.00. If 3,000 acres were purchased by Pardee under this scenario, Plaintiffs
would be entitled to \$1,800,000 in commissions. However, Pardee's course of conduct

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Telephone (702) 388-7171 - Facsimile (702) 387-1167


1 in failing to appropriately discharge its duties under the Commission Letter Agreement
2 has robbed Plaintiffs of this opportunity to be paid these commissions. Pardee's
3 actions have served to reclassify the land originally labeled as Purchase Property and
4 Option Property, and under the new reclassification, all Option Property has been
5 removed from Clark County, thereby divesting Plaintiffs of any hope to collect any part
6 of the \$1.8 million in commissions they could be paid had no reclassification occurred.

7 The second component of this calculation is attorney's fees. Plaintiffs' attorney's
8 fees currently exceed \$102,700.00. This amount represents all work from the date of
9 drafting of the Complaint in November 2010 through October 19, 2012. These attorney's
10 fees constitute damages pursuant to the September 1, 2004 Commission Letter
11 Agreement. As stated in the Agreement, "In the event, either party brings an action to
12 enforce its rights under this Agreement, the prevailing party shall be awarded
13 reasonable attorneys' fees and costs." Plaintiffs in bringing this suit expect to be the
14 prevailing party and, as such, are entitled to their reasonable attorney's fees as
15 damages for Defendant's breach of contract and breach of the covenant of good faith
16 and fair dealing.

17 Finally, Plaintiffs must be compensated for the time and effort expended
18 attempting to discover from public records what information was owed to them under
19 the Commission Letter Agreement. Discovery is still ongoing therefore the Plaintiffs reserve
20 the right to amend and supplement this response as the investigation and discovery in this
21 case proceeds.

22 Dated this 26th October, 2012

23 JIMMERSON HANSEN, P.C.

24 
25 JAMES J. JIMMERSON, ESQ.
26 Nevada Bar No. 000264
27 LYNN M. HANSEN, ESQ.
28 Nevada Bar No. 0244
JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
Attorney for Plaintiffs
James Wolfram and Walt Wilkes

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RECEIPT OF COPY

The undersigned hereby acknowledges receipt of copy of PLAINTIFFS' FIFTH
SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS

on this 26th day of October, 2012, at 4:40 a.m./p.m. + 2 CDA

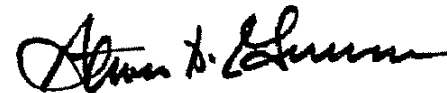
McDONALD CARANO WILSON, LLP

AARON D SHIPLEY / KLC

AARON D. SHIPLEY, ESQ
PAT LUNDVALL, ESQ.,
2300 W. Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant
Pardee Homes of Nevada

Exhibit 5

Exhibit 5



CLERK OF THE COURT

1 **MIL**
2 PAT LUNDVALL (NSBN 3761)
3 AARON D. SHIPLEY (NSBN 8258)
4 McDONALD CARANO WILSON LLP
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9 lundvall@mcdonaldcarano.com
10 ashipley@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 JAMES WOLFRAM,
16 WALT WILKES

17 Plaintiffs,

18 vs.

19 PARDEE HOMES OF NEVADA,

20 Defendant.

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

**DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE PLAINTIFFS' CLAIM FOR
ATTORNEYS' FEES AS AN ELEMENT
OF DAMAGES**

(MIL #1)

Hearing Date:
Hearing Time:

Trial Date: April 15, 2013

21 Defendant Pardee Homes of Nevada ("Pardee") hereby moves the Court for an
22 order *in limine* on the non-admissibility of the issue of attorneys' fees as an element of
23 damages, sought to be introduced by Plaintiffs James Wolfram and Walt Wilkes
24 ("Plaintiffs") in the trial on this matter. Testimony and evidence at the trial regarding
25 Plaintiffs' alleged attorneys' fees and costs would be improper in the context of this
26 breach of contract case as they cannot be considered an element of Plaintiffs'
27 damages. Such issues should be handled in post-trial briefing only.
28

1 This Motion is brought pursuant to NRS 47.060, the following Memorandum of
2 Points and Authorities, the exhibits attached hereto, the pleadings and papers on file
3 herein, and any oral argument this Court wishes to consider.

4 RESPECTFULLY SUBMITTED this 1st day of March, 2013.

5 McDONALD CARANO WILSON LLP

6
7 /s/ Aaron D. Shipley
8 Pat Lundvall (#3761)
9 Aaron D. Shipley (#8258)
10 2300 West Sahara Avenue, Suite 1000
11 Las Vegas, Nevada 89102
12 *Attorneys for Defendant Pardee Homes of*
13 *Nevada*

14 **NOTICE OF MOTION**

15 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

16 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
17 will bring the foregoing **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE**
18 **PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES** on
19 for hearing before the above-entitled Court on the 16 day of April,
20 2013, at the hour of 8 : 30 a.m. or as soon thereafter as counsel may be heard.

21 RESPECTFULLY SUBMITTED this 1st day of March, 2013.

22 McDONALD CARANO WILSON LLP

23 /s/ Aaron D. Shipley
24 Pat Lundvall (#3761)
25 Aaron D. Shipley (#8258)
26 2300 West Sahara Avenue, Suite 1000
27 Las Vegas, Nevada 89102
28 *Attorneys for Defendant Pardee Homes of*
Nevada

**DECLARATION OF AARON D. SHIPLEY IN SUPPORT OF DEFENDANT'S MOTION
IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES AS AN
ELEMENT OF DAMAGES**

AARON D. SHIPLEY, after being sworn, declares as follows:

1. I am licensed to practice law in the State of Nevada, and am a partner with the law firm of McDonald Carano Wilson LLP, attorneys of record for Defendant Pardee Homes ("Pardee").

2. This Declaration is made of my own personal knowledge except where stated upon information and belief, and as to those matters, I believe them to be true.

3. This Declaration is submitted in compliance with EDCR 2.47 and in support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (the "Motion").

4. On February 28, 2013, I spoke to James M. Jimmerson, counsel for Plaintiffs, via telephone, as required by EDCR 2.47. We discussed the issues relevant to this Motion. We disagreed on the issue of whether Plaintiffs could properly seek an award of their attorneys' fees as an element of their damages at trial, as opposed to seeking an award of their fees in post-trial motion practice if they are found to be the prevailing party at trial. Ultimately we were unable to resolve this issue during our telephone conference.

5. Under the circumstances, despite a good faith effort to confer, the motion has become necessary.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 1st day of March, 2013.

/s/ Aaron D. Shipley
AARON D SHIPLEY

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND

This case, simply put, involves claims for breach of contract arising from the Commission Agreement dated September 1, 2004 ("Commission Agreement" or "Commission Letter"), which Pardee and the Plaintiffs negotiated and executed. A copy of the Commission Letter is attached hereto as **Exhibit A**. The undisputed evidence reveals that Pardee performed all of its contractual obligations.

Plaintiffs acknowledge that their contractual relationship with Pardee is dictated entirely by the Commission Agreement. The Commission Agreement governs the payment of commissions from Pardee to Plaintiffs related to Pardee's purchase of certain property from CSI related to the Project. It is this Commission Agreement that Plaintiffs accuse Pardee of breaching. The Commission Agreement contains an attorneys' fees provision, which states: "In the event either party brings an action to enforce its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs." See Exhibit A, at p. 2.

Plaintiffs have claimed that their attorneys' fees should be considered an element of their damages. Their NRCP 16.1 disclosure states, in part: "The second component of this calculation [of damages] is attorney's fees. Plaintiffs' attorney's fees currently exceed \$102,700.00. This amount represents all work from the date of drafting of the Complaint in November 2010 through October 19, 2012. These attorney's fees constitute damages pursuant to the September 1, 2004 Commission Letter Agreement...Plaintiffs in bringing this suit expect to be the prevailing party and, as such, are entitled to their reasonable attorney's fees as damages for Defendant's breach of contract and breach of the covenant of good faith and fair dealing." See Plaintiffs' Seventh Supplement to NRCP 16.1 Disclosure of Witnesses and Documents, at p. 8:14-22, a copy of which is attached hereto as **Exhibit B**.

Plaintiffs' contention that they are entitled to reimbursement of their attorney's fees as an element of their alleged damages is misguided and contrary to Nevada law.

1 Therefore, Pardee requests the Court issue an order *in limine* that Plaintiffs are
2 precluded from offering any evidence at trial, in the form of documents, testimony,
3 expert opinions and any other evidence, related to their claim for an award of their
4 attorneys' fees. Attorneys' fees in the context of a breach of contract case such as this
5 cannot be awarded as an element of damages. In this context, Attorneys' fees can only
6 be only properly awarded to the prevailing party. There can be no determination of
7 prevailing party until the conclusion of the trial. An order *in limine* on this issue will
8 promote efficiency in preparation for and during the trial.

9 **II. LEGAL ARGUMENT**

10 **A. Legal Standard.**

11 Pursuant to NRS 47.060, a motion in limine is the proper vehicle to prevent the
12 introduction of inadmissible evidence at trial. See NRS 47.080(1). ("[p]reliminary
13 questions concerning the qualification of a person to be a witness, the existence of a
14 privilege or the admissibility of evidence shall be determined by the judge."). The ruling
15 on a motion *in limine* lies soundly within the district court's discretion. See State ex. rel.
16 Dept. of Highways v. Nevada Aggregates and Asphalt Co., 92 Nev. 370, 551 P.2d
17 1095, 1098 (1976).

18 Motions in limine take two forms: (1) to procure a definitive ruling on the
19 admissibility of evidence at the outset of trial; or (2) to prevent counsel for the opposing
20 party from mentioning potentially inadmissible evidence in his opening statement, or
21 eliciting such evidence from a witness until a definitive ruling on the admissibility or non-
22 admissibility of the evidence can be made. Born v. Eisenman, 114 Nev. 854, 962 P.2d
23 1227 (1998); Nev. Rev. St. 47.080; see 21 Charles Alan Wright and Kenneth W.
24 Graham, Jr., Federal Practice and Procedure §5037.6 (2007). This motion takes both
25 forms.

26 An order in limine further promotes efficiency at trial and helps minimize
27 disruptions, increasing uninterrupted flow of evidence during trial. Kelly v. New West
28 Federal Savings, 56 Cal. Rptr. 2d 803, 808 (1996).

1 **B. Plaintiffs Are Precluded From Presenting Evidence At Trial About**
2 **Their Alleged Attorneys' Fees as an Element of Damages.**

3 Plaintiffs argue that they have suffered damages in the form of attorneys' fees.
4 However, Plaintiffs have not specially pled attorneys' fees as an element of their
5 damages. See Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc., 117 Nev.
6 948, 35 P.3d 964, (2001). In Sandy Valley, the Nevada Supreme Court discusses the
7 difference between attorney fees as a cost of litigation and attorney fees as an element
8 of damages. See id., 117 Nev. at 955, 35 P.3d at 968-969. The court acknowledges
9 that attorney fees cannot be recovered as a cost of litigation unless authorized by
10 agreement, statute, or rule. See id., 117 Nev. at 956, 35 P.3d at 969 (internal citation
11 omitted). The Nevada Supreme Court also recognizes that when parties seek attorney
12 fees as a cost of litigation, documentary evidence of the fees is presented generally by
13 post-trial motion. See id. In contrast, however, when attorney fees are claimed as
14 foreseeable damages arising from tortious conduct or a breach of contract, they are
15 considered special damages and must be pled in the complaint pursuant to NRCP
16 9(g). See id. "The mention of attorney fees in a complaint's general prayer for relief is
17 insufficient to meet this requirement." Id.

18 Plaintiffs have only generally alleged attorneys fees, and therefore, cannot now
19 claim their attorneys' fees as an element of damages. In their Amended Complaint, a
20 recovery of attorneys' fees was only mentioned in the Plaintiffs' general prayer for relief.
21 Plaintiffs did not articulate its current position until a very late NRCP 16.1 disclosure.
22 Thus, Plaintiffs have now wrongfully asserted their attorneys' fees as a basis for their
23 argument that they have suffered recoverable damages.

24 Most recently, in 2011 the Nevada Supreme Court again recognized the
25 development of Sandy Valley and its progeny by summarizing:

26 In Sandy Valley Associates v. Sky Ranch Estates, we distinguished
27 between attorney fees as a cost of litigation and as special damages. 117
28 Nev. 948, 955-60, 35 P.3d 964, 968-71 (2001), *receded from on other*
 grounds as stated in Horgan v. Felton, 123 Nev. 577, 579, 170 P.3d 982,
 983 (2007). Attorney fees that are a cost of litigation arise from an

1 agreement, statute, or rule authorizing the fees, whereas attorney fees
2 that are considered special damages are fees that are foreseeable arising
3 from the breach of contract or tortious conduct. Id. at 956, 35 P.3d at 969.
4 In Shuette v. Beazer Homes Holdings Corp., we supplemented Sandy
5 Valley by explaining that fees as special damages "constitute a rather
6 **narrow exception** to the rule prohibiting attorney fees awards absent
7 express authorization." 121 Nev. 837, 862, 124 P.3d 530, 547
8 (2005)(emphasis added).

9 Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc., 127 Nev. Adv.
10 Op. 26, ---, 255 P.3d 268, 279 n. 11 (Jun. 2, 2011). Thus, Plaintiffs have wrongfully
11 asserted their attorneys' fees as a basis for their argument that they have suffered
12 recoverable damages.

13 By completely failing to specifically plead for such an award at the outset of this
14 litigation, Plaintiffs cannot now claim their attorneys' fees as an element of damages.
15 Plaintiffs should be precluded from introducing any evidence at trial to support this
16 claim. In this case, pursuant to the attorneys' fees provision in the Commission
17 Agreement attorneys' fees can only be awarded to the prevailing party. There can be
18 no determination of prevailing party until the conclusion of the trial. Therefore, this
19 issue should be handled in post-trial briefing only. In this regard, if Pardee is the
20 prevailing party at trial, it will seek an award of its attorneys' fees and costs after the
21 trial under the same attorneys' fees provision in the Commission Agreement.

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 McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020


1 **IV. CONCLUSION**

2 Based on the foregoing, Pardee requests the Court issue an order *in limine* to
3 preclude impermissible evidence, in the form of documents, testimony, expert opinions
4 and all other evidence, at trial on the issue of attorneys' fees as an element of Plaintiffs'
5 alleged damages. This early *in limine* ruling will allow the parties to more efficiently
6 prepare for trial.
7

8 RESPECTFULLY SUBMITTED this 1st day of March, 2013.

9 McDONALD CARANO WILSON LLP

10 /s/ Aaron D. Shipley
11 Pat Lundvall (#3761)
12 Aaron D. Shipley (#8258)
13 2300 West Sahara Avenue, Suite 1000
14 Las Vegas, Nevada 89102
15 Attorneys for Defendant Pardee Homes of
16 Nevada
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 **MCDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

CERTIFICATE OF SERVICE

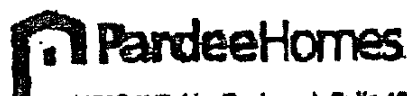
I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
and that on the 1st day of March, 2013, I served a true and correct copy of the foregoing
**DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR
ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES** via U.S. Mail on the following:

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

/s/ Melissa A. Merrill
An Employee of McDonald Carano Wilson LLP

273258

EXHIBIT A



10850 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024-4101

JON E. LASH
Sr. Vice President
(310) 476-3525 ext. 281
(310) 448-1285

September 1, 2004.

Mr. Walt Wilkes
General Realty Group, Inc.
10761 Turquoise Valley Dr.
Las Vegas, Nevada 89144-4141

Mr. Jim Wolfram
Award Realty Group
10761 Turquoise Valley Dr.
Las Vegas, Nevada 89144-4141

Re: Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of June 1, 2004, as amended (the "Option Agreement") between Coyote Springs Investment LLC ("Coyote") and Pardee Homes of Nevada ("Pardee")

Gentlemen:

This letter is intended to confirm our understanding concerning the pending purchase by Pardee from Coyote of certain real property located in the Counties of Clark and Lincoln, Nevada pursuant to the above-referenced Option Agreement. Except as otherwise defined herein, the capitalized words used in this Agreement shall have the meanings as set forth in the Option Agreement.

In the event Pardee approves the transaction during the Contingency Period, Pardee shall pay to you (one-half to each) a broker commission equal to the following amounts:

- (i) Pardee shall pay four percent (4%) of the Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the remaining Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the Option Property purchased by Pardee pursuant to paragraph 2 of the Option 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).

Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 2

Pardee shall make the first commission payment to you upon the Initial Purchase Closing (which is scheduled to occur thirty (30) days following the Settlement Date) with respect to the aggregate Deposits made prior to that time. Pardee shall make each additional commission payment pursuant to clauses (i) and (ii) above concurrently with the applicable Purchase Property Price payment to Coyote. Thereafter, Pardee shall make each commission payment pursuant to clause (iii) above concurrently with the close of escrow on Pardee's purchase of the applicable portion of the Option Property; provided, however, that in the event the required Parcel Map creating the applicable Option Parcel has not been recorded as of the scheduled Option Closing, as described in paragraph 9(c) of the Option Agreement, the commission shall be paid into escrow concurrently with Pardee's deposit of the Option Property Price into Escrow and the commission shall be paid directly from the proceeds of said Escrow.

Pardee shall provide to each of you a copy of each written option exercise notice given pursuant to paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date. 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.

In the event the Option Agreement terminates for any reason whatsoever prior to Pardee's purchase of the entire Purchase Property and Option Property, and Pardee thereafter purchases any portion of the Entire Site from Seller, at the closing of such purchase, Pardee shall pay to you a commission in the amount determined as described above as if the Option Agreement remained in effect.

For purposes of this Agreement, the term "Pardee" shall include any successor or assignee of Pardee's rights under the Option Agreement; and Pardee's obligation to pay the commission to you at the times and in the manner described above shall be binding upon Pardee and its successors and assigns. Pardee, its successors and assigns, shall take no action to circumvent or avoid its obligation to you as set forth in the Agreement. Nevertheless, in no event shall you be entitled to any commission or compensation as a result of the resale or transfer by Pardee or its successor in interest of any portion of the Entire Site after such property has been acquired from Seller and commission paid to you.

In the event any sum of money due hereunder remains unpaid for a period of thirty (30) days, said sum shall bear interest at the rate of ten percent (10%) per annum from the date due until paid. In the event either party brings an action to enforce its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs.

This Agreement represents our entire understanding concerning the subject matter hereof, and all oral statements, representations, and negotiations are hereby merged into this Agreement and are superseded hereby. This Agreement may not be modified except by a written instrument signed by all of us. Nothing herein contained shall create a partnership, joint venture or employment relationship between the parties hereto unless expressly set forth to the contrary. The language of this Agreement shall be construed under the laws of the State of Nevada according to its normal and usual meaning, and not strictly for or against either you or Pardee.

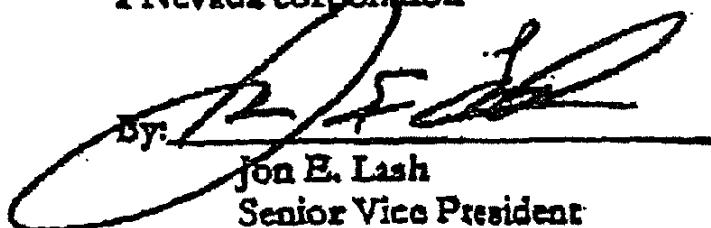
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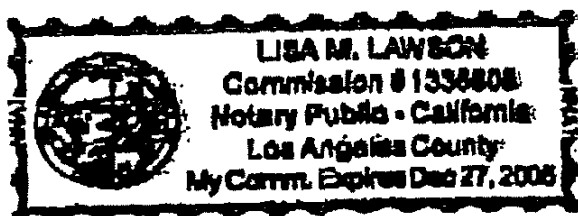
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 3

Our signatures below will represent our binding agreement to the above.

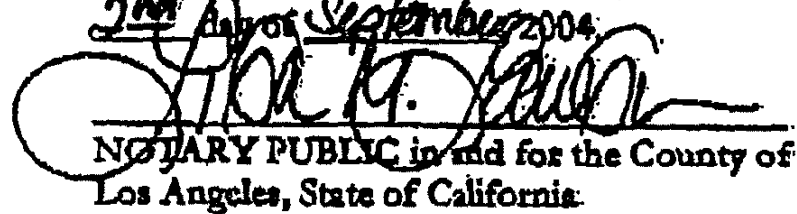
Sincerely,

PARDEE HOMES OF NEVADA,
a Nevada corporation

By: 
Jon E. Lash
Senior Vice President



SUBSCRIBED and SWORN to before me this

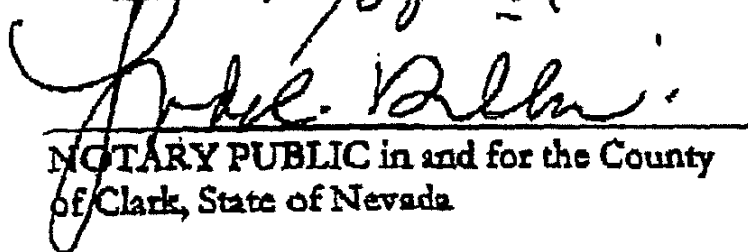
2nd day of September 2004

NOTARY PUBLIC in and for the County of
Los Angeles, State of California.

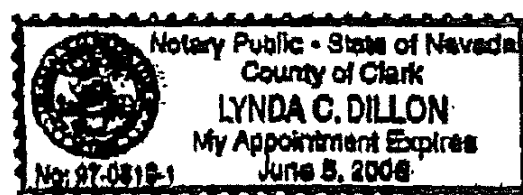
Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By: 
Walt Wilkes

SUBSCRIBED and SWORN to before me
this 1st day of September 2004.


NOTARY PUBLIC in and for the County
of Clark, State of Nevada



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Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 4

AWARD REALTY GROUP

By: *Jim Wolfram*
Jim Wolfram

SUBSCRIBED and SWORN to before me
this 1st day of SEPT, 2004.

Virginia Attieani
NOTARY PUBLIC in and for the County
of Clark, State of Nevada

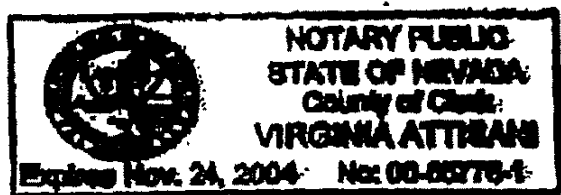


EXHIBIT B

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1157

1 SUPP
JAMES J. JIMMERSON, ESQ.
2 Nevada Bar No. 000264
LYNN M. HANSEN, ESQ.
3 Nevada Bar No. 0244
JAMES M. JIMMERSON, ESQ.
4 Nevada Bar No. 12599
JIMMERSON HANSEN, P.C.
5 415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
6 Tel No.: (702) 388-7171; Fax No.: (702) 380-6406
jjj@jimmersonhansen.com
7 lmh@jimmersonhansen.com
lmj@jimmersonhansen.com
8

Attorney for Plaintiffs
James Wolfram and Walt Wilkes

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM AND WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

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

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

///

///

///

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

I.

WITNESSES

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

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

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

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

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

3. Frances Butler Dunlap
Chicago Title Company
Las Vegas, Nevada

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

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

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

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

1 5. PARDEE HOMES OF NEVADA
2 Person Most Knowledgeable
3 McDonald Carano Wilson LLP
4 100 West Liberty Street, 10th Floor
5 Reno, Nevada 89501
6 (775) 788-2000

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

11 6. Jon Lash
12 c/o McDonald Carano Wilson LLP
13 100 West Liberty Street, 10th Floor
14 Reno, Nevada 89501
15 (775) 788-2000

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

18 7. Clifford Anderson
19 c/o McDonald Carano Wilson LLP
20 100 West Liberty Street, 10th Floor
21 Reno, Nevada 89501
22 (775) 788-2000

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

25 8. Harvey Whitmore
26 c/o Coyote Springs
27 Address Unknown

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

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

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

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

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 398-7171 Facsimile (702) 397-1167

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

3 11. Peter J. Dingerson
4 D&W Real Estate
5 5455 S. Durango Dr., Ste 160
6 Las Vegas, NV 89113

7 Mr. Dingerson is the owner of D&W Real Estate and is expected to testify regarding the
8 facts and background of this case.

9 12. Jay Dana
10 General Realty Group
11 6330 S. Eastern Ave Ste 2
12 Las Vegas, NV 89119

13 Mr. Dana is the owner of General Realty Group Inc. and is expected to testify regarding
14 the facts and background of this case.

15 13. Jerry Masini
16 Award Realty Corp.
17 3015 S. Jones Blvd.
18 Las Vegas, NV 89146

19 Mr. Masini is the owner of Award Realty and is expected to testify regarding the
20 facts and background of this case.

21 14. Mark Carmen
22 Exit Realty Number One
23 6600 W. Charleston, Suite #119
24 Las Vegas, Nevada 89146

25 Mr. Carmen is the owner of Las Vegas Realty Center and is expected to testify
26 regarding the facts and background of this case.

27 Plaintiffs reserve the right to call any and all witnesses who may be disclosed or
28 deposed throughout the course of discovery.

Plaintiffs reserve the right to call any and all of Defendant's witnesses; and

Plaintiffs reserve the right to call any and all rebuttal witnesses.

Plaintiffs' experts, if any, as yet unidentified.

Plaintiffs reserve the right to supplement this list of witnesses as discovery
progresses and until the time of trial in this case.

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

II.

DOCUMENTS

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

1. Any and all written agreements between the Parties;
2. Any and all documents evidencing damages to the Plaintiffs;
3. Any and all correspondence between the Parties;
4. Any and all appropriate Custodian of Record documents;
5. Any and all pleadings in this matter;
6. Documents labeled Bates Numbers PLTF0001-PLTL10496.

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

- A. Option Agreement for the Purpose of Real Property and Joint Escrow Instructions dated May 2004 (Bates No. PLTF0001-0080);
- B. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-0152);
- C. Two Assignments of Real Estate Commission and Personal Certification Agreement (Bates No. PLTF0153-0157A)
- D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes regarding the attached Commission letter dated September 1, 2004, (Bates No. PLTF0158-0162);
- E. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No. PLTF0175-0179);
- G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0180-0187);
- H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0188-0191);
- I. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0192-0193);
- J. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E. Curtis, (Bates No. PLTF0194-0196);

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 • Facsimile (702) 387-1157

- 1 K. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates
2 No. PLTF0197-0202);
- 3 L. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No.
4 PLTF0203-0205);
- 5 M. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash,
6 (Bates No. PLTF0206-0209);
- 7 N. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq.,
8 (Bates No. PLTF0210-0211);
- 9 Bates Nos. PLTF0212-0244 are the duplicative documents produced in
10 Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 11 7. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces
12 Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 13 8 Documents produced by Chicago Title in response to Plaintiffs' Subpoena
14 Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 15 9. Documents produced by Coyote Springs Investments in response to Plaintiff's
16 Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 -
17 CSI_Wolfram0003004), attached hereto;
- 18 10. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 -
19 PLTF10417), attached hereto;
- 20 11. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached
21 hereto;
- 22 12. Non-Party Coyote Springs Investments, LLC's Supplement and Amended
23 Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates
24 PLTF10420-PLTF10424, attached hereto.
- 25 13. Chicago Title Company's previously bates stamped documents no. PLTF 1424
26 through PLTF 10414 (on bottom right of documents bates stamped) and rebated
27 as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates
28 stamped), including the Custodian of Records Subpoena to Chicago Title
Company including the executed Certificate of Custodian of Records bates
stamped as Cht 08997.
14. Stewart Title Company's previously bates stamped documents no. PLTF 0245
through PLTF 1423 and rebated as bates nos: Stwt 0001 through 1202.
Documents Stwt 0699 and Stwt 0731 are copy coversheets and were
inadvertently bates stamped.
15. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138,
page 51, bates PLTF 10427 through PLTF 10438.
16. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116,
page 35, bates PLTF 10439 through PLTF 10440.
17. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117,
page 18, bates PLTF 10441 through PLTF 10443.
18. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140,
page 57, bates PLTF 10444 through PLTF10456.

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- 1 19. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113,
2 page 55, bates PLTF 10457 through PLTF 10462.
- 3 20. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98,
4 page 57, bates PLTF 10463 through PLTF 10468.
- 5 21. Copy of redacted billing sheets representing attorney's fees charged by
6 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,
7 bates PLTF 10469 through PLTF 10481.
- 8 22. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
- 9 23. Assignment of Rights, Title and Interest from Jay Dana on behalf of General
10 Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.
- 11 24. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award
12 Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.
- 13 25. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of
14 Walt Wilkes, bates PLTF 10487.
- 15 26. Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.
- 16 27. Assignment signed by Mark Carmen dated December 3, 2012 along with
17 Exhibit A signed by Jay Dana dated January 11, 2011, attached hereto as
18 bates PLTF 10491 through PLTF 10493; and
- 19 28. Assignment signed by Peter J. Dingerson dated December 20, 2012 along
20 with Exhibit A signed by Jerry Masini dated December 20, 2010, attached
21 hereto as bates PLTF 10494 through PLTF 10496.

22 Plaintiffs reserve the right to any and all documents the Defendants disclosed by any
23 parties or used at any depositions.

24 Plaintiffs reserve the right to any and all other relevant documents to this matter.

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

27 III.

28 COMPUTATION OF DAMAGES

Plaintiffs calculate their damages to be in excess of \$1,900,000.00 associated with the Defendant's breach of contract and the Defendant's failure to faithfully meet their obligations to the Plaintiffs.

There are two primary components to this calculation. The first component is the loss of future commissions from future sales or takedowns of property located in Clark County, subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least 3,000 acres of property, defined as Option Property under the Option Agreement effective

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1 June 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South,
2 Range 63 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June
3 1, 2004, these 3,000 acres can be purchased by Pardee and designated as Production
4 Residential Property—a purchase and designation that would entitle Plaintiffs to a 1.5%
5 commission on a per-acre price of \$40,000.00. If 3,000 acres were purchased by Pardee
6 under this scenario, Plaintiffs would be entitled to \$1,800,000 in commissions. However,
7 Pardee's course of conduct in failing to appropriately discharge its duties under the
8 Commission Letter Agreement has robbed Plaintiffs of this opportunity to be paid these
9 commissions. Pardee's actions have served to reclassify the land originally labeled as
10 Purchase Property and Option Property, and under the new reclassification, all Option
11 Property has been removed from Clark County, thereby divesting Plaintiffs of any hope to
12 collect any part of the \$1.8 million in commissions they could be paid had no reclassification
13 occurred.

14 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees
15 currently exceed \$102,700.00. This amount represents all work from the date of drafting of
16 the Complaint in November 2010 through October 19, 2012. These attorney's fees constitute
17 damages pursuant to the September 1, 2004 Commission Letter Agreement. As stated in the
18 Agreement, "In the event, either party brings an action to enforce its rights under this
19 Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs."
20 Plaintiffs in bringing this suit expect to be the prevailing party and, as such, are entitled to their
21 reasonable attorney's fees as damages for Defendant's breach of contract and breach of the
22 covenant of good faith and fair dealing.

23 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
24 discover from public records what information was owed to them under the Commission Letter
25 Agreement. Discovery is still ongoing therefore the Plaintiffs reserve

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