

1 34. The Commission Letter Agreement has a non-circumvention clause, preventing
2 Pardee from evading its obligations under the Commission Letter Agreement. The
3 Commission Letter Agreement states, "Pardee, its successors and assigns, shall take no
4 action to circumvent or avoid its obligation to you set forth in the Agreement."

5 35. The non-circumvention clause, which contains the word "avoid," bars Pardee from
6 taking any action, whether intentional, reckless, negligent, or simply mistaken, which
7 serves to bypass Pardee's duties to pay Plaintiffs commissions for the purchase of
8 Production Residential Property and keep them informed as to all matters related to the
9 amount and due dates of their commission payments.

10 36. For example, the non-circumvention clause prohibits Pardee from failing to properly
11 pay and inform Plaintiffs in the event Pardee acquires Production Residential Property
12 through the use of separate agreements outside of the procedures set forth in the Option
13 Agreement, whether or not Pardee used the separate agreements for the specific purpose
14 of denying Plaintiffs their commissions. The non-circumvention clause further prohibits
15 Pardee from failing to properly pay and inform Plaintiffs in the event Pardee purchases
16 property other than Production Residential Property and later redesignates it to Production
17 Residential Property.

18 37. After executing the Commission Letter Agreement, Plaintiffs never entered into
19 another agreement with Pardee concerning the development of Coyote Springs.

20 38. The relationship between the parties was such that Plaintiffs reasonably imparted
21 special confidence in the Defendant to faithfully inform them of the developments at Coyote
22 Springs which would impact their future commission payments and Defendant knew of this
23 confidence. In failing to keep Plaintiffs informed as to the plans and negotiations between
24 Pardee and CSI, Pardee knew that Plaintiffs would be reliant on Pardee to provide them
25 with the appropriate information concerning the development of Coyote Springs.

26 39. The facts material to Plaintiffs' entitlement to future commissions were peculiarly
27 within the knowledge of Defendant and were not within the fair and reasonable reach of
28 Plaintiffs.

1 40. The records necessary to keep Plaintiffs reasonably informed as to the accuracy of
2 their commission payments were not public record and were only accessible from Pardee.
3 Klif Andrews, Pardee's President, testified that Pardee has internally set designations for
4 certain land in Coyote Springs, but has not filed paperwork with any public authority,
5 including Clark County, concerning those designations and thus Plaintiffs had no access to
6 the designation information for the land in Coyote Springs.

7 **E. Pardee's Performance Under the Commission Letter Agreement**

8 41. Defendant failed to faithfully discharge its duties and obligations under the
9 Commission Letter Agreement.

10 42. Pardee failed to keep Plaintiffs informed as to the land transactions between it and
11 CSI as required by the Commission Letter Agreement. After signing the Commission Letter
12 Agreement in September 2004, Pardee and CSI proceeded to amend the Option
13 Agreement nine (9) times from March 2005 until June, 2009.

14 43. Specifically, in March, 2005, Pardee and CSI entered into an "Amended and
15 Restated Option Agreement for the Purchase of Real Property and Joint Escrow
16 Instructions" (the "Amended and Restated Option Agreement").

17 44. The Amended and Restated Option Agreement redefined Purchase Property as
18 "portions of Sections 20 and 21 of T13S, R63E, M.D.M., Clark County, Nevada as more
19 fully described on Exhibit B..." containing approximately 511 acres.

20 45. In so redefining Purchase Property, the Amended and Restated Option Agreement
21 served to redefine Option Property since Option Property is "the remaining portion of the
22 Entire Site [other than Purchase Property] which is or becomes designated for single-family
23 detached production residential use." As a matter of mathematics, shrinking Purchase
24 Property had the effect of expanding potential Option Property since the Option Property
25 was effectively the rest of the land in Coyote Springs designated for Production Residential
26 Property.

27 46. After entering into the Amended and Restated Option Agreement, Pardee and CSI
28 amended that Amended and Restated Option Agreement eight (8) times after March of

1 2005. Pardee and CSI entered into Amendment No. 1 to Amended and Restated Option
2 Agreement for the Purchase of Real Property and Joint Escrow Instructions on July 28,
3 2006, Amendment No. 2 to Amended and Restated Option Agreement for the Purchase of
4 Real Property and Joint Escrow Instructions on September 30, 2006, Amendment No. 3 to
5 Amended and Restated Option Agreement for the Purchase of Real Property and Joint
6 Escrow Instructions on November 22, 2006, Amendment No. 4 to Amended and Restated
7 Option Agreement for the Purchase of Real Property and Joint Escrow Instructions on
8 December 20, 2007, Amendment No. 5 to Amended and Restated Option Agreement for
9 the Purchase of Real Property and Joint Escrow Instructions on May 12, 2008,
10 Amendment No. 6 to Amended and Restated Option Agreement for the Purchase of Real
11 Property and Joint Escrow Instructions on January 30, 2009, Amendment No. 7 to
12 Amended and Restated Option Agreement for the Purchase of Real Property and Joint
13 Escrow Instructions on April 24, 2009, and Amendment No. 8 to Amended and Restated
14 Option Agreement for the Purchase of Real Property and Joint Escrow Instructions on
15 June 18, 2009.

16 47. The Amendments to the Amended and Restated Option Agreement all contained
17 confidentiality clauses and were not part of the public record.

18 48. As part of these Amendments and other agreements, Pardee purchased Option
19 Property as defined in the Option Agreement. Specifically, Pardee purchased land which
20 was designated as Production Residential Property as defined in the Option Agreement
21 and which was located in Coyote Springs but outside the boundaries of Parcel 1 as shown
22 on Parcel Map 98-57 recorded July 21, 2000 in Book 2000072, as Document No. 01332.

23 49. Despite the purchase of Option Property, Pardee never produced copies of the
24 Amendments to the Amended and Restated Option Agreement to Plaintiffs, including
25 during the present litigation; Plaintiffs recovered copies of those documents from CSI by
26 subpoena.

27 50. For all intents and purposes, Pardee treated its purchases as if they were for
28 Purchase Property only. Pardee paid Plaintiffs' commissions entirely according to the price

1 of the acreage purchased and never calculated their commissions according to the number
2 of acres purchased outside of Parcel 1.

3 51. Pardee denied Plaintiffs the information they were entitled to in bad faith. Mr. Lash
4 explicitly instructed representatives of Chicago Title not to produce copies of these
5 amendments to Plaintiffs. Mr. Lash further instructed representatives of Chicago Title to
6 tell Plaintiffs that they had all of the documents, despite knowing that this was not true.

7 52. The only records provided by Pardee to both of the Plaintiffs regarding these
8 purchases were enclosed in two letters: one written by Jon Lash on August 23, 2007
9 concerning adjusting the commission payment schedule and another written by Mr. Lash
10 on March 14, 2008 declining to provide Plaintiffs with the maps they had requested.

11 53. Representatives of Pardee sent Mr. Wolfram (but not Mr. Wilkes) one letter dated
12 April 6, 2009, containing copies of three closing statements; and a second written by Jon
13 Lash on November 24, 2009, containing a map of some, but not all, of Pardee's land
14 purchases.

15 54. Representatives of Chicago Title provided Mr. Wolfram (but not Mr. Wilkes) copies
16 of certain deeds to the property Pardee purchased in Coyote Springs.

17 55. Pardee never produced any documents to either Plaintiff reflecting the designation
18 of the property purchased in Coyote Springs.

19 56. Pardee never produced any documents stating that the land shown on the map
20 attached to the November 24, 2009 letter was all of the Production Residential Property
21 Pardee owned in Coyote Springs at the time.

22 57. Pardee never explained to Mr. Wolfram and Mr. Wilkes how they were being paid,
23 despite Plaintiffs' repeated requests for such information.

24 58. As a matter of geography, Pardee purchased Option Property as defined in the
25 Option Agreement (land designated as Production Residential Property outside of Parcel
26 1), without providing the required notices to Plaintiffs reflecting the same or paying
27 Plaintiffs the appropriate commission under the Commission Agreement for the Option
28 Property purchase.

1 59. Plaintiffs have been paid \$2,510,000.00 in commission payments to date.
2 However, Pardee only paid Plaintiffs according to the formula for Purchase Property, not
3 the formula for Option Property. This payment is not the result of the appropriate
4 calculation of commission payments as reflected by the failure of Pardee to calculate the
5 number of acres of Option Property purchased multiplied by \$40,000.00 and one and one-
6 half percent (1.5%).

7 60. Pardee has purchased additional land for which Plaintiffs are entitled to a
8 commission, outside of the Amendments to the Amended and Restated Option Agreement.

9 61. Under a Multifamily Agreement, Pardee purchased approximately 225 acres of
10 Production Residential Property, but never paid Plaintiffs any commissions on those
11 purchases or informed them of those purchases.

12 62. According to Exhibit B-6 of Amendment No. 7 to the Amended and Restated Option
13 Agreement, one of the sections of Production Residential Property purchased is called
14 Residential 5 or "Res-5." Res-5 contains approximately 50.2 acres of land designated as
15 Production Residential Property and is located at the southeast corner of Denali Summit
16 Ave. and Coyote Springs Pkwy. Harvey Whittemore, Jon Lash, and Klif Andrews all
17 testified that Res-5 is the location of one of Pardee's first subdivisions. In furtherance of
18 this development, Pardee filed a Tentative Map with Clark County requesting approval for
19 this plan. In February 2011, the Clark County Commission sitting as the Clark County
20 Zoning Commission approved the application. No further applications have been filed with
21 Clark County concerning Res-5.

22 63. The land contained in Res-5 is zoned "R2" for single family homes.

23 64. Multifamily development may not take place on land zoned as R2 under Clark
24 County Development Title 30.40.110.

25 65. Taking Res-5 by itself, Plaintiffs should have received commissions in the amount
26 of \$30,120.00 (50.2 acres times \$40,000.00 per acre, times 1.5%). Pardee made no such
27 payment.
28

1 66. Taking all of the Production Residential Property purchased under the Multifamily
2 Agreement, Plaintiffs should have received commissions in the amount of \$134,964.00
3 (224.94 acres times \$40,000.00 per acre, times 1.5%). Pardee made no such payment.

4 67. As a direct and proximate result of Pardee's failure to faithfully discharge its duties
5 under the Commission Letter Agreement, Plaintiffs have suffered significant damages.

6 68. Plaintiffs have incurred substantial attorney's fees in the course of enforcing their
7 rights under the Commission Letter Agreement. The fees were foreseeable and
8 necessarily caused by Pardee's failure to produce the information as required by the
9 Commission Letter Agreement as Plaintiffs had no other way to retrieve the information
10 than by hiring an attorney, filing suit, using the tools of discovery, and appealing to the
11 powers of the Court. The attorney's fees attributable to Defendant's bad faith conduct
12 equal or exceed \$135,486.87. Specifically, the attorney's fees caused by Defendant's
13 breach of contract and breach of the covenant of good faith and fair dealing exceed
14 \$7,602.50. Plaintiffs' attorney fee damages for the accounting claim equal or exceed
15 \$135,486.87. The fees are reasonable for the work performed and are far less than the
16 fees actually incurred by Plaintiffs in prosecuting this action.

17 69. Plaintiffs expended no fewer than eighty (80) hours of time, effort, and energy
18 attempting to discover the nature of the transactions between CSI and Pardee, which
19 Pardee has a duty to disclose under the Commission Letter Agreement.

20 70. This time and effort was foreseeable at the time of execution of the Commission
21 Letter Agreement. It was natural and foreseeable that Plaintiffs, in the event they were
22 denied the information and records promised to them by Defendant, would seek out
23 alternative sources of that information. Because the information concerned the availability
24 of commissions to be paid to Plaintiffs, they would naturally inquire as to the land
25 transactions to determine if any money is owed them. Additionally, Pardee's Option to buy
26 land from CSI lasted for forty (40) years. Given that both Plaintiffs were over sixty (60)
27 years of age at the time the Commission Letter Agreement was executed, it is foreseeable
28

1 that Plaintiffs would be concerned as to their families' abilities to track the land purchases
2 to which they would be entitled a commission when Plaintiffs have passed on.

3 71. An hourly rate of \$80 per hour is reasonable in light of the work performed and the
4 qualifications and experience of Plaintiffs.

5 72. Despite the damages suffered by Plaintiffs, there is no adequate remedy at law to
6 compensate Plaintiffs without compelling an accounting.

7 **F. Plaintiffs' Performance Under the Commission Letter Agreement**

8 73. Plaintiffs fully performed any and all obligations they had to Pardee for which they
9 would be entitled the benefits of their bargain with Pardee.

10 74. Since Mr. Wolfram and Mr. Wilkes had already performed services for Pardee, the
11 Commission Letter Agreement placed no affirmative obligations on them.

12 75. The Commission Letter Agreement did not bar Plaintiffs from inquiring as to the
13 development of Coyote Springs.

14 76. Under the circumstances, Defendant cannot justifiably expect Plaintiffs not to
15 inquire about the development of Coyote Springs.

16 77. Plaintiffs had requested information concerning the development of Coyote Springs
17 from Pardee between 2008 and 2010 prior to filing suit.

18 78. These requests were neither extreme nor outrageous.

19 79. It was not foreseeable by the parties at the time of entering into the Commission
20 Letter Agreement that Plaintiffs would have to compensate Defendant for the time and
21 effort responding to their requests for information.

22 **CONCLUSIONS OF LAW**

23 80. To sustain a claim for breach of contract, Plaintiffs must establish (1) the existence
24 of a valid contract between Plaintiffs and Defendant; (2) a breach by Defendant, and (3)
25 damages as a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 405 (1865); *Calloway*
26 *v. City of Reno*, 116 Nev. 250, 256, 993 P.3d 1259, 1263 (2000) (*overruled on other*
27 *grounds by Olson v. Richard*, 120 Nev. 240, 241–44, 89 P.3d 31, 31–33 (2004)).
28

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

5 82. If a contract is unambiguous, the parties' intent must be derived from the plain
6 language of the contract. See *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776,
7 121 P.3d 599, 603 (2005).

8 83. The Court may take notice of the course of dealing between the parties and the
9 trade usage of a contract's terms to interpret a contract. *Galardi*, 301 P.3d at 367; *United*
10 *Services Auto Ass'n v. Schlang*, 111 Nev. 486, 493, 894 P.2d 967, 971 (1995); *Nevada*
11 *Nat. Bank v. Huff*, 94 Nev. 506, 514, 582 P.2d 364, 370 (1978).

12 84. Contractual provisions should be harmonized whenever possible, and construed to
13 reach a reasonable solution. *Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112 Nev.
14 1255, 1260, 925 P.2d 505, 509 (1996).

15 85. "The parol evidence rule forbids the reception of evidence which would vary or
16 contradict the contract, since all prior negotiations and agreements are deemed to have
17 been merged therein." *Kaldi v. Farmers Ins. Exchange*, 117 Nev. 273, 281, 21 P.3d 16, 21
18 (2001).

19 86. Mutual consent is needed to amend or modify a contract. Unilateral changes are
20 unenforceable. See *MacKenzie Ins. Agencies, Inc. v. National Ins. Ass'n*, 110 Nev. 503,
21 505, 874 P.2d 758, 760 (1994); *Union Pacific R.R. Co. v. Chicago M. St. P. & P. R. Co.*,
22 549, F.2d 114, 118 (9th Cir. 1976); *Clark County Sports Enterprises, Inc. v. City of Las*
23 *Vegas*, 96 Nev. 167, 172, 606 P.2d 171, 175 (1980).

24 87. Damages arising from breach of contract must (1) arise from the breach of contract
25 and (2) "be such as may reasonably be supposed to have been in the contemplation of
26 both parties." See *Clark County School Dist. v. Rolling Plains Const., Inc.*, 117 Nev. 101,
27 106, 16 P.3d 1079, 1082 (2001) (disapproved of on other grounds, 117 Nev. 948). Stated
28 another way, "the damages claimed for the breach of contract must be foreseeable." *Id.*

1 88. The Commission Letter Agreement constitutes a valid and enforceable contract
2 between Plaintiffs and Defendant.

3 89. Considering that (1) the Commission Letter Agreement guaranteed that Plaintiffs
4 would receive commission payments and information in connection with every takedown of
5 Production Residential Property by Pardee as of the date the Commission Letter
6 Agreement was executed (since the Option Agreement only allowed Pardee to purchase
7 Production Residential Property through procedures whereby Plaintiffs would be entitled to
8 a commission, and (2) the Commission Letter Agreement explicitly prohibited Pardee from
9 taking any action to circumvent or otherwise avoid its obligations to Plaintiffs, it would be
10 inappropriate to interpret the Commission Letter Agreement to deny Plaintiffs commissions
11 in the event Pardee acts outside of the strictures of the Option Agreement and acquires
12 Option Property in a manner other than pursuant to paragraph 2 of the Option Agreement.
13 Interpreting the phrase "pursuant to paragraph 2" as a limitation on Plaintiffs' entitlement to
14 commissions and information in all instances except when Pardee acquires Option
15 Property pursuant to paragraph 2 of the Option Agreement would do violence to the intent
16 of the parties and would render the non-circumvention clause meaningless. Since at the
17 time the Commission Letter Agreement was executed, Pardee had only one way to
18 purchase Option Property under the Option Agreement (through the exercise of options
19 pursuant to paragraph 2), the phrase "pursuant to paragraph 2" in the Commission Letter
20 Agreement cannot be interpreted as creating an artificial limitation on when Plaintiffs would
21 receive a commission now that Pardee has purchased Option Property in a manner other
22 than pursuant to paragraph 2 of the Option Agreement. The phrase "pursuant to
23 paragraph 2" cannot take on a new importance or meaning simply because Pardee and
24 CSI later created new avenues for Pardee to purchase Production Residential Property.

25 90. Defendant materially breached its obligations under the Commission Letter
26 Agreement by purchasing Option Property and:

- 27 a. Failing to appropriately calculate and pay to Plaintiffs the commission owed under
28 the Option Property formula;

- 1 b. Failing to provide a copy of the notice whereby Defendant purchased the Option
- 2 Property;
- 3 c. Failing to provide Plaintiffs information concerning the number of acres of Option
- 4 Property Purchased;
- 5 d. Failing to keep Plaintiffs reasonably informed as to all matters related to the amount
- 6 and due dates of their commission payments;
- 7 e. Purchasing Production Residential Property and failing to appropriately pay and
- 8 inform Plaintiffs of the purchases; and
- 9 f. Circumventing and otherwise attempting to avoid its obligations under the
- 10 Commission Letter Agreement.
- 11 91. Plaintiffs appropriately satisfied any and all obligations they had under their
- 12 agreement with Pardee.
- 13 92. Plaintiffs suffered damages in the form of the commissions Plaintiffs were entitled to
- 14 be paid, but were not, for Pardee's purchase of Production Residential Property. These
- 15 damages total \$134,964.00.
- 16 93. Plaintiffs suffered damages in the form of their time and effort attempting to retrieve
- 17 the information owed to them. Such harm is compensable. *See Gray v. Don Miller &*
- 18 *Associates, Inc.*, 35 Cal.3d 498, 505, 674 P.2d 253, 256 (Cal. 1984); *Barthels v. Santa*
- 19 *Barbara Title Co.*, 28 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 570, 581-82 (Cal. App. Ct.
- 20 1994). These damages total \$6,400.00.
- 21 94. Plaintiffs suffered damages in the form of the attorney's fees and costs incurred as
- 22 they were necessary and foreseeable to recover the information Plaintiffs are entitled to
- 23 under the Commission Letter Agreement. Plaintiffs had no alternative but to file suit,
- 24 access the tools of discovery, and appeal to the Court's equitable powers to get access to
- 25 the information owed to them. These reasonable attorney's fees and costs are special
- 26 damages. *See Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948,
- 27 35 P.3d 964 (2001). These damages total \$7,602.50.
- 28

1 95. To sustain a claim for breach of the implied covenant of good faith and fair dealing
2 sounding in contract, Plaintiffs must establish: (1) Plaintiffs and Defendant were parties to
3 the contract; (2) the Defendant owed a duty of good faith to Plaintiffs; (3) the Defendant
4 breached that duty by performing in a manner that was unfaithful to the purpose of the
5 contract; and (4) Plaintiff's justified expectations were thus denied. *See Perry v. Jordan*,
6 111 Nev. 943, 947, 900 P.2d 335, 338 (1995).

7 96. "An implied covenant of good faith and fair dealing is recognized in every contract
8 under Nevada law." *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*,
9 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

10 97. Under the implied covenant, each party must act in a manner that is faithful to the
11 purpose of the contract and the justified expectations of the other party. *Morris v. Bank of*
12 *America Nevada*, 110 Nev. 1274, 1278 n. 2, 886 P.2d 454, 457 (1994).

13 98. The implied covenant of good faith and fair dealing "essentially forbids arbitrary,
14 unfair acts by one party that disadvantages the other." *Frantz v. Johnson*, 116 Nev. 455,
15 465 n. 4., 999 P.2d 351, 358 (2000).

16 99. Because Pardee had only one way to purchase Option Property under the Option
17 Agreement (pursuant to the procedures of paragraph 2) at the time of the execution of the
18 Commission Letter Agreement, and Pardee had promised to take no action to circumvent
19 or avoid its obligations to Plaintiffs, Plaintiffs had justifiable expectations that Pardee would
20 not enter into later agreements with CSI granting Pardee new rights to purchase Option
21 Property while failing to appropriately inform Plaintiffs and pay them their commissions.

22 100. Defendant denied Plaintiffs their justified expectations under the Commission
23 Letter Agreement by purchasing Option Property and:

- 24 a) Failing to appropriately calculate and pay to Plaintiffs the commission owed under
25 the Option Property formula;
26 b) Failing to provide a copy of the notice whereby Defendant purchased the Option
27 Property;

28

- c) Failing to provide Plaintiffs information concerning the number of acres of Option Property Purchased;
- d) Failing to keep Plaintiffs reasonably informed as to all matters related to the amount and due dates of their commission payments;
- e) Purchasing Production Residential Property and failing to appropriately pay and inform Plaintiffs of the purchases; and
- f) Circumventing and otherwise attempting to avoid its obligations under the Commission Letter Agreement.

101. Plaintiffs suffered damages in the form of the commissions Plaintiffs were entitled to be paid, but were not, for Pardee's purchase of Production Residential Property. These damages total \$134,964.00.

102. Plaintiffs suffered damages in the form of their time and effort attempting to retrieve the information owed to them. Such harm is compensable. *See Gray v. Don Miller & Associates, Inc.*, 35 Cal.3d 498, 505, 674 P.2d 253, 256 (Cal. 1984); *Barthels v. Santa Barbara Title Co.*, 28 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 570, 581-82 (Cal. App. Ct. 1994). These damages total \$6,400.00.

103. Plaintiffs suffered damages in the form of the attorney's fees and costs incurred as they were necessary and foreseeable to recover the information Plaintiffs are entitled to under the Commission Letter Agreement. Plaintiffs had no alternative but to file suit, access the tools of discovery, and appeal to the Court's equitable powers to get access to the information owed to them. These reasonable attorney's fees and costs are special damages. *See Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001). These damages total \$7,602.50.

104. Plaintiffs did not breach any obligation they had to Pardee under the Commission Letter Agreement by inquiring into the development of Coyote Springs.

105. Plaintiffs acted in good faith at all times toward Defendant and did not deny Pardee its justified expectations under the Commission Letter Agreement.

1 106. Defendant suffered no recoverable damages from Plaintiffs' inquiries.
2 Defendant's time and effort damages were not foreseeable at the time of entering the
3 contract.

4 107. An accounting is an independent cause of action that is distinct from the
5 equitable remedy of accounting. See, e.g. *Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705
6 (1910); *Young v. Johnny Ribiero Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Oracle*
7 *USA, Inc. v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933 (D. Nev.
8 Aug. 13, 2010); *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal.
9 App. 2009); *Mobius Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-
10 RJJ, 2012 WL 194434 (D. Nev. Jan. 23, 2012).

11 108. An action for an accounting is a "proceeding in equity for the purpose of
12 obtaining a judicial settlement of the accounts of the parties in which proceedings the court
13 will adjudicate the amount due, administer full relief, and render complete justice." *Oracle*
14 *USA, Inc. v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933, at *6 (D.
15 Nev. Aug. 13, 2010).

16 109. To prevail on a claim for accounting, a Plaintiff must establish the existence
17 of a special relationship whereby a duty to account may arise. See *Teselle v. McLoughlin*,
18 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009). The right to an accounting
19 can arise from Defendant's possession of money or property which, because of the
20 Defendant's relationship with the Plaintiff, the Defendant is obliged to surrender. *Id.*

21 110. The elements of a cause of action for an accounting are: (1) a special
22 relationship between the parties giving rise to a duty to account; (2) mutual accounts
23 between the parties must be held by one of the parties; and (3) a duty by defendant to
24 render an accounting. *Mobius Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-
25 01678-GMN-RJJ, 2012 WL 194434, at *8 (D. Nev. Jan. 23, 2012); *Mitchell v. O'Neale*, 4
26 Nev. 504, 522 (1869).

27 111. The duty to account arises (1) where the parties enjoy a fiduciary
28 relationship; (2) where the parties enjoy a "special relationship," that is, where a party

1 reasonably imparts special confidence in the defendant and the defendant would
2 reasonably know of this confidence; or (3) where a party has superior knowledge or where
3 the material facts are peculiarly within the knowledge of the party sought to be charged and
4 not within the fair and reasonable reach of the other party. *Dow Chemical v. Mahlum*, 114
5 Nev. 1468, 1486, 970 P.2d 98, 110 (1998); *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d
6 335, 337 (1995).

7 112. Plaintiffs have established the requisite elements to prosecute a claim for
8 accounting—that there exists a special relationship between Plaintiffs and Pardee; that the
9 accounts are controlled by Pardee; and that Pardee owes Plaintiffs a duty to account. The
10 relationship between Pardee and Plaintiffs is such that Pardee is in a position of trust and
11 superior knowledge relative to Plaintiffs and the material facts are peculiarly within the
12 knowledge of Pardee and not within the fair and reasonable reach of Plaintiffs.

13 113. The Commission Letter Agreement confirms that the accounts are controlled
14 by one party in that the Commission Letter Agreement obligates Pardee to: (1) determine if
15 a commission payment is warranted for a particular purchase; (2) decide what notice is
16 required under the Agreement; (3) calculate the appropriate commission to be paid; and (4)
17 make the payment to Plaintiffs.

18 114. To date, Defendant has failed to appropriately account to Plaintiffs and there
19 is no adequate remedy at law to compensate Plaintiffs without compelling an accounting.
20 Plaintiffs are entitled to be provided the following information when Pardee purchases land
21 from CSI: the name of the seller, the buyer, the parcel numbers, the amount of acres sold,
22 the purchase price, the commission payments schedule and amount, Title company
23 contact information, and Escrow number(s), copy of close of escrow documents, maps
24 specifically depicting the property sold, with parcel numbers specifically identified, and
25 information stating the designation of the property when it is sold (and if the designation
26 changes, information stating the change in designation).

115. Plaintiffs are entitled to their reasonable attorney's fees as special damages.
See Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc., 117 Nev. 948, 35 P.3d 964 (2001). These damages total \$135,486.87

DECISION

116. WHEREFORE, the Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for breach of contract, breach of the covenant of good faith and fair dealing, and for its failure to account to Plaintiffs as to the information concerning the development of Coyote Springs as it pertained to Plaintiffs present and future commissions. Damages are to be awarded to Plaintiffs from Defendant in an amount totaling \$276,850.87.

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

118. The Court will schedule further proceedings consistent with this Decision, including compelling Defendant to account to Plaintiffs.

DATED this ____ day of _____, 201__.

DISTRICT COURT JUDGE

Respectfully submitted by:

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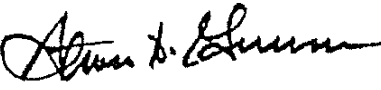
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EXHIBIT G

1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA


CLERK OF THE COURT

4 JAMES WOLFRAM and
5 WALT WILKES,

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

6 Plaintiffs,

Trial Date: October 23, 2013

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

10 AND RELATED CLAIMS

11 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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

24 I. FINDINGS OF FACT

25 A. THE PARTIES

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **A. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF CONTRACT**

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

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

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

24 4. The Commission Letter Agreement constitutes a valid and enforceable
25 contract between Plaintiffs and Defendant.

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

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

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

10 8. Pardee has never exercised any such option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **DECISION**

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

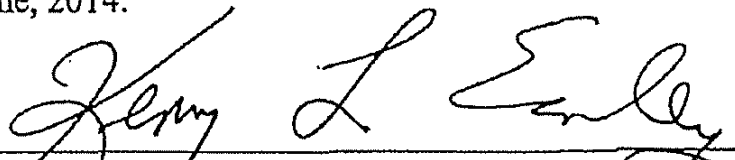
25 1. The Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for
26 breach of contract, breach of the covenant of good faith and fair dealing, and its failure to account to
27 Plaintiffs regarding the information concerning the development of Coyote Springs because it
28

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

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

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

10
11 DATED this 25 day of June, 2014.

12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

15
16 **CERTIFICATE OF SERVICE**

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

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

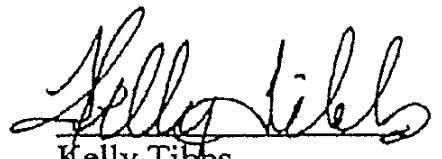
21
22 
23 Kelly Tibbs
24 Judicial Executive Assistant

EXHIBIT H

OFFER

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALK WILKES,)	
)	CASE NO.: A-10-632338-C
Plaintiffs,)	DEPT. NO.: IV
)	
vs.)	
)	
PARDEE HOMES OF NEVADA,)	
)	
Defendant.)	

PLAINTIFFS' OFFER OF JUDGMENT TO DEFENDANT
PARDEE HOMES OF NEVADA

PLEASE TAKE NOTICE that pursuant to Nevada Rule of Civil Procedure 68, Plaintiffs, JAMES WOLFRAM and WALK WILKES, make to Defendant, PARDEE HOMES OF NEVADA, the following Offer of Judgment:

In accordance with NRS 17.115 and NRCP 68, in exchange for Defendants' acceptance of this Offer of Judgment, and filing an Acceptance, thus directing the Clerk of the Court to enter judgment against Defendant in the above-captioned action,

1 Defendant Pardee Homes of Nevada will pay to Plaintiffs the total amount of One
2 Hundred Forty Nine Thousand Dollars (\$149,000.00), inclusive of attorney's fees and
3 interest incurred to date and exclusive of costs incurred (see *Fletcher v. Fletcher*, 89
4 Nev. 540, 516 P.2d 103). As part and parcel of this Offer of Judgment, and as a
5 condition to the same, if Defendant, Pardee Homes of Nevada ("Pardee"), accepts this
6 Offer of Judgment, it also accepts the following conditions:
7

- 8 1. All purchases of real property designated for detached production
9 residential use, which includes, without limitation, all single-family
10 detached production residential lots (which shall include lots of which
11 custom homes are constructed), all land for roadways, utilities,
12 government facilities, including schools and parks (which school and park
13 sites are subject to the provisions of paragraph 7(c) of the Option
14 Agreement for the Purchase of Real Property and Joint Escrow
15 Instructions); open space required or designated for the benefit of the
16 residential development pursuant to the master plan, a habitat
17 conservation plan, or development agreement; drainage ways or any
18 other use associated with or resulting from the development of the
19 Purchase Property and each Option Parcel of the Option Property made
20 in the future, shall be deemed Option Property under the terms of the
21 Option Agreement for the Purchase of Real Property and Joint Escrow
22 Instructions executed May, 2004, Bates stamp numbers PLTF0001-0080;
23 and Pardee shall provide advanced notice of the pendency of an escrow,
24 fourteen (14) days prior to close of escrow, to advise James Wolfram or
25
26
27
28

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

- 17
18
19 2. The terms of the Commission Letter Agreement dated September 1,
20 2004, shall remain in full force and effect and the Defendant, by
21 accepting this Offer of Judgment, fully confirms and acknowledges its
22 continuing obligation to provide to Mr. Wilkes and Mr. Wolfram a copy of
23 each written option exercise notice given pursuant to paragraph 2 of the
24 Option Agreement for the Purchase of Real Property and Joint Escrow
25 Instructions, together with information as to the number of acres involved
26
27
28

1 and the scheduled closing date. In addition, Pardee shall keep Mr. Wilkes
2 and Mr. Wolfram reasonably informed as to all matters relating to the
3 amount and due dates of their commission payments.

- 4 3. With respect to any portion of Option Property purchased by Pardee
5 pursuant to this offer of Judgment, Pardee shall pay to Plaintiffs one and
6 one-half percent (1 ½%) of the amount derived by multiplying the number
7 of acres purchased by Pardee Homes of Nevada by Forty Thousand
8 Dollars (\$40,000.00).
9

10 This Offer of Judgment is made for the purposes stated in NRS 17.115 and in
11 Nevada Rule of Civil Procedure 68 and, if accepted, Plaintiffs will direct the Clerk of the
12 Court to enter a judgment against Defendant PARDEE HOMES OF NEVADA upon
13 receipt of payment of the offered amount of One Hundred Forty Nine Thousand Dollars
14 (\$149,000.00), inclusive of attorney's fees and interest incurred to date and exclusive
15 of costs incurred.
16

17 ///

18 ///

19 ///

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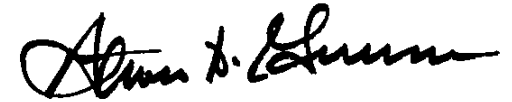
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

**PARDEE HOMES OF NEVADA'S
REPLY IN SUPPORT OF MOTION FOR
ATTORNEY'S FEES AND COSTS**

Hearing Date: JULY 27, 2015
Hearing Time: 9:00 a.m.

AND RELATED CLAIMS

I. INTRODUCTION

Any complaint filed in Nevada has two components. First, there are the formulaic causes of action—or theories of liability—that the plaintiff alleges. Second, a plaintiff alleges the damages flowing from these theories of liability, which the defendant allegedly owes to the plaintiff. In this matter, Plaintiffs argued two theories of liability: (1) that Pardee breached the Commission Agreement by purportedly re-designating Option Property on the Coyote Springs project and failing to pay Plaintiffs commissions when Pardee purchased this re-designated land; and (2) that Pardee breached the Commission Agreement by failing to provide information that Plaintiffs could use to

1 prove up these additional commissions. From those theories of liability, Plaintiffs
2 disclosed substantial damages, including \$1.8 million in lost commissions and the need
3 for additional information from Pardee regarding its purchases at Coyote Springs. As
4 the Court is well aware, it rejected Plaintiffs' theory of liability regarding the lost
5 commissions, and in doing so, it also rejected Plaintiffs' claims to millions of dollars in
6 lost commissions. The Court did, however, accept Plaintiffs' theory of liability regarding
7 information and awarded them nominal damages for it.

8 Now, in conducting "prevailing party" analysis pursuant to the attorney's fees
9 provision in the parties' Commission Agreement, Plaintiffs want the Court to ignore not
10 only their theory of liability regarding re-designated land, but also the substantial lost
11 commissions damages that Plaintiffs argued flowed from this theory of liability. Instead,
12 Plaintiffs claim that this case was "always about getting information"—documents rather
13 than dollars. Such a myopic view of this case hardly squares with the parties'
14 contemplation of "prevailing party" in the Commission Agreement. More importantly,
15 though, it also differs from Plaintiffs' own actions during trial. If this case was only
16 about documents and not dollars, why then did Plaintiffs proceed to a two-week trial? If
17 this case was only about information, then why did the Plaintiffs not stop with their
18 prosecution of the case after they obtained all of the information they requested through
19 discovery? Because, as the Court noted in its Findings of Fact and Conclusions of Law
20 ("Findings and Conclusions"), Pardee disclosed all relevant information to Plaintiffs
21 during the course of discovery in this matter. See Findings and Conclusions at 13:5-7
22 (explaining Pardee provided "the complete documentation" during the litigation").
23 Plaintiffs therefore had all the information they were seeking before trial and there was
24 no need for any trial to compel such information. Additionally, if the case was only
25 about documents and not dollars, why did the Court expressly include a finding that
26 "Plaintiffs have also contended that they are entitled to a commission" if Pardee re-
27 designated land on the project? Such a finding would be superfluous and entirely
28 irrelevant if Plaintiffs were only seeking documents and information.

1 The answer is obvious. From the moment this litigation began, Plaintiffs' primary
2 focus was on asserting a theory of liability regarding purportedly lost additional
3 commissions, while their theory of liability regarding additional information was merely
4 the secondary method by which they could prove up those lost commissions. Having
5 lost on their main theory of liability—that Pardee purportedly re-designated Option
6 Property and failed to pay them commissions for purchasing Option Property—Plaintiffs
7 also lost on the overwhelmingly portion of their claimed damages. As such, Pardee,
8 and not Plaintiffs, is the prevailing party under the Commission Agreement's attorney's
9 fees provision.

10 II. LEGAL ARGUMENT

11 A. Plaintiffs' Case Law Is Largely Irrelevant To The Prevailing Party Analysis
12 Under the Commission Agreement.

13 Plaintiffs primarily rely on *Valley Electric Association v. Overfield* in claiming that
14 a party cannot be a prevailing party unless it recovers some sort of monetary judgment.
15 See Opposition at 6:8-10. But, as Plaintiffs' Opposition concedes, the party seeking
16 attorney's fees in *Valley Electric* did not seek fees based upon a contract, but instead
17 upon NRS 18.010 and a statutory award of attorney's fees. This is why the Nevada
18 Supreme Court clearly stated that the judgment must be monetary in nature for a party
19 to be a 'prevailing party' **under the general attorney fee statute**. See Opposition at
20 6:8-10 (emphasis added). But Pardee does not seek to recover its attorney's fees
21 under NRS 18.010, the general attorney fee statute, and so the prevailing party
22 analysis in *Valley Electric* has no application here. In fact, NRS 18.010(4) specifically
23 states that the statute does "not apply to any action arising out of a written instrument or
24 agreement which entitles the prevailing party to an award of reasonable attorney's
25 fees." The Commission Agreement clearly is a written agreement containing a
26 provision entitling the prevailing party to attorney's fees and costs. NRS 18.010
27 consequently has no application here. See Motion at 9:24-10:3 (quoting the
28 Commission Agreement's attorney's fees provision).

Plaintiffs also cite to *Las Vegas Metropolitan Police Department v. Blackjack Bonding, Inc.* and *Hensley v. Eckerhart*, but again those cases dealt specifically with prevailing party analysis based on a statute and not a contract. The plaintiff in *Blackjack Bonding* sought attorney's fees pursuant to NRS 239.011, which deals specifically with recovering attorney's fees "from the governmental entity whose officer has custody of [a] book or record" and wrongfully conceals it from the public. 131 Nev. Adv. Op. 10, 343 P.3d 608, 614-15 (2015); see also NRS 239.011(2). *Hensley* involved an attorney's fee claim based on 42 U.S.C. § 1988, a statute used in civil rights actions that permits "the court, in its discretion, [to] allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." Neither of these statutes has any application to the Commission Agreement in this case, and indeed even if they did, the cases stand for the proposition that Pardee is advancing: the Court must consider the litigation holistically and reach a common sense conclusion as to who prevailed rather than a technical one.

B. Pardee Succeeded on the Case's Most Important Theory of Liability and Therefore Also Successfully Defended Against the Overwhelming Majority of Plaintiffs' Claimed Damages.

Plaintiffs argue that Pardee did not succeed on any significant issue in this case, as Plaintiffs suggest the case was solely about information and not about money. See Opposition at 6:21-7:21. Under this truncated view of the case, Plaintiffs suggest they merely asked Pardee to keep "Plaintiffs reasonably informed as to matters related to the commission, and in particular, to Provide Plaintiffs with copies of Option Notices when Pardee acquires Option Property from CSI." *Id.* at 7:9-13.¹

The most immediate flaw in Plaintiffs' reasoning, however, is that Plaintiffs obtained all of this information, including these "Option Notices," during discovery and

¹ Pardee has rebutted Plaintiffs' attempt to narrowly recast this case both in Pardee's Opposition to Plaintiffs' Motion for Attorney's Fees and Pardee's Motion to Amend Judgment. Thus, unlike Plaintiffs, Pardee will not saddled the Court with repeated arguments again in this Reply. Instead, Pardee will only point out additional flaws in Plaintiffs' incorrect positions.

1 yet still proceeded to trial. Indeed, the Court clearly explained Plaintiffs' theory
2 regarding information and **the fact that they received all of this information before**
3 **trial:**

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

7 **Although the complete documentation when provided in this**
8 **litigation verified that Plaintiffs were not due any further**
9 **commissions at this time for the additional purchases of land by**
10 **Pardee**, Pardee still had a duty to provide sufficient information regarding
the design and the type of the land that had been purchased to Plaintiffs.
11 Plaintiff Wolfram attempted through public records to ascertain
information regarding the additional lands, but he was unable to verify the
required information of the land use designations.

12 Findings and Conclusions at 13:1-12 (emphasis added). The reason that Plaintiffs
13 proceeded to trial despite having all of the information they purportedly needed is that
14 this case was about more than just documents. As the Court properly found above, the
15 case was primarily about additional commissions that Plaintiffs claimed Pardee owed
16 them. The Court denied them these commissions:

17 No commission to Plaintiffs is payable under clause (iii) of the
18 Commission Agreement unless the property purchased fell within the
19 definition of Option Property purchased pursuant to paragraph 2 of the
20 Option Agreement.

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

24

25 Plaintiffs have also contended that they are entitled to a commission if
26 Pardee re-designates any of its land purchases from CSI to single family
production residential property. Plaintiffs are not entitled to commissions
on any re-designation of lands by Pardee pursuant to the Commission
27 Agreement.

28 *Id.* at 10:19-27 and 13:12-17.

Consequently, in considering which party prevailed in this litigation under the Commission Agreement, the Court must look at the entirety of the case, including both of Plaintiffs' theories of liability and the alleged damages flowing from each those theories. Plaintiffs asked for documents, but even more they demanded additional commissions. These commissions were their only incentive for moving forward into trial. Plaintiffs believed they could show the Court that Pardee had breached the Commission Agreement by conspiring with CSI to re-designate Option Property on the project. From this theory of breach, Plaintiffs believed, through their accounting claim, they could show Pardee owed them substantial lost commissions from this alleged re-designation. This is why, in their NRCP 16.1 damages disclosures both before and during trial, Plaintiffs claimed Pardee owed them \$1.8 million in additional commission flowing from Pardee's breach of the Commission Agreement. Were the case solely about documents, Plaintiffs had no reason to claim any monetary damages in their NRCP 16.1 disclosures, much less \$1.8 million in lost commissions.² Plaintiffs' primary theory of liability, and indeed their most lucrative one, was that Pardee breached the Commission Agreement by re-designating the land and failing to pay additional commissions on these purchases.

But they lost on this theory of liability, and that loss also meant that they lost on the overwhelming amount of their claimed damages. Under the Commission Agreement, Pardee is therefore the prevailing party. The entirety of the litigation,

² Plaintiffs attempt to convince this Court that NRCP 16.1 damages disclosures are meaningless because they are not introduced at trial. In other words, Plaintiffs believe that what was "at issue" in the litigation is solely what was introduced during trial. But this narrow minded argument is at odds with the plain language of NRCP 16.1, which expressly states that a plaintiff must disclose "a computation of any category of **damages claimed by the disclosing party** . . . including the nature and extent of the injuries suffered." NRCP 16.1(a)(1)(c) (emphasis added). Moreover, case law shows that this disclosure of a plaintiff's actual damages serves vital litigation purposes because it allows defendants to "understand the contours of their potential exposure and make informed decisions regarding settlement and discovery." *Allstate Ins. Co. v. Nassiri*, No. 2:08-CV-00369, 2010 WL 5248111 at *4 (D. Nev. Dec. 16, 2010). Thus, damages disclosures are not meaningless, but are specific descriptions of the damages that a plaintiff seeks in the litigation.

1 including theories of liability and associated claimed damages, shows that Pardee
2 achieved its main objective in this litigation. It is accordingly entitled to its attorney's
3 fees and costs pursuant to the contract.

4 C. Plaintiffs' Offer of Judgment Has No Bearing on Pardee's Claim to
5 Attorney's Fees and Costs Under the Commission Agreement.

6 Plaintiffs argue that, pursuant to NRCP 68(f), Pardee is not entitled to recover its
7 attorney's fees and costs because Plaintiffs succeeded on their Offer of Judgment.
8 Pardee has already addressed the inherent error of this argument in Pardee's
9 Opposition to Plaintiffs' Motion for Attorney's Fees and Costs. Plaintiffs assume,
10 without proving, that they served a valid and enforceable Offer of Judgment upon
11 Pardee, and that they also recovered damages exceeding that amount at trial.

12 This is plainly incorrect. First, Plaintiffs' Offer of Judgment is not valid and
13 enforceable because it was a conditional offer that violates NRCP 68. See Pardee's
14 Opposition to Plaintiffs' Motion for Attorney's Fees and Costs at 13:3-14:25. Plaintiffs'
15 Offer of Judgment required Pardee to accept conditions deeming certain land on the
16 Coyote Springs project as Option Property. This would have entitled Plaintiffs to
17 additional commissions under the Commission Agreement.³ But the Nevada Supreme
18 Court has held that a conditional offer of judgment is not valid, and it cannot therefore
19 serve as the basis either for Plaintiffs to recovery their attorney's fees or to deny Pardee
20 its attorney's fees. See *Pombo v. Nevada Apartment Ass'n*, 113 Nev. 559, 562, 938
21 P.2d 725, 727 (1997) ("An offer of judgment must be unconditional and for a definite
22 amount in order to be valid for the purposes of NRCP 68.").


23 Second, because of the \$145,500.00 Judgment, Plaintiffs did not recover more
24 than their Offer of Judgment of \$149,000.00. See Pardee's Opposition to Plaintiffs'
25 Motion for Attorney's Fees and Costs at 14:26-16:7. Plaintiffs merely assume that they
26

27 ³ This is yet another indication that Plaintiffs' case was about more than just
28 documents. Their Offer of Judgment was an attempt to extract a factual finding from
Pardee that would entitle Plaintiffs to dollars, not documents.

are entitled to pre-judgment interest, but the Court has not awarded them such interest. See *id.* Moreover, parties are only entitled to prejudgment interest on damages that they incurred by the time they filed the complaint. See *id.*; see also *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 428-29, 132 P.3d 1022, 1034-35 (2006) (noting that prejudgment interest only includes those damages already incurred and does not attach to future damages or those incurred after filing a complaint). But Plaintiffs miscalculate their prejudgment interest, claiming interest on damages that happened well after they filed their Complaint. See Pardee's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs at 14:26-16:7. This is incorrect, and Plaintiffs cannot count this prejudgment interest in claiming they beat their Offer of Judgment. In reality, the numbers are clear. Plaintiffs recovered a Judgment for \$145,500.00 while their Offer of Judgment was for \$149,000.00. They did not beat their Offer of Judgment, and so NRCP 68 does not apply at all to this case.

III. CONCLUSION

Contractual prevailing party analysis under the Commission Agreement must be a common sense consideration of what was "at issue" during the entire litigation. Although Plaintiffs attempt to reduce three years of litigation to a mere 9-day trial, in reality the trial was a mere snippet of the disagreement between the parties in this case. By looking at the entirety of what occurred in this case, including the pleadings, discovery, trial and post-trial proceedings, the Court has recognized that not only were Plaintiffs asserting two theories of breach against Pardee, but that Plaintiffs alleged different damages flowing from each of these theories. The most important theory was Plaintiffs' argument that Pardee breached the Commission Agreement by re-designating land on the project, purchasing Option Property, and then failing to pay Plaintiffs their commissions from those purchases. It was this theory that served as the basis for Plaintiffs' NRCP 16.1 damages disclosure, in which they claimed \$1.8 million in additional commissions due and owing.

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1 But it was also this theory that Pardee soundly defeated after trial, as the Court
2 recognized that Pardee did not re-designate land, did not purchase Option Property,
3 and most importantly did not owe Plaintiffs any existing or future commissions. In other
4 words, Plaintiffs not succeed on their most lucrative theory of liability. Accordingly,
5 Pardee prevailed in this litigation under the Commission Agreement, and it respectfully
6 requests that the Court award its attorney's fees and costs on this basis.


7 DATED this 30th day of June, 2016.

8 MCDONALD CARANO WILSON LLP

9
10 /s/ Rory T. Kay

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17 *Attorneys for Defendant Pardee Homes of*
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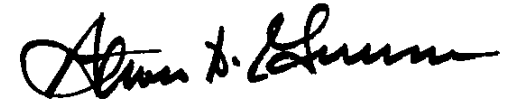
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PARDEE HOMES OF NEVADA'S
REPLY IN SUPPORT OF MOTION TO
AMEND JUDGMENT;**

AND


**OPPOSITION TO PLAINTIFFS'
COUNTERMOTION FOR ATTORNEY'S
FEES**

Date:
Time:

AND RELATED CLAIMS

I. INTRODUCTION

In purporting to distinguish a whole line of Nevada cases stating that attorney's fees are not available as special damages in routine breach-of-contract cases, Plaintiffs continue to miss the very point of special damages. These damages are not routine or expected, but instead "unusual" given the claim and thus must be specifically pleaded to avoid surprise to the opposing litigant. *See Fleet Bus. Cred. V. Krapohl Ford Lincoln Mercury Co.*, 735 N.W.2d 644, 648 (Mich. App. Ct. 2007); *see also McNaughton v.*

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1 *Charleston Charter School for Math and Science, Inc.*, 768 S.E.2d 389, 396 (S.C. Jan.
2 28, 2015) (“Where a plaintiff seeks special damages in addition to general damages,
3 he must plead and prove the special damages to avoid surprise.”); see *also* NRCP 9(g)
4 (“When items of special damage are claimed, they shall be specifically stated.”).

5 Simply put, other than Plaintiffs’ bizarre attempt to change the entire theory of
6 the case during trial, this case is anything but “unusual” or “unexpected.” Plaintiffs
7 alleged a breach of contract claim, and then breach of the duty of good faith and fair
8 dealing and equitable accounting claims both flowing directly from the contract. In all
9 respects, this case at its core was nothing more than a routine breach-of-contract case.
10 And as the Nevada Supreme held in both *Liu* and *Sandy Valley*, attorney’s fees are not
11 an element of special damages in breach of contract cases. Indeed, making attorney’s
12 fees available as special damages in breach-of-contract cases solely between two
13 parties would entirely swallow the historical rule that each party should bear its own
14 fees and costs. The Nevada Supreme Court has never embraced such a radical
15 departure from the American rule regarding attorney’s fees, and it certainly would not
16 license that approach here. The Court should amend the Judgment accordingly.

17 Moreover, though Plaintiffs again repeat their argument that they never sought
18 lost future commissions as damages during trial, such a myopic approach hardly
19 conforms to the Nevada Supreme Court’s prior statements on what is at issue during
20 the entirety of litigation. From the moment Plaintiffs filed the case, they made it clear to
21 the Court and Pardee that they were seeking lost commissions they believed Pardee
22 owed them related to the Commission Agreement. For them to argue that this was not
23 “at issue” or litigated because they failed to mention a specific dollar figure during trial is
24 duplicitous and contrary to their own damages disclosures during trial. Plaintiffs always
25 sought substantial lost commissions in this litigation through a two-step process. First,
26 through their breach claims, Plaintiffs aimed to convince the Court that Pardee
27 purchased Option Property under the Commission Agreement but “re-designated” the
28 land to conceal these commissions from Plaintiffs. Second, had the Court accepted

1 that faulty premise, Plaintiffs intended to use their accounting claim to “prove up” those
2 lost commissions.

3 But the Court properly rejected Plaintiffs’ claims of breach for failure to pay due
4 and owing commissions, and the Judgment should be amended to accurately reflect
5 Plaintiffs’ loss on this issue. The damages for the lost commissions were Plaintiffs’
6 primary litigation objective, and Pardee soundly defeated them on that issue. Absent
7 amending the Judgment to reflect the Court’s findings on these lost future commissions,
8 the Judgment does not appropriately reflect what occurred during this litigation.

9 II. LEGAL ARGUMENT

10 A. The Court’s Judgment Incorrectly Awards Certain of Plaintiffs’ Attorney’s
11 Fees as Special Damages for This Routine Breach of Contract Case.

12 In opposing Pardee’s Motion, Plaintiffs advance two primary arguments. First,
13 Plaintiffs suggest that because the Court cited *Liu v. Christopher Homes, LLC*, in its
14 Findings of Fact and Conclusions of Law (the “Findings and Conclusions”), the Court’s
15 subsequent Judgment incorporating those Findings and Conclusions did not ignore *Liu*
16 and is therefore not erroneous. See Opposition at 9:11-28. Second, Plaintiffs argue
17 that the three limited exceptions identified in *Sandy Valley Association v. Sky Ranch*
18 *Owners Association* are not exhaustive and that the case of *Works v. Kuhn*, decided
19 before *Sandy Valley*, expressly permits exceptions beyond the three identified in *Sandy*
20 *Valley*. Plaintiffs’ arguments are incorrect.

21 First, contrary to Plaintiffs’ claims, Pardee is not arguing that the Court failed to
22 review and apply *Liu* on its own. Instead, Pardee is arguing that the parties did not fully
23 brief *Liu* for the Court because the Nevada Supreme Court decided that case after the
24 trial in this matter. Consequently, Pardee argues that the Court improperly awarded
25 Plaintiffs their attorney’s fees as special damages in this case, and the correct reading
26 of *Sandy Valley* and *Liu* prohibits such an award. And as Pardee cited in its Motion,
27 amendment of a judgment is appropriate “to correct manifest legal or factual errors . . .
28 or to notify the court of an intervening change in controlling law.” See *Stevo Design*,

1 *Inc. v. SBR Marketing, Ltd.*, 919 F. Supp. 2d 1112, 1117 (D. Nev. Jan. 25, 2013); see
2 also *Allstate Insurance Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Without the
3 benefit of full briefing on *Liu*, the Court has misapplied the case, and the Judgment
4 should be amended to prevent this legal error.

5 Second, Plaintiffs' attempt to invoke *Works* to claim additional exceptions
6 beyond *Sandy Valley*'s three limited exceptions is incorrect and misleading. See 103
7 Nev. 65, 732 P.2d 1373 (1989). As the Nevada Supreme Court made clear in *Works*,
8 the plaintiff in that case sought attorney's fees under three separate theories, all of
9 which the Court rejected:

- 10 (1) As "an appropriate sanction" for NRCP 11 violations related to abuse of
11 process;
- 12 (2) As damages from the defendants "malicious prosecution of their
13 counterclaim," which would require the plaintiff to file "an additional lawsuit";
14 and
- 15 (3) As statutory fees under NRS 18.010 because plaintiff claimed to be the
16 "prevailing party" in the case.

17 103 Nev. at 67 (rejecting attorney's fees as NRCP 11 sanctions), 67-68 (rejecting
18 attorney's fees related to purported malicious prosecution) and 68 (declining to award
19 plaintiff's attorneys fees under NRS 18.010 as the prevailing party). None of these had
20 anything to do with recovering attorney's fees as special damages.

21 Moreover, although Plaintiffs are correct that the *Works* court awarded the
22 defendant attorney's fees to "defray the expenses and costs," it did not do so as special
23 damages flowing from any claim, much less one for breach of contract. Instead, as the
24 *Works* court clearly explained, it granted the attorney's fees as a sanction under NRAP
25 38 because the plaintiff's "contentions on appeal [were] so lacking in merit as to
26 constitute a frivolous appeal and a misuse of the appellate processes of [the] court." *Id.*
27 at 69; see also NRAP 38 ("If the Supreme Court or Court of Appeals determines that an
28 appeal is frivolous, it may impose monetary sanctions."). *Works* does not even mention

1 the phrase “special damages” in the opinion. Thus, contrary to Plaintiffs’ claims, *Sandy*
2 *Valley’s* citation to *Kuhn* does not create another exception whereby a party can seek
3 attorney’s fees as special damages for a breach-of-contract claim.¹

4 Moreover, Plaintiffs’ citation to *Works* is nothing more than a distraction from
5 *Sandy Valley’s* and *Liu’s* explanation of the three “limited circumstances” that are
6 exceptions to the general rule that “attorney’s fees are not recoverable absent authority
7 under statute, rule or contract.” *Liu*, 130 Nev. Adv. Op. 17, 321 P.3d at 878. Plaintiffs
8 make much of the fact that *Liu* purportedly involved a breach of contract. See
9 Opposition at 10:11-12:25. But *Liu* clearly identified that the plaintiff was seeking
10 recovery of attorney’s fees as special damages because he became “**involved in a**
11 **third-party legal dispute as a result of a breach of contract** . . . and fees incurred in
12 defending the third-party action could be damages in the proceeding between the
13 plaintiff and the defendant who breached the contract.” 130 Nev. Adv. Op. 17, 321
14 P.2d at 878 (emphasis added). In other words, *Liu* recognizes the third-party exception
15 that *Sandy Valley* discussed: when a party breaches a contract in such a way as to
16 require the non-breaching party to become involved in third-party litigation, the non-
17 breaching party can seek recovery of all attorney’s fees incurred in the third-party
18 litigation. Indeed, Plaintiffs quote this third-party language in their Opposition: “[T]he *Liu*
19 court noted that there was no retreat from *Sandy Valley’s* conclusion that a party to a
20 contract may recover, as special damages, the attorney’s fees that arise from another
21 party’s breach of contract when the breach causes the former party **to incur attorney’s**

22
23 ¹ Indeed, Plaintiffs’ claim that the *Sandy Valley* court “cited *Works* with approval” is
24 an outright misrepresentation. *Sandy Valley* mentions *Works* only once, in footnote 7 of
25 the opinion, in which the Nevada Supreme Court stated that “the following cases
26 [including *Works*] involved issues relating to attorney’s fees as an element of damages.”
27 That statement is not approval, but mere recognition that the plaintiff in *Works* sought
28 attorney’s fees as purported damages for the defendants’ malicious prosecution of their
counterclaim. And as discussed above, not only did the *Works* court reject the
plaintiff’s attempt to recover those attorney’s fees, but it never discussed attorney’s fees
as special damages because the plaintiff in that case never actually asserted a claim
for malicious prosecution. 103 Nev. at 67-68. *Sandy Valley* does not approve of *Works*
or otherwise add exceptions to the rule that attorney’s fees are not recoverable in
routine breach-of-contract actions.

1 **fees in a legal dispute brought by a third party.”** Opposition at 12:12-15. The
2 recovery of attorney’s fees as special damages comes not from a routine breach of
3 contract, but rather from a breach that forces one of the contracting parties to defend
4 itself in third-party litigation.

5 But there is no third-party litigation in this lawsuit that would entitle Plaintiffs to
6 their attorney’s fees from Pardee’s breach of contract, and so the exception identified in
7 *Liu* has no application here. This is precisely why the Court’s citation to *Liu* in justifying
8 awarding Plaintiffs’ certain attorney’s fees as special damages is incorrect and must be
9 amended. Although the Court found that Pardee breached the Commission
10 Agreement, Pardee’s breach did not force Plaintiffs to defend themselves in third-party
11 litigation where they incurred additional attorney’s fees. This is a much different
12 circumstance than the *Liu* plaintiff, who was forced to defend himself in third-party
13 litigation because of the defendant’s breach. Because Plaintiffs did not have to defend
14 themselves in third-party litigation, they are not entitled to recover any attorney’s fees
15 as special damages as the *Liu* plaintiff did.

16 Any other result would completely swallow the rule identified by the *Liu* court—
17 that attorney’s fees are not recoverable absent authority under statute, rule or contract.
18 If a non-breaching party could recover its attorney’s fees incurred in asserting a breach-
19 of-contract claim against the breaching party, then the rule requiring attorney’s fees to
20 be justified by statute, rule or contract could not exist. The non-breaching plaintiff could
21 simply recover the attorney’s fees as special damages flowing from the breach, thus not
22 requiring a “statute, rule or contract” justifying such fees. The Colorado Supreme Court
23 dealt with precisely this problem in evaluating whether attorney’s fees were special
24 damages flowing from a routine breach of contract:

25 Attorney fees and costs necessarily are incurred as part of the defense
26 based on a breach of a [written agreement] but they are not the subject of
27 the suit. Smallwood’s position in this respect is no different from that of
28 any other defendant who prevails in a lawsuit and does not have a
successful counterclaim for damages. Unless we are prepared to
abandon the American rule and award attorney fees and costs to the

prevailing party, it is difficult to construct any principled way to contain the exception to the American rule which would be created by characterizing attorney fees as the subject of the lawsuit.”

Bunnett v. Smallwood, 793 P.2d 157, 161 (1990). Indeed, the *Bunnett* court was even more direct: “In the absence of a statute or private contract to the contrary, attorney fees and costs are generally not recoverable by the prevailing party in a breach of contract case. Requiring each party in such cases to pay its own legal expenses is based on the well-established American rule.” *Id.* at 160 (citing 1 M. Derfner & A. Wolfe, *Court Awarded Attorney Fees* ¶ 1.01 (1990)).

Abandoning the American rule is exactly what the Court did in this case, and it is contrary to *Sandy Valley* and *Liu*.² The Court should accordingly amend the Judgment to strike out its award of certain of Plaintiffs’ attorney’s fees as special damages.

B. The Court Incorrectly Omitted Pardee’s Successful Defense Against Plaintiffs’ Predominant Theory Regarding Lost Commissions.

Plaintiffs argue that the Court’s Judgment, which does not include language indicating Pardee defeated Plaintiffs’ claims to additional commissions, is accurate because Plaintiffs never claimed any entitlement to additional commissions. Opposition at 15:23-25 (“The Court did not err in failing to include . . . that Pardee had ‘succeeded’

² The Court’s holding is also contrary to other states that recognize attorney’s fees incurred in prosecuting a breach-of-contract claim against the breaching party are not “special damages.” See, e.g., *American List Corp. v. U.S. News and World Report, Inc.*, 549 N.E.2d 1161, 1164 (“General damages are those which are the natural and probable consequence of the breach while special damages are extraordinary in that they do not so directly flow for the breach.”); see also *Lewis Jorge Const. Mgmt., Inc. v. Pomona Unified Sch. Dist.*, 102 P.3d 257, 261-62 (Cal. 2004) (“Unlike general damages, special damages are those losses that do not arise directly and inevitably from any similar breach of any similar agreement. Instead, they are secondary or derivative losses arising from circumstances that are particular to the contract or to the parties.”).

Attorney’s fees incurred because of a breach of contract arise “directly and inevitably” from that breach, and are in no way “special” or “unique” to the circumstances of the contracting parties. The Nevada Supreme Court affirmed as much in *Sandy Valley*: “Because parties always know that lawsuits are possible when disputes arise, the mere fact that a party was forced to file or defend a lawsuit is insufficient to support an award of attorney’s fees as damages.” 117 Nev. at 957, 35 P.3d at 969.

1 in defending against Plaintiffs' 'claim' for \$1.8 million in lost commissions, as no such
2 'claim' has ever existed."). The crux of Plaintiffs argument is that Pardee "did not find it
3 necessary to admit any of [Plaintiffs'] NRCP 16.1 Disclosures . . . into evidence at the
4 time of trial." *Id.* at 17:18-21. Thus, Plaintiffs claim that "\$1.8 million was never an
5 issue in this matter." *Id.* at 17:23-25. Understandably, but incorrectly, Plaintiffs attempt
6 to narrow the scope of what was "at issue" in this litigation only to what occurred at trial.

7 The Nevada Rules of Civil Procedure, however, and any common sense notion
8 of what is "at issue" during litigation necessarily includes all stages of the litigation from
9 the filing of the pleading until the final judgment entered by the trial court. Indeed, one
10 of the very first things that any Nevada plaintiff does after filing his or her complaint is to
11 make mandatory damages disclosures pursuant to NRCP 16.1. This disclosure, by its
12 plain terms, requires the plaintiff to disclose "[a] **computation of** any category of
13 **damages claimed by the disclosing party** . . . including materials bearing on the
14 **nature and extent of injuries suffered.**" NRCP 16.1(a)(1)(c) (emphasis added). In
15 fact, Nevada courts have recognized that these damages disclosures serve a vital
16 purpose in litigation, as they "enable the defendants to understand the contours of their
17 potential exposure and make informed decisions regarding settlement and discovery."
18 *Allstate Ins. Co. v. Nassiri*, No. 2:08-CV-00369, 2010 WL 5248111 at *4 (D. Nev. Dec.
19 16, 2010); *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 593 (D. Nev.
20 2011) (noting a damages disclosure is necessary because "the plaintiff cannot shift to
21 the defendant the burden of attempting to determine the amount of the plaintiff's alleged
22 damages."). NRCP 16.1 damages disclosures are not meaningless or unimportant as
23 Plaintiffs claim, but instead a defendant's first indication of the money damages at issue
24 in the litigation.³ And Plaintiffs cannot deny that they served numerous NRCP 16.1

26 ³ Plaintiffs' basic position is that the figures disclosed in NRCP 16.1 damages
27 disclosures are of no concern to defendants because they occur before trial and have
28 no bearing on what a plaintiff ultimately claims at trial. But the cases cited above show
not only that a plaintiff must disclose the damages they "claim" in the lawsuit, but also
that the purpose of NRCP 16.1 disclosures is to prevent "gamesmanship" in

1 damages disclosures indicating they were “claiming” \$1.8 million in lost commissions,
2 putting that number squarely at issue in the litigation. Just as *Nassiri* explains, it was
3 this figure that determined how Pardee treated both discovery and settlement in this
4 case.

5 Moreover, even Plaintiffs’ attempt to narrow what is “at issue” in litigation to only
6 what happens at trial, and not what happens before it in discovery, rings hollow. As
7 Pardee’s Motion pointed out, Plaintiffs served NRCP 16.1 damages disclosures **during**
8 **trial** in which they claimed they were entitled to \$1.8 million in lost commissions. Thus,
9 it is contradictory at best and disingenuous at worst for Plaintiffs to argue “\$1.8 million
10 was never an issue in this matter.”⁴ Additionally, the Motion outlines numerous times
11 **during trial** where Plaintiffs suggested they were entitled to additional commissions,
12 including opening and closing statements by counsel, testimony by both Wolfram and
13 Wilkes, and third-party testimony by Harvey Whittemore in which he admitted he
14 thought the case was about additional commissions based on the evidence and
15 proceedings both before and at trial. See Motion at 6:5-24. For Plaintiffs to claim that
16 additional lost commissions were “never an issue” in this case stands in stark contrast
17 to their actions throughout the entirety of the litigation.

18 Taking a common sense view of the case, including all of the damages that
19 Plaintiffs claimed throughout discovery and into trial, it is clear that additional lost
20 commissions were “at issue” in the litigation and that Pardee prevailed on Plaintiffs’
21

22 sandbagging claimed damages until the eve of trial. See *Jackson*, 278 F.R.D. at 592
23 (“The [damages] disclosure requirement should be applied with common sense in light
24 of the principles of Rule 1, keeping in mind the salutary purposes that the rule is
25 intended to accomplish. The litigants should not indulge in gamesmanship with respect
26 to the disclosure obligations.”). In other words, the NRCP 16.1 damages disclosure is
27 intended to put everything on the table so that a defendant knows what damages
28 Plaintiff is claiming.

⁴ Plaintiffs’ argument that Pardee never introduced Plaintiffs’ own NRCP 16.1
damages disclosures at trial is also curious. Plaintiffs, and not Pardee, bore the burden
of proving their damages. See *Calloway v. City of Reno*, 116 Nev. 250, 993 P.3d 1259
(2000) (noting a plaintiff must prove he sustained damages as a result of a defendant’s
breach). Thus it was not Pardee’s responsibility to enter that evidence for Plaintiffs,
and it would make no strategic sense for Pardee to do so.

claims to such commissions. The Judgment, which must reflect all of the issues presented in the case, should be amended to accurately reflect Pardee's successful defense of the majority of Plaintiffs' claimed damages. See *Lee v. GNLV Corp.*, 116 Nev. 424, 427 996 P.2d 416, 418 (2000) ("[A] final judgment is one that disposes of all of the issues presented in the case, and leaves nothing for the future consideration of the court, except post-judgment issues such as attorney's fees and costs.").⁵

C. Plaintiffs' Countermotion Is Meritless.

Plaintiffs suggest that the Court should sanction Pardee and award Plaintiffs their attorney's fees for filing the Opposition because the 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 previous written court filings" by Pardee. Opposition at 20:9-12. Of course, Plaintiffs ignore that those four filings were before the Nevada Supreme Court issued *Liu*, and that a motion to amend is appropriate to correct "manifest legal or factual errors . . . or to notify the court of an intervening change in controlling law." *Stevo Design, Inc.*, 919 F. Supp. 2d at 1117; see also *Herron*, 634 F.3d at 1111. To avoid any possible appeal, Pardee has an obligation as an officer of the Court to diligently attempt to correct legal errors and inform the Court of changes in controlling law. That is precisely what Pardee has done through the Motion, as the *Liu* decision creates questions as to the validity of the Court's Judgment.

Moreover, even setting aside the issue of the attorney's fees as special damages, Pardee has not previously moved the Court to include its victory on Plaintiffs' claim to additional lost commissions in the Judgment. Although Pardee submitted a proposed Judgment including such language, the Court struck it out. Pardee believes this is a factual error because the Judgment does not accurately reflect "all of the

⁵ The *Lee* court also noted that a judgment "adjudicate[s] the rights and liabilities of all parties and dispose[s] of all issues presented in the case." 116 Nev. at 427-28, 996 P.2d at 418. This indication of "liabilities" necessarily includes not only the formulaic causes of action involved in the litigation, but also the amounts of money, or damages, that were at issue as well.

issues presented in the case.” *Lee*, 116 Nev. at 427-28, 996 P.2d at 418. To correct this error, Pardee is well within its procedural rights under NRCP 52(b) and 59(e) to move for amendment of the Judgment.

III. CONCLUSION.

As discussed above, the Court’s Judgment does not comply with *Sandy Valley* and *Liu* and accordingly must be amended. Attorney’s fees incurred in prosecuting a breach of contract case between the breaching party and the non-breaching party are not special damages. They are not unique, they are not unusual, and they are not recoverable as an exception to the American rule requiring each party to bear its own attorney’s fees and costs.

Moreover, although Plaintiffs argue they succeeded on their breach of contract “claim” (and thereby ignore that they also lost on their primary theory of “liability” for the same claim), such an approach is tone deaf to the realities of litigation. What was “at issue” in any case is not just a claim of liability, but also the damages that flowed from that purported liability. And those damages are exactly what Plaintiffs described in their mandatory NRCP 16.1 damages disclosure: millions of dollars for purportedly lost commissions. With the Court expressly finding that Pardee prevailed in defending against these purported damages, the Judgment should accurately reflect as much. Because the Court struck such language from the Judgment, it should be amended to correctly reflect what occurred in this case.


DATED this 30th day of June, 2016.

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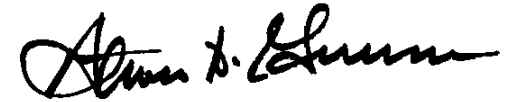
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**PARDEE'S REPLY IN SUPPORT OF
MOTION TO RETAX PLAINTIFFS'
MEMORANDUM OF COSTS FILED
MAY 23, 2016**

AND RELATED CLAIMS

I. INTRODUCTION

In support of their claimed costs, Plaintiffs never actually rebut any of the arguments in Pardee's Motion to Retax Plaintiffs' Costs. Pardee's main arguments were that Plaintiffs' costs were inflated and did not conform to NRS 18.005, that Plaintiffs' "supporting" documentation was unclear or had no evidentiary value to support the costs, and that in any event, Plaintiffs were not the prevailing party in this litigation such that they can recover costs.¹

¹ Which party prevailed in this matter has been the focus of many of the parties' post-judgment filings, including each party's motion for attorney's fees and costs. Accordingly, Pardee will not repeat these arguments in this Reply, but instead incorporates the arguments from its other post-judgment filings and directs the Court to the reasoning therein.

1 In response, Plaintiffs still attempt to recover for costs that do not conform to
2 NRS 18.005. Perhaps the most egregious example is Plaintiffs' continued claim for the
3 attorney's fees of John Muije, an attorney who Plaintiffs hired to execute on the Court's
4 previous judgment that Plaintiffs moved to strike. Indeed, the Court found that this
5 execution was improper and violated various statutory notice requirements, and
6 accordingly ordered the Plaintiffs to expunge the recorded judgment and immediately
7 cease collection efforts related to it. Incredulously, Plaintiffs still claim to this day that
8 they are entitled to Muije's fees as a recoverable cost for that illegal execution.

9 There are also documentary flaws in Plaintiffs' supporting documentation, not the
10 least of which is that many of the line item entries give no description as to why
11 Plaintiffs incurred the cost. Without these descriptions, neither the Court nor Pardee
12 can evaluate whether these costs were reasonable and necessary. And contrary to
13 Plaintiffs' self-serving claims, *Cadle Co.* does not permit a party to justify its costs so
14 long as it provides an affidavit of counsel stating they were reasonable, necessary and
15 actually incurred. Instead, *Cadle Co.* stands for the basic proposition that a party must
16 support its costs with actual documentary evidence showing it is entitled to recover
17 these costs. Plaintiffs' counsel's representations are not sufficient, and Plaintiffs'
18 nondescriptive documentary evidence does not meet that standard either. In sum,
19 Plaintiffs have not met their burden under *Cadle Co.* and the Court should therefore
20 deny them costs. Moreover, Plaintiffs are not the prevailing party in this litigation and
21 cannot recover costs on that basis.

22 II. Plaintiffs' Claimed Costs Remain Nonconforming and Unsupported By
23 Documentary Evidence.

24 1. NRS 18.005 prohibits many of Plaintiffs' claimed costs.

25 In the Motion, Pardee explained that Plaintiffs were seeking a number of costs
26 that do not conform to NRS 18.005's list of recoverable costs, including their claims to
27 Muije's attorney's fees as costs, transcripts, service of process, and expert witnesses.
28 See Motion at 5:27-7:8.

1 While Plaintiffs reward themselves for “excellence in bookkeeping and record-
2 keeping,” they never actually explain to the Court why the costs identified above are
3 recoverable under NRS 18.005. They still claim almost \$20,000.00 in costs for
4 “transcripts” despite NRS 18.005 expressly allowing only for “reporters’ fees **for**
5 **depositions**, including a reporter’s fee for **one copy of each deposition.**” NRS
6 18.005(2) (emphasis added). Instead of limiting themselves to seeking recovery of
7 copies related to depositions, Plaintiffs admit that they are actually seeking far more,
8 including “copies of hearing transcripts from March 2013 through trial.” Opposition at
9 11:5-6. But NRS 18.005 does not allow them to recover transcript costs for hearings,
10 and their attempts to do so despite clear statutory language are inappropriate.

11 Moreover, Plaintiffs still try to recover \$12,651.81 for Muije’s attorney’s fees as
12 well as \$613.90 for “expert fees” related to Muije’s collection efforts. They suggest that
13 NRS 18.005(17) is a catch-all provision allowing parties to recover “any other
14 reasonable and necessary expense incurred in connection with the action.” But Muije’s
15 fees were neither reasonable nor necessary. Indeed, not only did Plaintiffs challenge
16 the previous judgment upon which Muije was trying to collect, but as the Motion
17 describes, the Court found that Muije’s work expressly violated statutory notice
18 provisions and was premature until the Court could rule on all post-judgment motions.
19 See Motion at 6:2-13. In other words, Plaintiffs suggest plainly illegal work on their
20 behalf is “reasonable and necessary.” Such a contention is unbelievable. They are not
21 entitled to recover Muije’s attorney’s fees as a cost under NRS 18.005’s catch-all
22 provision.

23 Finally, Plaintiffs concede that they are seeking recovery for “Fax Transaction
24 Services” and “service of process” under the same catch-all provision that they use to
25 impermissibly seek Muije’s fees. Initially, NRS 18.005 specifically enumerates
26 recoverable costs for communications and administrative office functions, including
27 telecopies, photocopies, telephone calls and postage. That the statute expressly
28 excludes “Fax Transaction Services” indicates that the legislature did not consider them

1 a recoverable cost. Plaintiff cannot force them into a catch-all provision. Additionally,
2 Plaintiffs claim emergency or “rush” subpoenas were necessary to secure trial
3 testimony from Klif Andrews, Chelsea Peltier, Jerry State, Kenneth Hanifin and James
4 Rizzi in December 2013. This lacks credibility on its face. The Court had already heard
5 a portion of the trial in October 2013, and both parties knew quite clearly when the
6 Court was going to hear the second portion of the trial. No rush service was necessary,
7 and Plaintiffs cannot recover artificially inflated costs for it. More damning, though, is
8 that Plaintiffs never actually subpoenaed the individuals they identify, and Andrews, a
9 Pardee executive, appeared on Pardee’s behalf during its case-in-chief. There was no
10 justification for Plaintiffs to subpoena him, much less in emergency fashion. This is yet
11 another example of Plaintiffs inflating their costs with no factual or legal basis to do so.
12 The Court should not award them for such deleterious behavior.

13 2. Plaintiffs’ Documentary Evidence Is Insufficient Under *Cadle Co.*

14 Pardee also indicated in the Motion that many of Plaintiffs’ line-item entries on
15 their computer-generated list were so vague that they do not adequately describe the
16 cost item, much less the necessity for incurring it or whether such a cost was
17 reasonable. See Motion at 7:26-8:1. In so arguing, Pardee identified a number of copy
18 costs generically labeled “copies of Bates stamping,” “copies of Bates,” “copies of
19 copy,” “copies of (sic),” and “copies of copy trial exhibits.” *Id.* at 8:1-8.

20 In response, Plaintiffs’ only argument is “trust us” because we provided a
21 declaration from our counsel about these costs. See, e.g., Opposition at 7:13-27
22 (“*Cadle* states unequivocally that the Courts have wide, though not unlimited, discretion
23 to award costs to prevailing parties.”). But this non-evidentiary approach is exactly
24 what *Cadle Co.* prohibits. *Cadle Co.* requires a party to put forth evidence specifically
25 demonstrating that each cost was necessary and reasonably incurred. See 131 Nev.
26 Adv. Op. 15, 345 P.3d at 1244 (noting a party must “demonstrate how such fees were
27 necessary to and incurred in the present action.”). Simply put, for all the reasons
28 identified in the Motion and above, Plaintiffs’ line item entries are so vague and non-

descriptive that they cannot justify an award of costs in this case pursuant to *Cadle Co.* It is not Pardee's or the Court's job to accurately describe each cost for Plaintiffs or guess as to the reason why the cost was incurred. Instead, it is Plaintiffs' job to provide an accurate, complete, and informative description for each cost they claim. They have not done so in this matter.

III. CONCLUSION


Litigants in Nevada are not entitled to recover all of their costs. Rather they can recover only those costs expressly conforming to NRS 18.005 and for which they provide suitable documentary evidence proving the necessity and reasonableness of each cost. In this matter, Plaintiffs have not made either showing. They have tried to recover costs outside of the parameters of NRS 18.005, and they have provided vague, non-descriptive evidence purporting to support these costs. Consequently, under *Cadle Co.*, there is only one conclusion. Plaintiffs are not entitled to recover their costs and so McDonald Carano respectfully requests that the Court grant its Motion and deny Plaintiffs' costs.

DATED this 1st day of July, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 1st day of July, 2016, I e-served and e-filed a true and correct copy of the foregoing **PARDEE'S REPLY IN SUPPORT OF MOTION TO RETAX PLAINTIFFS' MEMORANDUM OF COSTS FILED MAY 23, 2016** via Wiznet, as utilized in the Eighth Judicial District in Clark County, Nevada, on the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

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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 82 OF 88

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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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08/10/2015	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Reconsideration of the Order on Pardee's Emergency Motion to Stay Execution of Judgment	67	JA010582- JA010669
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion for Attorney's Fees and Costs	82	JA013171- JA013182
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion to Amend Judgment; and Opposition to Plaintiffs' Countermotion for Attorney's Fees	82	JA013183- JA013196
07/01/2016	Pardee Homes of Nevada's Reply in Support of Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	82	JA013197- JA013204
03/23/2016	Pardee Homes of Nevada's Response to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011214- JA011270
08/25/2014	Pardee Homes of Nevada's Supplemental Brief Regarding Future Accounting	49	JA007699- JA007707
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05/10/2017	Pardee's Reply in Support of Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014069- JA014071
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07/08/2015	Pardee's Supplemental Briefing in Support of its Emergency Motion to Stay Execution of Judgment	62	JA009711- JA009733
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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
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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
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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
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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
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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
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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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08/17/2015	Reply Points and Authorities in Support of Motion for Reconsideration	67	JA010670- JA010678
11/08/2011	Scheduling Order	1	JA000028- JA000030
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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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08/27/2012	Transcript re Hearing	1	JA000049- JA000050
04/26/2013	Transcript re Hearing	16	JA002527- JA002626
07/09/2013	Transcript re Hearing	17	JA002688- JA002723
09/23/2013	Transcript re Hearing	18	JA002875- JA002987
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01/15/2016	Transcript re Hearing	70	JA010962- JA011167
08/15/2016	Transcript re Hearing - August 15, 2016	86	JA013445- JA013565
12/06/2012	Transcript re Status Check	13	JA002066- JA002080
07/23/2013	Transcript re Status Check	17	JA002809- JA002814
10/23/2013	Transcript re Trial	22	JA003213- JA003403

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10/23/2013	Trial Exhibit A	23	JA003404- JA003544
10/23/2013	Trial Exhibit B – filed under seal	23	JA003545- JA003625
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10/23/2013	Trial Exhibit W	27	JA004095- JA004096
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10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
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12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
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10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – filed under seal	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – filed under seal	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – filed under seal	27	JA004313- JA004319
10/23/2013	Trial Exhibit AA	27	JA004101- JA004102
10/23/2013	Trial Exhibit BB	27	JA004103
10/23/2013	Trial Exhibit CC	27	JA004104
10/23/2013	Trial Exhibit DD	27	JA004105
10/23/2013	Trial Exhibit EE	27	JA004106- JA004113
10/23/2013	Trial Exhibit FF	27	JA004114- JA004118
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10/23/2013	Trial Exhibit NN	27	JA004170- JA004174
10/23/2013	Trial Exhibit OO	27	JA004175- JA004183
10/23/2013	Trial Exhibit PP	27	JA004184- JA004240
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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
10/23/2013	Trial Exhibit UU	27	JA004263- JA004288
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12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935

Dated this 28th day of February, 2018.

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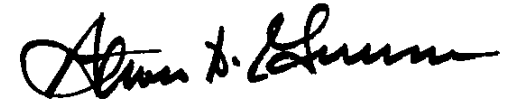
Attorneys for Appellant

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

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

10 JAMES WOLFRAM, WALT WILKES,

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

11 Plaintiffs,

12 vs.

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

13
14 PARDEE HOMES OF NEVADA,

Hearing Date: July 11, 2016
Hearing Time: [In Chambers]

15 Defendant.

16
17 AND RELATED CLAIMS
18

19 **I. INTRODUCTION**

20 Beyond continuing to claim prevailing party status when they lost on the case's
21 most substantial issue, Plaintiffs' Motion for Attorney's Fees and Costs (the "Motion")
22 suffers from two even more glaring errors. First, after the Court already awarded
23 Plaintiffs \$135,000 in attorney's fees as special damages, Plaintiffs attempt to double
24 dip by seeking recovery of some of these same fees again by including them in their
25 current Motion. The Nevada Supreme Court has held that such double dipping is highly
26 inappropriate, and Plaintiffs' attempt to sneak these duplicative fees by the Court casts
27 substantial doubt on the accuracy of the remainder of their claimed fees. Plaintiffs
28

1 cannot double recover, and the Court should deny their Motion in its entirety for
2 attempting such egregious behavior.

3 Second, Plaintiffs try to recover on their invalid Offer of Judgment. Specifically,
4 NRCP 68 and related case law state that an offer of judgment to a single defendant is
5 valid only if unconditional. But in this matter, Plaintiffs' Offer was conditioned on
6 Pardee accepting factual findings that Plaintiffs were due additional commissions well
7 beyond the mere value of the Offer. Plaintiffs' Offer is accordingly invalid and cannot
8 support their claim to attorney's fees and costs.

9 Finally, despite continually repeating it, Plaintiffs did not prevail in this matter so
10 as to be the "prevailing party" under the parties' Commission Agreement in this case.
11 The most substantial issue in this litigation was always Plaintiffs' claims to additional
12 commissions that Pardee purportedly "robbed" them of by re-classifying land on the
13 Coyote Springs project. The entire record shows that Plaintiffs consistently and
14 continually claimed lost commissions from before they filed the lawsuit up until its
15 conclusion. Specifically, Plaintiffs claimed they were owed additional commission
16 payments in the following ways, all of which are verifiable by specific reference to the
17 record:

- 18 • Pre-litigation demand letters from Plaintiffs' counsel to Pardee;
 - 19 • Nine different NRCP 16.1 damages disclosures claiming \$1.9 million in
20 damages;
 - 21 • Plaintiffs' pre-trial brief;
 - 22 • Plaintiffs' opening statement;
 - 23 • Plaintiffs' direct and cross-examinations of witnesses;
 - 24 • Plaintiffs' closing argument;
 - 25 • Plaintiffs' proposed findings of fact and conclusions of law; and
 - 26 • Plaintiffs' recent Motion to Strike Judgment.
- 27
28

1 In each of these, Plaintiffs' core theory was that Pardee had purchased Option Property
2 that translated into additional commissions due under subparagraph (iii) of the
3 Commission Agreement, and that Pardee had re-designated certain land on the Coyote
4 Springs Project. Plaintiffs claimed that when Pardee purchased Option Property and
5 re-designated the land, Pardee owed additional commissions to Plaintiffs under
6 subparagraph (iii) and failed to pay the same. Through their accounting claim, Plaintiffs
7 argued that Pardee failed to provide information about the Project, but only because
8 Plaintiffs believed such information was needed to calculate their purportedly unpaid
9 commissions. Thus, Plaintiffs' sole objective in the litigation was always to recover
10 additional commissions, and the information Plaintiffs demanded was simply the
11 specific information to calculate those commissions.

12 When the Court rejected Plaintiffs' contentions of Option Property purchases or
13 re-designation, and therefore Plaintiffs' claims to any additional commissions in its
14 Findings of Fact and Conclusions of Law, the Court also ended any credible argument
15 that the Plaintiffs were the prevailing party in this litigation. Plaintiffs lost on the most
16 substantial and important issue in the case, and they failed to achieve their primary
17 litigation objective. Under Nevada law they are not entitled to their attorney's fees and
18 costs pursuant to the attorney fee provision found in the Commission Agreement.

19 Under any of Plaintiffs' proffered theories, they are not entitled to recover their
20 attorney's fees and costs in this matter, and the Court should deny their Motion in its
21 entirety.

22 II. ARGUMENT.

23 A. Legal Standard For Recovery of Attorney's Fees.

24 1. Recovery of Fees Pursuant to a Contract.

25 NRCP 54 permits a party to claim attorney's fees by motion, based on a "statute,
26 rule or other grounds entitling the movant to the award." NRCP 54(d)(2). A district
27 court may only award attorney's fees if authorized to do so by statute, rule or contract,
28 and parties "are free to provide for attorney fees by express contractual provision." See

1 *Davis v. Beling*, 128 Nev. Adv. Op. 28, 278 P. 3d 501, 515 (2012). The goal in
2 “interpreting an attorney fees provision, as with all contracts, is to discern the intent of
3 the contracting parties.” *Id.* The Court should be mindful that contractual provisions for
4 fees and costs “provide an incentive to settle and reduce litigation” rather than pressing
5 forward with trumped up claims or damages. *Dimick v. Dimick*, 112 Nev. 402, 405, 915
6 P.2d 254, 256 (1996). In this matter, the parties’ agreement calls for attorney’s fees for
7 the “prevailing party” in “an action to enforce its rights under this Agreement.”

8 The term “prevailing party” is “broadly construed” to encompass both plaintiffs
9 and defendants. *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200
10 (2005); see also *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807, 810 (Fla. 1992).
11 Because the term “prevailing party” is a “legal term of art,” the Nevada Supreme Court
12 has never provided an exact definition of prevailing party in the contractual context.
13 *Cleverley v. Ballantyne*, No. 2:12-CV-00444-GMN, 2014 WL 317775, at *2 (D. Nev.
14 Jan. 28, 2014) (noting “Nevada case law does not define prevailing party in the
15 contractual context”). Nevertheless, it has explained that, with respect to contractual
16 attorney’s fees provisions, a party prevails if it “succeeds on any substantial aspect of
17 the case.” *Davis*, 128 Nev. Adv. Op. 28, 278 P. 3d at 515; see also *Moritz*, 604 So. 2d
18 at 810 (“[T]he party prevailing on the significant issue in the litigation is that party that
19 should be considered the prevailing party for attorney’s fees.”).

20 *Davis and Friedman v. Friedman* are particularly instructive regarding this
21 analysis. In *Davis*, homeowners sought to recover attorney’s fees against their former
22 real estate agent for successfully defending against the agent’s claims of breach of the
23 listing agreement between the parties. See 128 Nev. Adv. Op. 28, 278 P. 3d at 506. In
24 writing for the Nevada Supreme Court, Justice Saitta noted that the matter was
25 straightforward:

26 [B]ecause the [homeowners] successfully defended against [the agent’s]
27 breach of contract action[], pursuant to the clear language of the[]
28 agreements, the [homeowners] were entitled to recover reasonable
attorney’s fees incurred in the defense of those particular claims.

1 *Id.* at 515. Justice Saitta affirmed these attorney's fees and costs even though the
2 agent had recovered \$115,455 against the homeowners on a related unjust enrichment
3 cause of action. *Id.* at 507. She did so because under a common sense meaning of
4 "prevailing party," the homeowners won on the major issue of the case even though
5 they lost on another secondary issue.

6 *Friedman v. Friedman* also embraces the pragmatic principle of awarding
7 contractual attorney's fees to a defendant who successfully defeats a plaintiff's
8 predominant legal theory. *Friedman* was a divorce case in which the district court
9 heard numerous issues related to the divorcing parties' assets. See 2012 WL 6681933
10 (Nev. Dec. 20, 2012) (unpublished). The plaintiff filed a motion to compel against his
11 former wife, arguing that she had failed to comply with the terms of the parties' marital
12 settlement agreement and asking for his attorney's fees pursuant to that agreement.
13 See *id.* at * 1. The defendant filed a motion for summary judgment in which she argued
14 her former husband's claims regarding compliance were meritless. After hearing the
15 motions, the district court ruled in the defendant's favor and awarded her \$2,500 in
16 attorney's fees pursuant to the contract for successfully defending against the plaintiff's
17 claims. In affirming the award of attorney's fees to the defendant as the contractual
18 prevailing party, the Nevada Supreme Court explained that the term "prevailing party" is
19 not limited to the individual initiating the suit and that the former wife prevailed because
20 she successfully defended against the plaintiff's claims "with regard to the majority of
21 the issues that the parties litigated." *Id.* at *6. Accordingly, the fact that the district
22 court found the wife breached "one provision" of the agreement was immaterial
23 because, as a practical matter, she won the majority of the contested issues. *Id.* at *2.

24 Numerous other jurisdictions have considered and ruled on how to define a
25 prevailing party in contractual disputes involving an attorney's fees provision. For
26 example, California's case law is the most robust on this issue, and California courts
27 note that a prevailing party is the one that "most accomplish[es] its litigation objective."
28 *Maynard v. BTI Grp., Inc.*, 216 Cal. App. 4th 984, 992, 157 Cal. Rptr. 3d 148, 153

1 (2013). Thus the California Supreme Court explained that the analysis was a pragmatic
2 one:

3 We agree that in determining litigation success, courts should respect
4 substance rather than form, and to this extent should be guided by
5 equitable considerations. For example, a party who is denied direct relief
6 on a claim may nonetheless be found to be a prevailing party if it is clear
7 that the party has otherwise achieved its main litigation objection.

8 *Hsu v. Abbara*, 9 Cal. 4th 863, 877, 891 P.2d 804, 813 (1995). That court later
9 explained that if a contract does not expressly define “prevailing party,” the court must
10 “base its attorney fees decision on a pragmatic definition of the extent to which each
11 party has realized its litigation objectives, whether by judgment, settlement or
12 otherwise.” *Santisas v. Goodin*, 17 Cal. 4th 599, 622, 951 P.2d 399, 414 (1998).

13 The Ninth Circuit has also recognized this objective-based approach, noting that
14 prevailing party analysis must be done within the “common sense meaning” of the
15 phrase and that successfully defending against a plaintiff’s argument, even by
16 technicality on voluntary dismissal, makes a litigant a prevailing party under a
17 contractual attorney’s fees provision. See, e.g., *Anderson v. Melwani*, 179 F.3d 763,
18 766 (9th Cir. 1999). In applying California law on contractual prevailing parties, the
19 Ninth Circuit has also held that a party’s failure to recover a majority of its requested
20 damages from a purported breach of contract means that it cannot be the prevailing
21 party:

22 While a plaintiff who obtains all relief requested on the only contract claim
23 in the action must be regarded as the party prevailing on the contract for
24 purposes of attorney’s fees . . . a court could also determine that a party is
25 not prevailing when it receives only a part of the relief sought.

26 *Berkla v. Corel Corp.*, 302 F.3d 909, 920 (9th Cir. 2002). In fact, although the plaintiff in
27 *Berkla* recovered \$23,502 in compensatory damages on its breach-of-contract claim,
28 the Ninth Circuit determined the plaintiff was not the prevailing party because it had
sought \$1.2 million in damages for the breach, and thus the defendant had successfully
prevailed because plaintiff only recovered “less than 3% of what he affirmatively sought

1 before the jury at trial.” *Id.* at 919-20. Because the plaintiff’s pre-litigation “demands
2 and objectives clearly involved a substantial financial payoff,” which the defendant
3 successfully defeated at trial, the “equitable considerations” in the case prevented
4 plaintiff from being the prevailing party. *Id.* at 920.

5 In sum, numerous jurisdictions, including Nevada, embrace an equitable,
6 common sense approach to evaluating the prevailing party. Under such an approach,
7 the focus is appropriately on which party achieved most of the litigation objectives it had
8 before trial.

9 2. Recovery of Fees Pursuant to an Offer of Judgment.

10 “An offer of judgment must be unconditional and for a definite amount in order to
11 be valid for the purposes of NRCP 68.” *Pombo v. Nevada Apartment Ass’n*, 113 Nev.
12 559, 562 938 P.2d 725, 727 (1997). In *Pombo*, the Nevada Supreme Court held that
13 the plaintiff’s first offer of judgment was conditional, and consequently invalid, because
14 it required the defendant to (1) dismiss the case, (2) agree to no admission of any
15 wrongdoing by either party, and (3) execute a confidentiality agreement upon its
16 acceptance of the offer. See *id.* The *Pombo* court also cited to *Stockton Kenworth v.*
17 *Mentzer Detroit Diesel*, 101 Nev. 400, 404, 705 P.2d 145, 148 (1985) as support for the
18 legal principle that an offer of judgment must be “unconditional.” In *Stockton*, Stockton
19 sued Mentzer to recover possession of a truck that Mentzer was repairing. 101 Nev. at
20 401, 705 P.2d at 147. Mentzer issued an offer of judgment offering to buy good title to
21 the truck for \$10,000. 101 Nev. at 402, 705 P.2d at 147. The Court found that the
22 condition requiring Stockton to obtain good title to the truck following acceptance of the
23 offer of judgment was impermissible. 101 Nev. at 404, 705 P.2d at 148. As in *Pombo*,
24 the condition in *Stockton* meant that Stockton could not resolve the litigation simply by
25 accepting the offer of judgment. As discussed herein, Plaintiffs’ Offer of Judgment was
26 not unconditional.

27 Additionally, *Beattie v. Thomas* counsels that “while the purpose of NRCP 68 is
28 to encourage settlement, it is not to force [parties] unfairly to forego legitimate claims [or

defenses].” 99 Nev. 579, 588, 668 P.2d 268, 274 (1983). The trial court should therefore consider whether the offering party’s claims were brought in good faith, whether the offer of judgment was reasonable and in good faith both in timing and amount, and whether the decision to reject the offer was grossly unreasonable or in bad faith. See *id.* Timing is particularly important when evaluating the offer of judgment, as the offered party should have a “fair opportunity to assess its claim [or defense] through discovery.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. Adv. Op. 35, 283 P.3d 250, 258 (2012).

3. Double Recovery Prohibited.

Under the double recovery doctrine, there can be “only one recovery of damages for one wrong or injury.” *Elyousef v. O’Reilly & Ferrario, LLC*, 126 Nev. 441, 443-44, 245 P.3d 547, 549 (2010). A plaintiff cannot “recover damages twice for the same injury simply because he or she has two legal theories.” *Id.* In *Elyousef*, the plaintiff recovered \$50,000 in a settlement with his business partner but separately moved for payment of his attorney’s fees by the third-party law firm for which his business partner previously worked. See *id.* The Nevada Supreme Court affirmed the district court’s dismissal of his claim, applying the double recovery doctrine and holding that “a plaintiff can recover only once for a single injury even if the plaintiff asserts multiple legal theories.” *Id.* In *Davis*, the high court again affirmed that a trial court should “prevent a double recovery” of attorney’s fees by reducing the amount of fees claimed in a motion for attorney’s fees by any amount separately and previously awarded to the moving party. See 128 Nev. Adv. Op. 28, 278 P.3d at 513 fn. 7.

B. In Their Motion, Plaintiffs Impermissibly Attempt to Double Recover Certain of Their Attorney’s Fees.

The Court previously awarded Plaintiffs a portion of their attorney’s fees as special damages related to their breach of contract claim. See, e.g., Pardee’s Motion to Amend Judgment; see also Judgment at 2:11-13 (awarding Plaintiffs \$135,500.00 in special damages “in the form of attorney’s fees and costs.”). At trial, Plaintiffs claimed

1 these special damages corresponded with Plaintiffs' Trial Exhibit 31a, in which
2 Plaintiffs' counsel presented the Court with the line item entries for each attorney's fee
3 billed to Plaintiffs. See Plaintiffs' Detail Fee Transaction File List, attached as Exhibit A.
4 The Court awarded Plaintiffs the attorney's fees listed in Trial Exhibit 31a, an amount
5 equal to \$135,500.00, and this amount was later included in the Court's Judgment. See
6 *id.*; see also Judgment, on file with the Court

7 Yet in now moving for additional attorney's fees, Plaintiffs have submitted an
8 exhibit in support of their Motion that contains duplicate attorney's fees that the Court
9 previously awarded them as special damages in the Judgment. Specifically, Exhibit 6
10 to the Motion contains numerous entries that are mere duplicates of entries from Trial
11 Exhibit 31a. For ease of the Court's reference, Pardee has attached a spreadsheet
12 listing some of the duplicate attorney's fees entries for which Plaintiffs now
13 impermissibly attempt to double recover. See Plaintiffs' Duplicate Time Entries,
14 attached as Exhibit B. Each of the entries listed on this spreadsheet appears on both
15 Plaintiffs' Trial Exhibit 31a and Exhibit 6 to the Motion, showing that Plaintiffs are
16 **therefore asking that the Court award them the same attorney's fees twice.**

17 As *Elyousef* and *Davis* make clear, it is plainly inappropriate for Plaintiffs to
18 attempt to sneak these entries by the Court. Given Plaintiffs' dishonest attempts to
19 double recover, there remains substantial doubt about the accuracy and credibility of
20 Plaintiffs' other time entries as well. For this reason, Pardee requests that the Court
21 deny Plaintiffs' Motion in its entirety.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 C. Plaintiffs Cannot Recover Their Attorney's Fees and Costs Under Either
2 the Contract Provision Or Their Offer Of Judgment.

- 3 1. Plaintiffs did not prevail in this litigation under the Commission
4 Agreement, the Court's Findings of Fact and Conclusions of Law,
or the Judgment.

5 Plaintiffs contend that it is "clear" that Plaintiffs are the prevailing party pursuant
6 to the attorney's fees provision in the Commission Agreement. See Motion at 2:25-26
7 and 3:8-12. But Plaintiffs' actions throughout the entirety of this case make it clear that
8 they sought substantial and purportedly lost commissions in this litigation and failed to
9 prove them at trial. Plaintiffs' main litigation objective was two-fold: first, prove that
10 Pardee made Option Property purchases at Coyote Springs, and second, once those
11 purchases were established at trial, seek these lost commissions through their
12 accounting claim. This was their predominant legal theory in the case, one they
13 repeated throughout the entirety of the litigation.

14 As one of many examples, Plaintiffs' trial brief discusses Plaintiffs' claims to
15 additional unpaid commissions from Pardee. The Plaintiffs clearly argue that Pardee
16 purchased Option Property on the Project, thereby entitling the Plaintiffs to additional
17 commissions. See Plaintiffs' Trial Brief at 6:4-6 ("With these facts at the Court's
18 disposal, the Court will quickly conclude that the land purchased by Pardee is Option
19 Property."), attached as Exhibit C. The Plaintiffs claimed the Court would "learn that
20 Plaintiffs were not paid their commissions according to the appropriate formulas and
21 that only Pardee [had] the information necessary to properly calculate Plaintiffs'
22 commissions." See *id.* at 3:21-23. The Plaintiffs promised "evidence of how Pardee
23 acquired land for which a commission would be owed to Plaintiffs, but that Pardee
24 executed other agreements to avoid paying these commissions." *Id.* at 3:23-25.
25 Finally, the Plaintiffs argued that they were "entitled to commissions as specified by
26 subparagraph (iii)" of the Commission Agreement." *Id.* at 13:5. This was because
27 "Pardee still insisted that it had not purchased Option Property and that [the Plaintiffs']
28 commissions were appropriately calculated and paid," statements the Plaintiffs argued

1 “were false” and purportedly showed that “Pardee [was] in breach of the Commission
2 Letter Agreement.” *Id.* at 9:16-19.

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

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

18 At the conclusion of trial, the Plaintiffs’ Proposed Findings of Fact and
19 Conclusions of Law asked the Court to conclude that “Defendant materially breached
20 its obligations under the Commission Letter Agreement by purchasing Option Property
21 and failing to appropriately calculate and pay to Plaintiffs the commission owed under
22 the Option Property Formula . . . [and] [p]urchasing Production Residential Property and
23 failing to appropriately pay and inform Plaintiffs of the purchases.” See Plaintiffs’
24 Proposed Findings of Fact and Conclusion of Law and Decision at 15:25-16:8, attached
25 as Exhibit F. In each of these instances, among others, Plaintiffs were resolute that
26 they were seeking \$1.8 million in additional commissions as damages from Pardee.

27 But the Court entirely denied Plaintiffs’ claims to any lost commissions.
28 Specifically, the Court found that “the complete documentation . . . in this litigation

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

16 Accordingly, by stepping back and viewing the entirety of the documents and
17 arguments both parties presented in this case, **it is Pardee and not Plaintiffs who**
18 **achieved its main objective in the litigation.** Plaintiffs’ predominant legal theory was
19 that Pardee purchased Option Property on the Coyote Springs project and that such
20 purchases would be proven through their accounting claim, resulting in additional
21 commissions due to Plaintiffs. But, as the Court clearly found, Pardee successfully
22 defeated Plaintiffs’ claims to \$1.8 million in allegedly lost commissions, which was the
23 most substantial and heavily litigated issue in the case.¹ Pardee and only Pardee is the
24 prevailing party under the Commission Agreement, and so Plaintiffs are not entitled to
25 recover their attorney’s fees in this matter.

26
27 ¹ As discussed in Pardee’s Motion for Attorney’s Fees, this \$1.8 million
28 represented over 92% of Plaintiffs’ total claimed damages.

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

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

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

14 1. All purchases of real property designated for detached production
15 residential use, which includes, without limitation, all single-family
16 detached production residential lots (which shall include lots of which
17 custom homes are constructed), all land for roadways, utilities,
18 government facilities, including schools and parks (which school and
19 park sites are subject to the provisions of paragraph 7(c) of the Option
20 Agreement for the Purchase of Real Property and Joint Escrow
21 Instructions); open space required or designated for the benefit of the
22 residential development pursuant to the master plan, a habitat
23 conservation plan, or development agreement, drainage ways or any
24 other use associated with or resulting from the development of the
25 Purchase Property and each Option Parcel of the Option Property
26 made in the future, shall be deemed Option Property under the terms
27 of the Option Agreement for the Purchase of Real Property and Joint
28 Escrow Instructions executed May, 2004, Bates stamp numbers
PLTF0001-00800; and Pardee shall provide advanced notice of the
pendency of an escrow, fourteen (14) days prior to close of escrow, to
advise James Wolfram or Walter Wilkes, their heirs, successors or
assigns, of the impending purchase, of the date of close of escrow,
and then to further advise them as to their entitlement to commissions
under the terms of the Option Agreement. Notices to Mr. Wilkes and
Mr. Wolfram, during their life shall be to them directly, with copies to
their counsel, Jimmerson Hansen, P.C., James J. Jimmerson, Esq.
and James M. Jimmerson, Esq., and following the passing of either
one of the Plaintiffs, to their heirs and assigns to be designated at the
appropriate time. Upon request by Mr. Wolfram, Mr. Wilkes, their
counsel, or their future designees, Pardee shall provide true and

1 complete copies of executed agreements or contracts concerning the
2 purchase of real property between Pardee Homes of Nevada and
3 Coyote Springs Investment, LLC (or affiliated entities). Mr. Wolfram
4 and Mr. Wilkes and their counsel understand that receipt of the
5 requested documents may require consent to certain confidentiality
6 agreements. Mr. Wolfram, Mr. Wilkes and their counsel agree to be
7 bound by the necessary confidentiality agreements.

- 8
- 9 3. With respect to any portion of Option Property purchased by Pardee
10 pursuant to this offer of Judgment, Pardee shall pay to Plaintiffs one
11 and one-half percent (1 ½%) of the amount derived by multiplying the
12 number of acres purchased by [Pardee] by Forty Thousand Dollars
13 (\$40,000.00).

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

19 Additionally, consistent with the holding in *Beattie*, Pardee had a legitimate
20 defense to Plaintiffs' claims to these additional commissions related to Option Property
21 and thus an incentive to reject Plaintiffs' Offer instead of foregoing this valid defense.
22 See 99 Nev. 579, 588, 668 P.2d 268, 274 (1983). In fact, the Court corroborated this
23 defense at the trial's conclusion when it found that "the complete documentation . . . in
24 this litigation verified that Plaintiffs were not due any further commissions at this time for
25 the additional purchases of land by Pardee" Exhibit G, Findings and Conclusions
26 at 10:25-27. Plaintiffs' conditional Offer was nothing more than an attempt to force
27 Pardee to unfairly forego a valid defense. After Pardee rejected this unfair offer,
28 Plaintiffs cannot now punish it for the defense ultimately succeeding at trial. Pursuant
to *Beattie*, Plaintiffs are not entitled to any attorney's fees under NRCP 68.

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

Plaintiffs play a shell game with their Offer of Judgment as they attempt to argue
they beat their \$149,000 sum at trial, when they clearly did not. Plaintiffs falsely inflate

1 the value of the Judgment such that it exceeds their Offer of Judgment, therefore
2 purportedly entitling them to their attorney's fees under NRCP 68. See *generally*
3 Motion at 13:12-14:27. Specifically, they make this leap by increasing their calculation
4 of the Judgment over \$39,000 in purportedly due and owing prejudgment interest, and
5 also by discounting their Offer of Judgment by \$17,359.52, an amount allegedly
6 reflecting the interest included in the Offer of Judgment. See Motion at 13:19-14:13
7 ("[T]he final judgment was exclusive of legal interest, and Plaintiffs are entitled to
8 prejudgment interest on that figure."); see *also* Exhibit 4 to Plaintiffs' Motion.

9 But again, the record reveals that such calculations are disingenuous at best.
10 Initially, the Judgment expressly excluded the "issues of attorney's fees, costs, and
11 legal interest." See Judgment at 2:22-24, on file with the Court. Plaintiffs have offered
12 no proof whatsoever of the amount of their incurred costs, interest or attorney's fees
13 allegedly due **at the time they made the Offer of Judgment**. They may only make an
14 "apples to apples" comparison of the amounts actually incurred versus the amount
15 offered. See NRCP 68(g) (explaining that the trial court must make an apples to apples
16 comparison depending on whether the offer of judgment included or excluded fees and
17 costs). Without those numbers to do an apples to apples comparison, Plaintiffs have
18 failed to prove they exceeded the specific dollars offered under the Offer of Judgment.
19 And contrary to the Plaintiffs' unbridled assumption of more than \$39,000 in
20 prejudgment interest, the Court has yet to award them such interest and so they cannot
21 include it in the Judgment's total for the purposes of NRCP 68 analysis. Moreover, the
22 sum of \$39,000 is premised upon an interest calculation beginning when the complaint
23 was filed. But Plaintiffs' financial award was not based on damages incurred
24 immediately upon filing the complaint, but instead was based almost exclusively on
25 attorney's fees incurred well after the complaint was filed. They are therefore not
26 entitled to pre-judgment interest from the date of filing the summons and complaint
27 even if requested. See *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 428-29, 132
28 P.3d 1022, 1034-35 (2006) (noting that prejudgment interest only includes those

1 damages already incurred and does not attach to future damages or those incurred
2 after filing a complaint).

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

8 D. Plaintiffs have not shown that their attorney's fees are reasonable and
9 supported by proper evidentiary documentation.

10 As discussed above, Plaintiffs have attempted to double recover certain of their
11 attorney's fees through the Motion. Beyond this severe flaw, however, Plaintiffs have
12 also grossly inflated their attorney's fees since filing their last Motion for Attorney's Fees
13 only a year ago. Plaintiffs now claim \$441,228.75 in attorney's fees, which they say
14 represents the \$270,517.50 in fees they incurred through trial and also those fees they
15 incurred "defending against Pardee's . . . filing of its Judgment with the Court on June
16 15, 2015." Motion at 4:7-15. In other words, Plaintiffs would have the Court believe
17 that they incurred \$170,711.25 in attorney's fees challenging the Court's previously
18 entered judgment. See *id.*; see also Declaration of James J. Jimmerson at ¶ 2.


19 But such a claim is hardly credible. As the Court no doubt recalls, Plaintiffs filed
20 only two motions "defending" against the previous Judgment entered June 15, 2015:
21 (1) a Motion to Strike Judgment Entered June 15, 2015 and (2) a Motion Pursuant to
22 NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015.²
23 Though Plaintiffs have no doubt inundated the Court with inflated motions, it is incredible
24 and impossible on its face that Plaintiffs spent \$170,711.25 on attorney's fees to file
25 these two motions. In fact, a close look at Plaintiffs' Exhibit 6, the Detail Fee
26 Transaction File List, shows that many of the claimed attorney's fees have nothing to do
27

28 ² Plaintiffs filed both of these motions with the Court on June 29, 2015.

1 with the two motions “defending” against the June 15, 2015 judgment. See, e.g. Exhibit
2 6 at line item entries on 6/23/15 (\$560 to draft an opposition to Pardee’s Motion for
3 Attorney’s Fees), 6/29/15 (\$1,600 to draft Plaintiffs’ Motion for Attorney’s Fees and
4 Costs), and 7/9/15 (billing to “[r]eview Las Vegas Review Journal article regarding
5 Coyote Springs”).

6 Moreover, Plaintiffs shockingly attempt to recover for attorney’s fees associated
7 with their improper attempt to execute on the June 15, 2015 judgment. See *id.* at line
8 item entries on 7/8/15 (\$600 to review Pardee’s Emergency Motion to Stay Execution of
9 Judgment) and 7/10/15 (\$595 to attend the hearing on Pardee’s Motion to Stay
10 Execution). The Court granted Pardee’s Emergency Motion to Stay this wrongful
11 execution. See July 10, 2015 Transcript of Proceedings at 13:7-11 (finding that
12 Plaintiffs’ “premature execution upon the writ . . . violates some notice statutes, NRS
13 21.075, 21.076” and “includes amounts not awarded to plaintiffs.”). Plaintiffs’ improper
14 acts as found by the Court cannot justify Plaintiffs’ later attempts to seek attorney’s fees
15 associated with those improper acts. These attorney’s fees were entirely unnecessary,
16 and the Court cannot award them to Plaintiffs.

17 In sum, Plaintiffs’ claim to \$170,711.25 in post-judgment attorney’s fees not only
18 lacks credibility, but also seeks to improperly recover fees to which they are not entitled.
19 Absent any further explanation on these matters, the Court cannot grant Plaintiffs their
20 claimed attorney’s fees because of Nevada Supreme Court precedent. Specifically, the
21 Nevada Supreme Court has held that an award of attorney’s fees must be supported by
22 “substantial evidence” and that such fees must be reasonable and necessary. *Logan v.*
23 *Abe*, 2015 WL 3533249 at *4, 131 Nev. Adv. Op. 31, -- P.3d – (June 4, 2015); see also
24 *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005). Here,
25 the Plaintiffs have not proven that their newly claimed attorney’s fees are reasonable
26 and necessary, much less by substantial evidence. Without that evidence and
27 explanation, the Court must therefore deny them.

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III. CONCLUSION.

Plainly, Plaintiffs have not shown that they are entitled to any attorney's fees or costs in this matter beyond what the Court already granted them as special damages. Plaintiffs have tried to double recover many of their attorney's fees, and they were not the prevailing party in the case's most significant issue. Additionally, they cannot use their unfair and conditional Offer of Judgment to recover the same, and Plaintiffs did not provide the substantial evidence necessary to justify another award of attorney's fees. Accordingly, Pardee respectfully requests that the Court deny Plaintiffs' Motion and instead grant Pardee's Motion for Attorney's Fees and Costs.

DATED this 27th day of June, 2016.

MCDONALD CARANO WILSON LLP

/s/ Pat Lundvall

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Attorneys for Defendant Pardee Homes of Nevada

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 27th day of June, 2016, I served a true and correct copy of the foregoing **PARDEE HOMES OF NEVADA'S OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS**, via e-service through Wiznet as utilized in the 8th Judicial District on the following:

James J. Jimmerson
Holly A. Fic
Kim Stewart
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Co-counsel for Plaintiffs

/s/ Michelle Wade
An Employee of McDonald Carano Wilson
LLP

361525.2

EXHIBIT A

Date: 07/19/2013

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page: 1

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	05/20/2013	05/21/2013	A	450.00	1.75	787.50 Meeting with Jim Wolfram	ARCH 31a-001
4886.01	05/20/2013	05/21/2013	A	350.00	1.00	350.00 Conference with client regarding	ARCH
4886.01	05/20/2013	05/21/2013	A	350.00	0.50	175.00 Prepare for meeting.	ARCH
4886.01	05/20/2013	05/21/2013	A	350.00	0.50	175.00 Draft of 9th Supplement, redacted billing.	ARCH
4886.01	05/22/2013	06/21/2013	A	300.00	0.50	150.00 Discussion with James M. Jimmerson, Esq. for the purposes of Supplement regarding	ARCH
4886.01	05/22/2013	06/21/2013	A	350.00	1.00	350.00 Prepare 9th Supplement.	ARCH
4886.01	05/22/2013	06/21/2013	A	350.00	0.50	175.00 Prepare redacting bills.	ARCH
4886.01	05/22/2013	06/21/2013	A	350.00	1.00	350.00 Prepare calculating dates.	ARCH
4886.01	05/22/2013	06/21/2013	A	450.00	0.40	180.00 Review 9th supplement	ARCH
4886.01	05/24/2013	06/21/2013	A	450.00	2.00	900.00 Deposition preparation with Jim Wolfram	ARCH
4886.01	05/24/2013	06/21/2013	A	350.00	1.50	525.00 Attend depo prep with client.	ARCH
4886.01	05/24/2013	06/21/2013	A	350.00	0.50	175.00 Conference with Lynn M. Hansen, Esq. regarding	ARCH
4886.01	05/25/2013	06/21/2013	A	450.00	0.50	225.00 Meet with James M. Jimmerson, Esq. regarding	ARCH
4886.01	05/28/2013	06/21/2013	A	350.00	1.20	420.00 Prepare Order, emailed opposing counsel for review and signature.	ARCH
4886.01	05/29/2013	06/21/2013	A	450.00	2.00	900.00 Meet with Jim Wolfram regarding	ARCH
4886.01	05/29/2013	06/21/2013	A	450.00	0.25	112.50 Review proposed Order	ARCH
4886.01	05/29/2013	06/21/2013	A	350.00	0.20	70.00 Prepare email to opposing counsel with scans of map.	ARCH
4886.01	05/29/2013	06/21/2013	A	350.00	0.50	175.00 Telephone call to opposing counsel regarding: depo and order.	ARCH
4886.01	05/29/2013	06/21/2013	A	350.00	0.30	105.00 Telephone conference with client.	ARCH
4886.01	05/29/2013	06/21/2013	A	350.00	1.50	525.00 Attend depo prep with client.	ARCH
4886.01	05/29/2013	06/21/2013	A	450.00	1.50	675.00 Attend depo prep w/client	ARCH
4886.01	05/30/2013	06/21/2013	A	350.00	0.50	175.00 Prepare redacted billing statements.	ARCH
4886.01	05/31/2013	06/21/2013	A	450.00	1.50	675.00 Attend deposition of Jim Wolfram	ARCH
4886.01	05/31/2013	06/21/2013	A	350.00	1.40	490.00 Deposition of client.	ARCH
4886.01	05/31/2013	06/21/2013	A	350.00	0.10	35.00 Email to opposing counsel regarding Eleventh Supplement.	ARCH
4886.01	05/31/2013	06/21/2013	A	350.00	1.50	525.00 Drafting Eleventh Supplement / identification of damages.	ARCH
4886.01	05/31/2013	06/21/2013	A	450.00	1.40	630.00 Attend depo of client	ARCH
4886.01	06/03/2013	06/21/2013	A	450.00	0.25	112.50 Review email to Opposing Counsel	ARCH
4886.01	06/06/2013	06/21/2013	A	350.00	0.20	70.00 Prepare and filed Notice of Entry of Order.	ARCH
4886.01	06/06/2013	06/21/2013	A	350.00	0.10	35.00 Filed Second Amended Complaint.	ARCH
4886.01	06/11/2013	06/21/2013	A	350.00	0.50	175.00 Prepare emails to opposing counsel regarding: supplements.	ARCH
4886.01	06/12/2013	06/21/2013	A	350.00	1.00	350.00 Prepare emails to opposing counsel regarding: extension of time to respond.	ARCH
4886.01	06/12/2013	06/21/2013	A	450.00	0.30	135.00 Conference with James M. Jimmerson, Esq. regarding	ARCH

PLTF10531

Friday 07/19/2013 11:01 am

JA013045

Date: 07/19/2013

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

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Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	06/13/2013	06/21/2013	A	350.00	0.50	175.00 Prepare 9th Supplement.	ARCH
4886.01	06/19/2013	06/21/2013	A	350.00	0.30	105.00 Prepare email to opposing counsel regarding EDCR 2.67.	ARCH
4886.01	06/20/2013	06/21/2013	A	350.00	0.10	35.00 Telephone call to A. Shipley, left message.	ARCH
Total for Client ID 4886.01				Billable	28.75	11,222.50 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA	
GRAND TOTALS							
				Billable	28.75	11,222.50	

31a-002

PTF10537

Friday 07/19/2013 11:01 am

JA013046

Date: 07/1

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page: 1

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	04/22/2013	05/21/2013	A	300.00	6.00	1,800.00 Review Opposition, prepare Reply in Support.	ARCH
4886.01	04/22/2013	05/21/2013	A	450.00	0.50	225.00 Conference with James M. Jimmerson, Esq. regarding	ARCH
4886.01	04/23/2013	05/21/2013	A	300.00	10.50	3,150.00 Finalized Reply in Support of Motion for Leave to File Second Amended Complaint, e-filed, courtesy copy to chambers, faxed, emailed and mailed to opposing counsel.	ARCH
4886.01	04/23/2013	05/21/2013	A	450.00	0.75	337.50 Review and revise Reply to Opposition to Motion to File Amended Complaint.	ARCH
4886.01	04/25/2013	05/21/2013	A	300.00	2.00	600.00 Prepare for hearing on Motion to Leave to Amend Complaint.	ARCH
4886.01	04/26/2013	05/21/2013	A	300.00	0.50	150.00 Prepare for Court Hearing.	ARCH
4886.01	04/26/2013	05/21/2013	A	300.00	2.00	600.00 Court hearing regarding Motion for Leave to File Second Amended Complaint.	ARCH
4886.01	04/26/2013	05/21/2013	A	300.00	0.20	60.00 Legal research on	ARCH
4886.01	04/26/2013	05/21/2013	A	300.00	0.50	150.00 Legal research on	ARCH
4886.01	04/26/2013	05/21/2013	A	300.00	0.40	120.00 Conference with Lynn M. Hansen, Esq. regarding.	ARCH
4886.01	04/29/2013	05/21/2013	A	300.00	4.80	1,440.00 Legal research on	ARCH
4886.01	04/29/2013	05/21/2013	A	300.00	0.20	60.00 Finalize Offer of Judgment.	ARCH
4886.01	04/30/2013	05/21/2013	A	450.00	0.30	135.00 Review Offer of Judgment	ARCH
4886.01	04/30/2013	05/21/2013	A	300.00	3.20	960.00 Legal research on	ARCH
4886.01	05/01/2013	05/21/2013	A	300.00	0.50	150.00 Prepare Order on hearing.	ARCH
4886.01	05/09/2013	05/21/2013	A	350.00	6.00	2,100.00 Prepare and draft supplement to Motion for Leave to file Second Amended Complaint.	ARCH
4886.01	05/09/2013	05/21/2013	A	350.00	0.50	175.00 Legal research on	ARCH
4886.01	05/10/2013	05/21/2013	A	300.00	1.50	450.00 Review Supplement to Motion to File Second Amended Complaint for James M. Jimmerson, Esq.; Meeting with James M. Jimmerson, Esq. regarding	ARCH
4886.01	05/10/2013	05/21/2013	A	350.00	14.20	4,970.00 Drafting supplement to Motion for Leave to File Second Amended Complaint, call and emails to opposing counsel regarding". Order on 4/26/13 and review of opposing counsel's supplement.	ARCH
4886.01	05/11/2013	05/21/2013	A	550.00	0.60	330.00 Review Supplemental points and authorities regarding	ARCH
4886.01	05/13/2013	05/21/2013	A	350.00	0.20	70.00 Prepare emails to opposing counsel regarding	ARCH
4886.01	05/13/2013	05/21/2013	A	450.00	0.75	337.50 Review Plaintiff's Supplement to Motion to Amend	ARCH
4886.01	05/14/2013	05/21/2013	A	350.00	0.10	35.00 Telephone conference with opposing counsel regarding: discovery.	ARCH
4886.01	05/15/2013	05/21/2013	A	350.00	0.10	35.00 Telephone call to opposing counsel regarding: discovery.	ARCH
4886.01	05/15/2013	05/21/2013	A	350.00	0.50	175.00 Telephone call to opposing counsel regarding: trial date.	ARCH

Friday 07/19/2013 1:59 pm

JA013047

Date: 07/19/2013

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

Page: 2

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	05/16/2013	05/21/2013	A	350.00	0.30	105.00 Prepare email to opposing counsel regarding: deposition dates.	ARCH
4886.01	05/16/2013	05/21/2013	A	350.00	0.30	105.00 Telephone conference with client regarding: deposition date.	ARCH
4886.01	05/16/2013	05/21/2013	A	350.00	0.50	175.00 Prepare and draft Order.	ARCH
4886.01	05/16/2013	05/21/2013	A	350.00	0.50	175.00 Prepare 9th Supplemental Disclosures.	ARCH
4886.01	05/20/2013	05/21/2013	A	450.00	1.75	787.50 Meeting with Jim Wolfram	ARCH
4886.01	05/20/2013	05/21/2013	A	350.00	1.00	350.00 Conference with client regarding: depo prep.	ARCH
4886.01	05/20/2013	05/21/2013	A	350.00	0.50	175.00 Prepare for meeting.	ARCH
4886.01	05/20/2013	05/21/2013	A	350.00	0.50	175.00 Draft of 9th Supplement, redacted billing.	ARCH
Total for Client ID 4886.01				Billable	63.15	20,962.50 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA	

GRAND TOTALS

Billable 63.15 20,962.50

PLTF10529

Friday 07/19/2013 1:59 pm

JA013048

Date: 07/19/2013

Detail Cost Transaction File List JIMMERSON HANSEN, P.C.

Page: 1

Client	Trans Date	Stmt Date	H P	Rate	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM						
4886.01	04/23/2013	05/21/2013	A	0.200	4.80 COPIES OF REPLY, 24 PP @ \$0.20 PER PAGE.	ARCH
4886.01	04/29/2013	05/21/2013	A	5.000	5.00 Hand Delivery	ARCH
					Item: Offer of Judgment Hand Delivered to McDonald Carano Wilson, LLP	
4886.01	04/29/2013	05/21/2013	A	0.200	1.20 COPIES OF OFFER OF JUDGMENT, 6 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/03/2013	05/21/2013	A		207.50 Copy of Transcript of Proceedings 4/26.13 - Jennifer Church, Court Reporter	ARCH
4886.01	05/06/2013	05/21/2013	A	0.200	0.20 COPIES OF TRANSCRIPT REQ, 1 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/10/2013	05/21/2013	A		3.50 Electronic Filing - Plaintiff's Supplement to Motion for Leave to File a Second Amended complaint Pursuant to the Courts Order on Hearing on April 26, 2013	ARCH
4886.01	05/10/2013	05/21/2013	A		3.50 Electronic Filing - Plaintiff's Supplement to Motion for Leave to File a Second Amended Complaint Pursuant to the Courts Order on Hearing on April 26, 2013	ARCH
4886.01	05/10/2013	05/21/2013	A	0.200	2.40 COPIES OF ORDER, 12 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/10/2013	05/21/2013	A	0.200	13.80 COPIES OF SUPP BRP, 69 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/13/2013	05/21/2013	A	0.200	0.40 COPIES OF COPY, 2 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/20/2013	05/21/2013	A		753.07 Westlaw legal research charges, Usage Period: May 21, 2013	ARCH
4886.01	05/20/2013	05/21/2013	A	0.200	39.60 COPIES OF COPY 3, 198 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/20/2013	05/21/2013	A	0.200	1.80 COPIES OF ORDER, 9 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/20/2013	05/21/2013	A	0.200	0.20 COPIES OF COPY 3, 1 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/20/2013	05/21/2013	A	0.200	7.20 COPIES OF COPY 3, 36 PP @ \$0.20 PER PAGE.	ARCH
4886.01	05/20/2013	05/21/2013	A	0.200	0.60 COPIES OF COPY 3, 3 PP @ \$0.20 PER PAGE.	ARCH
Total for Client ID 4886.01				Billable	1,044.77 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA	

GRAND TOTALS

Billable 1,044.77

PLTF10530

Friday 07/19/2013 2:00 pm

JA013049

Date: 10/20/2012

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

Page:

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount		Ref
Client ID 4886.01 WILKES/ WOLFRAM								
4886.01	11/03/2010	11/21/2010	A	175.00	4.00	700.00	Reviewed file for Complaint	ARCH
4886.01	11/04/2010	11/21/2010	A	175.00	6.50	1,137.50	Wrote	ARCH
4886.01	11/05/2010	11/21/2010	A	175.00	1.50	262.50	Finishing Complaint	ARCH
4886.01	11/05/2010	11/21/2010	A	550.00	2.00	1,100.00	Revised Draft Complaint	ARCH
4886.01	12/20/2010	12/21/2010	A	550.00	2.00	1,100.00	Revised Complaint for	ARCH
4886.01	12/20/2010	12/21/2010	A			-1,000.00	COURTESY DISCOUNT PER JAMES J. JIMMERSON, ESQ.	ARCH
4886.01	12/27/2010	01/21/2011	A	550.00	2.00	0.00	Revised final draft of Complaint. Ready for filing. (NO CHARGE)	ARCH
4886.01	12/28/2010	01/21/2011	A	550.00	2.00	0.00	Filed Complaint (NO CHARGE)	ARCH
4886.01	12/29/2010	01/21/2011	A	550.00	1.00	0.00	Complaint filed today; Service is sent out for effectuation. (NO CHARGE)	ARCH
4886.01	01/03/2011	01/21/2011	A	550.00	0.50	275.00	Received /	ARCH
4886.01	01/14/2011	01/21/2011	A	175.00	1.10	192.50	Preparation of Amended Complaint and Amended Summons; E-file Amended Complaint	ARCH
4886.01	01/20/2011	01/21/2011	A	175.00	0.40	70.00	Preparation of Complaint and Summons for Service	ARCH
4886.01	04/01/2011	04/21/2011	A	550.00	1.00	550.00	Reviewed	ARCH
4886.01	08/15/2011	08/21/2011	A	350.00	1.50	525.00	Draft and send 16.1 Case Conference Notice and draft and send email	ARCH
4886.01	08/16/2011	08/21/2011	A	550.00	0.20	110.00	Phone call with client:	ARCH
4886.01	08/16/2011	08/21/2011	A	350.00	1.20	420.00	Review .. Receipt and review from /: Discussion with M. Gi	ARCH
4886.01	08/18/2011	08/21/2011	A	350.00	1.50	525.00	Discussion with M > G concerning Receive and review email correspondence from I : Draft and send response I	ARCH
4886.01	08/19/2011	08/21/2011	A	100.00	1.50	150.00	Draft and finalize 16.1 List; call to I regarding	ARCH
4886.01	08/19/2011	08/21/2011	A	550.00	2.50	1,375.00	Prepare for Rule 16.1 Case Conference: attend Rule 16.1 Case Conference, prepare Request for Production of Documents; redrafting of Requests.	ARCH
4886.01	08/19/2011	08/21/2011	A	350.00	2.00	700.00	Preparation for 16.1 Conference: Discussions with I : Discussion and instruction with J. : Editing of Witness List; Search of file and production of documents for 16.1; Attendance at/a 16.1	ARCH
4886.01	08/22/2011	09/21/2011	A	100.00	0.50	50.00	Telephone call from Mr Wolfram regarding	ARCH

31a-006

PLTF10459

Thursday 10/25/2012 4:11 pm

JA013050

09/25/2012

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

Page:

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref.
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	08/22/2011	09/21/2011	A	350.00	0.40	140.00 Receipt and review of l. email correspondence; Discussion with l. e concerning	ARCH
4886.01	08/30/2011	09/21/2011	A	350.00	0.20	70.00 Draft and send correspondence concerning	ARCH
4886.01	09/06/2011	09/21/2011	A	450.00	1.00	450.00 Review Pleadings File and Nature of Act	ARCH
4886.01	09/06/2011	09/21/2011	A	350.00	1.00	350.00 Discussion with wherein told; Call and discussion with; Draft and send email to	ARCH
4886.01	09/08/2011	09/21/2011	A	450.00	2.50	1,125.00 Review file	ARCH
4886.01	09/12/2011	09/21/2011	A	100.00	2.50	250.00 Draft JCCR	ARCH
4886.01	09/12/2011	09/21/2011	A	550.00	2.00	1,100.00 Conference with l. regarding	ARCH
4886.01	09/13/2011	09/21/2011	A	300.00	0.50	150.00 Meeting with Lynn M. Hansen, Esq. and Phillip Odunze, Esq.	ARCH
4886.01	09/13/2011	09/21/2011	A	450.00	0.50	225.00 Meeting with Phillip Odunze, Esq. to	ARCH
4886.01	09/13/2011	09/21/2011	A	100.00	0.60	60.00 Continue draft of JCCR	ARCH
4886.01	09/15/2011	09/21/2011	A	450.00	1.00	450.00 Review documents disclosed in 16.1; Draft Supplemental Disclosure.	ARCH
4886.01	09/15/2011	09/21/2011	A	450.00	0.50	225.00 Revise Joint Case Conference Report	ARCH
4886.01	09/19/2011	09/21/2011	A	450.00	0.50	225.00 Final draft of 1st Supplement to 16.1 Disclosure	ARCH
4886.01	09/26/2011	10/21/2011	A	450.00	0.20	90.00 Conference with Amanda J. Brookhyser, Esq. regarding	ARCH
4886.01	10/05/2011	10/21/2011	A	550.00	0.40	220.00 Schedule of depositions of our clients; Conference with client to be scheduled;	ARCH
4886.01	10/13/2011	10/21/2011	A	350.00	1.50	525.00 Document review and conference with Lynn M. Hansen, Esq. and James J. Jimmerson, Esq. in preparation for	ARCH
4886.01	10/13/2011	10/21/2011	A	350.00	1.50	525.00 Meeting with James J. Jimmerson, Esq., Lynn M. Hansen, Esq. and client to	ARCH
4886.01	10/13/2011	10/21/2011	A	450.00	1.50	675.00 Review file for meeting	ARCH
4886.01	10/13/2011	10/21/2011	A	450.00	1.00	450.00 Attend Meeting	ARCH
4886.01	10/13/2011	10/21/2011	A	550.00	1.00	550.00 Conference with Jim Wolfram	ARCH
4886.01	10/14/2011	10/21/2011	A	450.00	1.50	675.00 Meeting with James J. Jimmerson, Esq. and Amanda J. Brookhyser, Esq. regarding	ARCH
4886.01	10/14/2011	10/21/2011	A	550.00	1.80	990.00 Outline of l	ARCH
4886.01	10/24/2011	11/21/2011	A	175.00	0.30	52.50 Document review for Hearing in front of Discovery Commissioner.	ARCH
4886.01	10/25/2011	11/21/2011	A	450.00	0.25	112.50 Conference with Amanda J. Brookhyser, Esq.	ARCH

31a-007

PLTF10470

Thursday 10/25/2012 4:11 pm

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	10/25/2011	11/21/2011	A	175.00	1.30	227.50 Attend Hearing in front of Discovery Commissioner regarding	ARCH
4886.01	10/25/2011	11/21/2011	A	175.00	4.50	787.50 Review file and documents in preparation for	ARCH
4886.01	10/25/2011	11/21/2011	A	550.00	0.50	275.00 Discovery Conference Court Hearing	ARCH
4886.01	10/26/2011	11/21/2011	A	450.00	0.50	225.00 Meeting with Amanda J. Brookhyser, Esq.	ARCH
4886.01	10/26/2011	11/21/2011	A	450.00	1.25	562.50 Meeting with client	ARCH
4886.01	10/26/2011	11/21/2011	A	175.00	3.00	525.00 Complete document review and draft Memo of	ARCH
4886.01	10/26/2011	11/21/2011	A	175.00	0.50	87.50 Conference with Lynn M. Hansen, Esq. regarding	ARCH
4886.01	10/26/2011	11/21/2011	A	175.00	1.00	175.00 Meet with client, Lynn M. Hansen, Esq. regarding i	ARCH
4886.01	10/26/2011	11/21/2011	A	175.00	4.00	700.00 Draft Motion for Preferential Trial Setting.	ARCH
4886.01	10/27/2011	11/21/2011	A	175.00	0.20	35.00 Phone call with opposing counsel regarding	ARCH
4886.01	10/27/2011	11/21/2011	A	175.00	0.50	87.50 Edit Motion for Preferential Trial Setting.	ARCH
4886.01	10/28/2011	11/21/2011	A	100.00	0.20	20.00 Draft Notice of Taking Deposition of Walt Wilkes.	ARCH
4886.01	10/28/2011	11/21/2011	A	100.00	0.50	50.00 Transcribe Motion for Preferential Trial Setting.	ARCH
4886.01	10/28/2011	11/21/2011	A	450.00	0.50	225.00 Revise Motion for Preferential Trial Setting.	ARCH
4886.01	10/31/2011	11/21/2011	A	100.00	0.10	10.00 Made changes from Lynn M. Hansen, Esq. to Motion for Preferential Trial Setting.	ARCH
4886.01	11/01/2011	11/21/2011	A	100.00	0.10	10.00 Schedule videographer for deposition of Walt Wilkes.	ARCH
4886.01	11/02/2011	11/21/2011	A	100.00	0.20	20.00 Prepared Certificate of Service for Motion for Preferential Trial Setting set for 12/5/11 in Chambers.	ARCH
4886.01	11/02/2011	11/21/2011	A	100.00	0.20	20.00 Drafted Amended Notice of Taking Deposition.	ARCH
4886.01	11/02/2011	11/21/2011	A	175.00	0.20	35.00 Review Supplement to Defendant's Disclosure with client's notes regarding	ARCH
4886.01	11/02/2011	11/21/2011	A	175.00	0.30	52.50 Review draft of first set of Requests for Production of Documents to Pardee.	ARCH
4886.01	11/02/2011	11/21/2011	A	175.00	0.20	35.00 Conference with JD re	ARCH
4886.01	11/03/2011	11/21/2011	A	100.00	0.20	20.00 Draft Subpoena for Custodian of Records of Coyote Springs.	ARCH
4886.01	11/03/2011	11/21/2011	A	100.00	0.20	20.00 Draft Subpoena for Custodian of Records of Chicago Title.	ARCH
4886.01	11/03/2011	11/21/2011	A	100.00	0.20	20.00 Draft Subpoena for Custodian of Records of Stewart Title.	ARCH
4886.01	11/03/2011	11/21/2011	A	100.00	0.10	10.00 Made changes from Lynn M. Hansen, Esq. on	ARCH
4886.01	11/03/2011	11/21/2011	A	175.00	0.30	52.50 Draft letter to opposing counsel re	ARCH
4886.01	11/03/2011	11/21/2011	A	175.00	0.30	52.50 Conference with MW re	ARCH

31a-008

PLTF10471

Thursday 10/25/2012 4:11 pm

Date: 10/25/2012

Detail Fee Transaction File List JIMMERSON HANSEN, P.C.

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Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	11/03/2011	11/21/2011	A	175.00	0.50	87.50 Edit Subpoena Duces Tecum to Chicago Title, Stewart Title and Coyote Springs LLC	ARCH
4886.01	11/04/2011	11/21/2011	A	100.00	0.20	20.00 Made changes to Subpoenas (x3).	ARCH
4886.01	11/04/2011	11/21/2011	A	450.00	1.75	787.50 Meeting with J. Wolfram and W. Wilkes	ARCH
4886.01	11/06/2011	11/21/2011	A	100.00	0.10	10.00 Made revisions from James J. Jimmerson, Esq. to Subpoena to Custodian of Records of Stewart Title.	ARCH
4886.01	11/06/2011	11/21/2011	A	100.00	0.10	10.00 Made revisions from James J. Jimmerson, Esq. to Subpoena for Custodian of Records of Chicago Title.	ARCH
4886.01	11/06/2011	11/21/2011	A	100.00	0.10	10.00 Made revisions from James J. Jimmerson, Esq. to Subpoena for Custodian of Records of Coyote Springs.	ARCH
4886.01	11/06/2011	11/21/2011	A	100.00	0.10	10.00 Drafted Notice of Taking Deposition - Custodian of Records of Stewart Title.	ARCH
4886.01	11/06/2011	11/21/2011	A	100.00	0.10	10.00 Drafted Notice of Taking Deposition - Custodian of Records of Chicago Title.	ARCH
4886.01	11/06/2011	11/21/2011	A	100.00	0.10	10.00 Drafted Notice of Taking Deposition - Custodian of Records of Coyote Springs.	ARCH
4886.01	11/07/2011	11/21/2011	A	450.00	3.00	1,350.00 Meeting with Amanda J. Brookhyser, Esq. and James J. Jimmerson, Esq.; analyse new	ARCH
4886.01	11/07/2011	11/21/2011	A	100.00	1.75	175.00 Prepare documents for	ARCH
4886.01	11/07/2011	11/21/2011	A	175.00	1.50	262.50 Review additional documents provided by client in	ARCH
4886.01	11/07/2011	11/21/2011	A	175.00	2.20	385.00 Attend depo prep meeting with clients and LMH and WW	ARCH
4886.01	11/07/2011	11/21/2011	A	175.00	0.30	52.50 Edit and finalize subpoenas to Chicago Title, Coyote Springs and Stewart Title	ARCH
4886.01	11/07/2011	11/21/2011	A	175.00	3.30	577.50 Conference with LMH and JJJ regarding	ARCH
4886.01	11/07/2011	11/21/2011	A	450.00	2.20	990.00 Meeting with Walter Wilkes for	ARCH
4886.01	11/08/2011	11/21/2011	A	450.00	2.30	1,035.00 Attend deposition of Plaintiff Jim Wolfram	ARCH
4886.01	11/08/2011	11/21/2011	A	450.00	1.00	450.00 Office Conference with client	ARCH
4886.01	11/08/2011	11/21/2011	A	450.00	0.30	135.00 Review Subpoenas and Custodian of Records Notices.	ARCH
4886.01	11/08/2011	11/21/2011	A	175.00	1.30	227.50 Meet with clients and JJJ before	ARCH
4886.01	11/08/2011	11/21/2011	A	175.00	5.00	875.00 Attend and defend deposition of James Wolfram	ARCH
4886.01	11/08/2011	11/21/2011	A	550.00	1.50	825.00 Prepared "	ARCH
4886.01	11/09/2011	11/21/2011	A	175.00	0.20	35.00 Draft email to Wilkes re	ARCH
4886.01	11/10/2011	11/21/2011	A	450.00	0.50	225.00 Revise subpoena to Title Company and ISI	ARCH
4886.01	11/14/2011	11/21/2011	A	450.00	1.25	562.50 Prepare Requests for Production	ARCH

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Client ID 4886.01 WILKES/WOLFRAM								
4886.01	11/14/2011	11/21/2011	A	100.00	0.20	20.00	Drafted Amended Notice of Taking Deposition of the Custodian of Records of Chicago Title; sent to opposing counsel.	ARCH
4886.01	11/14/2011	11/21/2011	A	100.00	0.20	20.00	Drafted Amended Subpoena to the Custodian of Records of Chicago Title; sent out for service.	ARCH
4886.01	11/14/2011	11/21/2011	A	175.00	0.10	17.50	Draft email to client re	ARCH
4886.01	11/15/2011	11/21/2011	A	450.00	0.75	337.50	Edit Request for Production	ARCH
4886.01	11/18/2011	11/21/2011	A	450.00	2.50	1,125.00	Review changes of deposition of James Wolfram	ARCH
4886.01	11/21/2011	12/21/2011	A	175.00	1.50	262.50	Telephone conference with Walt Wilkes to	ARCH
4886.01	11/22/2011	12/21/2011	A	175.00	0.20	35.00	Phone call with Walt Wilkes.	ARCH
4886.01	11/22/2011	12/21/2011	A	175.00	0.20	35.00	Phone conference with Wolfram regarding	ARCH
4886.01	11/22/2011	12/21/2011	A	100.00	0.20	20.00	Gather documents for meeting on Sunday with Walt Wilkes.	ARCH
4886.01	11/23/2011	12/21/2011	A	175.00	1.50	262.50	Phone conference with client Wilkes regarding	ARCH
4886.01	11/23/2011	12/21/2011	A	100.00	0.20	20.00	Phone call with counsel of Coyote Springs Investments regarding	ARCH
4886.01	11/25/2011	12/21/2011	A	175.00	1.00	175.00	Phone conference with client Wilkes regarding	ARCH
4886.01	11/25/2011	12/21/2011	A	175.00	0.80	140.00	Review deposition transcript of James Wolfram and draft email to Wilkes	ARCH
4886.01	11/27/2011	12/21/2011	A	450.00	2.20	990.00	Meeting with client regarding	ARCH
4886.01	11/28/2011	12/21/2011	A	450.00	3.50	1,575.00	To Deposition with client	ARCH
4886.01	11/28/2011	12/21/2011	A	450.00	0.50	225.00	Review Walt Wilkes' documents	ARCH
4886.01	11/28/2011	12/21/2011	A	450.00	0.25	112.50	Conference with James J. Jimmerson, Esq. regarding	ARCH
4886.01	11/28/2011	12/21/2011	A	175.00	0.30	52.50	Research conference with JD regarding ; emails with Lynn M. Hansen. Esq. regarding	ARCH
4886.01	11/28/2011	12/21/2011	A	175.00	0.30	52.50	Review documents sent by Wilkes; respond to several emails from Lynn M. Hansen, Esq. regarding	ARCH
4886.01	11/28/2011	12/21/2011	A	175.00	0.10	17.50	Conference with Lynn M. Hansen, Esq. regarding	ARCH
4886.01	11/28/2011	12/21/2011	A	175.00	0.20	35.00	Phone call with opposing counsel regarding	ARCH
4886.01	11/28/2011	12/21/2011	A	175.00	0.30	52.50	Review non-opposition to Motion for Preferential Trial	ARCH

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Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	11/28/2011	12/21/2011	A	100.00	0.30	30.00 Setting.	ARCH
4886.01	11/28/2011	12/21/2011	A	100.00	0.20	20.00 Print out several documents provided to us by clients.	ARCH
4886.01	11/28/2011	12/21/2011	A	100.00	0.20	20.00 Draft Amended Notice of Taking Custodian of Records deposition of Stewart Title.	ARCH
4886.01	11/28/2011	12/21/2011	A	100.00	0.20	20.00 Draft subpoena to Stewart Title c/o registered agent.	ARCH
4886.01	11/28/2011	12/21/2011	A	100.00	0.20	20.00 Telephone call to Chicago Title inquiring about	ARCH
4886.01	11/29/2011	12/21/2011	A	450.00	0.20	90.00 Review Discovery Order	ARCH
4886.01	11/29/2011	12/21/2011	A	450.00	0.40	180.00 Review Jim Wolfram's documents.	ARCH
4886.01	11/30/2011	12/21/2011	A	175.00	0.10	17.50 Conference with JD regarding	ARCH
4886.01	11/30/2011	12/21/2011	A	100.00	0.20	20.00 Copy client's copy exhibits to James' deposition; send runner to to	ARCH
4886.01	11/30/2011	12/21/2011	A	450.00	1.50	675.00 Review Jim Wolfram's deposition for changes and and compare to his notes.	ARCH
4886.01	11/30/2011	12/21/2011	A	450.00	0.25	112.50 Review 2nd Request for Production	ARCH
4886.01	12/01/2011	12/21/2011	A	175.00	0.40	70.00 Send and respond to multiple emails regarding	ARCH
4886.01	12/01/2011	12/21/2011	A	175.00	0.10	17.50 Conference with Lynn M. Hansen, Esq. regarding	ARCH
4886.01	12/01/2011	12/21/2011	A	175.00	0.50	87.50 Review draft Confidentiality Agreement from opposing counsel and make edits.	ARCH
4886.01	12/02/2011	12/21/2011	A	175.00	0.10	17.50 Edit Subpoena to Stewart Title of Nevada.	ARCH
4886.01	12/02/2011	12/21/2011	A	100.00	0.30	30.00 Make revisions to Stipulated Confidentiality Agreement and Protective Order drafted by opposing counsel.	ARCH
4886.01	12/05/2011	12/21/2011	A	100.00	0.20	20.00 Make revisions from Amanda J. Brookhyser, Esq. to subpoena to Stewart Title.	ARCH
4886.01	12/05/2011	12/21/2011	A	100.00	0.10	10.00 Make revisions from Amanda J. Brookhyser, Esq. to Amended Notice of Taking Deposition of Stewart Title.	ARCH
4886.01	12/06/2011	12/21/2011	A	175.00	0.10	17.50 Conference with JD regarding	ARCH
4886.01	12/06/2011	12/21/2011	A	175.00	0.20	35.00 Phone call with client regarding	ARCH
4886.01	12/06/2011	12/21/2011	A	175.00	0.10	17.50 Conference with Lynn M. Hansen, Esq. regarding	ARCH
4886.01	12/06/2011	12/21/2011	A	175.00	0.10	17.50 Draft email to opposing counsel regarding	ARCH
4886.01	12/06/2011	12/21/2011	A	100.00	0.20	20.00 Make revisions to Amended Notice of Taking Deposition of	ARCH

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Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	12/07/2011	12/21/2011	A	450.00	0.20	90.00 Stewart Title; Subpoena to Stewart Title. Review trial setting	ARCH
4886.01	12/07/2011	12/21/2011	A	175.00	0.40	70.00 Meet with Jim Wolfram to discuss	ARCH
4886.01	12/07/2011	12/21/2011	A	100.00	0.50	50.00 Begin drafting memo to Lynn M. Hansen, Esq., Amanda J. Brookhyser, Esq. regarding	ARCH
4886.01	12/08/2011	12/21/2011	A	450.00	1.00	450.00 Revise 2nd Request for Production	ARCH
4886.01	12/08/2011	12/21/2011	A	175.00	0.30	52.50 Review edited version of confidentiality agreement from Opposing Counsel; draft several emails to opposing counsel.	ARCH
4886.01	12/08/2011	12/21/2011	A	100.00	0.20	20.00 Finish drafting memo to Lynn M. Hansen, Esq. and Amanda J. Brookhyser, Esq. regarding	ARCH
4886.01	12/08/2011	12/21/2011	A	100.00	0.20	20.00 Prepare Subpoena and Notice of Taking Deposition of Custodian of Records of Stewart Title for service.	ARCH
4886.01	12/13/2011	12/21/2011	A	175.00	0.20	35.00 Conference with JD regarding	ARCH
4886.01	12/13/2011	12/21/2011	A	175.00	0.30	52.50 Conduct research on Secretary of State website and conference with Lynn M. Hansen, Esq. regarding	ARCH
4886.01	12/13/2011	12/21/2011	A	175.00	0.40	70.00 Conference with JD and Lynn M. Hansen, Esq. regarding	ARCH
4886.01	12/13/2011	12/21/2011	A	100.00	0.20	20.00 Make from Lynn M. Hansen, Esq. and client to	ARCH
4886.01	12/14/2011	12/21/2011	A	175.00	0.30	52.50 Review from Wolfram deposition conference with Lynn M. Hansen, Esq. regarding	ARCH
4886.01	12/19/2011	12/21/2011	A	175.00	0.10	17.50 Draft email to client Wilkes regarding	ARCH
4886.01	12/20/2011	12/21/2011	A	100.00	0.20	20.00 Draft letter to Linda Jones from Stewart Title regarding	ARCH
4886.01	12/20/2011	12/21/2011	A	100.00	0.10	10.00 Email to Litigation Services attaching Certificate of Deponent.	ARCH
4886.01	12/22/2011	01/21/2012	A	175.00	0.20	35.00 Phone call with Walt Wilkes regarding	ARCH
4886.01	12/27/2011	01/21/2012	A	175.00	0.20	35.00 Conference with LH regarding	ARCH
4886.01	12/27/2011	01/21/2012	A	175.00	0.50	87.50 Review Wilkes' deposition	ARCH
4886.01	12/28/2011	01/21/2012	A	450.00	0.90	405.00 Review Walt Wilkes deposition.	ARCH
4886.01	01/06/2012	01/21/2012	A	175.00	0.10	17.50 Draft email to opposing counsel regarding	ARCH

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Client	Trans Date	Start Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	01/06/2012	01/21/2012	A	450.00	0.30	135.00	Reviewed revised changes to deposition transcript
4886.01	01/10/2012	01/21/2012	A	175.00	0.50	87.50	Review objections from Coyote Springs to Subpoena, begin draft of amended subpoena to address email to team regarding
4886.01	01/10/2012	01/21/2012	A	450.00	0.50	225.00	Review objections from Coyote Springs to subpoena
4886.01	01/11/2012	01/21/2012	A	175.00	0.30	52.50	Conference with Shahana Polselli regarding
4886.01	01/11/2012	01/21/2012	A	175.00	1.00	175.00	Conference with Lynn M. Hansen, Esq. regarding
4886.01	01/11/2012	01/21/2012	A	450.00	1.00	450.00	Conference with Amanda J. Brookhyser, Esq. regarding
4886.01	01/18/2012	01/21/2012	A	175.00	1.00	175.00	Begin drafting initial draft of deficiency letter to Pardee
4886.01	01/18/2012	01/21/2012	A	175.00	0.50	87.50	Review Plaintiff's responses to second set of Requests for Production.
4886.01	01/18/2012	01/21/2012	A	175.00	0.50	87.50	Conference with LH and JD regarding
4886.01	01/18/2012	01/21/2012	A	175.00	1.20	210.00	Conduct research for
4886.01	01/19/2012	01/21/2012	A	175.00	0.30	52.50	Phone call with Chicago Title's Counsel regarding
4886.01	01/19/2012	01/21/2012	A	175.00	0.40	70.00	Conduct additional research for
4886.01	01/19/2012	01/21/2012	A	175.00	3.30	577.50	Complete first draft of letter to opposing counsel addressing
4886.01	01/19/2012	01/21/2012	A	175.00	0.40	70.00	Phone call with opposing counsel regarding
4886.01	01/19/2012	01/21/2012	A	450.00	0.50	225.00	Review Plaintiff's responses to discovery
4886.01	01/20/2012	01/21/2012	A	450.00	0.50	225.00	Review letter to Plaintiff's counsel regarding
4886.01	01/23/2012	02/21/2012	A	450.00	1.00	450.00	Revise Discovery letter and Responses to Request for

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Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	01/30/2012	02/21/2012	A	100.00	6.00	600.00 Production Prepare working binders for Lynn M. Hansen Esq. of documents from Stewart Title.	ARCH
4886.01	02/06/2012	02/21/2012	A	450.00	0.20	90.00 Review 3rd Supplemental Disclosure.	ARCH
4886.01	02/06/2012	02/21/2012	A	300.00	2.50	750.00 Begin review of documents produced by Chicago Title consists of 9 notebooks	ARCH
4886.01	02/09/2012	02/21/2012	A	450.00	2.50	1,125.00 Review Stewart Title document	ARCH
4886.01	02/28/2012	03/21/2012	A	450.00	0.30	135.00 Telephone call with Harvey Whittemore	ARCH
4886.01	03/22/2012	04/21/2012	A	300.00	0.20	60.00 Review correspondence from Opposing Counsel regarding	ARCH
4886.01	03/22/2012	04/21/2012	A	300.00	0.20	60.00 Conference with Jessica Dennis and Lori Harrison regarding	ARCH
4886.01	03/22/2012	04/21/2012	A	450.00	0.20	90.00 Review correspondence regarding	ARCH
4886.01	03/29/2012	04/21/2012	A	300.00	0.50	150.00 Go through Request for Productions with Jessica Dennis to designate	ARCH
4886.01	04/16/2012	04/21/2012	A	300.00	2.00	600.00 Document review	ARCH
4886.01	05/18/2012	05/21/2012	A	450.00	2.50	1,125.00 Review Stewart title documents	ARCH
4886.01	05/20/2012	05/21/2012	A	450.00	3.00	1,350.00 Review documents produced by Chicago Title	ARCH
4886.01	05/24/2012	06/29/2012	A	450.00	1.00	450.00 Review Stewart Title Documents	ARCH
4886.01	06/22/2012	07/21/2012	A	450.00	1.75	787.50 Review file for Motion to	ARCH
4886.01	07/12/2012	07/21/2012	A	450.00	2.00	900.00 Review agreement with Stewart Title	ARCH
4886.01	07/17/2012	07/21/2012	A	450.00	0.25	112.50 Meeting with James M. Jimmerson, Esq. regarding	ARCH
4886.01	07/17/2012	07/21/2012	A	300.00	5.70	1,710.00 Review of the documents produced by Stewart Title.	ARCH
4886.01	07/19/2012	07/21/2012	A	300.00	2.00	600.00 Review of the document production by Stewart Title.	ARCH
4886.01	07/20/2012	07/21/2012	A	300.00	2.00	600.00 Drafting Motion	ARCH
4886.01	07/23/2012	08/27/2012	A	300.00	0.40	120.00 Call with Pisanelli & Bice regarding	ARCH
4886.01	07/23/2012	08/27/2012	A	450.00	0.25	112.50 Telephone conference with clients and James M. Jimmerson, Esq.	ARCH
4886.01	07/24/2012	08/27/2012	A	300.00	0.20	60.00 Phone call with Pisanelli & Bice regarding	ARCH
4886.01	07/26/2012	08/27/2012	A	300.00	4.00	1,200.00 Draft Motion to Compel for third party discovery.	ARCH
4886.01	07/27/2012	08/27/2012	A	300.00	0.20	60.00 Phone call with J. Pisanelli regarding	ARCH
4886.01	07/27/2012	08/27/2012	A	300.00	0.20	60.00 Call with James Pisanelli regarding	ARCH
4886.01	08/02/2012	08/27/2012	A	300.00	2.00	600.00 Call with Migali Wysong regarding	ARCH

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Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	08/03/2012	08/27/2012	A	300.00	1.00	300.00 Resolving the Subpoena issues with Miquali Wysong and-	ARCH
4886.01	08/08/2012	08/27/2012	A	300.00	3.00	900.00 Drafting discovery extension Motion.	ARCH
4886.01	08/09/2012	08/27/2012	A	300.00	1.00	300.00 Drafting Motion to Extend Discovery.	ARCH
4886.01	08/10/2012	08/27/2012	A	450.00	1.00	450.00 Revise Motion to Extend Time.	ARCH
4886.01	08/17/2012	08/27/2012	A	550.00	1.00	0.00 Telephone conference with J. Wolfram; Telephone conference with Lynn M. Hansen, Esq.	ARCH
						1.(NO CHARGE)	
4886.01	08/21/2012	09/21/2012	A	300.00	0.50	150.00 Reviewing Stipulation and Order for Extension of Discovery.	ARCH
4886.01	08/24/2012	09/21/2012	A	300.00	0.10	30.00 Call with client regarding	ARCH
4886.01	08/27/2012	09/21/2012	A	450.00	0.50	225.00 Prepare Motion for Preferential Trial Setting	ARCH
4886.01	08/27/2012	09/21/2012	A	300.00	0.30	90.00 Attending the discovery motion where the Judge ordered the Stipulation to Extend Discovery.	ARCH
4886.01	09/04/2012	09/21/2012	A	300.00	5.70	1,710.00 Reviewing documents from Coyote Springs. Preparation for deposition.	ARCH
4886.01	09/04/2012	09/21/2012	A	450.00	1.00	450.00 Review the privilege logs from Coyote Springs	ARCH
4886.01	09/07/2012	09/21/2012	A	300.00	1.00	300.00 Meeting with James J. Jimmerson, Esq. regarding	ARCH
4886.01	09/12/2012	09/21/2012	A	300.00	5.60	1,680.00 Reviewing Coyote Springs documents produced by Pisanelli Bice.	ARCH
4886.01	09/14/2012	09/21/2012	A	450.00	0.50	225.00 Review Coyote Springs Documents with James M. Jimmerson Esq	ARCH
4886.01	09/18/2012	09/21/2012	A	300.00	4.60	1,380.00 Review of the Coyote Springs documents	ARCH
4886.01	09/19/2012	09/21/2012	A	450.00	1.50	675.00 Meeting with James M. Jimmerson, Esq. regarding	ARCH
4886.01	09/19/2012	09/21/2012	A	450.00	2.00	900.00 Meeting with Jim Wolfram regarding	ARCH
4886.01	09/19/2012	09/21/2012	A	450.00	2.50	1,125.00 Review documents to	ARCH
4886.01	09/19/2012	09/21/2012	A	450.00	0.40	180.00 Conference with James J. Jimmerson, Esq.	ARCH
4886.01	09/19/2012	09/21/2012	A	300.00	2.80	840.00 Meeting with Lynn M. Hansen, Esq. and J. Wolfram for	ARCH
4886.01	09/20/2012	09/21/2012	A	450.00	1.00	450.00 Conference with James M. Jimmerson, Esq. regarding	ARCH
4886.01	09/20/2012	09/21/2012	A	300.00	2.40	720.00 Preparation for deposition and review of documents regarding	ARCH
4886.01	09/21/2012	mm/dd/yyyy	P	450.00	1.00	450.00 Review documents produced	388
4886.01	09/24/2012	mm/dd/yyyy	P	450.00	0.50	225.00 Meeting with James M. Jimmerson, Esq. to discuss	389

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Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	08/24/2012	mm/dd/yyyy	P	450.00	5.00	2,250.00 Prepare for deposition of Jon Lash - Review	390
4886.01	09/24/2012	mm/dd/yyyy	P	450.00	2.00	900.00 Meeting with James M. Jimmerson, Esq. to discuss	391
4886.01	09/24/2012	mm/dd/yyyy	P	300.00	5.20	1,560.00 Preparation in anticipation of deposition of John Lash: meeting with client and Lynn M. Hansen, Esq. regarding	393
4886.01	09/24/2012	mm/dd/yyyy	P	550.00	1.50	825.00 Telephone conference with client to	405
4886.01	09/25/2012	mm/dd/yyyy	P	300.00	3.80	1,140.00 Deposition preparation for the deposition of John Lash	394
4886.01	09/25/2012	mm/dd/yyyy	P	450.00	1.00	450.00 Review Stewart Title records regarding	396
4886.01	09/25/2012	mm/dd/yyyy	P	450.00	5.00	2,250.00 Review prepare	397
4886.01	09/26/2012	mm/dd/yyyy	P	300.00	6.10	1,830.00 Deposition of John Lash, before and after deposition.	395
4886.01	09/26/2012	mm/dd/yyyy	P	450.00	2.00	900.00 Review	398
4886.01	09/26/2012	mm/dd/yyyy	P	450.00	1.25	562.50 Take deposition of Jon Lash: Set up meeting	399
4886.01	09/26/2012	mm/dd/yyyy	P	550.00	2.00	0.00 Attended deposition of Jon Lash with Jim Wolfram, Lynn M. Hansen, Esq. and James M. Jimmerson, Esq. (NO CHARGE)	406
4886.01	09/27/2012	mm/dd/yyyy	P	450.00	0.50	225.00 Review	400
4886.01	09/27/2012	mm/dd/yyyy	P	450.00	0.20	90.00 Review trial setting	401
4886.01	10/01/2012	mm/dd/yyyy	P	300.00	0.50	150.00 Drafting of, and,	402
4886.01	10/01/2012	mm/dd/yyyy	P	550.00	1.20	660.00 Prepare for tomorrow's	414
4886.01	10/02/2012	mm/dd/yyyy	P	300.00	0.60	180.00 Drafting	403
4886.01	10/02/2012	mm/dd/yyyy	P	300.00	0.60	180.00 with Lynn M. Hansen, Esq. and Pat Lundvall	404
4886.01	10/02/2012	mm/dd/yyyy	P	450.00	1.00	450.00 with Pardee counsel: Conference with James J. Jimmerson, Esq. and review of	411
4886.01	10/02/2012	mm/dd/yyyy	P	450.00	0.50	225.00 Conference with James J. Jimmerson, Esq.	412
4886.01	10/02/2012	mm/dd/yyyy	P	450.00	0.25	112.50 Phone call with Harvey Whitmire.	413
4886.01	10/03/2012	mm/dd/yyyy	P	550.00	0.40	0.00 Conference with Lynn M. Hansen, Esq. and Shawn M. Goldstein, Esq. and regarding	415
4886.01	10/03/2012	mm/dd/yyyy	P	550.00	0.40	220.00 Conference with Lynn M. Hansen, Esq. and James M. Jimmerson, Esq. regarding t. James J. Jimmerson, Esq.	416

31a-016

PLTF10479

Thursday 10/25/2012 4:11 pm

JA013060

Date: 10/25/2012

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

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<u>Client</u>	<u>Trans Date</u>	<u>Stmt Date</u>	<u>H</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	10/03/2012	mm/dd/yyyy	P	450.00	0.60	270.00 Telephone conference with clients	420
4886.01	10/04/2012	mm/dd/yyyy	P	300.00	0.30	90.00 Telephone conference with client	407
4886.01	10/04/2012	mm/dd/yyyy	P	300.00	2.00	600.00 Review of	408
4886.01	10/04/2012	mm/dd/yyyy	P	300.00	2.30	690.00 Settlement conference call	409
4886.01	10/04/2012	mm/dd/yyyy	P	300.00	0.70	210.00 Meeting with S. Goldstein regarding	410
4886.01	10/04/2012	mm/dd/yyyy	P	375.00	1.00	375.00 Conference with James M. Jimmerson, Esq. regarding	417
4886.01	10/05/2012	mm/dd/yyyy	P	375.00	0.50	187.50 Reviewed and revised Notice of Deposition, Prepared. reviewed and revised letter to Opposing Counsel enclosing Notice of Deposition and Subpoena.	418
4886.01	10/05/2012	mm/dd/yyyy	P	450.00	0.75	337.50 Review James M. Jimmerson, Esq. and James J. Jimmerson, Esq.	423
4886.01	10/05/2012	mm/dd/yyyy	P	300.00	1.70	510.00 Drafting memorandum regarding	424
4886.01	10/05/2012	mm/dd/yyyy	P	300.00	0.50	150.00 Issuing subpoena and notice of deposition of Harvey Whittemore	425
4886.01	10/07/2012	mm/dd/yyyy	P	300.00	0.40	120.00 Meeting with JJJ regarding	426
4886.01	10/08/2012	mm/dd/yyyy	P	450.00	0.50	225.00 Meeting with James M. Jimmerson, Esq.	421
4886.01	10/08/2012	mm/dd/yyyy	P	450.00	0.50	225.00 Phone call with client	422
4886.01	10/08/2012	mm/dd/yyyy	P	300.00	0.10	30.00 Securing the Certificate of the Custodian of Records from Chicago Title	427
4886.01	10/08/2012	mm/dd/yyyy	P	300.00	0.50	150.00 Call with client regarding	428
4886.01	10/08/2012	mm/dd/yyyy	P	300.00	3.60	1,080.00 Recorders Office acquiring maps	429
4886.01	10/08/2012	mm/dd/yyyy	P	300.00	0.20	60.00 Meeting with Lynn M. Hansen, Esq. and James J. Jimmerson, Esq. regarding	430
4886.01	10/08/2012	mm/dd/yyyy	P	300.00	1.60	480.00 Review documents from Chicago Title specifically looking at	431
4886.01	10/09/2012	mm/dd/yyyy	P	300.00	1.60	480.00 Email to client attaching certain explaining the	432
4886.01	10/12/2012	mm/dd/yyyy	P	300.00	0.70	210.00 Telephone conference with client regarding	433

31a-017

PLTF10480

Thursday 10/25/2012 4:11 pm

Detail Fee Transaction File List
JIMMERSON HANSEN, P.C.

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	10/12/2012	mm/dd/yyyy	P	300.00	0.30	90.00 Meeting with Lynn M. Hansen, Esq. regarding	434
4886.01	10/12/2012	mm/dd/yyyy	P	450.00	0.50	225.00 Telephone conference with Jim Wolfram and Walt Wilkes.	435
4886.01	10/16/2012	mm/dd/yyyy	P	450.00	1.50	675.00 Conference with James M. Jimmerson, Esq. regarding	436
4886.01	10/16/2012	mm/dd/yyyy	P	450.00	0.25	112.50 E-mail to Pat Lundvall, Esq.	437
4886.01	10/16/2012	mm/dd/yyyy	P	450.00	0.25	112.50 Phone call with Pat Lundvall, Esq. regarding	438
4886.01	10/16/2012	mm/dd/yyyy	P	300.00	0.80	240.00 Telephone conference with Harvey Whittemore.	441
4886.01	10/16/2012	mm/dd/yyyy	P	300.00	0.58	174.00 Meeting with Lynn M. Hansen, Esq. regarding	442
4886.01	10/16/2012	mm/dd/yyyy	P	300.00	0.50	150.00 Meeting with Lynn M. Hansen, Esq. regarding	443
4886.01	10/17/2012	mm/dd/yyyy	P	450.00	3.00	1,350.00 Review documents to take Harry Whittemore's deposition	439
4886.01	10/17/2012	mm/dd/yyyy	P	140.00	3.00	420.00 Deposition summary Jon Lash	448
4886.01	10/18/2012	mm/dd/yyyy	P	450.00	0.30	135.00 Conference with James M. Jimmerson, Esq. regarding	440
4886.01	10/18/2012	mm/dd/yyyy	P	300.00	4.90	1,470.00 Preparation for the Whittemore deposition	444
4886.01	10/18/2012	mm/dd/yyyy	P	300.00	1.30	390.00 Research regarding	445
4886.01	10/18/2012	mm/dd/yyyy	P	450.00	0.75	337.50 Review Court Order. Phone call with Defense Counsel. Prepare e-mail to Prepare letter to	449
4886.01	10/19/2012	mm/dd/yyyy	P	300.00	1.50	450.00 Preparation for the Whittemore deposition in Reno	446
4886.01	10/19/2012	mm/dd/yyyy	P	300.00	3.50	1,050.00 Taking of the Whittemore deposition.	447
4886.01	10/19/2012	mm/dd/yyyy	P	450.00	3.50	1,575.00 Attend and take deposition of Harvey Wittemore	450
4886.01	10/19/2012	mm/dd/yyyy	P	450.00	1.50	675.00 Prepare for Harvey Wittemore's deposition in Reno	451
4886.01	10/19/2012	mm/dd/yyyy	P	450.00	3.00	1,350.00 Travel to and from Reno.	452
Total for Client ID 4886.01				Billable	317.93	102,761.50 WILKES/ WOLFRAM	
				Non-billable	10.40	600.00 VS. PARDEE HOMES OF NEVADA	
				Total	328.33	103,361.50	

GRAND TOTALS

Billable	317.93	102,761.50
Non-billable	10.40	600.00
Total	328.33	103,361.50

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PLTF10481

Thursday 10/25/2012 4:11 pm

Date: 03/13/2013

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JIMMERSON HANSEN, P.C.

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Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	10/24/2012	11/21/2012	A	450.00	0.25	112.50 Conference with James M. Jimmerson, Esq.	ARCH
4886.01	10/25/2012	11/21/2012	A	300.00	1.00	300.00 Legal research	ARCH
4886.01	10/25/2012	11/21/2012	A	300.00	3.50	1,050.00 Responding to Motion for Summary Judgment	ARCH
4886.01	10/26/2012	11/21/2012	A	450.00	2.00	900.00 Review supplemental disclosure.	ARCH
4886.01	10/26/2012	11/21/2012	A	300.00	2.50	750.00 Supplement to Initial Disclosures.	ARCH
4886.01	10/29/2012	11/21/2012	A	450.00	0.75	337.50 Review Motion for Summary Judgment; Review e-mail	ARCH
4886.01	10/29/2012	11/21/2012	A	300.00	0.80	240.00 Supplement to Initial Disclosures.	ARCH
4886.01	10/29/2012	11/21/2012	A	300.00	0.30	90.00 Email and conversation with A. Shipley regarding Motion for Summary Judgment	ARCH
4886.01	11/01/2012	11/21/2012	A	300.00	2.00	600.00 Drafting Opposition to Motion for Summary Judgment.	ARCH
4886.01	11/02/2012	11/21/2012	A	300.00	1.20	360.00 Revising Opposition for Motion for Summary Judgment.	ARCH
4886.01	11/03/2012	11/21/2012	A	300.00	1.50	450.00 Legal research Work	ARCH
4886.01	11/05/2012	11/21/2012	A	300.00	0.60	180.00 on opposition for Motion for Summary Judgment.	ARCH
4886.01	11/05/2012	11/21/2012	A	300.00	0.60	180.00 Emails with opposing counsel regarding Motion for Summary Judgment.	ARCH
4886.01	11/06/2012	11/21/2012	A	300.00	2.00	600.00 Legal research regarding	ARCH
4886.01	11/08/2012	11/21/2012	A	450.00	1.50	675.00 Revised Opposition to Motion for Summary Judgment	ARCH
4886.01	11/08/2012	11/21/2012	A	300.00	0.20	60.00 Emails and phone conversation with opposing counsel regarding service of the Opposition to Motion for Summary Judgment	ARCH
4886.01	11/08/2012	11/21/2012	A	300.00	1.50	450.00 Drafting Motion to Seal Certain Exhibits in support of Opposition to Motion for Summary Judgment	ARCH
4886.01	11/08/2012	11/21/2012	A	300.00	0.50	150.00 Preparing hard copy filings and exhibits for the court	ARCH
4886.01	11/08/2012	11/21/2012	A	300.00	0.50	150.00 Call with Lynn M. Hansen, Esq. and opposing counsel regarding Motion for Summary Judgment	ARCH
4886.01	11/08/2012	11/21/2012	A	300.00	0.50	150.00 Email with opposing counsel regarding hearing for Motion for Summary Judgment	ARCH
4886.01	11/09/2012	11/21/2012	A	300.00	0.50	150.00 Call with Aaron Shipley regarding authentication of certain documents	ARCH
4886.01	11/13/2012	11/21/2012	A	300.00	0.20	60.00 Emails to third parties regarding	ARCH
4886.01	11/13/2012	11/21/2012	A	300.00	0.20	60.00 Emails with opposing counsel regarding motion for summary judgment.	ARCH
4886.01	11/14/2012	11/21/2012	A	450.00	0.25	112.50 Review	ARCH
4886.01	11/16/2012	11/21/2012	A	300.00	1.00	300.00 Meeting with Aaron Shipley regarding original documents and Motion for Summary Judgment	ARCH
4886.01	11/16/2012	11/21/2012	A	300.00	1.50	450.00 Draft letter in response to	ARCH

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JA013063

Date: 03/13/2013

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<u>Client</u>	<u>Trans Date</u>	<u>Stmnt Date</u>	<u>H P</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	11/19/2012	11/21/2012	A	140.00	3.00	420.00 correspondence.	ARCH
4886.01	11/29/2012	12/21/2012	A	300.00	0.30	90.00 Deposition summary Harvey Whittemore	ARCH
4886.01	11/30/2012	12/21/2012	A	450.00	0.50	225.00 Responding to the letter from	ARCH
4886.01	11/30/2012	12/21/2012	A	450.00	0.30	135.00 Review letter to Plaintiff's Counsel	ARCH
4886.01	11/30/2012	12/21/2012	A	450.00	0.30	135.00 Conference with James M. Jimmerson, Esq.; Review deposition of H. Wittemore	ARCH
4886.01	11/30/2012	12/21/2012	A	450.00	0.30	135.00 Review Opposition to Countermotion	ARCH
4886.01	12/03/2012	12/21/2012	A	300.00	0.50	150.00 Drafting assignment	ARCH
4886.01	12/05/2012	12/21/2012	A	450.00	0.30	135.00 Review Order changing Status Check; Phone call with court; Review memo from court regarding	ARCH
4886.01	12/05/2012	12/21/2012	A	300.00	0.10	30.00 Client email	ARCH
4886.01	12/06/2012	12/21/2012	A	550.00	1.00	550.00 Court status check; new dates set. Orders entered	ARCH
4886.01	12/17/2012	12/21/2012	A		1.20	0.00 Conference with	ARCH
4886.01	12/17/2012	12/21/2012	A	300.00	1.00	300.00 Legal research	ARCH
4886.01	12/17/2012	12/21/2012	A	300.00	2.50	750.00 Drafting response to Pat Lundvall's letter of November 29, 2012.	ARCH
4886.01	12/17/2012	12/21/2012	A	300.00	0.10	30.00 Email Mark Carmen	ARCH
4886.01	12/18/2012	12/21/2012	A	450.00	0.50	225.00 Review correspondence to Defense Counsel regarding	ARCH
4886.01	12/19/2012	12/21/2012	A	300.00	0.50	150.00 Letter to	ARCH
4886.01	12/20/2012	12/21/2012	A	300.00	1.50	450.00 Drafting reply	ARCH
4886.01	12/20/2012	12/21/2012	A	550.00		-30,686.52 Balance	ARCH
4886.01	12/27/2012	01/21/2013	A	300.00	0.50	150.00 Review of transcript of December 6 status check.	ARCH
4886.01	12/28/2012	01/21/2013	A	450.00	0.25	112.50 Review transcript of hearing.	ARCH
4886.01	12/31/2012	01/21/2013	A	450.00	0.20	90.00 Conference with James M. Jimmerson, Esq. regarding	ARCH
4886.01	01/09/2013	01/21/2013	A	450.00	1.60	720.00 Review Reply to Our Opposition	ARCH
4886.01	01/14/2013	01/21/2013	A	300.00	0.30	90.00 Telephone conference with opposing counsel regarding order and motion for summary judgment.	ARCH

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PLT10698

Wednesday 03/13/2013 1:16 pm

JA013064

Date: 03/13/2013

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Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	01/17/2013	01/21/2013	A	300.00	4.40	1,320.00	ARCH
4886.01	01/18/2013	01/21/2013	A	300.00	0.10	30.00	ARCH
4886.01	01/21/2013	02/21/2013	A	300.00	1.50	450.00	ARCH
4886.01	01/21/2013	02/21/2013	A	550.00	3.00	1,650.00	ARCH
4886.01	01/22/2013	02/21/2013	A	300.00	0.50	150.00	ARCH
4886.01	01/22/2013	02/21/2013	A	300.00	1.50	450.00	ARCH
4886.01	01/23/2013	02/21/2013	A	550.00	1.50	825.00	ARCH
4886.01	01/23/2013	02/21/2013	A	300.00	0.50	150.00	ARCH
4886.01	01/23/2013	02/21/2013	A	300.00	0.50	150.00	ARCH
4886.01	01/27/2013	02/21/2013	A	550.00	2.00	1,100.00	ARCH
4886.01	01/28/2013	02/21/2013	A	450.00	0.25	112.50	ARCH
4886.01	02/14/2013	02/21/2013	A	450.00	1.00	450.00	ARCH
4886.01	02/20/2013	02/21/2013	A	550.00		-4,000.00	ARCH
Total for Client ID 4886.01				Billable	59.95	-14,174.02	WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA

GRAND TOTALS

Billable 59.95 -14,174.02

31a-021

PLTF10499

Wednesday 03/13/2013 1:16 pm

JA013065

Date: 04/02/2013

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Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount		Ref #
Client ID 4886.01 WILKES/ WOLFRAM								
4886.01	02/21/2013	03/21/2013	A	450.00	1.00	450.00	Review Pleadings for Court	ARCH
4886.01	02/26/2013	03/21/2013	A	450.00	0.25	112.50	Review Motion to Enforce Order Shortening Time and Summary Judgment	ARCH
4886.01	02/26/2013	03/21/2013	A	300.00	1.00	300.00	Review of Motion to Continue Trial	ARCH
4886.01	02/27/2013	03/21/2013	A	300.00	0.50	150.00	Prepare Plaintiffs 7th Supplement to 16.1 Disclosures	ARCH
4886.01	02/28/2013	03/21/2013	A	300.00	8.10	2,430.00	Prepare Opposition to Motion to Continue (735); telephone call with opposing counsel regarding Motion to Continue and Motions in Limine (.6).	ARCH
4886.01	03/01/2013	03/21/2013	A	450.00	0.25	112.50	Revise Opposition to Defendant's Motion to Enforce Order Shortening Time	ARCH
4886.01	03/01/2013	03/21/2013	A	300.00	0.80	240.00	Telephone conference with opposing counsel regarding Motion to Continue and Motions in Limine.	ARCH
4886.01	03/04/2013	03/21/2013	A	450.00	1.50	675.00	Review the Agreement for Hearing.	ARCH
4886.01	03/04/2013	03/21/2013	A	450.00	0.50	225.00	Meeting with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. regarding /	ARCH
4886.01	03/04/2013	03/21/2013	A	300.00	5.00	1,500.00	Prepare Memo in preparation with James J. Jimmerson, Esq. (1.0); Prep with James J. Jimmerson, Esq. on Motion for Summary Judgment Hearing (1.5); Research on (1.7) and Memo on standards on	ARCH
4886.01	03/05/2013	03/21/2013	A	450.00	3.50	1,575.00	Attend Hearing on Motion for Summary Judgment	ARCH
4886.01	03/05/2013	03/21/2013	A	450.00	0.30	135.00	Provide dates and tasks for calendaring pre-trial activities to assistant.	ARCH
4886.01	03/05/2013	03/21/2013	A	300.00	5.30	1,590.00	Attend Hearing on Motion for Summary Judgment (3.0); Meeting with client regarding Hearing on Motion for Summary Judgment (.5); Meeting with James J. Jimmerson, Esq. regarding: (1.0) and meeting with James J. Jimmerson, Esq. in	ARCH
4886.01	03/05/2013	03/21/2013	A	550.00	5.00	2,750.00	Prepared for and attended court hearing with Jim Wolfram in Pardee's Motion for Summary Judgment and our cross-motion for summary judgment; matter taken under advisement, but our cross-motion for summary judgment is granted; teleconference with Wilkes; trial dates set.	ARCH
4886.01	03/06/2013	03/21/2013	A	300.00	0.50	150.00	Telephone conference with client regarding	ARCH
4886.01	03/07/2013	03/21/2013	A	450.00	1.25	562.50	Review	ARCH
4886.01	03/08/2013	03/21/2013	A	300.00	2.70	810.00	Prepare Order regarding Partial Summary Judgment (1.4); Email with James J. Jimmerson, Esq. regarding (1.0); Research regarding (1.0).	ARCH
4886.01	03/11/2013	03/21/2013	A	450.00	0.25	112.50	Conference with James M. Jimmerson, Esq. regarding	ARCH

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PLTF10506

Tuesday, 04/02/2013 11:02 am

JA013066

Date: 04/02/2013

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Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	Ref #
Client ID 4886.01 WILKES/ WOLFRAM							
4886.01	03/11/2013	03/21/2013	A	300.00	0.20	60.00 Telephone conference with client regarding	ARCH
4886.01	03/12/2013	03/21/2013	A	300.00	2.60	780.00 Telephone conference with client (.2); Legal research in (2.4).	ARCH
4886.01	03/13/2013	03/21/2013	A	300.00	3.20	960.00 Legal research regarding (1.5); drafting Order regarding Motion for Summary Judgment (.5); call with clients regarding (1.2).	ARCH
4886.01	03/14/2013	03/21/2013	A	300.00	3.20	960.00 Legal research in (1.2); drafting order denying summary judgment (.5); drafting motion for leave to amend (1.5).	ARCH
4886.01	03/15/2013	03/21/2013	A	300.00	6.40	1,920.00 Review opposition to Motions in Limine (.2); drafting opposition to Motion in Limine on parol evidence (4.2); legal research (1.5); call with opposing counsel regarding orders and Motions in Limine (.5).	ARCH
4886.01	03/18/2013	03/21/2013	A	300.00	10.40	3,120.00 Drafting opposition to motion in limine regarding attorney's fees (8.4); legal research (2.0); call with client regarding	ARCH
4886.01	03/19/2013	03/21/2013	A	300.00	8.00	2,400.00 Revise order denying Motion for Summary Judgment (.2); Draft Opposition to Motion in Limine for compensation of time (6.8); call with client regarding (.5) and 8TH JUDICIAL DISTRICT COURT CLERK supplement (.5).	ARCH
4886.01	03/19/2013	03/21/2013	A	450.00	1.25	562.50 Review Objections to Motion in Limine	ARCH
4886.01	03/20/2013	03/21/2013	A	300.00	8.20	2,460.00 Prepare Opposition to Motion in Limine regarding disclosure after discovery deadline.	ARCH
4886.01	03/20/2013	03/21/2013	A	550.00	2.00	1,100.00 Pardee's Motion for Summary Judgment denied; Minutes received, Telephone conference with J. Wolfram and W. Wilkes;	ARCH
Total for Client ID 4886.01				Billable	83.15	28,202.50 WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA	

GRAND TOTALS

Billable 83.15 28,202.50

PLTF10507

Tuesday 04/02/2013 11:03 am

JA013067

Date: 05/21/2013

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<u>Client</u>	<u>Trans Date</u>	<u>Stmt Date</u>	<u>H P</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
Client ID 4886.01 WILKES/ WOLFRAM								
4886.01	03/21/2013	03/21/2013	A	300.00	0.40	120.00	Redact billing statement	ARCH
4886.01	03/21/2013	03/21/2013	A	300.00	0.40	120.00	Review Motion for Leave to File Second Amended Complaint	ARCH
4886.01	03/21/2013	04/21/2013	A	300.00	4.20	1,260.00	Prepare and draft Motion to Leave to File 2nd Amended Complaint, e-filed, emailed and mailed to opposing counsel.	ARCH
4886.01	03/22/2013	03/21/2013	A	450.00	0.60	270.00	Review Reply Brief	ARCH
4886.01	03/22/2013	04/21/2013	A	300.00	0.20	60.00	Prepared and filed Notice of Hearing on Motion.	ARCH
4886.01	03/25/2013	04/21/2013	A	300.00	0.30	90.00	Prepare e-mail to opposing counsel regarding: settlement,	ARCH
4886.01	03/26/2013	04/21/2013	A	300.00	0.20	60.00	Prepare e-mail for opposing counsel regarding: EDCR 2.67 conference.	ARCH
4886.01	03/29/2013	04/21/2013	A	300.00	1.50	450.00	Prepare email to opposing counsel regarding: motions in limine, EDCR 2.67 conference and phone call regarding the same.	ARCH
Total for Client ID 4886.01				Billable	7.80	2,430.00	WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA	

GRAND TOTALS

Billable 7.80 2,430.00

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PLTF10508

Tuesday 05/21/2013 4:20 pm

JA013068

Date: 05/20/2013

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JIMMERSON HANSEN, P.C.

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<u>Client</u>	<u>Trans Date</u>	<u>Stmt Date</u>	<u>H P</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
Client ID 4886.01 WILKES/ WOLFRAM								
4886.01	04/01/2013	04/21/2013	A	300.00	6.20	1,860.00	Trial preparation	ARCH
4886.01	04/02/2013	04/21/2013	A	300.00	0.70	210.00	Review of letter from opposing counsel regarding: requesting advancing calendar call.	ARCH
4886.01	04/02/2013	04/21/2013	A	300.00	4.50	1,350.00	Draft of letter in response to letter from opposing counsel regarding: requesting advancing calendar call.	ARCH
4886.01	04/03/2013	04/21/2013	A	450.00	0.25	112.50	Conference with James M. Jimmerson, Esq. regarding	ARCH
4886.01	04/03/2013	04/21/2013	A	300.00	1.50	450.00	Drafting of Offer of Judgment.	ARCH
4886.01	04/03/2013	04/21/2013	A	300.00	0.20	60.00	Review of	ARCH
4886.01	04/03/2013	04/21/2013	A	300.00	0.50	150.00	Prepare letter to counsel with opposing counsel regarding: teleconference.	ARCH
4886.01	04/03/2013	04/21/2013	A	300.00	0.30	90.00	Telephone call to Judge's chambers regarding: trial dates.	ARCH
4886.01	04/04/2013	04/21/2013	A	300.00	0.30	90.00	Telephone conference with Pat Lundvall regarding: setting of trial.	ARCH
4886.01	04/05/2013	04/21/2013	A	300.00	0.40	120.00	Call with P Lundvall re: trial setting	ARCH
4886.01	04/05/2013	04/21/2013	A	300.00	0.20	60.00	Conference with James J. Jimmerson, Esq. in advance of call with opposing counsel	ARCH
4886.01	04/05/2013	04/21/2013	A	300.00	1.40	420.00	Legal research on	ARCH
4886.01	04/05/2013	04/21/2013	A	300.00	1.00	300.00	drafting subpoenas of trial	ARCH
4886.01	04/05/2013	04/21/2013	A	550.00	0.40	220.00	Telephone conference: Pardee wants to Bifurcate Trial; we do not agree.	ARCH
4886.01	04/08/2013	04/21/2013	A	450.00	0.40	180.00	Conference with James M. Jimmerson, Esq. and James J. Jimmerson, Esq. regarding	ARCH
4886.01	04/08/2013	04/21/2013	A	450.00	2.00	900.00	Review deposition of Jim Wolfram.	ARCH
4886.01	04/08/2013	04/21/2013	A	450.00	1.50	675.00	Meeting with client for	ARCH
4886.01	04/08/2013	04/21/2013	A	300.00	1.50	450.00	Meeting with client regarding:	ARCH
4886.01	04/08/2013	04/21/2013	A	300.00	0.20	60.00	email with opposing counsel re: trial date.	ARCH
4886.01	04/08/2013	04/21/2013	A	300.00	0.30	90.00	Telephone Conference with opposing counsel re: trial date and preserving Wilkes testimony	ARCH
4886.01	04/08/2013	04/21/2013	A	300.00	1.00	300.00	Drafting reply to motion for leave to amend to file 2nd amended complaint.	ARCH
4886.01	04/09/2013	04/21/2013	A	300.00	0.20	60.00	email w/opp; counsel re: trial date	ARCH
4886.01	04/09/2013	04/21/2013	A	300.00	0.30	90.00	correspondence w/ court on trial	ARCH
4886.01	04/10/2013	04/21/2013	A	450.00	0.50	225.00	Review Opposition to Plaintiff's Motion to file Amended Complaint.	ARCH
4886.01	04/12/2013	04/21/2013	A	300.00	0.30	90.00	Telephone conference with client regarding:	ARCH
4886.01	04/18/2013	04/21/2013	A	550.00	1.60	880.00	Review and revise Reply to Opposition and Amend Complaint	ARCH

31a-025

PLTF10511

Monday 05/20/2013 1:48 pm

Detail Fee Section File List
JIMMERL HANSEN, P.C.

Client	Trans Date	Stmt Date	H P	Rate	Hours to Bill	Amount	
Total for Client ID 4886.01				Billable	27.65	9,492.50	WILKES/ WOLFRAM VS. PARDEE HOMES OF NEVADA
GRAND TOTALS							
				Billable	27.65	9,492.50	

31a-026

PLTF10512

Monday 05/20/2013 1:48 pm

JA013070

EXHIBIT B

Plaintiffs' Duplicate Time Entries

Date	Time Keeper	Rate	Hours to Bill	Amount	Description
05/11/13	1	\$550.00	0.60	\$330.00	Review Supplemental points and authorities regarding [REDACTION]
05/13/13	19	\$350.00	0.20	\$70.00	Prepare emails to opposing counsel regarding: discovery
05/13/13	2	\$450.00	0.75	\$337.50	Review Plaintiff's Supplement to Motion to Amend
05/14/13	19	\$350.00	0.10	\$35.00	Telephone conference with opposing counsel regarding: discovery.
05/15/13	19	\$350.00	0.10	\$35.00	Telephone call to opposing counsel regarding: discovery.
05/15/13	19	\$350.00	0.50	\$175.00	Telephone call to opposing counsel regarding: trial date.
05/16/13	19	\$350.00	0.30	\$105.00	Prepare email to opposing counsel regarding: deposition dates.
05/16/13	19	\$350.00	0.30	\$105.00	Telephone conference with client regarding: [REDACTION]
05/16/13	19	\$350.00	0.50	\$175.00	Prepare and draft Order.
05/16/13	19	\$350.00	0.50	\$175.00	Prepare 9th Supplemental Disclosures.
05/20/13	2	\$450.00	1.75	\$787.50	Meeting with Jim Wolfram
05/20/13	19	\$350.00	1.00	\$350.00	Conference with client regarding: [REDACTION]
05/20/13	19	\$350.00	0.50	\$175.00	Prepare for meeting.
05/20/13	19	\$350.00	0.50	\$175.00	Draft of 9th Supplement, redacted billing.
05/22/13	12	\$300.00	0.50	\$150.00	Discussion with James M. Jimmerson, Esq. [REDACTION]
05/22/13	19	\$350.00	1.00	\$350.00	Prepare 9th Supplement.
05/22/13	19	\$350.00	0.50	\$175.00	Prepare redacting bills.
05/22/13	19	\$350.00	1.00	\$350.00	Prepare calculating dates.
05/22/13	2	\$450.00	0.40	\$180.00	Review 9th supplemant (<i>sic</i>)
05/24/13	2	\$450.00	2.00	\$900.00	[REDACTION]
05/24/13	19	\$350.00	1.50	\$525.00	Attend [REDACTION]
05/24/13	19	\$350.00	0.50	\$175.00	Conference with Lynn M. Hansen, Esq. regarding: [REDACTION].
05/25/13	2	\$450.00	0.50	\$225.00	Meet with James M. Jimmerson, Esq. regarding [REDACTION]
05/28/13	19	\$350.00	1.20	\$420.00	Prepare Order, emailed opposing counsel for review and signature.
05/29/13	2	\$450.00	2.00	\$900.00	Meet with Jim Wolfram regarding [REDACTION]
05/29/13	2	\$450.00	0.25	\$112.50	Review proposed Order
05/29/13	19	\$350.00	0.20	\$70.00	Prepare email to opposing counsel with scans of map.
05/29/13	19	\$350.00	0.50	\$175.00	Telephone call to opposing counsel regarding: depo and order.
05/29/13	19	\$350.00	0.30	\$106.00	Telephone conference with client.
05/29/13	19	\$350.00	1.50	\$525.00	Attend [REDACTION]
05/29/13	2	\$450.00	1.50	\$675.00	Attend [REDACTION]
05/30/13	19	\$350.00	0.50	\$175.00	Prepare redacted billing statements.
05/31/13	2	\$450.00	1.50	\$675.00	Attend deposition of Jim Wolfram.
05/31/13	19	\$350.00	1.40	\$490.00	Deposition of client.
05/31/13	19	\$350.00	0.10	\$35.00	Email to opposing counsel regarding Eleventh Supplement.
05/31/13	19	\$350.00	1.50	\$525.00	Drafting Eleventh Supplement/[REDACTION]
05/31/13	2	\$450.00	1.40	\$630.00	Attend depo of client
06/03/13	2	\$450.00	0.25	\$112.50	Review email to Opposing Counsel
06/06/13	19	\$350.00	0.20	\$70.00	Prepare and filed (<i>sic</i>) Notice of Entry of Order.
06/06/13	19	\$350.00	0.10	\$35.00	Filed Second Amended Complaint.
06/11/13	19	\$350.00	0.50	\$175.00	Prepare emails to opposing counsel regarding: [REDACTION]
06/12/13	19	\$350.00	1.00	\$350.00	Prepare emails to opposing counsel regarding: extension of time to respond.
06/12/13	2	\$450.00	0.30	\$135.00	Conference with James M. Jimmerson, Esq. regarding [REDACTION]
06/13/13	19	\$350.00	0.50	\$175.00	Prepare 9th Supplement.
06/19/13	19	\$350.00	0.30	\$105.00	Prepare email to opposinjc counsel regarding: EDCR 2.67.
06/20/13	19	\$350.00	0.10	\$35.00	Telephone call to [REDACTION]
			32.60	\$12,766.00	

EXHIBIT C

BREF

JAMES J. JIMMERSON, ESQ.
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and)	
WALT WILKES,)	CASE NO.: A-10-632338-C
)	DEPT. NO.: IV
Plaintiffs,)	
)	
vs.)	
)	
PARDEE HOMES OF NEVADA,)	
)	
Defendant.)	
)	
And related claims.)	
)	

PLAINTIFFS' TRIAL BRIEF PURSUANT TO EDCR 7.27

COME NOW, Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their counsel of record, James J. Jimmerson, Esq., Lynn M. Hansen, Esq., and James M. Jimmerson, Esq., of the law firm of JIMMERSON HANSEN, P.C., and hereby file Plaintiffs' Trial Brief Pursuant to EDCR 7.27. This Trial Brief is based upon the papers and pleadings

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on file in this action, and the Memorandum of Points and Authorities attached hereto.

DATED this 21st day of October, 2013.

JIMMERSON HANSEN, P.C.

/s/ James J. Jimmerson, Esq.
JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
LYNN M. HANSEN, ESQ.
Nevada State Bar No. 000244
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415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Plaintiffs
James Wolfram and Walt Wilkes

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' TRIAL BRIEF PURSUANT TO EDCR 7.27

I. INTRODUCTION

Trial is here.

Despite Plaintiffs' attempts to avoid a lawsuit and to resolve their claims for information without lawyers and the Court, Plaintiffs have been left no choice but to come before Your Honor and seek the relief available nowhere else. For three years, Plaintiffs sought to avoid litigation by requesting information concerning the development of Coyote Springs as it related to commission payments to which they were entitled under the September 1, 2004 Commission Letter Agreement with Pardee Homes of Nevada ("Pardee"). These requests should have ended the problem in its infancy. Unfortunately they did not. Now Plaintiffs sit ready for trial, having already spent almost three additional years in litigation and incurring over \$250,000 in attorney's fees just for information they are entitled to under their agreement with Pardee.

How unjust!

Plaintiffs have had to spend a fortune for information that should have been afforded to them in the normal course, and if not, surely upon their request. Were the need for the information and the implications of not receiving it not so immense, Plaintiffs would not be here. They would have taken their lumps from Pardee and moved on.

But the need for the information is great and the implications of not receiving it are mammoth. The legacies of James Wolfram and Walt Wilkes are at stake.

In 2004, Plaintiffs executed the Commission Letter Agreement with Pardee which capped off one of the largest, if not the largest, land transactions involving land brokers in the history of Nevada. Plaintiffs had facilitated the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (the "Option Agreement") between Pardee and Coyote Springs Investment, LLC ("CSI"), an agreement whereby Pardee agreed to purchase thousands of acres of land and secured a forty-year option to buy tens of thousands more. If the option was completely exercised, Pardee would pay CSI well over

1 \$1,000,000,000 for the land known as Coyote Springs in Clark County and Lincoln County,
2 Nevada.

3 Importantly, Plaintiffs would receive a substantial commission on the deal. If the
4 option were completely exercised for the approximately 30,000 acres in Coyote Springs,
5 Plaintiffs could expect commissions exceeding \$6,000,000 for every 10,000 acres
6 designated as "Production Residential Property." Even before a single option parcel was
7 purchased, Plaintiffs were set to receive over \$2,000,000 in commissions. This was by far
8 the most lucrative transaction either Mr. Wilkes or Mr. Wolfram had been a part of, and it
9 represented a substantial sum of money for them individually and for their families. As the
10 Court knows, in 2004 Plaintiffs were both in their 60's when the initial transaction was
11 agreed to, and they may not survive to see the end of the forty-year option. This means
12 that their families and heirs would reap the benefit of their hard work.

13 But not if Pardee keeps withholding critical information from Plaintiffs. If Pardee
14 keeps operating in the dark, Plaintiffs and their heirs will never know if they would ever be
15 entitled to another commission and Plaintiffs' legacies could disappear. That is why
16 Plaintiffs are here and have taken on such costs. They are protecting their entitlement to
17 monies which may very well dwarf their current attorney's fees.

18 At trial, the evidence will show that Pardee wrongfully withheld information from
19 Plaintiffs despite their ongoing requests for it. Because the Commission Letter Agreement
20 bifurcated the calculation of commissions between those for the sale of Purchase Property
21 and those for the sale of Option Property, the agreement contained provisions requiring
22 Pardee to provide Plaintiffs with records and information when Option Property was
23 purchased, and mandated that, no matter what, Pardee would keep Plaintiffs "reasonably
24 informed as to all matters related to the amount and due date of [their] commission
25 payments." Further, Pardee promised to refrain from circumventing their obligations in the
26 Commission Letter Agreement. Defendant has acted in derogation of these covenants and
27 duties.
28

1 The evidence will show that Pardee purchased Option Property and yet never
2 alerted Plaintiffs of such purchases. Instead, Pardee treated all of their land transactions
3 as to have been for Purchase Property, despite the geographical proof that Defendant did
4 indeed purchase Option Property. Likewise, none of the requirements for the production of
5 records and information when Option Property was purchased were followed. Even after
6 Plaintiffs requested the information at all, Pardee failed to deliver the appropriate records.
7 Instead, Pardee, when it provided any information, gave an incomplete picture of the
8 events and occurrences related to Plaintiffs' commissions, "cherry-picked" the documents it
9 would produce, and never came forward with a candid response to Plaintiffs' inquiries.
10 Pardee even instructed the title company involved not to produce the records concerning
11 the land purchases in Coyote Springs.

12 Plaintiffs were prisoner to Defendant's wrongful actions. Defendant would not
13 produce the information; it prevented other informed parties from doing so; and it ensured
14 that the records were withheld from the public record by executing agreements containing
15 confidentiality provisions. Plaintiffs were left with no alternative other than to file suit and
16 gain access to the tools of discovery and the Court's equitable powers in order to compel
17 the production of the information.

18 Now the Court will hear testimony and consider evidence about Pardee's failure to
19 live up to its obligations under the law and under the Commission Letter Agreement, which
20 evidence was only discovered once Plaintiffs had the right to discovery and subpoena
21 power. The Court will learn that Plaintiffs were not paid their commissions according to the
22 appropriate formulas and that only Pardee has the information necessary to properly
23 calculate Plaintiffs' commissions. The Court will hear evidence of how Pardee acquired
24 land for which a commission would be owed to Plaintiffs, but that Pardee executed other
25 agreements to avoid paying those commissions. Finally, the Court will hear how these
26 transgressions would have gone undiscovered if Pardee were allowed to continue
27 withholding the information it is required to disclose under the Commission Letter
28 Agreement.

1 There is no adequate excuse or explanation for this conduct. The Court may hear
2 how the records had confidentiality clauses and how important maintaining that
3 confidentiality is. This is a red herring. The original Option Agreement as well as all
4 amendments thereto, including the Amended and Restated Option Agreement, had
5 confidentiality clauses, but Pardee produced those to Plaintiffs. The Court may hear how
6 the later amendments contained reference to other agreements for which Plaintiffs had no
7 interest. Again, another pretext for withholding the information. Pardee never produced
8 redacted versions of the amendments, keeping only the information relevant to Plaintiffs.
9 Pardee never produced a summary explanation of how the transactions affected Mr.
10 Wolfram's and Mr. Wilkes' commissions. Pardee never produced information explaining
11 how the land was being designated so that they could go to the Clark County Recorder's
12 office and confirm that the commissions were being calculated appropriately. Nothing even
13 resembling the appropriate disclosure ever took place. As such, the Court should find that
14 Plaintiffs are entitled to relief for the costs they had to incur in order to get the information
15 they were entitled to under the Commission Letter Agreement.¹

16 **II. LEGAL ARGUMENT**

17 **A. Defendant Purchased both Purchase Property and Option Property in**
18 **Coyote Springs**

19 As the Court is surely aware, much of this case hinges on whether Defendant
20 purchased Option Property from CSI. Because the purchase of Option Property places
21 additional obligations on Pardee, which it admits it did not fulfill, if Plaintiffs demonstrate
22 that Option Property was purchased the Court will find in favor of Plaintiffs. As will be
23 proven at trial, despite claims to the contrary, Pardee took down Option Property and did
24 not fulfill its duties upon so doing.

25
26 ¹ Defendant's counterclaim is meritless and relies upon the wild assertion that not only
27 were Plaintiffs appropriately informed, Plaintiffs acted in bad faith by requesting the
28 information from Pardee and causing it damages in the form of time and effort spent
responding to the requests. As expanded upon below, the counterclaim has no factual or
legal support.

1 Between 2004 and 2009, Defendant Pardee purchased in excess of 2100 acres of
2 land in Northern Clark County in Coyote Springs from CSI. This land was purchased in
3 five "take-downs" over the course of multiple years. A map of this land can be found as an
4 enclosure to Jon Lash's November 24, 2009 letter to James Wolfram at Pltfs' Ex. 15. This
5 property acquired by Pardee is both Purchase Property and Option Property as defined
6 under the Option Agreement.

7 The Option Agreement defines Purchase Property as follows: "Parcel 1 as shown
8 on Parcel Map 98-57 recorded July 21, 2000 in Book 2000072, as Document No. 01332,
9 Official Records, Clark County, Nevada (containing approximately 3,605.22 acres)." Pltfs'
10 Ex. 2 at 1. By contrast, Option Property is defined as "the remaining portion of the Entire
11 Site which is or becomes designated for single-family detached production residential use."
12 *Id.* In short, Option Property is the balance of the property in Coyote Springs which is or
13 becomes designated as Production Residential Property. Therefore there are two critical
14 questions whose answers will decide whether the property taken down is Purchase
15 Property or Option Property: (1) is the property located outside the boundaries of Parcel 1
16 on Parcel-Map 98-57; and (2) if it is located outside Parcel 1, is the property designated for
17 Production Residential Property? If the Court answers these two questions in the
18 affirmative, it will have decided that Pardee purchased Option Property.

19 Examining the maps of the property purchased by Pardee, the Court will conclude
20 at trial that Defendant purchased Option Property. First, the Court will closely examine
21 Parcel Map 98-57 recorded on July 21, 2000, in the Clark County Recorder's Office, and
22 Parcel 1, located therein. See Pltfs' Ex. 25. Looking at Parcel Map 98-57, the Court will
23 make two observations. First, the Eastern and Western sides of Parcel 1 run parallel for
24 the vast majority of the parcel.² This conclusion concerning the parallel sides of Parcel 1 is
25 significant because the Eastern side of Parcel 1, for the purposes of locating the property
26

27 ² The Court can make this conclusion because the distance between the sides is the same
28 at multiple points. Simply looking at the 3 lines running horizontally across Parcel 1, the
Court can conclude that the lines are equidistant.

1 purchased by Pardee, will always be the same distance from U.S. Highway 93 (the
2 Western side of Parcel 1). As such, the Court will be able to measure the property's
3 distance from U.S. Highway 93 and immediately determine if it is outside or inside Parcel
4 1. Second, Parcel Map 98-57 indicates that the width of Parcel 1 is 7996.92 feet.³ With
5 these facts at the Court's disposal, the Court will quickly conclude that the land purchased
6 by Pardee is Option Property.

7 As will be proven at trial, Defendant took down property through the executions of a
8 number of amendments to the Amended and Restated Option Agreement. These various
9 amendments identify the parcels being purchased with reference to the parcel map where
10 the particular parcel is found. For example, in Amendment No. 5 to the Amended and
11 Restated Option Agreement, one part of the property being purchased is identified as
12 Parcel 2 of Book 113 Page 55 of Parcel Maps ("Parcel 2 of Parcel Map 113-55"). See
13 Pltfs' Ex. 10 at 2. It is in the course of examining Parcel Map 113-55 that the Court can
14 determine that the location of Parcel 2 of Parcel Map 113-55 is outside of Parcel 1 on
15 Parcel Map 98-57. See Pltfs' Ex. 30. Specifically, by measuring the distance from U.S.
16 Highway 93 to the eastern most portion of Parcel 2 of Parcel Map 113-55 and applying the
17 scale of Parcel Map 113-55, the Court will find that this eastern-most portion of Parcel 2 of
18 Parcel Map 113-55 is approximately 9175 feet east of U.S. Highway 93. This is significant
19 because, as confirmed earlier, the outer boundary of Parcel 1 on Parcel Map 98-57, and by
20 extension, Purchase Property, is 7996.92 feet east of U.S. Highway 93. This means that
21 the eastern-most portion of Parcel 2 of Parcel Map 113-55 is more than 1100 feet outside
22 the boundaries of Purchase Property and therefore, if appropriately designated, Parcel 2 of
23 Parcel Map 113-55 must contain Option Property.⁴

24
25 ³ The Court can make this calculation by adding the distances between the Eastern and
Western side of Parcel 1 located at the North side of Parcel 1.

26 ⁴ The Court can confirm that the eastern-most portion of Parcel 2 of Parcel Map 113-55 is
27 over 1100 feet outside of Parcel 1 on Map 98-57 by performing the same task (measuring
the distance from U.S. Highway 93 to the eastern-most edge of Parcel 2 of Parcel Map
28 113-55 and applying the appropriate scale) with Book 138 Page 51 of Plats at Pltfs' Ex. 26.
There the Court will have to measure across Sheets 5 and 6, but it will find that the

1 Amendment No. 5 to the Amended and Restated Option Agreement is not the only
2 place the Court will find that Pardee purchased Option Property. Pardee did it again by
3 executing Amendment No. 6 to the Amended and Restated Option Agreement. See Pltfs'
4 Ex. 11 at 2. In Amendment No. 6, Defendant purchased Parcel 3 and Parcel 4 of Parcel
5 Map 113-55. Referring to Parcel Map 113-55 and performing the same task as above, the
6 Court will find that large swaths Parcel 3 and Parcel 4 of Parcel Map 113-55 are outside of
7 Parcel 1 on Parcel Map 98-57. Specifically, the Court will find that eastern-most portions of
8 Parcel 3 and Parcel 4 are approximately 10,800 feet and 11,062.50 feet, respectively,
9 away from U.S. Highway 93.⁵ Again, this means Parcels 3 and 4 of Parcel Map 113-55 are
10 more than 2,800 and 3,000 feet outside the boundaries of Purchase Property, respectively,
11 and therefore, if appropriately designated, Parcels 3 and 4 constitute Option Property as
12 defined in the Option Agreement.

13 Performing this task conclusively establishes that Parcels 2, 3, and 4 of Parcel Map
14 113-55 are outside the boundaries of Purchase Property. However, notwithstanding this
15 geographical fact, the Court can readily conclude that Pardee's takedown of land under
16 Amendment No. 8 to the Amendment and Restated Option Agreement constituted the
17 purchase of Option Property without having to perform the tedious chore of measuring
18 distances on these Parcel and Plat Maps. See Pltfs' Ex. 13 at 9-10. Looking to
19 Amendment No. 8, the Court will find that under this agreement, Pardee purchased Lot 3
20 per Parcel Map 116, Page 35. See Pltfs' Ex. 13 at ex. "K". Referring the Court to Parcel
21 Map 116-35, found at Pltfs' Ex. 27, the Court can see that Lot 3 occupies the eastern-most
22 portion of Section 23 of Township 13S, R63E, Mount Diablo Meridian, Clark County,

23
24 eastern-most portion of Parcel 2 of Parcel Map 113-55 is approximately 9175 feet from
U.S. Highway 93.

25 ⁵ Again the Court can confirm that Parcels 3 and 4 of Parcel Map 113-55 are approximately
26 2,800 feet and 3,062.50 feet, respectively, outside of Parcel 1 on Map 98-57 by performing
27 the same task (measuring the distance from U.S. Highway 93 to the eastern-most edge of
Parcel 3 of Parcel Map 113-55 and applying the appropriate scale) with Book 138 Page 51
28 of Plats, again at Pltfs' Ex. 26. There the Court will have to once again measure across
Sheets 5 and 6, but it will find that the eastern-most portion of Parcels 3 and 4 are
approximately 10,800 and 11,062.5 feet from U.S. Highway 93, respectively.

1 Nevada, on the eastern-most portion of that Township. Parcel 1 on Parcel Map 98-57,
2 conversely, is located within sections 21 and 22 on the western-most portions of the same
3 Township. Looking to Sheets 5 and 6 on Parcel Map 98-57, the Court will find that
4 Sections in this Township are over 5300 feet wide—making Lot 3 per Parcel Map 116-35
5 over 8,778 feet outside the boundaries of Parcel 1. This means that some of the land
6 taken down as part of Amendment No. 8 is quite literally miles apart from the boundaries of
7 Purchase Property.

8 Now, as the Court will surely recognize, Option Property is not just determined by its
9 location (that is being outside Parcel 1 on Parcel Map 98-57). Option Property must also
10 be designated as Production Residential Property as defined on Page 2 of the Option
11 Agreement. See Pltfs' Ex. 2 at 2. For example, property designated for "single-family
12 residential lots," "roadways," "utilities," "schools," "parks," and "drainage ways" is
13 Production Residential Property. *Id.* Therefore, in order to establish that the land located
14 at Parcels 2, 3, and 4 of Parcel Map 113-55 and Lot 3 per Parcel Map 116-35 is Option
15 Property, the Court must know how that property is designated.

16 The Court can make such a determination by looking at the Exhibits to Amendment
17 Nos. 7 and 8 to the Amended and Restated Option Agreement. See Pltfs' Ex. 12, 13.
18 Specifically, the Court will find that at Exhibit B-2 to Amendment No. 7 is a map indicating
19 how the land within Parcel 2 of Parcel Map 113-55 is designated. Looking at the eastern-
20 most portion of Parcel 2, the Court will see that this parcel is designated as "Residential,"
21 meaning that it is designated as Production Residential Property. Therefore because
22 Parcel 2 is so designated and it is located outside the boundaries of Purchase Property, it
23 is Option Property. *Id.*

24 Performing the same task for Parcels 3 and 4 of Parcel Map 113-55 reveals the
25 same information. Exhibits B-4 and B-5 to Amendment No. 7 are maps reflecting the
26 designation of Parcels 3 and 4, respectively, and show that the vast majority of the parcels,
27 including the eastern-most portions of them, are designated as "Residential." See Pltfs'
28 Ex. 13 at B-4, B-5.

1 The same conclusion is found for Lot 3 per Parcel Map 116-35. This 11-acre parcel
2 located over 8700 feet outside of Parcel 1 on Parcel Map 98-57 is designated for
3 wastewater treatment plant and facilities. *Id.* at 9. This means that this lot is Production
4 Residential Property as defined in the Option Agreement as it is designated for "utilities,"
5 which is included in the description of Production Residential Property. Pltfs' Ex. 2 at 2.
6 Overall, since these parcels are designated as Production Residential Property, and
7 because they are outside the boundaries of Purchase Property, they constitute Option
8 Property.

9 While tedious, this task of identifying the location and designation of the land
10 purchased by Pardee establishes not only that Pardee purchased Option Property as
11 defined in the Option Agreement, but also that it knew that it purchased Option Property.⁶
12 Given that Pardee purchased land that was miles outside the bounds of Purchase
13 Property, Pardee had to have known that it was purchasing Option Property. Even the
14 parcel closest to the outer-boundary of Purchase Property was still over 1100 feet inside
15 the territory for Option Property. That is why this case is so troubling. Despite Mr.
16 Wolfram's and Mr. Wilkes' good faith inquiries, Pardee still insisted that it had not
17 purchased Option Property and that their commissions were appropriately calculated and
18 paid. Such statements were false and Pardee is in breach of the Commission Letter
19 Agreement.

20 **B. Defendant Breached its Contractual Duties to Plaintiffs Under the**
21 **Commission Letter Agreement**

22 The Court is well-versed in the law surrounding breach of contract actions. To
23 sustain a claim for breach of contract, Plaintiffs must establish (1) the existence of a valid
24 contract between Plaintiffs and Defendant; (2) a breach by Defendant, and (3) damages as
25 a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 405 (1865); *Calloway v. City of*

26 _____
27 ⁶ If for some reason Pardee did not know it was purchasing Option Property as defined in
28 the Option Agreement, it was reckless in not knowing such a fact given that the land
Pardee took down was thousands of feet (and in some cases miles) outside of the
boundaries of Parcel 1 on Parcel Map 98-57.

1 *Reno*, 116 Nev. 250, 256, 993 P.3d 1259, 1263 (2000) (*overruled on other grounds by*
2 *Olson v. Richard*, 120 Nev. 240, 241–44, 89 P.3d 31, 31–33 (2004)). “Contract
3 interpretation strives to discern and give effect to the parties’ intended meaning...before an
4 interpreting court can conclusively declare a contract ambiguous or unambiguous, it must
5 consult the context in which the parties exchanged promises.” *Galardi v. Naples Polaris*, --
6 - Nev. ---, ---, 301 P.3d 364, 367 (July 18, 2013). If a contract is unambiguous, the parties’
7 intent must be derived from the plain language of the contract. See *Canfora v. Coast*
8 *Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The Court may take
9 notice of the course of dealing between the parties and the trade usage of a contract’s
10 terms to interpret a contract. *Galardi*, 301 P.3d at 367; *United Services Auto Ass’n v.*
11 *Schlang*, 111 Nev. 486, 493, 894 P.2d 967, 971 (1995); *Nevada Nat. Bank v. Huff*, 94 Nev.
12 506, 514, 582 P.2d 364, 370 (1978). Contractual provisions should be harmonized
13 whenever possible, and construed to reach a reasonable solution. *Eversole v. Sunrise*
14 *Villas VIII Homeowners Ass’n*, 112 Nev. 1255, 1260, 925 P.2d 505, 509 (1996). Applying
15 these principles, the Court will find that Pardee breached its obligations under the
16 Commission Letter Agreement.

17 Throughout this litigation Defendant has gravitated to the contractual issues raised
18 by Plaintiffs. As the Court surely remembers, Defendant’s original motion for summary
19 judgment focused primarily on the breach of contract claim and, when that was
20 unsuccessful, Defendant filed another dispositive motion arguing that Plaintiffs’ breach of
21 contract claim subsumed the cause of action for an accounting, rendering the accounting
22 no more than an equitable remedy (and not an independent cause of action). While it is
23 unclear how Defendant will dispute the breach of contract claim or if Pardee will raise a
24 new argument at trial, one thing is certain: the terms of the contract offer Defendant no
25 quarter from Plaintiffs’ claims.

26 The Commission Letter Agreement reflects Pardee’s obligation to (1) pay to
27 Plaintiffs certain commissions for land purchased from CSI; and (2) send Plaintiffs notices
28 and other information concerning the real estate purchases made under the Option

1 Agreement and the corresponding commission payments. As for the commission
2 payments, the Commission Letter Agreement provides for commissions equal to the
3 following amounts:

4 (i) Pardee shall pay four percent (4%) of the Purchase Property
5 Price payments made by Pardee pursuant to Paragraph 1 of
6 the Option 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%)
8 of the remaining Purchase Property Price payments made by
9 Pardee pursuant to paragraph 1 of the Option Agreement in the
aggregate amount of Sixteen Million Dollars (\$16,000,000);⁷
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 See Pltfs' Ex. 1 at 1.

14 According to the first two payment clauses, Plaintiffs are entitled to receive a
15 percentage of the Purchase Property Price payments.⁸ This means that when Defendant
16 purchased the Purchase Property, Plaintiffs were entitled to receive the commission
17 payment calculated by multiplying the price paid for Purchase Property by the appropriate
18 percentage (4% for the first \$50 million, 1½% for the balance of the remaining Purchase
19 Property Price) as stated above.

20 Not to be ignored, however, is the phrase "pursuant to Paragraph 1 of the Option
21 Agreement." The Court will remember that Defendant focused much of its attention on this
22 clause in the third subparagraph during the hearing on the motions for summary judgment.
23 This clause in the first and second subparagraphs is important because it explains that
24

25 ⁷ Amendment No. 2. to the Option Agreement, effective August 31, 2004, provided for an
26 increased Purchase Property Price of \$84 million. This increase was incorporated by the
27 Commission Agreement through the Re: line, "Option Agreement for the Purchase of Real
Property and Joint Escrow Instructions dates as of June 1, 2004, *as amended* (the 'Option
Agreement')." Pltfs' Ex. 1 at 1 (emphasis supplied).

28 ⁸ The Option Agreement defines the "Purchase Property Price" as "the purchase price of
the Purchase Property." Pltfs' Ex. 2 at 3.

1 payments for Purchase Property will be made in accordance to a four-step process as
2 detailed in the Option Agreement. See Pltfs' Ex. at 3-4. Instead of making one lump sum
3 payment for the Purchase Property, Pardee was to (1) deposit \$1 million into escrow at the
4 opening of escrow; (2) deposit \$9 million into escrow at least one business day prior to the
5 Initial Purchase Closing; (3) make thirty-two (32) monthly payments of \$1.5 million followed
6 by three monthly payments of \$2 million; and (4) make a final payment of \$2 million (plus
7 any balance owed on the Purchase Property) at least one business day prior to the
8 Purchase Closing. *Id.* As such, by using of the phrase "pursuant to Paragraph 1 of the
9 Option Agreement," Pardee refers specifically to the drawn-out process of the Purchase
10 Property payment structure and Plaintiffs know that they will be paid over the course of
11 several months.

12 Additionally, subparagraph (ii) calculates the balance of Plaintiffs' commissions as
13 equaling, "1 ½% of the remaining Purchase Property Price payments made by Pardee
14 pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen
15 Million Dollars (\$16,000,000)." As the Court is aware, the Purchase Property Price
16 increased from \$66 million to \$84 million as of August 31, 2004 as described by
17 Amendment No. 2 to the Option Agreement. See Pltfs' Ex. 4 at 2. Defendant at trial may
18 (for the first time) argue that the Commission Letter Agreement only provided for
19 commissions for the first \$66 million of Purchase Property, and therefore Plaintiffs were
20 overpaid, but that argument would be belied by the language of the Commission Letter
21 Agreement. Indeed, the language in subparagraph (ii) is notably different than the
22 language in subparagraph (i). Instead of stating that Pardee will pay a percentage of
23 payments "up to a maximum" of a certain price (which is the language used to describe the
24 commissions owed under subparagraph (i)), subparagraph (ii) states that commissions will
25 be equal to 1½% of "*the remaining Purchase Property Price* in the aggregate amount of
26 \$16 million." Pltfs' Ex. 1 at 1 (emphasis supplied). By tying the rest of Plaintiffs' Purchase
27 Property commission to the remaining Purchase Property Price, the Commission Letter
28 Agreement afforded Pardee and CSI the flexibility to change the Purchase Property Price

1 (which they did on August 31, 2004) and preserve Plaintiffs' entitlement to the increased
2 Purchase Property Price payments. Any argument to the contrary would not only run
3 counter to the canons of contractual interpretation, but would almost surely confirm that
4 Defendant breached the implied covenant of good faith and fair dealing in its treatment of
5 Plaintiffs. The Court should appropriately reject such a claim.

6 Now, so far in the litigation, there has been no dispute as to the above interpretation
7 of the Commission Letter Agreement. What has been in dispute is the meaning of
8 subparagraph (iii) and the calculation of commissions for Option Property purchases.
9 Defendant may still maintain that it never took down any Option Property but that argument
10 would be easily dispatched when the Court simply looks at the location and the designation
11 of the property Pardee bought (as seen above). So Pardee will need another argument to
12 defeat the breach of contract claim—and the Court heard a bit about it during the hearing
13 on the motions for summary judgment. That is, even if Option Property was technically
14 purchased, it was not purchased "pursuant to paragraph 2 of the Option Agreement" and
15 therefore commissions are not due to Plaintiffs. *Id.* Such an argument would be as
16 meritless as it is desperate.

17 Unlike the corresponding phrase in subparagraphs (i) and (ii), the phrase "the
18 Option Property purchased by Pardee pursuant to paragraph 2 of the Option Agreement"
19 does not impose a complex procedure on the Buyer, Pardee. Instead, Paragraph 2
20 provides that "[Pardee] may exercise its Option during the Option Period described in
21 subparagraph (c) below⁹ by giving written notice of such exercise to Seller in the manner
22 set forth in paragraph 17 below." Pltfs' Ex. 2 at 5. Written notice is made by (1) personal
23 delivery, (2) overnight courier, or (3) certified mail to the addresses listed in Paragraph 17
24 for Pardee, CSI and their respective counsel. *Id.* at 37-38. No other requirements for
25 option exercise notices besides the above notification procedure are specified in

26 _____
27 ⁹ The Option Period is defined as the period commencing on the Settlement Date and
28 ending forty (40) years later. *Id.* at 6. The Settlement Date took place thirty (30) days
before Plaintiffs received their first commission payments in 2005. See Pltfs' Ex. 1 at 2;
Deft's Ex. 1.

1 Paragraphs 2 or 17. Therefore, the Court can readily conclude that when Defendant
2 purchased the Option Property, it did so during the Settlement Period and appropriate
3 notice was given to CSI (as reflected by CSI's signature on the documents executing the
4 Option Property takedowns) and thus did so pursuant to Paragraph 2 of the Option
5 Agreement. Plaintiffs are entitled to the commissions as specified by subparagraph (iii).

6 Besides the obligation to pay the appropriate commissions to Plaintiffs, Pardee also
7 had an obligation to properly notify and inform Plaintiffs of the development of Coyote
8 Springs. Specifically, the Commission Agreement provides:

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

16 Pltfs' Ex. 1 at 2.

17 Pardee complied with none of the requirements in this paragraph of the
18 Commission Letter Agreement. First, Pardee never provided Plaintiffs copies of the
19 documents by which Pardee purchased the Option Property. Mr. Wolfram and Mr. Wilkes
20 will testify that despite numerous requests for documents, Pardee never provided them
21 with the required information. Second, Pardee never provided to Plaintiffs information as
22 to the number of acres of the Option Property being taken down or the future scheduled
23 closing date. Again, Plaintiffs will explain at trial that never once did Pardee provide them
24 with information as to the number of acres purchased outside Parcel 1 of Parcel Map 98-57
25 constituting Option Property, or about future scheduled closing dates. All that was
26 provided was a letter from Jon Lash to James Wolfram dated November 24, 2009
27 containing a total acreage calculation and past closing dates.

28 Defendant may again advance the claim that Option Property was not purchased
pursuant to Paragraph 2 of the Option Agreement and therefore no notices were due to
Plaintiffs. However, as demonstrated above, Pardee did in fact purchase Option Property

1 pursuant to Paragraph 2 of the Option Agreement and therefore Pardee did breach its
2 obligations under this sentence of the Commission Letter Agreement.

3 Third, Pardee failed to keep Plaintiffs reasonably informed as to all matters relating
4 to the amount and due date of their commission payments. Notwithstanding the specific
5 requirements to provide information when Option Property was purchased, Defendant
6 failed to appropriately inform Plaintiffs as required under this provision of the Commission
7 Letter Agreement. The key term in this sentence is "reasonably informed." Plaintiffs will
8 testify that with over seventy (70) years of combined experience in this field, to be
9 reasonably informed as to all matters related to the amount and due date of commission
10 payments, at a minimum, Pardee must have provided information whereby Plaintiffs could
11 verify the accuracy of the commission calculations. Besides coming from two brokers with
12 substantial experience, this interpretation makes sense within the context of the
13 Commission Letter Agreement. Given that the Pardee could purchase Option Property
14 across a forty (40) year time period, it would be essential that the brokers could verify the
15 accuracy of their commission payments in order to avoid fee disputes. Further, with so
16 much property in Coyote Springs (over 30,000 acres), the chance that a miscalculation
17 could result in a substantial underpayment (or overpayment) is substantial. Ensuring that
18 all parties have the information to confirm the accuracy of the commissions reduces the
19 risk of inaccurate payments and future disputes. Unfortunately for Plaintiffs, Pardee did not
20 see the merit in complying with this section of the Commission Letter Agreement and failed
21 to provide this information.

22 Defendant failed to keep Plaintiffs reasonably informed as required by the
23 Commission Letter Agreement. Specifically, Pardee failed to provide Plaintiffs with the
24 information necessary to verify the accuracy of their commissions. In order to comply with
25 the terms of the Commission Letter Agreement, Defendant must have timely provided
26 information concerning (1) the location of the land being taken down, and (2) the
27 designation of the property. Without both of these pieces of information Plaintiffs could not
28 verify that they were being paid the appropriate commissions. Without the location of the

1 property, Mr. Wolfram and Mr. Wilkes would not know if the property was Purchase or
2 Option Property. Without the designation of the property, Plaintiffs could not confirm that
3 they were being paid for all Production Residential Property being sold (as they are entitled
4 to commissions on the sale of Production Residential Property). As will be demonstrated
5 at trial, Pardee failed to appropriately alert Plaintiffs as to the location of the property being
6 taken down with reference to Parcel 1 of Parcel Map 98-57 and never identified the
7 designation of the property subject to purchase. As such, Pardee did not keep Plaintiffs
8 reasonably informed as to all matters related to the amount and due date of their
9 commission payments.

10 Lastly, Defendant breached its duty not to circumvent their obligations under the
11 Commission Letter Agreement. Under the Agreement, "Pardee, its successors and
12 assigns, shall take no action to circumvent or avoid its obligation to [Plaintiffs] as set forth
13 in the Agreement." *Id.* However, instead of faithfully complying with the Commission
14 Letter Agreement, Pardee entered into an agreement with CSI to purchase land for, *inter*
15 *alia*, custom lots. As stated by Jon Lash in his letter to Plaintiffs dated August 23, 2007,
16 "Since the execution of the original single-family land Option Agreement, the Seller of
17 Coyote Springs has decided not to pursue building the multi-family land and custom lot
18 parcels. Recently, Pardee entered into separate agreements under different values per
19 acre and terms than the original deal to purchase this additional acreage at Coyote
20 Springs... As land is purchased under these other agreements, you will not be entitled to
21 any commissions related to these other agreements." Pltfs' Ex. 16 at 2. Pardee's new
22 agreement to purchase land for custom lots is *per se* circumvention of the Commission
23 Letter Agreement.

24 Under the Option Agreement, Production Residential Property—the property for
25 which Plaintiffs are eligible for a commission—includes custom home lots. See Pltfs' Ex. 2
26 at 2 ("Production Residential Property means that portion of the Net Usable Acreage that
27 encompasses all of the Purchase Property and the Option Property, which includes,
28 without limitation, all single-family detached production residential lots (which shall

1 include lots on which custom homes are constructed by Buyer)...") (emphasis
2 supplied). Therefore, Pardee cannot claim that it is able to buy custom home lots and yet
3 avoid paying Plaintiffs the commissions owed to them. Using "separate agreements" for
4 this purpose is the very definition of circumvention and is an independent breach of the
5 Commission Letter Agreement.

6 As the Court can conclude, the breaches of contract are numerous and require this
7 Court's intervention. Due to the failure of Pardee to comply with the information-sharing
8 provisions of the Commission Letter Agreement, the amount of commissions owed to
9 Plaintiffs is still unknown, but can be remedied through accounting proceedings after trial.
10 Nevertheless, Plaintiffs are entitled to their damages in the form of their attorney's fees and
11 their time and effort spent attempting to retrieve the information owed to them under the
12 Commission Letter Agreement. Because Plaintiffs had no other way other than a lawsuit to
13 get access to the information required to be provided to them, Plaintiffs' attorney's fees and
14 costs are special damages. See *Sandy Valley Assoc. v. Sky Ranch Estates Owners*
15 *Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001). Further, because it was foreseeable at the time
16 the parties entered into the Commission Letter Agreement that Plaintiffs would go looking
17 for alternate sources of information if Pardee failed to provide it as required, Plaintiffs are
18 entitled to reasonable compensation for their time and effort.

19 **C. Defendant Failed to Act in Good Faith and Denied Plaintiffs Their Justified**
20 **Expectations Under the Commission Letter Agreement**

21 Notwithstanding the facts that will prove the merit of Plaintiffs' breach of contract
22 claim, the Court need not perform the technical analysis of the Commission Letter
23 Agreement to know that Pardee has wronged Plaintiffs under the Commission Letter
24 Agreement. Were the Court to consider the spirit and purpose of the Commission Letter
25 Agreement it would know that Pardee did not act in good faith toward Plaintiffs and that
26 Defendant violated the purpose of the parties' agreement. Pardee's conduct is actionable
27 and is a violation of the implied covenant of good faith and fair dealing.
28

1 To sustain a claim for breach of the implied covenant of good faith and fair dealing
2 sounding in contract, Plaintiffs must establish: (1) Plaintiffs and Defendant were parties to
3 the contract; (2) the Defendant owed a duty of good faith to Plaintiffs; (3) the Defendant
4 breached that duty by performing in a manner that was unfaithful to the purpose of the
5 contract; and (4) Plaintiffs' justified expectations were thus denied. See *Perry v. Jordan*,
6 111 Nev. 943, 947, 900 P.2d 335, 338 (1995). "An implied covenant of good faith and fair
7 dealing is recognized in every contract under Nevada law." *Consolidated Generator-*
8 *Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256
9 (1998). Under the implied covenant, each party must act in a manner that is faithful to the
10 purpose of the contract and the justified expectations of the other party. *Morris v. Bank of*
11 *America Nevada*, 110 Nev. 1274, 1278 n. 2, 886 P.2d 454, 457 (1994). The implied
12 covenant of good faith and fair dealing "essentially forbids arbitrary, unfair acts by one
13 party that disadvantages the other." *Frantz v. Johnson*, 116 Nev. 455, 465 n. 4., 999 P.2d
14 351, 358 (2000).

15 The covenant of good faith and fair dealing has particular significance in the field of
16 brokering land sales. Because of the incentives to "cut out the middle man," Nevada law
17 recognizes the doctrine of "procuring cause" in order to protect a broker's entitlement to a
18 commission when the broker arranges a land transaction even when the strict terms of the
19 commission agreement would militate against such a payment. The Nevada Supreme
20 Court, in *Carrigan v. Ryan*, 109 Nev. 797, 799, 858 P.2d 29, 30 (1993) explained these
21 protections afforded to brokers under Nevada law, stating:

22 As this court explained in *Humphrey v. Nobel*, 78 Nev. 137,
23 141-45, 369 P.2d 872, 874-75 (1962), the doctrine of
24 "procuring cause" developed primarily to protect the broker
25 where he or she arranges a sale but nonetheless, according to
26 the strict terms of the broker's contract, the broker is not
27 otherwise entitled to a commission. See also 1 Harry D. Miller
28 & Marvin B. Starr, *Current Law of California Real Estate* § 2:20
(2d ed. 1989); D. Barlow Burke, Jr., *Law of Real Estate Brokers*
§ 3.4 (2d ed. 1992).

1 *Id.* Just as the Nevada Supreme Court protects brokers against overly-narrow readings of
2 commission agreements, so too should this Court.

3 The evidence at trial will conclusively establish that the purpose of the Commission
4 Letter Agreement was to: (1) pay Plaintiffs a commission for being the procuring cause of
5 the Option Agreement; and (2) keep them appropriately informed as to the development of
6 Coyote Springs as it pertained to their commission payments. The Court need only to look
7 to the language of the Option Agreement to confirm that one of the purposes of the
8 Commission Letter Agreement was to ensure Plaintiffs were paid commissions when
9 Purchase or Option Property was sold. As stated in the Option Agreement:

10 [U]pon and subject to the close of escrow for the Purchase
11 Property or any Option Parcel, Buyer shall pay any finder fee
12 owed to General Realty Group (Walt Wilkes) and Award Realty
Group (Jim Wolfram) pursuant to a separate agreement; said
fee shall be split equally.

13 Pltfs' Ex. 2 at 30.

14 The second purpose of the Commission Letter Agreement is equally clear.
15 Defendant was to "keep each [Plaintiff] reasonably informed as to all matters relating to the
16 amount and due dates of [their] commission payments." Pltfs' Ex. 1 at 2. If Plaintiffs were
17 not appropriately informed about the transactions affecting their commission payments,
18 Pardee could simply choose not to make the payments and Plaintiffs would be none the
19 wiser.

20 As will be demonstrated at trial, Pardee violated the implied covenant of good faith
21 and fair dealing and acted in such a way as to defeat the purpose of the Commission Letter
22 Agreement. The above-described breaches of the agreement all served to deny Plaintiffs'
23 justified expectations, and without retreading the ground covered above, Plaintiffs ask that
24 the Court take particular notice of how Pardee responded to Plaintiffs' requests for
25 information.

26 Pardee intentionally and unjustifiably withheld material facts when asked by
27 Plaintiffs for the information they were entitled to and only produced the information Pardee
28 wanted to disclose. For example, Jon Lash instructed individuals at Chicago Title to not

1 send to Plaintiffs copies (redacted or otherwise) of the amendments to the Amended and
2 Restated Option Agreement. See Deft's Exs. DD, II. However, Pardee did produce three
3 closing statements for land takedowns. Unfortunately for Plaintiffs, the only information on
4 the closing statements which connect the statements with the land acquired by Pardee are
5 the four word descriptions of the property in the top left hand corner of each statement (eg.
6 "1st Add'l Purchase Parcel"). See Pltfs' Ex. 9 at 1. These four word descriptions are
7 **defined terms** in the various amendments to the Amended and Restated Option
8 Agreement, which were never provided to Plaintiffs. Without the amendments, Plaintiffs
9 were left with three documents raising more questions than answers. The same pattern
10 emerges when Pardee revealed to Plaintiffs the location of certain land purchases.

11 In his November 24, 2009 letter to Mr. Wolfram, Jon Lash included a map of certain
12 takedowns in Coyote Springs. See Pltfs' Ex. at 3. However, the map was incomplete and
13 did not reflect all of the land acquisitions made by Pardee. Mr. Wolfram, when trying to get
14 the information he was owed, spent a significant amount of time at the Clark County
15 Recorder's office looking at maps of Coyote Springs and constructed a map showing that
16 Pardee had purchased many more parcels than were indicated on the map Mr. Lash sent.
17 See Pltfs' Ex. 23. Mr. Wolfram's request for an explanation for the discrepancy went
18 unanswered. *Id.* Indeed, when Mr. Wolfram requested information on the parcels he had
19 found that Pardee had purchased, Pardee sent copies of the publicly recorded deeds for
20 only some of Pardee's land transactions. See Deft's Ex. KK. Pardee basically cherry-
21 picked the information it would give to Mr. Wolfram—the Commission Letter Agreement be
22 damned.¹⁰

23
24
25 ¹⁰ Pardee cannot make the claim that it sent these documents in good faith as required by
26 the Commission Letter Agreement since Pardee sent none of the documents referenced in
27 this section to Walt Wilkes. The Agreement requires Pardee to keep "each of you"
28 reasonably informed" (referring to James Wolfram and Walt Wilkes). Without sending the
documents to Mr. Wilkes, Pardee cannot engage in revisionist history and claim now that it
was attempting to appropriate discharge its duties under the Commission Letter Agreement
in sending the maps, deeds and closing statements to Mr. Wolfram.

1 Pardee's conduct is not consistent with the acts of a party acting in good faith to
2 achieve the purpose of an agreement. At every turn Defendant did what it felt like and not
3 what it was obligated to: it bought Option Property and treated it like Purchase Property; it
4 entered into outside agreements with CSI concerning land for which Plaintiffs would be
5 entitled to a commission payment but excluded Mr. Wolfram and Mr. Wilkes from the
6 transaction; and it kept Plaintiffs in the dark about the transactions they should have been
7 informed of—all in spite of the agreement between Plaintiffs and Pardee.

8 As a result of this wrongful conduct, Plaintiffs have suffered substantial harm. Just
9 as in the case of their breach of contract claim, Plaintiffs were forced to hire an attorney
10 and incur substantial fees and costs to get the information they are entitled to. Such fees
11 and costs are appropriately characterized as special damages pursuant to *Sandy Valley*.
12 Likewise, Plaintiffs are entitled to compensation for the damages suffered for their
13 expenditure of time and effort in trying to get the information they were owed by Pardee
14 under the Commission Letter Agreement. See *Gray v. Don Miller & Associates, Inc.*, 35
15 Cal.3d 498, 505, 674 P.2d 253, 256 (Cal. 1984); *Barthels v. Santa Barbara Title Co.*, 28
16 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 570, 581-82 (Cal. App. Ct. 1994).

17 **D. Defendant Has a Duty to Account to Plaintiffs But Failed to So Account**

18 Quite likely the most important claim in this action is Plaintiffs' claim for an
19 accounting. Unlike all of the other causes of action in this case, the claim for an
20 accounting is the only one which provides Plaintiffs the ability to recover what is most
21 important to them: the information concerning the development of Coyote Springs. Despite
22 what has become an unbelievably costly endeavor, Plaintiffs have held firm and pursued
23 the information for which they are entitled and have been long denied.

24 As the Court is keenly aware, an action for an accounting is a "proceeding in equity
25 for the purpose of obtaining a judicial settlement of the accounts of the parties in which
26 proceedings the court will adjudicate the amount due, administer full relief, and render
27 complete justice." *Oracle USA, Inc. v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL,
28 2010 WL 3257933, at *6 (D. Nev. Aug. 13, 2010). Under Nevada law, to prevail on a claim

1 for accounting, there must (1) be a special relationship between the parties, (2) mutual
2 accounts between the parties must be held by one of the parties, and (3) defendant has a
3 duty to render an accounting. *Mobius Connections Group, Inc. v. Techskills, LLC*, No.
4 2:10-CV-01678-GMN-RJJ, 2012 WL 194434, at *8 (D. Nev. Jan. 23, 2012).

5 In Nevada, the duty to account arises from a special relationship between the
6 parties. For example:

7 A fiduciary relationship, for instance, gives rise to a duty of
8 disclosure. See, e.g., *Foley v. Morse & Mowbray*, 109 Nev.
9 116, 125–26, 848 P.2d 519, 525 (1993). A duty to disclose
10 may also arise where the parties enjoy a “special relationship,”
11 that is, where a party reasonably imparts special confidence in
12 the defendant and the defendant would reasonably know of this
13 confidence. See *Mackintosh v. Jack Matthews & Co.*, 109 Nev.
14 628, 634–35, 855 P.2d 549, 553 (1993) (citing *Mancini v.*
15 *Gorick*, 41 Ohio App.3d 373, 536 N.E.2d 8, 10 (Ohio
16 Ct.App.1987)). A party's superior knowledge thus imposes
17 a duty to speak in certain transactions, depending on the
18 parties' relationship... Even when the parties are dealing at
19 arm's length, a duty to disclose may arise from “the
20 existence of material facts peculiarly within the knowledge
21 of the party sought to be charged and not within the fair
22 and reasonable reach of the other party.” *Villalon v. Bowen*,
23 70 Nev. 456, 467–68, 273 P.2d 409, 415 (1954) (failure of
24 purported widow to tell the executor of her purported husband's
25 estate that her prior marriage had not been terminated).

26 *Dow Chemical v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998). (emphasis
27 supplied).

28 The evidence in this action fully supports Plaintiffs' entitlement to an accounting.
First, there can be no confusion that Plaintiffs and Defendant have a special relationship of
trust whereby Plaintiffs impart special confidence in Defendant and Defendant knows of
this confidence. It is undisputed that Plaintiffs were present at the initial meeting with Mr.
Lash and Mr. Whittemore, but were then excluded from any further meaningful contact with
Pardee or CSI as the development of Coyote Springs was planned. Plaintiffs had almost
no idea how Pardee and CSI were planning to develop Coyote Springs—and by extension,
no understanding of when they should expect a commission payment—which is why the
Commission Letter Agreement contains the provisions mandating that Pardee keep

1 Plaintiffs reasonably informed as to all matters concerning their commission payments.
2 See Pltfs' Ex. 1. Further, by instructing individuals at Chicago Title not to send the
3 appropriate information to Plaintiffs, Pardee knew that it was Plaintiffs' only possible source
4 of the information. See Deft's Exs. DD, II. By leaving Plaintiffs out of the planning process
5 and barring others from producing the necessary information about Coyote Springs,
6 Defendant left Plaintiffs no choice but to trust Pardee. In so having that trust, Defendant
7 owes Plaintiffs a duty to account to them.

8 Moreover, the relationship between the parties is such that the material facts
9 concerning the basis for Plaintiffs' commission payments are peculiarly within Pardee's
10 possession and not within the fair and reasonable reach of Plaintiffs. As was alluded to
11 above, Plaintiffs need more than what public records can reveal in order to stay reasonably
12 informed about their commission payments. While Plaintiffs can readily access land
13 records in the Clark and Lincoln County Records' offices, those offices do not possess
14 the information regarding how the land is designated under the Option Agreement.¹¹
15 Without knowing how Pardee and CSI designated the land, Plaintiffs could not know if they
16 are entitled to a commission since they may only receive a commission if the land is or
17 becomes designated as Production Residential Property. See Pltfs' Ex. 2 at 2. As such,
18 Defendant has a duty to account to Plaintiffs as the land is being taken down. See
19 *Epperson v. Roloff*, 102 Nev. 206, 213, 719 P.2d 799, 804 (1986) ("[W]here the defendant
20 alone has knowledge of material facts which are now accessible to the plaintiff. Under
21 such circumstances, there is a duty of disclosure.").

22 Despite this duty to account to Plaintiffs, Pardee inexplicably denied them the
23 information critical to confirm that they had been appropriately paid. As early as March of
24 2008, Jon Lash, responding to Plaintiffs' request for information, boldly stated, "There
25 should be no confusion over what property has been purchased. All commissions and
26 purchase monies have been paid through the same escrow account simultaneously.

27
28 ¹¹ If information about property designation was publicly available, Defendant should have
produced such records during discovery. However, no such records were produced.

1 Thus, production of the documentation you request serves no purpose of mutual
2 benefit." See Pltfs' Ex. 17 (emphasis supplied). Apparently Pardee would only produce
3 the necessary information if it was mutually beneficial, without heed to its duty to account
4 or contractual obligations. What is truly stunning about this declaration is that one
5 sentence later Mr. Lash requested additional information from Plaintiffs, stating, "Naturally,
6 if there is additional information to consider, please pass it along." *Id.* How Mr. Lash could
7 so quickly dismiss Plaintiffs' request for information and yet make a similar request of them
8 is shocking. Unfortunately for Plaintiffs, this behavior was the norm for Pardee and not the
9 exception.

10 Defendant's denial of the necessary information continued through the discovery
11 process. Plaintiffs, through counsel, requested "copies of all sales agreements, purchase
12 agreements, option agreements, letter agreements, commission agreements, or any
13 amendments, addendums or additions thereto entered into by Coyote Springs
14 Investments, LLC and Pardee Homes from the beginning of the relationship to present."
15 See Pltfs' Ex. 33 at Request No. 11. In response Defendant referred Plaintiffs to the
16 Option Agreement, the two amendments thereto, and the Amended and Restated Option
17 Agreement. *Id.* No specific assertion of privilege or confidentiality was mentioned and yet,
18 Defendant failed to even acknowledge the existence of the eight amendments to the
19 Amended and Restated Option Agreement containing the terms of four additional
20 takedowns of land in Coyote Springs. *Id.* If it were not for CSI in responding to Plaintiffs'
21 subpoena, Plaintiffs would be completely ignorant of the eight amendments. Pardee's
22 wholesale evasion of Plaintiffs' requests is improper and necessitates the Court's
23 intervention to compel Defendant to account to Plaintiffs.

24 At trial the Court will hear why the accounting is so important to Plaintiffs. Mr.
25 Wolfram and Mr. Wilkes have worked hard all of their life earning their living from the
26 commissions gained from brokering land transactions. As real estate brokers over 60
27 years old, they secured an opportunity to pass on the fruits of their labor to their children
28 and grandchildren when they successfully brokered the transaction between Pardee and

1 CSI. Through Pardee's option to buy land from CSI for the next forty (40) years, Plaintiffs
2 have a chance to earn substantial commissions for the same forty-year period. While
3 Plaintiffs may pass on before this option expires, their children will be able to benefit from
4 their parent's efforts. That is why the accounting is so critical. Without the information to
5 confirm that they are receiving the appropriate commissions, there is no way to protect
6 Plaintiffs and their families from the capricious conduct of a faceless corporation. Plaintiffs
7 are honorable individuals and they deserve to be treated fairly. Their cause of action for an
8 accounting empowers the Court to provide them with that fair treatment.

9 **E. At All Times Plaintiffs Acted Honorably and Fairly Toward Defendant**

10 Defendant's counterclaim is perplexing. Setting aside for the moment all of the
11 facts discussed above concerning Defendant's wrongful and improper conduct and its
12 failure to treat Plaintiffs fairly, Defendant is advancing a counterclaim centering on the
13 allegation that Plaintiffs asked Defendant questions. Somehow, according to Defendant,
14 Plaintiffs acted in bad faith when they requested the information owed to them under the
15 Commission Letter Agreement and as a result, Pardee incurred damages in the form of the
16 time and effort expended responding to the inquiries. The counterclaim is meritless and
17 there is no evidence to support it.

18 To begin, the evidence at trial will not establish that Plaintiffs owed Defendant any
19 duty to leave it alone or refrain from asking questions about their commissions. The text of
20 the Commission Letter Agreement is silent on this issue and it stretches reason to
21 conclude that a party who owes a duty to disclose information may reasonably expect that
22 it may not be asked questions about that information. But that is what Pardee is claiming
23 and must prove to prevail on its counterclaim—that Mr. Wolfram and Mr. Wilkes not only
24 had no right to inquire as to Coyote Springs and their commissions, but that in doing so
25 they would acted in dereliction of their obligations under the Commission Letter
26 Agreement. The facts cannot and do not support Defendant's counterclaim.

27 But setting aside the clear absence of facts establishing that Plaintiffs were liable for
28 breaching the covenant of good faith and fair dealing, what may be even more far-fetched

1 is Defendant's claim for damages. Defendant claims that it had to expend substantial time
2 and effort in responding to Plaintiffs' inquiries. This damage claim begs the question—if
3 Defendant had some reasonable expectation that Plaintiffs would not ask them for
4 information, why Defendant spend hours and hours responding to the inquiries? If
5 Defendant is correct and Plaintiffs had no right to ask the questions they did, and if
6 responding would cause a substantial expenditure of resources, why did Defendant
7 respond? Why wouldn't Pardee attempt to mitigate damages and ignore Plaintiffs?¹² The
8 answer is simple: Plaintiffs had no obligation to stay silent when Defendant failed to live up
9 to its obligations under the Commission Letter Agreement, and when such inquiries were
10 made, Pardee spent time cherry-picking the information it would disclose instead of being
11 candid and up front with Plaintiffs.

12 In all reality, if Defendant was truly concerned about the time it had to spend
13 responding to Plaintiffs, the simple solution would be to hold a meeting, walk through the
14 documents, explain to Plaintiffs what was happening, and answer questions. Such a
15 meeting might very well have averted this lawsuit and saved the parties hundreds of
16 thousands of dollars in attorney's fees. Then again, such a meeting would be
17 characteristic of a company acting in good faith and truly working to resolve problems
18 before they arise—hardly descriptors for Pardee's conduct toward Plaintiffs.

19 III. CONCLUSION

20 At trial, Plaintiffs will conclusively establish that Defendant failed to appropriately
21 discharge its obligations under the September 1, 2004 Commission Letter Agreement.
22

23 ¹² This question highlights the critical distinction between Plaintiffs' and Defendant's claims
24 for time and effort damages. Unlike Defendant, who allegedly could have avoided
25 spending the time and effort responding to Plaintiffs' inquiries with no repercussions,
26 Plaintiffs could not afford to do nothing. The information they sought and were entitled to
27 was necessary to ensure that they were receiving the appropriate amount of commissions.
28 This difference between the parties demonstrates why Plaintiffs' time and effort are
compensable damages—because Plaintiffs had something to lose if they were not properly
informed and thus it was foreseeable at the time the Commission Letter Agreement was
executed that if Plaintiffs were not informed pursuant to the agreement, they would seek
the information elsewhere.

1 Defendant had a duty to appropriately calculate Plaintiffs' commission and to keep
2 Plaintiffs reasonably informed as to all matters related to the amount and due date of their
3 commission payments. Such duties went unfulfilled. As such, Plaintiffs are entitled to their
4 damages and to an accounting.

5 Dated this 21st day of October, 2013.

6 JIMMERSON HANSEN, P.C.

7
8 /s/ James J. Jimmerson, Esq.
9 JAMES J. JIMMERSON, ESQ.
10 Nevada State Bar No. 000264
11 LYNN M. HANSEN, ESQ.
12 Nevada State Bar No. 000244
13 JAMES M. JIMMERSON, ESQ.
14 Nevada State Bar No. 12599
15 415 South Sixth Street, Suite 100
16 Las Vegas, Nevada 89101
17 *Attorneys for Plaintiffs*
18 *James Wolfram and Walt Wilkes*
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' TRIAL BRIEF
PURSUANT TO EDCR 7.27 was made on the 22nd day of October, 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 facsimile, pursuant to EDCR 7.26 (as amended)
☐ By receipt of copy as indicated below

Pat Lundvall, Esq.
Aaron D. Shipley, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, NV 89102
Attorneys for Defendant


An employee of JIMMERSON HANSEN, P.C.

EXHIBIT D

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
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12 jjj@jimmersonhansen.com
13 lmh@jimmersonhansen.com
14 jmj@jimmersonhansen.com
15 Attorney for Plaintiffs
16 *James Wolfram and Walt Wilkes*

DISTRICT COURT
CLARK COUNTY, NEVADA

12 JAMES WOLFRAM AND WALT WILKES)
13 Plaintiffs,)
14 vs.)
15 PARDEE HOMES OF NEVADA,)
16 Defendant.)

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

17 **PLAINTIFFS' THIRTEENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF**
18 **WITNESSES AND DOCUMENTS**

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

23 ///

24 ///

25 ///

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

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 15. James J. Jimmerson, Esq.
28 C/O JIMMERSON HANSEN, PC
415 South Sixth Street #100
Las Vegas, Nevada 89101

Mr. Jimmerson is a principal of Jimmerson Hansen, P.C and is expected to testify
regarding Plaintiffs' attorney's fees and costs.

16. Klif Andrews
Pardee Homes of Nevada
650 White Drive, Suite 100
Las Vegas, Nevada 89119

1 Mr. Andrews is the President of Pardee Homes of Nevada and is expected to
2 testify about facts and circumstances about the case. Specifically he is expected to
3 testify concerning all production of residential property at Coyote Springs.

4
5 17. Chelsea Peltier
6 Slater Hanifan Group
7 5740 S. Arville, Suite #216
8 Las Vegas, Nevada 89118

9 Ms. Peltier is an employee of Slater Hanifan Group and is expected to testify
10 and is expected to testify about facts and circumstances about the case. Specifically
11 she is expected to testify concerning all production of residential property at Coyote
12 Springs.

13 18. Jerry Slater
14 Slater Hanifan Group
15 5740 S. Arville, Suite #216
16 Las Vegas, Nevada 89118

17 Mr. Slater is a principal of Slater Hanifan Group and is expected to testify and
18 is expected to testify about facts and circumstances about the case. Specifically he is
19 expected to testify concerning all production of residential property at Coyote
20 Springs.

21 19. Kenneth Hanifan
22 Slater Hanifan Group
23 5740 S. Arville, Suite #216
24 Las Vegas, Nevada 89118

25 Mr. Hanifan is a principal of Slater Hanifan Group and is expected to testify
26 and is expected to testify about facts and circumstances about the case. Specifically
27 he is expected to testify concerning all production of residential property at Coyote
28 Springs.

20. Jim Rizzi
Pardee Homes of Nevada
650 White Drive, Suite 100
Las Vegas, Nevada 89119

1
2 Mr. Rizzi is an employee of Pardee Homes and is expected to testify and is
3 expected to testify about facts and circumstances about the case. Specifically he is
4 expected to testify concerning all production of residential property at Coyote
5 Springs.

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

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

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

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

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

13 II.

14 DOCUMENTS

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

- 17 1. Any and all written agreements between the Parties;
18 2. Any and all documents evidencing damages to the Plaintiffs;
19 3. Any and all correspondence between the Parties;
20 4. Any and all appropriate Custodian of Record documents;
21 5. Any and all pleadings in this matter;

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

- 25 1. Option Agreement for the Purpose of Real Property and Joint Escrow Instructions
dated May 2004 (Bates No. PLTF0001-0080);
26 2. Amended and Restated Option Agreement for the Purchase of Real Property and
Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-0152);
27 3. Two Assignments of Real Estate Commission and Personal Certification
28 Agreement (Bates No. PLTF0153-0157A)
4. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes

- 1 regarding the attached Commission letter dated September 1, 2004, (Bates No. PLTF0158-0162);
- 2
- 3 5. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- 4 6. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No. PLTF0175-0179);
- 5 7. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0180-0187);
- 6 8. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0188-0191);
- 7
- 8
- 9 9. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0192-0193);
- 10 10. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E. Curtis, (Bates No. PLTF0194-0196);
- 11 11. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates No. PLTF0197-0202);
- 12 12. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No. PLTF0203-0205);
- 13 13. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash, (Bates No. PLTF0206-0209);
- 14 14. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0210-0211);
- 15 15. Bates Nos. PLTF0212-0244 are the duplicative documents produced in Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 16 16. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 17 17. Documents produced by Chicago Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 18 18. Documents produced by Coyote Springs Investments in response to Plaintiff's Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 - CSI_Wolfram0003004), attached hereto;
- 19 19. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 - PLTF10417), attached hereto;
- 20 20. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached hereto;
- 21 21. Non-Party Coyote Springs Investments, LLC's Supplement and Amended Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates PLTF10420-PLTF10424, attached hereto.
- 22 22. Chicago Title Company's previously bates stamped documents no. PLTF 1424

- 1 through PLTF 10414 (on bottom right of documents bates stamped) and rebated
- 2 as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates
- 3 stamped), including the Custodian of Records Subpoena to Chicago Title
- 4 23. Stewart Title Company's previously bates stamped documents no. PLTF 0245
- 5 through PLTF 1423 and rebated as bates nos: Stwt 0001 through 1202.
- 6 Documents Stwt 0699 and Stwt 0731 are copy coversheets and were
- 7 inadvertently bates stamped.
- 8 24. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138,
- 9 page 51, bates PLTF 10427 through PLTF 10438.
- 10 25. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116,
- 11 page 35, bates PLTF 10439 through PLTF 10440.
- 12 26. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117,
- 13 page 18, bates PLTF 10441 through PLTF 10443.
- 14 27. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140,
- 15 page 57, bates PLTF 10444 through PLTF 10456.
- 16 28. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113,
- 17 page 55, bates PLTF 10457 through PLTF 10462.
- 18 29. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98,
- 19 page 57, bates PLTF 10463 through PLTF 10468.
- 20 30. Copy of redacted billing sheets representing attorney's fees charged by
- 21 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,
- 22 bates PLTF 10469 through PLTF 10481.
- 23 31. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
- 24 32. Assignment of Rights, Title and Interest from Jay Dana on behalf of General
- 25 Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.
- 26 33. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award
- 27 Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.
- 28 34. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of
- Walt Wilkes, bates PLTF 10487.
35. Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.
36. Assignment signed by Mark Carmen dated December 3, 2012 along with Exhibit
- A signed by Jay Dana dated January 11, 2011, attached hereto as bates PLTF
- 10491 through PLTF 10493; and
37. Assignment signed by Peter J. Dingerson dated December 20, 2012 along with
- Exhibit A signed by Jerry Masini dated December 20, 2010, attached hereto as
- bates PLTF 10494 through PLTF 10496.
38. Copy of redacted billing sheets representing attorney's fees charged by
- Jimmerson Hansen, P.C. from October 24, 2012 through February 21, 2013,
- bates PLTF 10497 through PLTF 10499.

- 1 39. Copy of redacted costs representing costs expended by Jimmerson Hansen, P.C.
2 from December 29, 2010 through February 4, 2013 bates PLTF 10500 through
3 PLTF 10505.
- 4 40. Copy of redacted billing sheets representing attorney's fees charged by
5 Jimmerson Hansen, P.C. from February 21, 2013 through March 29, 2013, bates
6 PLTF 10506 through PLTF 10508.
- 7 41. Copy of redacted costs representing costs expended by Jimmerson Hansen, P.C.
8 from February 27, 2013 through March 13, 2013 bates PLTF 10509 through
9 10510.
- 10 42. Copy of redacted billing sheets representing attorney's fees charged by
11 Jimmerson Hansen, P.C. from April 1, 2013 through April 18, 2013, bates PLTF
12 10511 through PLTF 10512.
- 13 43. Color copy of the map as edited by James Wolfram, attached hereto as bates
14 PLTF 10513.
- 15 44. Color copy the original map from Jon Lash to James Wolfram of the entire site,
16 attached hereto as bates PLTF 10514.
- 17 45. Three (3) color copies of maps from James Wolfram to Jon Lash, originally
18 produced by your office on April 21, 2010, attached hereto as bates PLTF 10515-
19 10517; and
- 20 46. A further detailed computation of the attorney fee damages is found at Exhibit "1"
21 attached hereto. Exhibit "1" is a collection of the previously produced attorney's
22 fees with the highlighted sections representing the line items which were
23 aggregated at 100% plus the non-highlighted line items which were aggregated
24 at 33.3% to equal \$102,160.00. The pink highlighted line items represent those
25 damages for a breach of contract and breach of the implied covenant of good
26 faith and fair dealing claims, which total \$7,602.50.
- 27 47. Emails dated from September 2008 between Nevada Title and Plaintiffs with their
28 attachments (commercial sales and parcels designated for the upcoming BLM
land action from Nevada Tile), attached hereto as bates PLTF 10518-10527.
48. Computation of attorneys fees and billing from April 22, 2013 through May 21,
2013, attached hereto as bates PLTF 10528 through 10530.
49. Computation of attorneys fees and billing from May 20, 2013 through June 20,
2013, attached hereto as bates PLTF 10531 through 10533.
50. Documents regarding Coyote Springs Major Plan dated 8/4/2008, previously
produced as Bates Nos. CNTY00001-CNTY00543.
51. Documents regarding Coyote Springs Major Plan dated May 5, 2006,
previously produced as Bates Nos. CNTY00542-00898.
52. Documents regarding Coyote Springs Major Plan dated 6/2002, previously
produced as Bates Nos. CNTY00899-CNTY01193.
53. Documents regarding Coyote Springs Development Agreement dated
6/16/2004, previously produced as Bates Nos. CNTY01194-CNTY01262.
54. Documents regarding Coyote Springs Development Agreement dated

- 1 12/18/2002, previously produced as Bates Nos. CNTY01263-01334.
- 2 55. Notice of Final Action Clark County Zoning Commission dated 2/16/2011,
- 3 previously produced as Bates Nos. CNTY01335-01347.
- 4 56. Tentative Map Application filed 12/29/2010, previously attached as Bate
- 5 Nos. CNTY01348-01349.
- 6 57. Tentative Map Application 0094-10 Coyote Springs Village #4 approval
- 7 2/15/2011, previously produced as Bates Nos. CNTY01350-01351.
- 8 58. Map of Coyote Springs dated 5/23/2008, previously produced as Bates Nos.
- 9 CNTY01352.
- 10 59. Coyote Springs Village #4 tentative map dated 12/28/2010, previously
- 11 produced as Bates Nos. CNTY01353-01358.

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 \$1,930,000.00 associated with the

20 Defendant's breach of contract and the Defendant's failure to faithfully meet their obligations

21 to the Plaintiffs.

22 There are two primary components to this calculation. The first component is the loss

23 of future commissions from future sales or takedowns of property located in Clark County,

24 subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least

25 3,000 acres of property, defined as Option Property under the Option Agreement effective June

26 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South, Range 63

27 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June 1, 2004,

28 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

1 conduct 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 actions have
3 served to reclassify the land originally labeled
4 1, 2004 Commission Letter Agreement. As stated in the Agreement, "In the event, either party
5 brings an action to enforce its rights under this Agreement, the prevailing party shall be
6 awarded reasonable attorneys' fees and costs." Plaintiffs in bringing this suit expect to be the
7 prevailing party and, as such, are entitled to their reasonable attorney's fees as damages for
8 Defendant's breach of contract, breach of the covenant of good faith and fair dealing, and for
9 compelling the accounting due to Plaintiffs.

10 As stated by the Court in its most recent minute order, Plaintiffs' claims for attorney fee
11 damages are governed by *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117
12 Nev. 948 (2001). Pursuant to *Sandy Valley*, Plaintiffs calculate their attorney fee damages as
13 follows: all fees and costs incurred for filing the complaint, prosecuting the claim for accounting,
14 and seeking documents owed to Plaintiffs under the September 1, 2004 Commission Letter
15 Agreement (for the breach of contract and breach of the covenant of good faith and fair dealing
16 claims) plus one-third of the fees and costs incurred for the prosecution of all of the claims (as
17 one of the three claims is for an accounting for which all of Plaintiffs' fees are damages).
18 Exempt from the damages are fees in connection with the prosecution of the breach of contract
19 and breach of the implied covenant of good faith and fair dealing claims, specifically not in
20 furtherance of the recovery of documents. To date, Plaintiffs' attorney fee damages are greater
21 than or equal to: **\$135,486.87**. Specifically, Plaintiffs' attorney fee damages for the accounting
22 claim equal or exceed **\$135,486.87**; for the claim for the breach of contract equal or exceed
23 \$7,602.50; and for the claim for the breach of the implied covenant of good faith and fair
24 dealing claims equal or exceed \$7,602.50.

25 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
26 discover from public records what information was owed to them under the Commission Letter
27 Agreement. Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this
28 information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed
\$6,400.00 for their time.

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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1 Discovery is still ongoing therefore the Plaintiffs reserve the right to amend and
2 supplement this response as the investigation and discovery in this case proceeds.

3 Dated this 11th day of day of December, 2013.

JIMMERSON HANSEN, P.C.

/s/ James M. Jimmerson
JAMES J. JIMMERSON, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' THIRTEENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 11th day of December, 2013, as indicated below:

X 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
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Las Vegas, Nevada 89102
Attorneys for Defendant
Pardee Homes of Nevada

/s/ Stephanie Spilotro
An Employee of JIMMERSON HANSEN, P.C.

EXHIBIT E

DISTRICT COURT
CLARK COUNTY, NEVADA

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

TRANSCRIPT
OF
TRIAL PROCEEDINGS

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE
HELD ON THURSDAY, OCTOBER 24, 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

1 willingness to come here and be here before us, and I
2 know that it was a terrible inconvenience, so that's
3 why we've set you out of order so you get in and out of
4 here by the break, and --

5 A. Well, I appreciate your willingness to
6 accommodate busy schedules. Thank you.

7 Q. Let's get the 800 pound gorilla out of the
8 way, you recently suffered an adverse setback legally;
9 is that right?

10 A. Criminally, yes. Civilly, no.

11 Q. Convicted of one false statement and alleged
12 improper activity regarding the election process?

13 A. The false statement count really is a
14 consequence of the other two counts. It is not a false
15 statement I made or perjurious statement made but is,
16 in fact, a felony that flows from a report which was
17 filed by the Senator Harry Reid campaign.

18 Q. Okay. We got that done, okay.

19 I'm here to talk to you about my clients'
20 entitlement to information and whether or not that
21 translates to dollars.

22 MS. LUNDVALL: Your Honor, from my
23 perspective, I appreciate as far as counsel or I would
24 appreciate if counsel didn't make comments --

25 THE COURT: The preparatory remarks? I think

1 necessary.

2 THE COURT: Okay.

3 * * * * *

4

5 ATTEST:

6 Full, true, and accurate transcription of proceedings.

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Loree Murray, CCR #426

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District Court IV

EXHIBIT F

FFCO

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Wolfram and Walt Wilkes*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and)	
WALT WILKES,)	CASE NO.: A-10-632338-C
)	DEPT. NO.: IV
Plaintiffs,)	
vs.)	Trial Date: October 23, 2013
)	Time of Trial: 8:30 a.m.
PARDEE HOMES OF NEVADA,)	
)	
Defendant.)	
And related claims.)	

**PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND DECISION**

The bench trial in this action is set to commence on October 23, 2013, at 8:30 a.m. and will last approximately five judicial days. James J. Jimmerson, Esq., Lynn M. Hansen, Esq. and James M. Jimmerson, Esq. of Jimmerson Hansen, P.C., will appear on behalf of Plaintiffs, James Wolfram and Walt Wilkes. In anticipation of trial and pursuant to the Court's orders, Plaintiffs hereby submit their Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A. The Parties

1. Plaintiffs James Wolfram and Walt Wilkes have been licensed real estate brokers working in Southern Nevada and the surrounding area for over 35 years.

2. Defendant Pardee Homes of Nevada ("Pardee") is a Nevada corporation operating as a residential homebuilder constructing homes and other structures in Southern Nevada and elsewhere. Pardee's current chief operating officer is Jon Lash.

B. The Parties' Interest in Developing Coyote Springs

3. In 2002, Plaintiffs had begun tracking the status and progress of the project located at Coyote Springs in the Counties of Clark and Lincoln, Nevada ("Coyote Springs"). The owner of the land at Coyote Springs was Coyote Springs Investment, LLC ("CSI"), managed by Harvey Whittemore.

4. Coyote Springs has approximately 30,000 acres of net usable property.

5. Plaintiffs had previously worked with Mr. Lash in the pursuit of different real estate transactions, but none were ever consummated prior to the Coyote Springs transaction.

6. In or about late 2003, Plaintiffs contacted Mr. Lash to inquire if Pardee would be interested in meeting Harvey Whittemore of CSI for the purposes of entering into an agreement for the purchase of real property in Coyote Springs.

7. Mr. Lash agreed to allow Plaintiffs to represent Pardee as a potential purchaser, and a meeting was scheduled to take place at Pardee's office in Las Vegas. Present at the meeting were Plaintiffs, Mr. Whittemore from CSI, and Mr. Lash and Klif Andrews from Pardee.

8. This meeting was the first time that Mr. Lash met Mr. Whittemore.

9. While this meeting was introductory in nature, it ultimately set in motion the plans to structure a deal to develop Coyote Springs and resulted in some 200 meetings between Pardee and CSI. As such, Plaintiffs were the procuring cause of Pardee's right to buy Production Residential Property in Coyote Springs.

C. The Option Agreement Between Coyote Springs Investment LLC and Pardee Homes of Nevada

10. In or about May, 2004, Defendant Pardee and non-party CSI entered into an Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (the "Option Agreement"). This agreement detailed Pardee's purchase of property at Coyote Springs for the development of single-family homes and supporting property ("Production Residential Property"). Under the Option Agreement, CSI reserved to itself all rights to own and develop land not designated as Production Residential Property (eg. multifamily and commercial).

11. Prior to entering into the Option Agreement, Pardee had no contractual arrangement with CSI concerning the development of Coyote Springs.

12. Pursuant to the Option Agreement, Pardee was able to purchase a certain amount of property (approximately 3600 acres in Clark County) for the construction of single-family homes for a price of \$66 million.

13. While Pardee acquired record title to the 3600-acre parcel under the Option Agreement, Pardee was only going to acquire legal title to approximately 1500 acres of land. The balance of the 3600 parcel was set to revert back to CSI once CSI fulfilled its obligations concerning the Initial Developed Parcel.

14. Additionally, the Option Agreement gave Pardee the option to purchase the balance, or a portion thereof, of the property in Coyote Springs designated for single-family home development for up to forty (40) years for a certain price per acre as reflected by a price schedule in the Agreement.

15. Consistent with this two-pronged structure, the Option Agreement classified the property eligible for purchase as either "Purchase Property" or "Option Property."

16. The Option Agreement only allowed Pardee to purchase Production Residential Property through purchasing "Purchase Property" or exercising options for "Option Property." There were no provisions in the Option Agreement permitting Pardee to purchase or otherwise acquire Production Residential Property in any other manner.

1 17. The Purchase Property is defined in the Option Agreement as "Parcel 1 as shown
2 on Parcel Map 98-57 recorded July 21, 2000 in Book 2000072, as Document No. 01332,
3 Official Records, Clark County, Nevada (containing approximately 3,605.22 acres)."

4 18. The Option Property is defined in the Option Agreement as "the remaining portion of
5 the Entire Site which is or becomes designated for single-family detached production
6 residential use."

7 19. In addition to reflecting the details of the land transaction between CSI and Pardee,
8 the Option Agreement reflected Mr. Wolfram's and Mr. Wilkes' right to collect a broker fee
9 or commission for their role in the deal. Specifically, the Option Agreement states, "[U]pon
10 and subject to the close of escrow for the Purchase Property or any Option Parcel, Buyer
11 shall pay any finder fee owed to General Realty Group (Walt Wilkes) and Award Realty
12 Group (Jim Wolfram) pursuant to a separate agreement; said fee shall be split equally."

13 20. The Option Agreement was amended twice in 2004. The first amendment was
14 executed on July 28, 2004 and was entitled Amendment to Option Agreement for the
15 Purchase of Real Property and Joint Escrow Instructions.

16 21. On August 31, 2004, Pardee and CSI executed the Amendment No. 2 to Option
17 Agreement for the Purchase of Real Property and Joint Escrow Instructions.

18 22. Amendment No. 2 to the Option Agreement was particularly significant and among
19 other changes, (1) it increased Purchase Property Price from \$66 million to \$84 million and
20 (2) it provided certain exhibits, including maps of the Entire Site, the Purchase Property,
21 and the Option Property, which were not included in the Option Agreement.

22 23. According to the maps attached to Amendment No. 2, the location of Purchase
23 Property stayed the same whether or not the BLM reconfiguration took place. See Exhibits
24 C-1 and C-2 to Amendment No. 2. Furthermore, the maps definitively indicated that the
25 Initial Developed Parcel was completely contained within the boundaries of Purchase
26 Property. See Exhibit D to Amendment No. 2.

1 24. Despite the substantial development and evolution of the plans for Coyote Springs,
2 Plaintiffs were not included in any of the meetings between CSI and Pardee after the initial
3 meeting.

4 **D. The Commission Letter Agreement between Plaintiffs and Defendant**

5 25. Plaintiffs and Pardee entered into a commission agreement whereby, in exchange
6 for services rendered by Plaintiffs, Pardee agreed to (1) pay to Plaintiffs certain
7 commissions for land purchased from CSI and (2) send Plaintiffs notices and other
8 information concerning the real estate purchases made under the Option Agreement and
9 the corresponding commission payments.

10 26. Since Mr. Wolfram and Mr. Wilkes had already performed services for Pardee, the
11 Commission Letter Agreement placed no affirmative obligations on them.

12 27. The Commission Letter Agreement, dated September 1, 2004 ("Commission Letter
13 Agreement"), was executed by Pardee on September 2, 2004, by Mr. Wolfram on
14 September 6, 2004, and Mr. Wilkes on September 4, 2004.

15 28. Plaintiffs signed the Commission Letter Agreement on behalf of Award Realty
16 Group Inc. and General Realty Corp. as Mr. Wolfram and Mr. Wilkes were then employed
17 by those two real estate companies, respectively. Since the execution of the Commission
18 Letter Agreement, Award Realty Group and General Realty each assigned to Mr. Wolfram
19 and Mr. Wilkes, respectively, all rights, title and interest under the Commission Letter
20 Agreement.

21 29. The Commission Letter Agreement provides for the payment of "broker
22 commission[s]" to Plaintiffs in the event that Pardee approved the transaction during the
23 Contingency Period, equal to the following amounts:

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

27 (ii) Then, Pardee shall pay one and one-half percent (1-1/2%)
28 of the remaining Purchase Property Price payments made by
Pardee pursuant to paragraph 1 of the Option Agreement in the

1 aggregate amount of Sixteen Million Dollars (\$16,000,000); and

2 (iii) Then, with respect to any portion of the Option Property
3 purchased by Pardee pursuant to paragraph 2 of the Option
4 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).

5 30. As of September 6, 2004, the Option Agreement provided Pardee no method to
6 purchase Production Residential Property other than purchasing Purchase Property or
7 exercising options for Option Property. And because the Commission Letter Agreement
8 mandated that Pardee pay a commission to Plaintiffs for the purchase of Purchase
9 Property and the exercise of options for Option Property—the only ways for Pardee to
10 purchase Production Residential Property under the Option Agreement—Plaintiffs had a
11 justified expectation that they would be informed of and paid a commission for all
12 Production Residential Property acquired by Pardee.

13 31. By virtue of Amendment No. 2 increasing the Purchase Property Price from \$66
14 million to \$84 million, Plaintiffs became entitled to commissions on the increased Purchase
15 Property Price.

16 32. The Commission Letter Agreement requires Pardee to provide Plaintiffs with
17 notifications and information concerning future transactions between Pardee and CSI
18 under the Option Agreement. Specifically, the Commission Agreement states:

19 Pardee shall provide to each of you a copy of each written
20 option exercise notice given pursuant to paragraph 2 of the
21 Option Agreement, together with information as to the number
22 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.

23 33. Mr. Wolfram, Mr. Wilkes, and Mr. Lash are in agreement that in order to be kept
24 reasonably informed as to all matters related to the amount and due date of the
25 commission payments, Pardee, at a minimum, must provide information by which Plaintiffs
26 can verify the accuracy of Pardee's commission calculations and payment dates.
27
28