

<p style="text-align: right;">Page 161</p> <p>1 felt it was just another chance to argue Sandy Valley, 2 but I'm okay with that, because to be real honest, I 3 want the most there, you know, in there for our appeal, 4 because I know we all -- I suspected strongly from my 5 rulings that, that the Sandy, that this would be, 6 because I, I -- and that's why it would go up. That 7 does not shock this Judge at all. 8 In fact, that's why I tried, honestly, 9 Ms. Lundvall, that's why I looked for every new case 10 that came down between when, after my Actos trial, 11 between when we finished your trial and before I took 12 the week off to do this, so you're not surprised I 13 found the case. 14 It's fine, and honestly, Mr. Jimmerson, 15 that's why I don't mind if you briefed it. I have no 16 problem if that's in my record, in this record, so this 17 is moot only for that reason, okay? Because the 18 judgment, okay, nothing is waived, as we know. I'm 19 very explicit. 20 The next one, the Number 4, which one is 21 this? 22 The countermotion, okay, the countermotion 23 for attorney's fees on Pardee's motion to amend 24 judgment, this is also moot, because I did not hear the 25 motion to amend the judgment, but I will tell you, I, I</p>	<p style="text-align: right;">Page 163</p> <p>1 MR. JIMMERSON: Well, your Honor, we're 2 talking two different things. 3 THE COURT: Okay. 4 MR. JIMMERSON: By Wiznet, there is an 5 obligation by each lawyer, each firm, to serve the 6 list, to serve whoever you've designated. 7 THE COURT: Right, on the list service. 8 MR. JIMMERSON: We're not talking about that. 9 This motion doesn't speak to that. This motion speaks 10 to emails to myself. 11 MS. LUNDVALL: No, it doesn't. 12 MR. JIMMERSON: I want emails that are gonna 13 be communicated to me by McDonald Carano to be added to 14 my secretary and now to Mr. Flaxman. 15 THE COURT: Are you asking me for any email 16 between you? 17 MR. JIMMERSON: That's right. Any order, any 18 email communicated to me is to be sent to three people, 19 not one person, and the defense has no defense to that. 20 They are confused. They say we're talking about 21 Wiznet. Well, Wiznet, you got to serve whoever is on 22 the mailing list. 23 If they submit a judgment to me by email, and 24 they know I don't read it, I'm asking for a Court order 25 so there is no excuse by them not to comply and that</p>
<p style="text-align: right;">Page 162</p> <p>1 do look at -- I can't give you advisory. 2 Let me just say, since we've opened up a lot 3 of topics here, I do look at NRCP 11(a)(1)(a), instead 4 of allowing countermotions, I will tell you, because I 5 do look at it that if I agree you can have a motion for 6 sanction, if you think it's, if the Court has grounds 7 for that, but I do require a separate motion just even 8 before you did it, just for that reason, because I am 9 trying so hard, because people do countermotions, so I 10 do read Rule 11 that way, okay? 11 But that does not waive any of your rights 12 for that, you do understand, so that's not advisory, 13 I'm just telling you how I read Rule 11 on the 14 countermotions. 15 Okay. The plaintiffs' motion for order -- 16 okay, this one we could do, the plaintiffs' motion for 17 order requiring defendant, when serving by electronic 18 means, to serve three specific persons. 19 I don't know how Wiznet works. I tried to 20 find out. 21 Basically the defense is, Hey, if they want 22 it through the electronic, it can go to Wiznet. 23 Here's my thought, because of this case I 24 have no problem, because that's whether it gets to your 25 firm, not you specifically.</p>	<p style="text-align: right;">Page 164</p> <p>1 they would serve my secretary and my associate. 2 THE COURT: When you say "email," you mean 3 any order? You're not saying every correspondence? 4 MR. JIMMERSON: I'm saying every 5 correspondence from McDonald Carano on this case be 6 done, not on other cases, this case. I want to make 7 sure that I read it and that I see it, and that what 8 happened in this case on June 15th or so does not 9 repeat, that's all. 10 It's so easy for them to add one other name 11 or two other names to the "to" box on a computer, 12 that's all, to the point where don't send it to me, 13 send it -- my point is it's no big deal to send it to 14 three people. 15 What gets me is if she would have asked me, 16 Would you make sure you send Rory a copy, yes, of 17 course, but not with Pardee. Pardee, they're just 18 never gonna communicate or cooperate, so I want an 19 order that obligates them that with regard to this 20 case, any communications by email as opposed to a 21 letter in the mail be sent to three people, not just to 22 me. 23 MS. LUNDVALL: Your Honor, I'm not trying to 24 be difficult here, but you know what, there are rules 25 that have consequences in this case, and there are</p>

<p style="text-align: right;">Page 165</p> <p>1 issues that interrelate to this request that he has 2 made now orally. 3 THE COURT: Uh-huh. 4 MS. LUNDVALL: And I want to as far as point 5 the Court specifically to his motion. 6 THE COURT: I got it. 7 MR. JIMMERSON: Mr. Jimmerson is so very apt 8 to read, and let me read from his own motion. 9 He says on Page 1 of his motion, Request this 10 Court for an order compelling defendants and its 11 counsel, if they are choosing to serve documents by 12 electronic means, and especially when serving by 13 electronic means without hard copies by U.S. Mail to 14 plaintiffs' counsel, to serve three individuals. 15 MR. JIMMERSON: Right. 16 MS. LUNDVALL: And now he's changing the 17 identity of who it is he wants to have served from his 18 motion, but the point being is that we serve documents 19 through Wiznet. You can't order what happens through 20 Wiznet. I can't order what happens through Wiznet. 21 If he wants things served upon him, then he 22 and his staff have to register with Wiznet. That is 23 all I'm talking about. 24 THE COURT: Okay. 25 MS. LUNDVALL: Now, to the extent he's made</p>	<p style="text-align: right;">Page 167</p> <p>1 because of what happened on not approving as to form 2 and content, so I, above all people, I am a stickler 3 for rules now. 4 What I'm going to say as far as I'm not going 5 to grant this motion, but I'm going to emphasize that 6 for any orders or any judgment in this case, that you, 7 both of you are ordered to give it to the other person 8 as to form and content, and that if you do not have 9 someone to form and content within a reasonable time, 10 you are to let this Court know what the reasonable time 11 was, what efforts you made to get ahold of the other 12 person, and -- before you do it, and if you get ahold 13 of them and they disagree, do exactly what I said. 14 Tell me either you both proposed and your basis for it. 15 That's what I'm going to do. 16 MS. LUNDVALL: Thank you, your Honor. 17 THE COURT: Which I thought was my standing 18 order, but obviously I am going to do a specific one 19 here, so if there's a misunderstanding that an order is 20 different from a judgment, it won't happen again. 21 MR. JIMMERSON: Could I have the Court order 22 that any communication to myself be directed to my 23 secretary? They don't have to send it to me. 24 THE COURT: I'm not sure I have the 25 jurisdiction.</p>
<p style="text-align: right;">Page 166</p> <p>1 an oral motion that is separate and apart from what the 2 actual motion he filed before the Court is, from my 3 perspective, I am a stickler for rules, and especially 4 when those rules will adversely impact my client, 5 because I know what's gonna happen. His argument is 6 going to be that since we did not do this in the past, 7 that somehow there was something nefarious then, 8 because we had sent the letter to the Court, we had 9 copied him on that letter. 10 And so to the extent that what he's trying 11 now by which to do is not only to accomplish something 12 prospectively, but to accomplish then something then 13 that's going to have a relationship to an issue that's 14 already before the Court, and so his oral motion, 15 number one, has no factual basis. His oral motion has 16 no legal foundation. He has no rule, no citation to a 17 rule by which that he can say, Your Honor, to compel 18 her to send me an email and compel her to copy somebody 19 else. That, with all due respect, your Honor, is 20 ridiculous. 21 THE COURT: So here's how I'm gonna do this 22 motion, because the reason I brought it up is because 23 of what happened in our first motion. 24 And I am a stickler for rules too, you know, 25 that affects this Court and everybody, as you know,</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. JIMMERSON: When you hear that they 2 refuse to serve somebody I asked to be served, and I 3 don't read it, and they knew about it a year and a half 4 ago, and they still go through that, what is somebody 5 to believe? I just want to make sure that when I get 6 something from the McDonald Carano firm in this case 7 that I'm aware of it, and so sending it to me will not 8 make me aware of it. 9 I would like to have an order from the Court 10 or a stipulation from the defendant. 11 THE COURT: Here's what I said, let's be real 12 plain here, any communication, whether it's written or 13 whether it's email or -- who do you want them to, if 14 it's not you, who do they -- 15 MS. LUNDVALL: Your Honor? 16 MR. JIMMERSON: Ks@jimmersonlawfirm.com. 17 THE COURT: Okay. 18 MS. LUNDVALL: Your Honor, there is a way for 19 you to be able to accomplish what it is he wants, and 20 let me make a suggestion. There is a function in 21 Wiznet that when I file something, I also have to ask 22 for it to be served, but if I don't want something 23 filed, I can simply say I'm going to serve him. 24 Now, whoever they have had register for their 25 service, they get it automatically. They're in charge</p>

<p style="text-align: right;">Page 169</p> <p>1 of that.</p> <p>2 THE COURT: But he's going beyond service.</p> <p>3 MR. JIMMERSON: I'm not talking about</p> <p>4 service, I'm talking about --</p> <p>5 MS. LUNDVALL: This is what I'm talking</p> <p>6 about, is that if I'm going to send him a proposed</p> <p>7 judgment, I can do that through the service function on</p> <p>8 Wiznet.</p> <p>9 MR. JIMMERSON: But you didn't do that this</p> <p>10 year, you didn't do that in --</p> <p>11 THE COURT: Okay. You know what, it's real</p> <p>12 easy, I'm sorry.</p> <p>13 MS. LUNDVALL: And I will do that. That's</p> <p>14 the point I'm trying to make, and so it will accomplish</p> <p>15 what it is that he wants.</p> <p>16 THE COURT: You will serve it to that person?</p> <p>17 MS. LUNDVALL: I will do it through Wiznet,</p> <p>18 and whoever they have through Wiznet, they receive</p> <p>19 copies of it. So once again, it puts the ball in their</p> <p>20 court to have somebody register for --</p> <p>21 MR. JIMMERSON: No problem, we have</p> <p>22 registered everyone in this case.</p> <p>23 THE COURT: But you're going beyond that,</p> <p>24 you're going beyond other emails.</p> <p>25 Am I understanding you right?</p>	<p style="text-align: right;">Page 171</p> <p>1 offer this suggestion to you. I've made the</p> <p>2 representation that any emails, any letters, anything,</p> <p>3 we will send to Mr. Jimmerson through the serve</p> <p>4 function on Wiznet and so it gets to them. I've made</p> <p>5 that representation, and so that's a stipulation.</p> <p>6 THE COURT: You're using Wiznet for</p> <p>7 everything, like Mr. Jimmerson --</p> <p>8 MS. LUNDVALL: Absolutely.</p> <p>9 THE COURT: You're using --</p> <p>10 MS. LUNDVALL: Absolutely. You can use</p> <p>11 Wiznet for that function, absolutely.</p> <p>12 MR. JIMMERSON: Do you understand the game</p> <p>13 they're playing?</p> <p>14 MS. LUNDVALL: What I'm trying to do is to</p> <p>15 give the Court an out, because number one, you don't</p> <p>16 have a motion before you. Number two, you don't have</p> <p>17 any grounds before you, and I'm trying to make sure</p> <p>18 that there's no issue in your record that --</p> <p>19 THE COURT: Well, if you want to appeal me on</p> <p>20 this, have at it, Ms. Lundvall. I mean I have an issue</p> <p>21 in front of me that somebody -- and I can tell you the</p> <p>22 issue came because the stickler for the rules, the</p> <p>23 rules didn't happen on this judgment.</p> <p>24 MR. JIMMERSON: That's right.</p> <p>25 THE COURT: So I do have an issue. My</p>
<p style="text-align: right;">Page 170</p> <p>1 MR. JIMMERSON: Absolutely right.</p> <p>2 THE COURT: That's his oral motion, and I</p> <p>3 agree he just asked about service, and I agree.</p> <p>4 Who, instead of them doing it to you, and</p> <p>5 they're not going to -- on different communications,</p> <p>6 they are not going to have to do three people. You're</p> <p>7 telling them who you want any communication to go to.</p> <p>8 MR. JIMMERSON: Right, any emails, just send</p> <p>9 it to ks@jimmersonlawfirm.com.</p> <p>10 You know, we send everything to Ms. Lundvall</p> <p>11 and to Rory.</p> <p>12 Sorry, I don't remember your last name.</p> <p>13 They won't accommodate that, and they know I</p> <p>14 don't read it.</p> <p>15 THE COURT: Okay. It's very easy, if you</p> <p>16 want to -- I absolutely feel like, so we don't have any</p> <p>17 more misunderstandings, any emails on this case that</p> <p>18 you want to go to Mr. Jimmerson, do not send it to his</p> <p>19 email, send it to --</p> <p>20 MR. JIMMERSON: Ks@jimmersonlawfirm.com.</p> <p>21 THE COURT: Ks@jimmerson, and he cannot come</p> <p>22 to this Court and say he didn't get it.</p> <p>23 MR. JIMMERSON: Agreed.</p> <p>24 MS. LUNDVALL: And from this perspective, one</p> <p>25 of the things that I would suggest to the Court, let me</p>	<p style="text-align: right;">Page 172</p> <p>1 concern is how do I address it?</p> <p>2 If you're saying you don't do private email,</p> <p>3 every email you send goes through Wiznet?</p> <p>4 MR. JIMMERSON: That's not true.</p> <p>5 THE COURT: I just, I just want her to get on</p> <p>6 the record and tell me. Every email, whether it's,</p> <p>7 Mr. Jimmerson, I'm going to be late for court on</p> <p>8 January 14, so please don't start without me, that</p> <p>9 would go through Wiznet?</p> <p>10 MS. LUNDVALL: Prospectively, for this case,</p> <p>11 I will do that from this point forward.</p> <p>12 MR. JIMMERSON: I'm not asking her to do</p> <p>13 that. She does not need to do that.</p> <p>14 THE COURT: But if that accomplishes, if you</p> <p>15 will do that, then you have them on Wiznet, and then</p> <p>16 you can get five of them or whoever you have on Wiznet.</p> <p>17 We're done.</p> <p>18 MS. LUNDVALL: That's right.</p> <p>19 THE COURT: If that's what you'll do, that's</p> <p>20 fine.</p> <p>21 MS. LUNDVALL: Thank you, your Honor.</p> <p>22 THE COURT: We accomplished what we want.</p> <p>23 I'm fine.</p> <p>24 And then not only that one, but then if it's</p> <p>25 -- then we actually have a basis to trace that it went</p>

<p style="text-align: right;">Page 173</p> <p>1 through Wiznet.</p> <p>2 MS. LUNDVALL: Absolutely. That's my point.</p> <p>3 THE COURT: Well, I -- so based on that, I'm</p> <p>4 gonna order that. That's regarding plaintiffs' motion</p> <p>5 for ordering client, defendant, when serving electronic</p> <p>6 means, to serve three, what I'm going to say is that I</p> <p>7 am going to deny that -- no.</p> <p>8 MS. LUNDVALL: Yes, you are denying it.</p> <p>9 THE COURT: I'm just trying to think how I</p> <p>10 make sure I get in the ruling, denying it based on the</p> <p>11 ruling that you, prospectively, the defendant</p> <p>12 prospectively will serve all email through Wiznet.</p> <p>13 MS. LUNDVALL: Thank you, your Honor.</p> <p>14 MR. JIMMERSON: For this case.</p> <p>15 MS. LUNDVALL: For purposes of this case</p> <p>16 prospectively.</p> <p>17 THE COURT: For this case. This is the only</p> <p>18 case I have with you, so for this case, so we're very</p> <p>19 specific, yes. Okay.</p> <p>20 We have Pardee's motion for attorney's fees.</p> <p>21 This is Number 6. It is also moot, because it's based</p> <p>22 on the judgment of 6/15/2015.</p> <p>23 This is the prevailing party -- I understand.</p> <p>24 The notes from what you just gave me, I will put it</p> <p>25 with that. We can get into so many things, can we not,</p>	<p style="text-align: right;">Page 175</p> <p>1 THE COURT: Okay. You know what, I am going</p> <p>2 -- no, no. I'm going to deny it, and you can just --</p> <p>3 you have it all in your briefing, and you can refile it</p> <p>4 based on the new judgment.</p> <p>5 MR. JIMMERSON: Could we have a --</p> <p>6 THE COURT: I'm denying it as moot, and you</p> <p>7 can refile it.</p> <p>8 MR. JIMMERSON: For both parties, Judge, can</p> <p>9 we have the opportunity to say plaintiff and defendant,</p> <p>10 individually have 10 days to exchange proposed</p> <p>11 judgments to keep it on track?</p> <p>12 THE COURT: Yeah, however you want to do it.</p> <p>13 MR. JIMMERSON: I'm just suggesting it might</p> <p>14 be a fair time, because we plan on preparing one.</p> <p>15 THE COURT: If you think you need to clarify</p> <p>16 anything else on your exchange on judgments, I'm fine.</p> <p>17 Okay, Pardee's motion to retax memo of costs</p> <p>18 filed June 19th, that also applies to the June 15th,</p> <p>19 2015.</p> <p>20 MR. JIMMERSON: Yes, it does.</p> <p>21 THE COURT: So I'm gonna it as moot at this</p> <p>22 time, and let's see what happens, because it's the NRS.</p> <p>23 It goes back to the prevailing party thing.</p> <p>24 And plaintiffs' motion for attorney fees and</p> <p>25 costs, same thing, I'm gonna deny it as moot, and we'll</p>
<p style="text-align: right;">Page 174</p> <p>1 on this case?</p> <p>2 So this is denied only because it is moot.</p> <p>3 MS. LUNDVALL: Hold on, your Honor. From</p> <p>4 this perspective, are you denying these motions --</p> <p>5 THE COURT: No.</p> <p>6 MS. LUNDVALL: -- or are you holding them</p> <p>7 over for future --</p> <p>8 THE COURT: That's a good question. I was</p> <p>9 going to deny them as moot. Then you would have to</p> <p>10 refile them.</p> <p>11 MS. LUNDVALL: Then everything would have to</p> <p>12 be refiled, then there would be a new opportunity if</p> <p>13 you want to -- my suggestion to the Court is to simply</p> <p>14 continue these then.</p> <p>15 THE COURT: Well, but your motion is asking</p> <p>16 for a judgment of 6/15/2015.</p> <p>17 MS. LUNDVALL: Well, from this perspective,</p> <p>18 your Honor, though, no matter what is contained within</p> <p>19 the judgment, based upon what you've said today, our</p> <p>20 position being the prevailing party on the portion of</p> <p>21 the case, as we've talked about, we prevailed on a</p> <p>22 portion of this case.</p> <p>23 THE COURT: Okay. Just, just --</p> <p>24 MS. LUNDVALL: They prevailed on another one.</p> <p>25 That's all set forth.</p>	<p style="text-align: right;">Page 176</p> <p>1 go from there.</p> <p>2 What is the last thing then, you want to make</p> <p>3 sure on these from my ruling of the first motion on</p> <p>4 exchanging these new judgments, do you want to add you</p> <p>5 each --</p> <p>6 MR. JIMMERSON: I'm just suggesting that we</p> <p>7 exchange them within the next ten days, that's all.</p> <p>8 THE COURT: Oh.</p> <p>9 MR. JIMMERSON: So we keep it on track, and</p> <p>10 then you'll make -- and then maybe if we have a</p> <p>11 dispute, we would telephone you. I'm just suggesting a</p> <p>12 joint call and/or your law clerk and just say, Listen,</p> <p>13 we're not able to get this together ourselves, we need</p> <p>14 a hearing by the Court on competing orders. You will</p> <p>15 have two orders in front of you, and you may make a</p> <p>16 third of your own. I'm just saying that may be a fair</p> <p>17 way to --</p> <p>18 THE COURT: Well, what are your thoughts on</p> <p>19 that?</p> <p>20 MS. LUNDVALL: The Court has told us you have</p> <p>21 a standing order and you want us to comply with that</p> <p>22 standing order.</p> <p>23 THE COURT: Let's just do it.</p> <p>24 MS. LUNDVALL: So my suggestion is that we do</p> <p>25 it that way.</p>

<p style="text-align: right;">Page 177</p> <p>1 THE COURT: I have to agree, because as soon 2 as I do something outside the normal course, as with 3 this case, then I have issues. 4 And if I feel like I need a hearing, I'm not 5 shy, I will ask for a hearing. 6 MR. JIMMERSON: Very good, your Honor. 7 THE COURT: I would like to do it that way. 8 MR. JIMMERSON: It's getting to the point 9 where if I suggest today is a Friday, I'm going to get 10 an opposition. 11 I'm with you. We'll just submit it. 12 THE COURT: Okay. It's all important. I 13 take no dispersions. It's all important. I get that. 14 MR. JIMMERSON: So as I understand it, we're 15 going to exchange between ourselves, try to reach an 16 accommodation. If not, we'll be sending letters served 17 upon the opposing side so each side has -- 18 THE COURT: Okay, here's what I would like to 19 do, here's how it works: One of you does the proposed 20 order. The other one looks at -- judgment, excuse me, 21 judgment. The other one looks at it, says what their 22 issue is and whether they can approve it or not. If 23 not, you try to work together. 24 If you can't, then whoever, then each of you, 25 the first one who proposed the judgment and the second</p>	<p style="text-align: right;">Page 179</p> <p>1 preparing the order. It's okay. 2 THE COURT: Unfortunately, the way it started 3 out in the first place, I'm going to keep consistent. 4 I'm fine. No one's waiving any rights. 5 MS. LUNDVALL: Thank you, your Honor. 6 THE COURT: You know, no one has to take 7 their ball and go home, okay? We're okay, I promise, 8 okay? 9 MR. JIMMERSON: You got it. 10 THE COURT: Thank you for staying so long. 11 MR. JIMMERSON: Thank you for all your time 12 and your staff's time too. I appreciate everybody's 13 efforts. 14 THE COURT: You're welcome, okay. 15 * * * * * 16 ATTEST: 17 Full, true, and accurate transcription of proceedings. 18 19 20 21 22 Loree Murray, CCR #426 23 24 25</p>
<p style="text-align: right;">Page 178</p> <p>1 one who couldn't agree, you couldn't work it out, give 2 me competing judgments or give me information on what 3 sections of the judgment you can't agree on. 4 MR. JIMMERSON: Okay. 5 MS. LUNDVALL: Thank you, your Honor. 6 THE COURT: Do it that way, and I will make 7 the determination whether I want more. And based on 8 this, I may, you know. I'm very aware of peoples' 9 arguments now. 10 One thing with both of you, oral argument 11 helps, because I do think there's so much stuff, and 12 trying to focus where we're at, but I will make that 13 determination when I get there. 14 MS. LUNDVALL: As the Court has previously, 15 as the Court has previously ordered at least three 16 times before, I will prepare the judgment. 17 THE COURT: Yes. 18 MS. LUNDVALL: And I will give it to 19 Mr. Jimmerson. 20 THE COURT: That was my -- 21 MR. JIMMERSON: I didn't know you ordered it 22 three times before for the defendant, who lost this 23 case, to prepare the judgment. Your Honor, I'm just 24 saying it will not alter the ultimate result, but since 25 I won the case, my clients won the case, we should be</p>	

<p style="text-align: right;">Page 73</p> <p>1 MS. LUNDVALL: And I'm quoting from their 2 opposition, and maybe it might make it easier for the 3 Court to have a paper copy of our powerpoint. 4 THE COURT: Sure, so I can follow it instead 5 of looking up. 6 MS. LUNDVALL: And I have a copy for 7 Mr. Jimmerson as well. 8 So anyway, so they opposed then our motion 9 for summary judgment. They say this whole case is 10 about what you call option property. They claimed that 11 we had made purchases of option property, and the 12 quantification of those purchases then yielded 1.8 in 13 -- 1.8 million in commissions that we had not paid to 14 them. That was their theory. That's what we defended 15 against, that's what we prevailed upon at the time of 16 the trial. 17 All right, so let's go on then. What did we 18 get nearly immediately after filing our motion for 19 summary judgment? And part of our motion for summary 20 judgment, very noticeably, had indicated that they had 21 not quantified their damages in compliance with Rule 22 16.1. 23 THE COURT: Right. 24 MS. LUNDVALL: Therefore, under the 25 sanctioning provisions under 16.1, they should not be</p>	<p style="text-align: right;">Page 75</p> <p>1 All right. So then what we do is we get then 2 to what they actually tried. Their supplement then 3 gave us plenty of information as to what they were 4 going to try at the time of trial. So let's get into 5 then we talked -- I have a number of slides in here 6 about how every single one of their Rule 16.1 7 disclosures. 8 Even disclosures that were given to us during 9 the course of trial included this figure of 10 \$1.8 million. It made it abundantly clear that they 11 were seeking money damages in addition to additional 12 information. 13 And if you think about -- 14 THE COURT: Once they got the additional 15 information, which started the lawsuit. They got it. 16 MS. LUNDVALL: That's correct. 17 THE COURT: Once they got it. 18 MS. LUNDVALL: And so -- 19 THE COURT: I didn't see any of this, as you 20 know, that's not evidence at trial. I only review the 21 evidence at trial, but yes, okay. 22 MS. LUNDVALL: But this is all part of the 23 record then before the Court as to what the parties 24 were doing as it relates then to this motion to amend 25 as it relates to the prevailing party. We put all this</p>
<p style="text-align: right;">Page 74</p> <p>1 able to advance any quantification of their damages. 2 And what did they do? They filed then their Rule 16.1 3 disclosure, and for the first time then, after we filed 4 our motion for summary judgment, they indicated that 5 they calculate their damages to be in excess of 1.9. 6 Now, I don't know about you, but any attorney 7 that I know that gets a disclosure, a Rule 16.1 8 disclosure of what the opposing side's damages are, we 9 know that's what you're defending against. 10 THE COURT: Okay. 11 MS. LUNDVALL: That's what the case is about. 12 That's what we're defending against, all right? 13 So they made their disclosure and they 14 identified how they calculated it. And it tracked the 15 two calculations on the two theories that they were 16 advancing. 17 The first one was the loss of the 18 commissions, and they gave calculations on that. And 19 they go on and they talk about how we reclassified the 20 lands as purchase property and option property, and we 21 divested then the plaintiffs of any opportunity then to 22 recover this \$1.8 million in commissions. That's what 23 their theory holds. That's the theory they tried, and 24 that's the theory, your Honor, that they lost, that you 25 ruled against them upon.</p>	<p style="text-align: right;">Page 76</p> <p>1 information before you. 2 THE COURT: You put all this information 3 before me at trial? 4 MS. LUNDVALL: No, no, no, I'm not suggesting 5 that. 6 THE COURT: No, no. 7 MS. LUNDVALL: What I'm suggesting is -- 8 THE COURT: This is discovery. This is to 9 put people on notice, you're right, as to what they may 10 or what may happen at trial. There's things in 16.1 11 that never come up at trial. You and I both know we 12 could have this theory initially, and after discovery, 13 we go, whoops, that's not the way we're going, so this 14 is discovery, I understand that, so I just want to make 15 sure -- I don't remember, and I went -- you didn't ask 16 me to review 16.1. 17 Did you put into evidence 16.1? 18 MS. LUNDVALL: Absolutely. All of this is in 19 as far in our oppositions to their various motion to 20 strike. 21 THE COURT: No, no, not for this, but at 22 trial. Believe me, I read everything, but at trial did 23 you have an exhibit of 16.1? 24 MS. LUNDVALL: Absolutely not. 25 THE COURT: All right. I just wanted to make</p>

<p style="text-align: right;">Page 77</p> <p>1 sure I didn't miss it, because that would concern me.</p> <p>2 MS. LUNDVALL: As a defendant, I'm not going</p> <p>3 to put in evidence --</p> <p>4 THE COURT: Of course not.</p> <p>5 MS. LUNDVALL: -- of what a plaintiff claims</p> <p>6 is their damages.</p> <p>7 THE COURT: Okay. Right, but at trial is</p> <p>8 what you're defending. You take what the burden of</p> <p>9 proof is and what they put on, and you do your defense</p> <p>10 according to the testimony of the plaintiffs and their</p> <p>11 exhibits. That's your burden, I understand completely,</p> <p>12 of what's done at trial.</p> <p>13 Okay, I'm on the same -- I'm following your</p> <p>14 reasoning.</p> <p>15 MS. LUNDVALL: All right. But I guess let me</p> <p>16 step back from this to make sure the Court understands</p> <p>17 the arguments that I'm making is --</p> <p>18 THE COURT: Yes.</p> <p>19 MS. LUNDVALL: Is that they told us what</p> <p>20 their theory was and what they were seeking to recover.</p> <p>21 For the attorney's fees we incurred in defending this</p> <p>22 case, it was based upon what they had disclosed to us,</p> <p>23 and those disclosures are all before the Court.</p> <p>24 And I'm gonna get to the trial where you're</p> <p>25 gonna see that, in fact, they continued in this, the</p>	<p style="text-align: right;">Page 79</p> <p>1 and that reclassification was really what they termed</p> <p>2 purchase property, and therefore they were entitled to</p> <p>3 a commission upon them.</p> <p>4 THE COURT: Wouldn't you agree with me, I</p> <p>5 just want to ask wouldn't you agree with me that a lot</p> <p>6 of questions was educating the Court and themselves on</p> <p>7 how, especially Mr. Whittemore, how did you treat</p> <p>8 Pardee, because they were not privy to this, and as you</p> <p>9 know, how this was done, how you decided to do the</p> <p>10 redesignation, how you decided to treat it, why you</p> <p>11 moved the boundaries, wouldn't you agree with me a lot</p> <p>12 of that information you're now basically saying to this</p> <p>13 Court, Oh, that was all to defeat their \$1.8 million</p> <p>14 claim, the damages they put in discovery, but a lot of</p> <p>15 it was to figure out, I felt, whether they were</p> <p>16 entitled to option property, not what the amount was</p> <p>17 yet, but to find out whether they were actually</p> <p>18 entitled based on third party, you know, that they</p> <p>19 weren't a part of, you know, that's a whole different</p> <p>20 thing to incorporate into a commission agreement.</p> <p>21 I'm sure this may not happen again, because</p> <p>22 they were not part of CSI, Coyote Springs and Pardee.</p> <p>23 A lot of questions, because I spent a long time on it,</p> <p>24 was trying to figure out whether they even have that</p> <p>25 theory.</p>
<p style="text-align: right;">Page 78</p> <p>1 same theory that they'd advanced.</p> <p>2 THE COURT: Okay.</p> <p>3 MS. LUNDVALL: Their theory was all the way</p> <p>4 back to their motion for summary judgment that said it</p> <p>5 all depends on what you call option property.</p> <p>6 THE COURT: Uh-huh.</p> <p>7 MS. LUNDVALL: Their theory that they tried</p> <p>8 to you was we had purchased option property. The</p> <p>9 theory we defended against was we didn't purchase any</p> <p>10 option property, and you agreed with us. And their</p> <p>11 quantification of that purchase was the \$1.9 million --</p> <p>12 it was actually 1.8. They add the additional component</p> <p>13 then for the attorney's fees that they incurred on the</p> <p>14 second portion of their theory.</p> <p>15 But going back then to what happened then at</p> <p>16 the time of the trial, all right, so we get to the</p> <p>17 witnesses. Mr. Wolfram gave nearly three days full of</p> <p>18 testimony, and Mr. Wilkes was there for about a half</p> <p>19 day, Mr. Whittemore. And these are the key witnesses,</p> <p>20 what I tried to highlight as to who the Court heard</p> <p>21 with the greatest frequency and the most information,</p> <p>22 and Mr. Whittemore had nearly three full days.</p> <p>23 And during the course of the trial, there was</p> <p>24 numerous questions about lost commissions and this</p> <p>25 theory about how we had reclassified option property</p>	<p style="text-align: right;">Page 80</p> <p>1 And that's why, I'll be honest, a lot of the</p> <p>2 questions -- because I'm being very -- I looked through</p> <p>3 it, and in honesty, a lot of it was just Mr. Jimmerson</p> <p>4 was trying to figure out how it was treated and what</p> <p>5 they did to see if it could go under his under the</p> <p>6 commission agreement.</p> <p>7 Do you agree with me or not, or do you think</p> <p>8 it was all I'm just, I'm gonna make them -- you know,</p> <p>9 because the questions were trying to understand,</p> <p>10 especially Whittemore, how did this work; Jon Lash, how</p> <p>11 did you do this, why did you do this, what happened on</p> <p>12 these amendments, you know, it was substantive to see.</p> <p>13 And I look at it and I did at the time, you</p> <p>14 know, I looked at it as the time of them trying to</p> <p>15 figure out whether -- which was the basis, whether they</p> <p>16 did owe anything, whether they did owe any under, I was</p> <p>17 gonna use the word "option," whether that actually,</p> <p>18 when they changed the boundaries and whether that</p> <p>19 actually was option. A lot of that was done, to me,</p> <p>20 when it was done at trial was questions to really find</p> <p>21 substance.</p> <p>22 And I see what you're saying, well, then, if</p> <p>23 it went the way they wanted, they would have had</p> <p>24 substance for their, they could have had evidence to</p> <p>25 this Court that they had \$1.8 million in damages,</p>

<p style="text-align: right;">Page 81</p> <p>1 correct?</p> <p>2 Do you guys agree would me on my questions?</p> <p>3 MS. LUNDVALL: Yeah, you've got two questions</p> <p>4 there, two principle questions there, and you say,</p> <p>5 Well, wasn't the trial about this.</p> <p>6 THE COURT: Yes.</p> <p>7 MS. LUNDVALL: But what I want you to think</p> <p>8 about is this: All the discovery was about that as</p> <p>9 well, all of the discovery that we went through with</p> <p>10 all the different witnesses, and they took Harvey</p> <p>11 Whittemore's deposition, they took Jon Lash's</p> <p>12 deposition, they took many depositions, no different</p> <p>13 than we did. All the way through discovery, we learned</p> <p>14 all this information.</p> <p>15 But what is a trial? Is a trial is --</p> <p>16 THE COURT: To prove.</p> <p>17 MS. LUNDVALL: Take it to the finder of fact.</p> <p>18 THE COURT: Correct.</p> <p>19 MS. LUNDVALL: And to convince --</p> <p>20 THE COURT: Convince me.</p> <p>21 MS. LUNDVALL: That's right, and to convince</p> <p>22 the finder of fact, so they weren't using trial as a</p> <p>23 discovery device. The weren't --</p> <p>24 THE COURT: I have to -- when they came up</p> <p>25 with that one, oh, my gosh, what was the one that they</p>	<p style="text-align: right;">Page 83</p> <p>1 commission agreement, and in his theory, had changed</p> <p>2 then as to whether or not they should get a commission</p> <p>3 based upon Pardee's purchases.</p> <p>4 He went on to say, talk about the three</p> <p>5 different provisions then of the commission agreement</p> <p>6 himself. He testified that the location and the</p> <p>7 boundaries of the parcels would determine what type of</p> <p>8 property was being purchased, and therefore, whether or</p> <p>9 not they were entitled to additional commissions.</p> <p>10 And then he went on then and talked about</p> <p>11 parcel maps as demonstrative evidence and how there was</p> <p>12 definite boundaries, in his opinion, to the purchase</p> <p>13 property and how if we went outside of certain</p> <p>14 boundaries, then, in fact, we were obligated to pay him</p> <p>15 commissions upon that.</p> <p>16 The Court will probably recall, I can</p> <p>17 visualize it as far as in your courtroom, we were here.</p> <p>18 He had huge maps with overlays. He talked about how we</p> <p>19 had purchased property that should be vertical, but we</p> <p>20 had developed in a horizontal fashion.</p> <p>21 THE COURT: Correct.</p> <p>22 MS. LUNDVALL: That, that, you know, should</p> <p>23 ring a bell as far as with the Court.</p> <p>24 THE COURT: I remember. I remember it all</p> <p>25 very well, the entire theory.</p>
<p style="text-align: right;">Page 82</p> <p>1 hadn't seen before?</p> <p>2 MR. JIMMERSON: Res. 5.</p> <p>3 THE COURT: Let me think it through --</p> <p>4 I'm sorry, Mr. Jimmerson -- on when they had bought it</p> <p>5 as multi -- I will tell you some of the information</p> <p>6 when I read it back, I felt, was -- and you can do</p> <p>7 discovery in trial. It's dangerous.</p> <p>8 MS. LUNDVALL: That's correct.</p> <p>9 THE COURT: It's a dangerous proposition, but</p> <p>10 I understand your argument.</p> <p>11 MS. LUNDVALL: But at the same token, your</p> <p>12 Honor, think about it from this perspective, that's</p> <p>13 what we were defending against, and that is what we</p> <p>14 were defending against and we prevailed on that. I</p> <p>15 want to go back to the fact we prevailed on that.</p> <p>16 MS. LUNDVALL: To go back and try to</p> <p>17 underscore Jim Wolfram's testimony. He was questioned</p> <p>18 very clearly about how he earned commissions, and it</p> <p>19 was his testimony that Pardee was obligated to pay him</p> <p>20 commissions on option property.</p> <p>21 And he went through all kinds of questions</p> <p>22 then through Mr. Jimmerson about the definitions from</p> <p>23 the documents on this purchase property price and</p> <p>24 option property. He testified that it wasn't fair that</p> <p>25 Pardee had executed amendments that affected his</p>	<p style="text-align: right;">Page 84</p> <p>1 MS. LUNDVALL: Their entire theory was if we</p> <p>2 went outside somewhat what they --</p> <p>3 THE COURT: What they labeled as option.</p> <p>4 MS. LUNDVALL: They wanted that all as option</p> <p>5 property.</p> <p>6 THE COURT: They said they defined it as</p> <p>7 option property under the agreement.</p> <p>8 MS. LUNDVALL: And that they thought they</p> <p>9 should get a commission then upon those purchases.</p> <p>10 THE COURT: If it had been deemed option, I</p> <p>11 understand.</p> <p>12 MS. LUNDVALL: All right.</p> <p>13 THE COURT: I understood the theory of the</p> <p>14 case.</p> <p>15 MS. LUNDVALL: And he said he believed he was</p> <p>16 entitled to additional commissions also on the custom</p> <p>17 lots. If you recall, there was an issue regarding the</p> <p>18 custom lots.</p> <p>19 THE COURT: Yes.</p> <p>20 MS. LUNDVALL: All right.</p> <p>21 THE COURT: Whether those would be</p> <p>22 single-family detached residential property, since they</p> <p>23 are single family, and the question is based on the</p> <p>24 agreement whether that could -- I agree.</p> <p>25 MS. LUNDVALL: All right. So he said he was</p>

<p style="text-align: right;">Page 85</p> <p>1 most certainly entitled to additional commissions. 2 That's what we tried. He said he was most certainly 3 entitled to additional commissions. 4 All right, then we get to Walt Wilkes. 5 Walt Wilkes, he too testified, and he also said, I do 6 think we're entitled to other and more commissions. He 7 says his understanding was they were gonna get 8 commissions on the whole of all of the transactions, 9 and he thought that the plaintiffs were owed additional 10 commissions for the custom lots as well. 11 And so then we get to he theorized and 12 characterized it that this is Pardee trying to take 13 money from us, and he, too, echoed this boundary theory 14 about if we purchased property outside of certain 15 boundaries, then they should be entitled then to 16 additional commissions. That's what his testimony was. 17 Harvey Whittemore, the other key witness -- 18 even though you heard many other witnesses, I'm trying 19 to focus on what the keys were. 20 THE COURT: Well, this issue was focused on 21 Harvey Whittemore and a little Jon Lash. 22 MS. LUNDVALL: And so the extent then he was 23 on the witness stand for three days, and he talked 24 about his original conception and the negotiations and 25 what, in fact, the contracts provided. He also</p>	<p style="text-align: right;">Page 87</p> <p>1 THE COURT: I remember this. 2 MS. LUNDVALL: -- in the commission 3 agreement, all right? 4 THE COURT: I painfully remember all of this, 5 and I mean that nicely. 6 MS. LUNDVALL: And so to the extent that 7 Mr. Whittemore talked about the principle reason was 8 that they needed this flexibility so as to be able to 9 do a development that was going to go across many 10 years. 11 This continues on to highlight then, your 12 Honor, how that the \$84 million that Pardee had paid to 13 CSI was this purchase property price, and if you go all 14 the way back to the commission, as the Court -- the 15 commission agreement, the Court will recall it was the 16 purchase property price upon which one part of their 17 commissions was based. 18 THE COURT: Correct. 19 MS. LUNDVALL: And it was option property 20 then -- 21 THE COURT: Was the second. 22 MS. LUNDVALL: -- that was the second part. 23 And so all of this was to demonstrate then that Pardee 24 had not made any purchases of option property, and if 25 we did not make any purchases of option property, then</p>
<p style="text-align: right;">Page 86</p> <p>1 testified that Pardee had not purchased any option 2 property, if the Court would recall. 3 And when asked about what he understood this 4 case was about, he says, Who gave you the idea that the 5 focus of this case was past due brokerage commissions? 6 He says, I took that impression from my deposition. 7 Why? Because all of those questions were asked of him 8 in his deposition. He spent nearly an entire day 9 asking questions also about the redesignation issue. 10 So not only did they want money for the 11 custom lots, but they also wanted additional 12 commissions on the redesignations. 13 All right. He said that we talked about and 14 highlighted, continuing as far as Mr. Whittemore's 15 testimony, and how he went on and talked about how they 16 could not have anticipated what the specific boundaries 17 were and why it is that they had crafted their 18 agreement in the form that it was. 19 THE COURT: Okay. 20 MS. LUNDVALL: And then when we got to 21 Jon Lash, Jon Lash echoed the same thing, and he said 22 that's why they had crafted the commission agreement. 23 It wasn't based upon boundaries or specific parcels of 24 purchase, it was based upon the purchase property price 25 that was set forth, and that was unambiguous --</p>	<p style="text-align: right;">Page 88</p> <p>1 they weren't entitled to any additional commissions 2 other than what they had already been paid. 3 So then we get to opening and closing 4 arguments. Let me as far as see if I can't highlight 5 then a couple of points that were made in the 6 plaintiffs' opening and closing arguments, because I 7 want you to think about that his basic position is, 8 your Honor, is that they were never seeking money 9 damages. That's their basic position. 10 And he further puts a fine point on it, as he 11 said, If we were never seeking money damages, and 12 moreover, we were never seeking 1.8, well, we know from 13 their rule 16.1 disclosures is that that's what they 14 had quantified. 15 THE COURT: I think what he was saying, 16 Ms. Lundvall, the basis of this suit was to get an 17 accounting and see what the information was, and then 18 once they got it, to see if they have money damages. 19 That's why there's this disconnect. 20 And I understand why they had to do, because 21 you did, you did a motion you didn't comply with 16.1, 22 you didn't give us a damage figure, and then guess 23 what, and they had to. 24 MS. LUNDVALL: So -- 25 THE COURT: Do you see where I'm --</p>

<p style="text-align: right;">Page 89</p> <p>1 MS. LUNDVALL: I understand the point, but 2 that -- what we have here, your Honor, is there were 3 two theories of breach. 4 THE COURT: There was theories of breach of 5 the contract. 6 MS. LUNDVALL: And we prevailed on one, they 7 prevailed on the other. 8 THE COURT: On the other. 9 MS. LUNDVALL: Okay. So to the extent that 10 Mr. Jimmerson, in his motion to amend, says that we 11 didn't prevail on anything, that we didn't, that they 12 never, number one, asked for any money damages, let 13 alone we didn't prevail on it, that is the point that 14 I'm trying to make. 15 THE COURT: And here's my thought process, so 16 help me. I broke it down. I get that, but here's my 17 thought process: You can sue for breach of contract, 18 you may have five different things where the trier of 19 fact can say you breached here, you breached here, you 20 breached here, you breached here, but those are 21 theories of breach. 22 If the trier of fact, which I did in this 23 case, found a breach, just because you were able to 24 defend the other breaches, why did they not, were they 25 the prevailing party in their claim?</p>	<p style="text-align: right;">Page 91</p> <p>1 because we won on the second, we think that was a 2 bigger theory or makes us more the prevailing party? 3 Okay, That makes -- at least I put together what I 4 thought you were saying, okay. That's good, all right? 5 Not "good," but I want to make sure I'm following very 6 well, okay. 7 MS. LUNDVALL: What I'm trying to do is continue 8 to focus then on the motion to amend, and on the motion 9 to amend they keep saying we didn't prevail on 10 anything. 11 THE COURT: You didn't prevail on their claim 12 for money damages is how they say it. I agree that, 13 and I'm gonna say I agree it's in my findings of fact 14 and conclusions. You prevailed on their theory of 15 breach of whether they were owed any unpaid past 16 commissions. There's no way you can't read this to say 17 that they did, but in all honesty, this doesn't say 18 that. 19 MS. LUNDVALL: Yes, it does. 20 THE COURT: Well, you and I have a -- this 21 does not say it, say it that way, but go ahead. I'm 22 not disagreeing with you, my findings of fact and order 23 says exactly that. It's a theory of liability, I agree 24 with you there, so go on. 25 MS. LUNDVALL: All right. So let me as far</p>
<p style="text-align: right;">Page 90</p> <p>1 Do you see what I'm saying? 2 I agree their theories of liability, and 3 that's my thought process, if you -- that's my thought 4 process, you're right, but they, they had a breach. 5 There was a breach. I found a breach to that 6 commission. I didn't find a second breach as far as 7 more commissions. I mean my findings are my findings. 8 They're very clear. They're very clear what I did. 9 And so what your point to me is, Well, they 10 may have prevailed on one breach but we prevailed on 11 the other, so we're really the more prevailing party, 12 is -- 13 MS. LUNDVALL: Well, and see -- 14 THE COURT: Is there such a thing as a -- 15 MS. LUNDVALL: Absolutely. 16 THE COURT: -- more prevailing party? 17 MS. LUNDVALL: Absolutely. 18 THE COURT: That's basically what you're 19 arguing to me. 20 MS. LUNDVALL: Absolutely, your Honor. 21 THE COURT: Okay. I just wanted to put in 22 terms what you were saying, okay. 23 MS. LUNDVALL: Absolutely, your Honor. 24 THE COURT: Because they prevailed on one 25 theory but they didn't prevail on the second and</p>	<p style="text-align: right;">Page 92</p> <p>1 as to step back as far as from this for just a second, 2 because if, in fact, that there is a perception that we 3 are claiming that we prevailed on everything -- 4 THE COURT: Oh, no. 5 MS. LUNDVALL: -- that perception is wrong. 6 THE COURT: No, absolutely. I even said you 7 lost your claim. You had a, you actually had a claim 8 against the plaintiffs for that same commission, breach 9 of the implied covenant of good faith and fair dealing, 10 and you did not -- 11 MS. LUNDVALL: That was not the portion, that 12 was not the foundation for our good faith and fair 13 dealing. 14 THE COURT: I understand that, but I'm 15 saying -- 16 MR. JIMMERSON: Excuse me. 17 THE COURT: No, that's okay. 18 MR. JIMMERSON: Let me just mention that 19 claim was withdrawn by Ms. Lundvall as part of her 20 closing arguments before submitting it to you. That's 21 the part I was clarifying. 22 THE COURT: Okay. 23 MS. LUNDVALL: So let me, I want to start -- 24 THE COURT: I get what you're saying. 25 MS. LUNDVALL: I want to start from ground</p>

<p style="text-align: right;">Page 93</p> <p>1 zero to make sure that there's no misunderstanding as 2 to our position. There were two theories. They 3 prevailed on one, we prevailed on the other one. 4 THE COURT: For the breach of contract. 5 MS. LUNDVALL: The case law, the case law, 6 when we get to the motions for summary judgment, I will 7 identify the specific case law says what the Court 8 needs to do is identify then and quantify then what did 9 the parties focus upon and what did they prevail on. 10 THE COURT: No, I read that. I get that. 11 Same with the accounting. I understand I'm to look at 12 the totality of the circumstance. 13 MS. LUNDVALL: Precisely. 14 THE COURT: I read every single case. I 15 understand that, including their accounting one, I am 16 to focus on all of that. Yes, I understand that. 17 MS. LUNDVALL: So what we end up with then at 18 the end of the day is that they prevailed on something, 19 we prevailed on something, and it's the Court's job 20 then by which to try to quantify where was the bulk of 21 this trial upon, what was the bulk of the trial on? 22 Was the bulk of the trial on trying to demonstrate that 23 we had purchased option property through all of those 24 witnesses and all of those theories and the additional 25 argument about the custom lots and that they were</p>	<p style="text-align: right;">Page 95</p> <p>1 THE COURT: And so that, I just wanted to be 2 very clear on the record. You agree with that, right? 3 I have to consider the accounting claims. 4 MS. LUNDVALL: One of the things I think that 5 you have to consider as a result of that is what the 6 consequence is once they received that information. 7 THE COURT: Oh, absolutely. 8 MS. LUNDVALL: Okay. 9 THE COURT: What would their consequence be, 10 once they get the information they just drop the 11 lawsuit? 12 MS. LUNDVALL: If you would allow me as far 13 as to finish what my thought is? 14 THE COURT: I apologize, I do that to you all 15 the time because I go one ahead of you, I'm sorry, the 16 consequence of what they did. 17 MS. LUNDVALL: Okay. So during the 18 discovery, they got all the information -- 19 THE COURT: They did. 20 MS. LUNDVALL: -- to which they claimed that 21 they were entitled to. They had all that information. 22 And what did they do as a result of that? Did they 23 say, We were paid everything that we were entitled to? 24 We got everything that we were entitled to? No. What 25 they did is they advanced the theory that they talked</p>
<p style="text-align: right;">Page 94</p> <p>1 entitled to commissions upon those as well as the 2 redesignation, that's what the bulk of the trial was 3 about, your Honor. 4 THE COURT: But I also have to consider the 5 accounting claim, and the only way they got all their 6 documents to even go to their theory that they were on 7 the option property was because you had to produce -- 8 not you, the defendant, only through this lawsuit 9 actually produced the documents that then they could 10 come up with a second theory. 11 There's no question they did not have enough 12 information until the option agreement and everything 13 was produced to them, so I have to balance that the 14 reason for the lawsuit, and it's very clear in the 15 record, was to get an accounting and to get the rest of 16 those option agreements and to try to find out, because 17 they tried to do it and I remember it all, they tried 18 to get Mr. Whittemore, and he goes, No, I can't. 19 I remember they were confidential, although a 20 couple of amendments had gone and the rest of them 21 didn't, but I also have to balance in that the impetus 22 was, the only reason for the first lawsuit was an 23 accounting to get the information so they could 24 determine if there was anything. 25 MS. LUNDVALL: All right, your Honor.</p>	<p style="text-align: right;">Page 96</p> <p>1 about in their letters before they started the case, 2 that they set forth in their complaint, that they set 3 forth in depositions, that they set forth in the 4 opposition for the motion for summary judgment, that 5 even though we have all this information from Pardee, 6 we still think our interpretation is right and that 7 we're entitled to money damages. 8 If they, in fact, had gotten all this 9 information and stopped and said that Pardee is right, 10 they haven't purchased any option property, then -- and 11 they would have gone forward with their breach of 12 contract at the time of the trial, then maybe their 13 argument may have merit, but they did not, and that is 14 the point that I'm trying to underscore here. 15 They argued in both opening and closing 16 arguments how the case was going to hinge upon these 17 purchases, and they continued to advance their theory 18 that we had purchased option property. 19 They talked about how it was a breach of 20 contract that affected their clients' rights to a 21 commission by making these later deals, once again 22 continuing to try to underscore the fact that they were 23 adversely affected by our conduct, and as a result of 24 that, they should have been entitled to more money. 25 Their actions -- one of the things I wanted</p>

<p style="text-align: right;">Page 97</p> <p>1 to get to at this point in time is this: If there is 2 any question whatsoever that the plaintiffs sought 3 money damages as a result of the trial, I would ask the 4 Court to look at one document and one document only, 5 and I'm gonna offer a copy of what I want you to take a 6 look at. 7 THE COURT: Uh-huh. 8 MS. LUNDVALL: This was the very last 9 submission that the Court had before you prepared your 10 findings of fact and conclusions of law. This is what 11 they gave you. This is what they said that they 12 thought they -- 13 THE COURT: No, this is their proposed, like 14 you gave me a proposed. 15 MS. LUNDVALL: And I want, and I want to 16 underscore it. 17 THE COURT: Okay. 18 MS. LUNDVALL: And I want you to think back 19 to everything you've read in all these motions that 20 Mr. Jimmerson has brought before you. 21 THE COURT: Uh-huh. 22 MS. LUNDVALL: He said that he never asked 23 for money damages. 24 MR. JIMMERSON: I never said that. 25 MS. LUNDVALL: He said, I've never asked for</p>	<p style="text-align: right;">Page 99</p> <p>1 THE COURT: I just didn't hear your 2 paragraph. 3 MS. LUNDVALL: And they talk about under the 4 multi-family agreement that we had purchased 225 acres 5 of that residential property. 6 THE COURT: Uh-huh. 7 MS. LUNDVALL: And they talk about at 62, 63, 8 64, and 65 how the Court could calculate what they were 9 then due. 10 THE COURT: For that Res. 5 property, I 11 remember that. 12 MS. LUNDVALL: That's correct. 13 And if you go to Page 12 then, they also talk 14 about what that amount was that they should be paid as 15 a result of that. They ask for money damages, based 16 upon the information that they had provided at the time 17 of the trial, of \$134,000 -- 18 THE COURT: 134,964. 19 MS. LUNDVALL: That had nothing do with their 20 attorney's fees, because their attorney fee provisions 21 come in at other places in this proposed findings of 22 fact and conclusions of law. 23 They then go on in the entirety of the 24 findings of fact and conclusions of law and say, Your 25 Honor, we think that we should be entitled additional</p>
<p style="text-align: right;">Page 98</p> <p>1 money damages and specifically we never asked for 1.8, 2 all right? So let's look to see whether or not they 3 did ask for money damages. 4 So go to Page 4. Page 4 sets forth their 5 entire theory about this option property and how we had 6 purchased option property. That's what their Finding 7 17, 18, 19, 21, 22, and 23 all track. 8 They go on and they talk about on Page 7 the 9 non-circumvention clause within the commission 10 agreement, Paragraphs 34, 35, and 36, and they claim 11 then that Pardee and CSI had circumvented their 12 opportunity to receive commissions by entering into 13 these subsequent agreements. 14 They then go on at Page 9, at 48, 49 and 50, 15 and they talk about specifically what they had proven 16 at trial were the actual purchases, and they go on at 17 Page 10 on line -- at their Finding 58 and talk about 18 the geography and specifically where the Court can find 19 that. 20 They go on then at Paragraph 60 that's on 11, 21 and that says that under the multi-family agreement. 22 In addition to the custom lot agreement arguments -- 23 THE COURT: I'm sorry, where are you now, 24 Page -- 25 MS. LUNDVALL: Page 11.</p>	<p style="text-align: right;">Page 100</p> <p>1 monies that only can be accounted for once you adopt 2 our theory, and if you adopt our theory, then we are 3 going to be entitled to even more money than this. 4 That's what they gave to you in their findings of fact 5 and conclusions of law. 6 And so to the extent that this case, yes, it 7 was about money damages in part. 8 THE COURT: In part. 9 MS. LUNDVALL: And the "in part" is what we 10 prevailed upon. 11 And so to the extent that once we get -- 12 let's start limiting it then to the motion that the 13 Court has in front of it right now. 14 THE COURT: Uh-huh. 15 MS. LUNDVALL: The motion to amend, were 16 we -- 17 THE COURT: This judgment. 18 MS. LUNDVALL: The judgment. 19 THE COURT: Okay. 20 MS. LUNDVALL: Were we accurate and were you 21 accurate then in saying that Pardee prevailed on the 22 portion of the case by which that they sought money 23 damages and that they were not entitled to 24 additional -- 25 THE COURT: It doesn't say that here. It</p>

<p style="text-align: right;">Page 101</p> <p>1 doesn't say that wording, Ms. Lundvall. I mean that's 2 different wording than what you put in here. 3 MS. LUNDVALL: It puts in there the 4 quantification as to what they had articulated. 5 THE COURT: 1.8 million, 1,800,000. 6 MS. LUNDVALL: That's what they -- 7 THE COURT: That's, nowhere was that put into 8 evidence. Even their proposed was, you just gave me 9 30,000 plus 134, and the second, which is exactly what 10 I said with Mr. Jimmerson, that if they did prevail on 11 the other, they're gonna have to then later do 12 something on that, and I'm not sure if it's even 13 accounting, and my thought process was if they 14 prevailed on the other, then I don't know if they have 15 to do another suit or what, because that really wasn't 16 damages that were put into the lawsuit. 17 MS. LUNDVALL: Well -- 18 THE COURT: The damages were the 30,134, 19 which I did buy the Res. -- not "buy," I did not agree 20 on the Res. 5 property, so, you know, so I just have a 21 hard time with this 1.8, but give me your explanation 22 again, all right. 23 MS. LUNDVALL: Well then as far as, your 24 Honor, let me as far as to offer it very simply then, 25 as we have, I've tried to do --</p>	<p style="text-align: right;">Page 103</p> <p>1 THE COURT: This is the summary judgment. 2 MS. LUNDVALL: Let me make this point, and 3 that is this: As a defendant, I am never ever going to 4 put into evidence what, in fact, the plaintiffs are 5 contending are their damages. 6 THE COURT: Of course not. 7 MS. LUNDVALL: That is the plaintiffs' burden 8 of proof. 9 THE COURT: Okay. 10 MS. LUNDVALL: If you recall -- hold on. If 11 you recall during my closing argument, even though it 12 was pretty late at night, both you and I and everybody 13 else in the courtroom were pretty tired, if you recall. 14 THE COURT: No, I -- 15 MS. LUNDVALL: One of the arguments that we 16 made is that they could not prevail on their money 17 damages claims because they did not put evidence in of 18 what their money damages were. That was part of our 19 theory. But the fact that they failed in their burden 20 of proof does not mean that we did not prevail in 21 defending against that or does it mean that they did 22 not quantify what that theory was that they had lost 23 upon. 24 I can't as far as imagine any defense 25 attorney putting evidence in the record --</p>
<p style="text-align: right;">Page 102</p> <p>1 THE COURT: Very simply. 2 MS. LUNDVALL: -- that they had two theories. 3 THE COURT: I have that. You don't have to 4 be that simple, believe me. 5 MS. LUNDVALL: They, they quantified their 6 first theory at \$1.8 million. That's not mine, I don't 7 have to -- 8 THE COURT: And they quantified that at trial 9 as 1.8 million? 10 MS. LUNDVALL: Hold on. 11 THE COURT: They did not. They did not. 12 MS. LUNDVALL: This is what we did -- well, 13 your Honor -- 14 THE COURT: They didn't say 1.8. I looked 15 for it. 16 MS. LUNDVALL: You know, let me as far as see 17 if can't -- 18 THE COURT: I understand they wanted damages, 19 I, believe me, I understand that completely. 20 MS. LUNDVALL: Let's see. 21 THE COURT: I got the -- I looked through all 22 your supplements. 23 MS. LUNDVALL: Let me see if I can find what 24 I'm looking for here. 25 Here we go.</p>	<p style="text-align: right;">Page 104</p> <p>1 THE COURT: You don't have to do that again. 2 I get that. My only question to you is: What did they 3 quantify at trial? 4 So let me make it simple for you, 5 Ms. Lundvall, because you keep saying "simple." 6 MS. LUNDVALL: What were we defending 7 against? 8 THE COURT: Okay, so then I see your 9 semantics, what were you defending against, you're 10 saying the 1.8, that you were defending that at trial 11 because they told you they were gonna prove 1.8. They 12 didn't put in 1.3, but when you went there, you thought 13 you were gonna defend 1.8. 14 That what you're saying? 15 MS. LUNDVALL: Absolutely. 16 THE COURT: Okay, perfect. I just want to 17 make sure I'm following you. You don't have to 18 simplify it any more. I just asked you the simple 19 question what did they quantify at trial, okay? I got 20 you. 21 MS. LUNDVALL: It's not what I believe their 22 claim was, it is what the plaintiffs believed. 23 THE COURT: So it's what the plaintiffs have 24 the burden of proof to convince this trier of fact. I 25 don't look at the supplementals. It's what their</p>

<p style="text-align: right;">Page 105</p> <p>1 burden of proof was and what they put in to me, to this 2 trier of fact, as to what they thought their damages 3 were. I agree with you there, okay. 4 MS. LUNDVALL: And so from this -- 5 THE COURT: I got that. 6 MS. LUNDVALL: From this perspective, your 7 Honor, throughout the entirety of this motion practice 8 is that the plaintiffs had contended that this case was 9 never about money damages. 10 We have walked you through that not only as 11 far as what their theory was and how they claimed if 12 they were successful on that theory, that they were 13 gonna get money damage. It would come in a two-step 14 process. They had a little two step going on. 15 THE COURT: I got that. 16 MS. LUNDVALL: They wanted, as far as they 17 wanted first as far as a finding from you, and then 18 they wanted as far as to come in for a subsequent 19 evidentiary hearing. 20 So to the extent then that they were the ones 21 that identified and quantified, they identified first 22 their theory was in two parts, they quantified the 23 values they put on their theory, and that's what we 24 defended against, your Honor. 25 THE COURT: Okay.</p>	<p style="text-align: right;">Page 107</p> <p>1 of fact. I thought that's what we were addressing. 2 MS. LUNDVALL: That is what we were 3 addressing. 4 THE COURT: And I see what you're saying. 5 You're saying that there was a plaintiffs' claim for 6 1.8 million, and this is appropriate, for lost future 7 commissions and that's appropriate. That's where we 8 were at. 9 MS. LUNDVALL: Your Honor, what we, as 10 defendants, are obligated to do, and think about this, 11 when you get a case in your office, you look at it and 12 you try to quantify it, because that quantification 13 depends upon how much resources you throw at it and the 14 type of resources that you throw at it and the energy 15 that you throw at it, and let me tell you, when the 16 plaintiffs identified that this case was about lost 17 commissions, and we pushed and we pushed to try to get 18 them to quantify how much are we talking about, they 19 told us how much we were talking about, and what they 20 told us is that this case was worth \$1.8 million in 21 lost commissions. 22 And they told you in their opposition to the 23 motion for summary judgment that this case was worth 24 1.8 in lost commissions. 25 THE COURT: We've been through this. I get</p>
<p style="text-align: right;">Page 106</p> <p>1 MS. LUNDVALL: And we successfully defended 2 against that. And so when we get into the portion of 3 the motion practice dealing with the prevailing party 4 analysis -- 5 THE COURT: Uh-huh. 6 MS. LUNDVALL: -- we will bring you the cases 7 and identify and underscore the cases where, in fact, 8 other judges sitting in your situation have found where 9 a party has prevailed on one issue and what it cost 10 them by which to litigate that issue, whereas the 11 adverse party then had prevailed on others and what it 12 cost by which to prevail on that, and what the Court is 13 supposed to do in that circumstance, it has been upheld 14 by the Nevada Supreme Court, and so the point -- 15 THE COURT: I think you already provided me 16 -- I read that. Didn't you give me those cases? 17 MS. LUNDVALL: There's one additional case. 18 THE COURT: Oh, because I read every case 19 that you give me on that. I understood prevailing 20 party. That's down here somewhere. 21 MS. LUNDVALL: And the other, I guess the one 22 thing that I guess that I still want to try -- 23 THE COURT: But what we're really addressing 24 right here, can I be honest, is whether this is a 25 proper -- you're saying this is proper from my findings</p>	<p style="text-align: right;">Page 108</p> <p>1 it. 2 MS. LUNDVALL: That's what drove it. That's 3 what drove our defense. 4 THE COURT: I understand. 5 MS. LUNDVALL: And the fact they did not meet 6 their burden of proving that at the time of trial 7 doesn't mean that they didn't try on their theory of 8 liability. They did try on their theory of liability. 9 They asked for a smaller number as a result. They 10 asked for the opportunity to do the two step to get to 11 the bigger number as a result, but you ruled against 12 them, but that does not mean that we didn't defend 13 against that. 14 Our entire defense was driven by what they 15 informed us their case was about. We prevailed on the 16 most important component of their case. They prevailed 17 on another piece of it, and we have the ability and can 18 and will provide the Court then with the quantification 19 of those two so that you can determine an offset, but 20 it does not negate the fact that we prevailed on their 21 claim that they quantified at \$1.8 million. 22 And so therefore, to suggest that somehow I 23 was deceptive, that I was fraudulent, that I had 24 fabricated a claim, when, in fact, it was their 25 information to us that defined not only the fact of the</p>

<p style="text-align: right;">Page 109</p> <p>1 claim, but the amount of the claim, that's what we put 2 in the judgment. 3 THE COURT: No, I saw where you got it from. 4 Just as the trial attorney listening to it, that is, 5 that is not what I saw at trial, and I went by the 6 evidence, but -- and you're making -- and this is to 7 say what I found at trial. 8 So what you're saying to me is you want me to 9 make, by what you put here, you want me to determine 10 that the claim was for 1.8 million, not by what was 11 shown at trial, because that was not shown at trial? 12 You realize this is judgment from trial -- 13 MS. LUNDVALL: Your Honor? 14 THE COURT: -- not from discovery. 15 MS. LUNDVALL: From this perspective, what 16 the Court has a hard time with -- 17 THE COURT: Yes, very big difficulty -- 18 MS. LUNDVALL: Well, hold on. 19 THE COURT: -- with the 1.8. 20 MS. LUNDVALL: With the quantification -- 21 THE COURT: Uh-huh. 22 MS. LUNDVALL: With the quantification, what 23 that suggests is that you think that I'm fabricating 24 the quantification was that the plaintiffs put on then. 25 THE COURT: No, no, that's not what I said.</p>	<p style="text-align: right;">Page 111</p> <p>1 that quantification came from the plaintiffs 2 themselves. 3 THE COURT: Oh, I got it. You have told me 4 nothing different than what you put in your motions. I 5 know exactly where you got it. 6 MS. LUNDVALL: If the Court -- 7 THE COURT: I looked at all the discovery. I 8 know where you got it. 9 MS. LUNDVALL: If the Court has a problem as 10 far as with the quantification, it still does not 11 negate the fact that we prevailed on that portion of 12 their claim, no matter what value they placed on it. 13 THE COURT: You just said that perfectly, 14 Ms. Lundvall. You just said you prevailed on that 15 portion of their claim, the plaintiffs' claim. 16 Here's what you wrote in, that you, that 17 judgment is against as to plaintiffs' claim for, and 18 then you put that you won -- where was it, let's see, 19 there was a section here that was, that -- hold on. 20 It's a word, they're saying "their claim," 21 and here's my concern: Is a claim, how do you define 22 that, as different -- I look at claims as causes of 23 action, okay? I'm just gonna be very -- I worked, you 24 know, and this didn't really -- claims are causes of 25 action, and that's why I very distinctly said to you</p>
<p style="text-align: right;">Page 110</p> <p>1 What I said is you want me to make the determination 2 that their claim was 1.8 million from what I heard at 3 trial. That's what you're saying in this. That's what 4 a judgment is. 5 Now, that's different than if you want me to 6 do post-judgment and come up with who's the prevailing 7 party and factor in the 1.8 and everything else, that's 8 a different analysis, is what I'm saying to you. 9 This is a judgment based on what I heard and 10 saw at trial. 11 Do you agree with that? 12 MS. LUNDVALL: No, I don't. 13 THE COURT: Okay. 14 MS. LUNDVALL: I agree that a judgment comes 15 at the conclusion of a case, and it ends the work, but 16 for the post-trial or the post-judgment motions that 17 the district Court is obligated to do. 18 THE COURT: I agree. 19 MS. LUNDVALL: But does that mean that, in 20 fact, that the Court looks as far as only at a prism? 21 And let me as far as let me offer this observation. 22 THE COURT: Okay. 23 MS. LUNDVALL: If the Court's concern is the 24 quantification portion that was put into the judgment, 25 and I've now explained where we got the quantification,</p>	<p style="text-align: right;">Page 112</p> <p>1 theory of liability, and you agreed with theory of 2 liability, but you used -- that's why I -- you used the 3 word "claim" in here. When you do a complaint, you can 4 say "claim" or "cause of action," and that was one of 5 my concerns when I looked at that. 6 And we're on the same page. I understand 7 there were two theories of liability for the breach of 8 contract. I could not have sat through this -- I got 9 that completely. What I don't understand is you're 10 saying so a theory of liability is the same as a cause 11 of action or a claim? Because that's what you're 12 saying here. 13 MS. LUNDVALL: Well, what -- 14 THE COURT: Because really what you prevailed 15 on is defeating one theory of liability. 16 MS. LUNDVALL: And what I'm trying -- 17 THE COURT: Right? Do you agree with me 18 there? 19 MS. LUNDVALL: What I am going to explain as 20 far as to the Court, you and I may have a difference in 21 semantics. 22 THE COURT: Well, it seems that we do. 23 MS. LUNDVALL: But I think we are talking 24 about the same thing. 25 THE COURT: All right. As long as you --</p>

<p style="text-align: right;">Page 113</p> <p>1 MS. LUNDVALL: So Rule 8 obligates you as far 2 as to give a fair statement to the defense of what the 3 nature of your claims are. They said to us that you 4 breached the contract. 5 THE COURT: Right. 6 MS. LUNDVALL: They said that you breached 7 the contract by not paying us the commissions and we're 8 entitled to additional information. 9 THE COURT: Right. 10 MS. LUNDVALL: We defended on both alleged 11 breaches. 12 Now, if the Court has issue then once again 13 with the idea that somehow that a claim is different 14 than a theory, I don't have any problem with that 15 either. 16 THE COURT: See -- 17 MS. LUNDVALL: I disagree with the semantics, 18 but it does not change the result that we prevailed on 19 the predominant theory that they were advancing at the 20 time of the trial. That's the point I guess that I'm 21 trying to make. 22 THE COURT: I get that. I get that. I 23 absolutely get that, but that was part of my problem 24 with this, was not just the quantification, but the 25 claim, because that was a theory of liability. Maybe</p>	<p style="text-align: right;">Page 115</p> <p>1 why they prevailed on another part of it. 2 THE COURT: I understand that. 3 MS. LUNDVALL: All right. And so from that 4 perspective, your Honor, respectfully, we submit that 5 the judgment that you entered does not need to be 6 amended, and moreover -- but if the Court quibbles with 7 the language that we had used, what we were, what we 8 would ask the Court to do is to ensure that the theory 9 of liability that the plaintiffs advanced that they did 10 not prevail upon is memorialized into the judgment. 11 That's what our simple request is, your Honor. 12 THE COURT: What you want is this to reflect 13 that as far as the theory of liability, that language 14 as opposed to all that's included in here, all right. 15 MS. LUNDVALL: And all that's included in 16 there is simply a description then of the claim and the 17 quantification of the claim that was given to us by the 18 plaintiff. 19 THE COURT: Okay. All right. 20 I will tell you that I do not agree, that 21 this judgment entered June 15, 2015, I do feel is an 22 erroneous judgment. I do not feel it is in compliance 23 with my orders, my previous orders, and that's what 24 it's supposed to do. 25 Now, based on that, I understand there's</p>
<p style="text-align: right;">Page 114</p> <p>1 it's semantics, but it's really not. When I looked at 2 the cases, to me it does make a distinction, so that's, 3 that's -- I did look at this. 4 MS. LUNDVALL: One of the things, and I don't 5 know if you wanted us to continue or -- 6 THE COURT: Let's keep going. Do you want to 7 go eat? Can we finish at least this? 8 MS. LUNDVALL: All right. So I guess what I 9 want to make sure that as far as the Court understands, 10 I'm only addressing at this point in time the motion to 11 amend. 12 THE COURT: Correct. 13 MS. LUNDVALL: I believe, I believe that the 14 Court has an understanding then -- 15 THE COURT: Right. 16 MS. LUNDVALL: -- of how it is that we got to 17 the language in there. 18 THE COURT: Right. 19 MS. LUNDVALL: And where it is that the 20 quantification came from. 21 THE COURT: I do. 22 MS. LUNDVALL: And why it is based upon the 23 Court's own findings and what the claims were that had 24 been alleged and what we were defending against, why it 25 is that we believe that we prevailed on part of it and</p>	<p style="text-align: right;">Page 116</p> <p>1 issues. I will not, I do not -- I feel this is 2 erroneous, I feel, the way it is. I understand that 3 you have the theory of liability, but this, I am going 4 to strike this. I don't feel it is. 5 I started to -- what I would like to do, 6 based on that, and I, I understand where you're coming 7 from on the theory of liability. I could obviously 8 have all these other motions and then we can get to it, 9 but until I really agree with the language here, 10 whether you agree with it or not, I think it's more 11 than quibbling. I think it's more than semantics. I 12 want to know what's in here to apply those cases on 13 prevailing party, I'm very honest, because I looked. I 14 think it's more than a quibble, so I am going to strike 15 this. 16 Once again, I apologize. I, I thought there 17 was an agreement on the language. It became very 18 obvious there wasn't, and I want, I want to do my 19 procedure of an agreement of the language in the 20 judgment, and if you can't, then I want a proposed 21 order, but I will not -- I, I do not want to -- I do 22 not believe the 1.8 million is a fair quantification of 23 the damages that were -- and I disagree with you, that 24 were presented at trial. I feel a judgment should, 25 should encompass what was presented at trial.</p>

<p style="text-align: right;">Page 117</p> <p>1 What you had to defend against, I understand, 2 is part, can be or is an analysis on prevailing party, 3 but I find that -- and if I'm wrong, I'm wrong, but as 4 far as what's in a judgment, I do not want to -- I 5 don't think it's proper to say it was quantified as 1.8 6 million. 7 I have been as distinct as I can here, so 8 what I would like -- and I know, you know -- 9 MS. LUNDVALL: If the Court -- 10 THE COURT: -- everything flows from this, 11 and that's why this was so critical. 12 MS. LUNDVALL: And if the Court wishes for us 13 as far as to take the guidance that you have given to 14 us during the course of this hearing then, particularly 15 within the last few comments, and for us to craft a new 16 judgment then, and we will submit it to Mr. Jimmerson 17 then for his review, and hopefully we can reach 18 agreement on it. If we can't -- 19 THE COURT: Absolutely. 20 MS. LUNDVALL: -- then we'll submit both of 21 the competing language then to you -- 22 THE COURT: That's exactly what I would want. 23 MS. LUNDVALL: -- for your review. 24 Thank you, your Honor. 25 THE COURT: The reason I did the hearing</p>	<p style="text-align: right;">Page 119</p> <p>1 I'm not saying -- 2 MS. LUNDVALL: Your Honor? 3 THE COURT: But I want the wording in here 4 based on what I saw, in fairness, all right, and I 5 understand that, so I do want this -- this is stricken, 6 and I do find it is erroneous, and I do feel that this 7 judgment does not reflect my findings and what I feel 8 would be appropriate in a judgment from the trial. I 9 want to be very clear on that. I feel it is erroneous 10 under -- and what's my rule, NRCP 58(a), correct? 11 MR. JIMMERSON: Also 52, your Honor. 12 THE COURT: 52. I have them both, 52(b). 13 MR. JIMMERSON: That the findings are 14 erroneous. 15 THE COURT: The findings are erroneous. 16 Well -- 17 MS. LUNDVALL: Your Honor? 18 THE COURT: -- let's do this -- 19 MS. LUNDVALL: One of the things that I would 20 ask -- 21 THE COURT: I want to be specific, yes. 22 Go ahead. I'm sorry. 23 MS. LUNDVALL: One of the things that I would 24 ask would be this: The conclusion of the Court's 25 ruling is that I'm going to prepare new language for a</p>
<p style="text-align: right;">Page 118</p> <p>1 today is because I read everything, and I wanted to 2 make you understand how I look at it so that we can 3 hopefully come to one. Then once we agree on the 4 judgment, then it goes, I understand we go from there. 5 And I did read -- but once we get that -- and 6 I have done a lot of the analysis, but I understand 7 better, I'll be honest. I understand Lundvall's side 8 better, I understood exactly Jimmerson's side before. 9 I put yours together a little differently, and that's 10 why I'm not quibbling, I want to rephrase, but the 11 language to me is important in the judgment. It is. 12 It, to me, is the most critical, so that's what I would 13 like to do. 14 Now, there's a couple of other -- but that is 15 what I would like to do, and then you know what, no 16 one's waiving any arguments on anything else, because 17 as you know, the memos of costs, all the prevailing 18 party, once I strike this then those all are gone 19 because that would be, I guess, an advisory opinion if 20 I did feel somebody -- but the prevailing party, I want 21 to get this done. I have done a lot of work on it. 22 And if you have another case please give it 23 to me, because I have, I will be very honest, that is 24 an issue I understand, I understand is an issue. It 25 has to stem from this though, how I want it in here.</p>	<p style="text-align: right;">Page 120</p> <p>1 judgment. We're going submit it then to Mr. Jimmerson, 2 and we're gonna hopefully then agree upon language to 3 submit to you. 4 THE COURT: Right. 5 MS. LUNDVALL: In the event that we are not 6 in agreement and the Court has to make a ruling upon 7 that -- 8 THE COURT: Correct, I have to. 9 MS. LUNDVALL: -- that, in fact, we can 10 articulate then in the letters we transmit then to you 11 why, what it is and why it is we disagree. 12 THE COURT: Absolutely. That's how I do it, 13 because otherwise, I don't know if -- I understand a 14 lot of it is going to be based on all this. 15 MS. LUNDVALL: The Court may make, enter a 16 judgment at that point in time. 17 THE COURT: Yes. 18 MS. LUNDVALL: Currently, there's a stay in 19 place of any enforcement. 20 THE COURT: Right, because there is no 21 judgment. 22 MS. LUNDVALL: Well, no, hold on. Judge 23 Bonaventure -- 24 THE COURT: Bonaventure, I'm sorry, you're 25 right.</p>

<p style="text-align: right;">Page 121</p> <p>1 MS. LUNDVALL: Judge Bonaventure entered the 2 stay, so my request is that we have the opportunity to 3 allow that stay to be in place for any new judgment 4 until there may be resolution then of any of the 5 outstanding motions to amend that may result, any 6 additional motion practice that may result by reason of 7 a new judgment. 8 MR. JIMMERSON: Your Honor, the rules call 9 for a stay for ten business days from the date that a 10 judgment is entered, so there is that protection for 11 that two-week time period, including weekends, to the 12 defendant. Afterwards, the defendant must post a bond 13 or there is the right to collect under Rule 62 and -- 14 THE COURT: Well, didn't Judge Bonaventure 15 hear and put a stay in effect? 16 MR. JIMMERSON: He put a stay until you -- 17 THE COURT: So you know what, I'm gonna 18 comply with -- 19 MR. JIMMERSON: Until these issues are 20 resolved? 21 THE COURT: I'm going to comply with Judge 22 Bonaventure. I'm going to do what Judge Bonaventure 23 did, because I want to make sure when this judgment is 24 done that everybody gets their chance to do their 25 motions, and when it is done, it is done as far as this</p>	<p style="text-align: right;">Page 123</p> <p>1 we could do. 2 Let's make sure this is all clear. 3 MR. JIMMERSON: I would like to do a brief 4 reply. 5 MS. LUNDVALL: What I want to make sure is 6 that the record is clear. 7 THE COURT: Yes. 8 MS. LUNDVALL: I believe the Court has 9 indicated that any new judgment that you intend to 10 order, to enter, that Judge Bonaventure's order of a 11 stay pending resolution of any post-judgment motions -- 12 THE COURT: Regarding the judgment. 13 MS. LUNDVALL: -- continues to be in place. 14 THE COURT: It is. 15 MS. LUNDVALL: Thank you. 16 THE COURT: That is my ruling. 17 MS. LUNDVALL: Thank you. 18 MR. JIMMERSON: May I have -- 19 THE COURT: I did want to give -- I cut you 20 off on the reply. We kind of got ahead, but yes, I 21 want you to be able to reply to Ms. Lundvall's. 22 MR. JIMMERSON: I just have a short reply. 23 THE COURT: That's fine. I'm taking it all 24 in. 25 MR. JIMMERSON: The pressure that Pardee may</p>
<p style="text-align: right;">Page 122</p> <p>1 Court, and then they can execute. 2 MS. LUNDVALL: Thank you, your Honor. 3 THE COURT: And all the other post-trial that 4 results from the judgment, those can all still happen, 5 and I know they're going to, depending on -- but I want 6 this judgment cleared up, because I looked at it 7 because it does, it does stay you executing your money, 8 Mr. Jimmerson. 9 I did look at what Judge Bonaventure did. I 10 understand it, so I am going to do that. 11 MS. LUNDVALL: Okay. 12 THE COURT: And I want to make that as part 13 of the order for denying -- granting, I am sorry, 14 granting the motion to amend this judgment of 15 June 15th, 2015. 16 MR. JIMMERSON: Is it your intention, Judge, 17 as I'm listening to your remarks, thank you, is it your 18 intention to defer the other motions that are pending 19 for resolution today until a final judgment is entered 20 by you? 21 THE COURT: Yes. I will be honest, I worked 22 on them all, but I can still work on them, but I 23 realized they all flow from this judgment. 24 MR. JIMMERSON: They do. 25 THE COURT: Now, there is one other one that</p>	<p style="text-align: right;">Page 124</p> <p>1 be placing upon their law firm to reverse the Court's 2 findings must be intense, but it doesn't justify 3 distorting the record. 4 Let's talk as lawyers and judges here. This 5 lawsuit was brought by a complaint, and there were two 6 amendments, so you have a complaint, you have an 7 amended complaint and a second amended complaint, and 8 the only differences in the complaints was there was a 9 clarification of the assignment from the general realty 10 companies to the individuals, and then there was the 11 permission to plead as attorney's fees special damages, 12 but the nature of the claims were identical. 13 In that complaint, in the complaint and the 14 amended complaints, all the complaints, is just simply 15 all that is stated is -- 16 MS. LUNDVALL: And your Honor, may I clarify 17 one thing? 18 THE COURT: Sure. 19 MS. LUNDVALL: You've made your ruling on the 20 motion to amend. Are we now moving into the motion for 21 attorney's fees? 22 THE COURT: No. 23 MR. JIMMERSON: No. I'm doing a reply. 24 THE COURT: What I did is I, unfortunately, 25 made my ruling and didn't give him a chance to reply.</p>

<p style="text-align: right;">Page 125</p> <p>1 I made my ruling. It's not going to change, but if he 2 wants to give a reply, we did it out of order. And 3 it's my fault because I know where I'm going, but if he 4 wanted to add anything, I should have waited. I knew 5 where I wanted -- no, we are not getting into the other 6 motions. 7 There's another motion I wanted to handle 8 too. I'm sorry it's taking so long, but this is really 9 important. Do you mind going through lunch a little 10 bit? You don't care. If I can stay here, you can 11 stay. It's just too important, okay? 12 MR. JIMMERSON: Thank you. 13 The amended complaint was served upon the 14 defendant in approximately January of 2 thousand -- not 15 approximately, in January of 2011, and it had general 16 allegations as to who the parties were, and then it 17 talked about the entry of the commission agreement and 18 then the original option agreement which allowed the 19 payment of the commission. 20 The allegation then at Paragraph 6 and 7 and 21 8 is pursuant to the commission agreement, plaintiffs 22 were to keep -- excuse me, defendants were to keep the 23 plaintiffs fully informed of all issues and all sales 24 and purchases of real property governed by the option 25 agreement.</p>	<p style="text-align: right;">Page 127</p> <p>1 estate, which would have quantified at 1.5 percent to 2 \$30,000, okay? We didn't know that until the trial, as 3 you know. 4 And then the whole issue of redesignation 5 came up during the trial. We had not argued about 6 redesignation, because we simply were asking for the 7 commission based upon what they were designating as 8 residential production property and then whether it 9 fell within the original purchase as an exercise of 10 option property. 11 THE COURT: That was your theory from the 12 beginning. I understand that. 13 MR. JIMMERSON: Right. 14 And of course none of this about 1.8 million 15 ever entered the trial, but I want you to -- and this 16 was attached to their opposition. It was our fifth 17 disclosure. 18 And I want you to read it and understand what 19 it says, because there was never -- everybody in this 20 courtroom knew that what had been purchased by Pardee 21 was roughly 1,800 acres that grew to about 2,000 acres. 22 How do we know that? Because you can take \$84 million, 23 you can divide it by 40,000 an acre, you get 1,800 24 acres, and as Mr. Whittemore said, with parks and 25 different things it turned out that we deeded over to</p>
<p style="text-align: right;">Page 126</p> <p>1 Specifically the letter said Pardee shall 2 provide each of you a copy of each written exercise 3 notice given pursuant to Paragraph 2 of this option 4 agreement, together with the information as to the 5 number of acres involved and the scheduled closing 6 dates. In addition, Pardee shall keep each of you 7 reasonably informed as to all matters relating to the 8 amount and due dates of your commission payments, and 9 then it went on. 10 There is clearly -- the main thrust of this 11 entire case was for information. There is clearly a 12 claim that if the Court found that there were past due 13 commissions due, largely because the Court would find 14 option property was exercised. 15 THE COURT: Right. 16 MR. JIMMERSON: Although no notices were 17 given, because it was to the east of the Parcel 1 18 location, then that would be compensable potentially to 19 the plaintiffs. We didn't know if that had been done 20 and how the Court was going to rule on that. 21 And secondly, during the course of the trial, 22 not beforehand, we discovered 225 acres of multi-family 23 property being redesignated as single family, and then 24 one part of that, Res. 5, actually having been filed 25 with Clark County as residential production real</p>	<p style="text-align: right;">Page 128</p> <p>1 them, about 2,100 acres. 2 THE COURT: Right, I remember. 3 MR. JIMMERSON: There were 5,000 or more 4 acres in this whole development that was designated for 5 single-family potential for Pardee. Pardee in the 6 option agreement, therefore, had another 3,000 acres 7 over the next 35 years to build production 8 single-family real estate, and for which our clients 9 would be entitled to a commission. This is our fifth 10 supplement. 11 That's why they're in this case, because 12 everybody knew that there hadn't been a subsequent 13 purchase of any acres, let alone 3,000 acres for, you 14 know, beyond that. We just didn't know how the lines 15 were drawn. We knew about what had been purchased and 16 whether or not it quantified to a commission. 17 This is what we wrote: Computation of 18 damages. See, this is where I believe respectfully the 19 Court and opposing counsel have inadvertently misstated 20 this, there is no theory -- the theory of liability, 21 the claims, which are claims under our Nevada Rules of 22 Civil Procedure, are three: Accounting, breach of 23 contract for failure to provide information, breach of 24 implied covenant of good faith and fair dealing for 25 failure to give information, and if there are damages</p>

<p style="text-align: right;">Page 129</p> <p>1 -- if there are commissions due through discovery, then 2 that should be paid. That's what the complaints say. 3 There was no two different theories. What 4 was discussed was two possible areas or theories of 5 calculation of damages, so I just want to make it 6 clear. 7 THE COURT: Do that again. You're saying you 8 didn't have a theory that they breached because they 9 didn't pay and you didn't -- 10 MR. JIMMERSON: No, that's not true. I'm 11 saying -- 12 THE COURT: Okay. 13 MR. JIMMERSON: -- that our complaint and 14 amended complaints always said the same thing, that 15 there was a need for an accounting because we didn't -- 16 THE COURT: I understand that. 17 MR. JIMMERSON: Because we needed to know if 18 there were more commissions due to us, breach of 19 contract for failure to give that information, and if 20 there were monies due to us, to be paid those monies, 21 and the same with the implied covenant of good faith 22 and fair dealing. 23 THE COURT: So if they had money due, if, if 24 they had actually not paid you the full commission 25 based on what they had bought, you had -- that was a</p>	<p style="text-align: right;">Page 131</p> <p>1 MR. JIMMERSON: 2012. Let me look at the 2 exact date. 3 The 26th day of October 2012, so it's a year 4 before trial. This is what's written: There appears 5 -- this is Line 22. There appears to be at least 3,000 6 acres of property defined as option property, not 7 purchase property, not the 84 million. 8 THE COURT: No. 9 MR. JIMMERSON: Defined as option property 10 under the option agreement effective June 1, 2004, 11 currently owned by Coyote Springs. Under the option 12 agreement effective June 1, 2004, these 3,000 acres can 13 be purchased by Pardee and designated as production 14 residential property purchase and a designation that 15 would entitle plaintiffs to a 1.5 percent commission on 16 a per acre price of 40,000. 17 If 3,000 acres were purchased by Pardee under 18 this scenario, plaintiffs would be entitled to 19 \$1.8 million in commissions; however, Pardee's course 20 of conduct by failing to appropriately discharge its 21 duties under the commission agreement robbed plaintiffs 22 of this opportunity to be paid these commissions. 23 Pardee's actions have served to reclassify 24 the land originally labeled as purchase property and 25 option property, and under the new reclassifications,</p>
<p style="text-align: right;">Page 130</p> <p>1 breach of the contract. 2 MR. JIMMERSON: Exactly. 3 THE COURT: Okay. That's all I was saying. 4 MR. JIMMERSON: Right. You got it right. 5 THE COURT: That's what Ms. Lundvall was 6 saying. 7 MR. JIMMERSON: So what we had then were two 8 components. The defendant used the word "theory." 9 THE COURT: Okay. 10 MR. JIMMERSON: But two components of 11 damages. We had whatever commissions would be due to 12 us that we learned through the case and through the 13 trial, and second would be, of course, the damages 14 associated with the need to file a lawsuit and 15 alternatively find information from CSI that was never 16 intentionally produced by Pardee to the plaintiffs, 17 which the Court awarded \$141,500. 18 The number \$1.8 million, as shown in the 19 disclosure, has nothing to do with what I just said. 20 What we wrote was specific and clear about what might 21 happen in the future, so what was read in the 22 disclosure is under Computation of Damages. It's at 23 Page 7 of the document. It was filed October, I think 24 13th, but I may be wrong. 25 THE COURT: Okay.</p>	<p style="text-align: right;">Page 132</p> <p>1 all option property has been removed from Clark County, 2 thereby divesting plaintiffs of any hope to collect any 3 part the \$1.8 million in commissions that would be paid 4 had no reclassification occurred. 5 The second part is, the second component is 6 calculation, is the attorney's fees associated with 7 that at that time was \$102,000 in October 2012. 8 So all I'm saying to you is that we knew that 9 they had purchased about 2,100 acres. 10 THE COURT: Out of the -- 11 MR. JIMMERSON: Out of the 5,000 -- 12 THE COURT: Right. 13 MR. JIMMERSON: -- that they had, and all I 14 was saying to them is that if you have gone ahead 15 behind our back and purchased the other 3,000 then, or 16 if you're going to in the future, that would entitle us 17 to commission, because they would be paying 18 \$120 million for the 3,000 acres. Multiply that by 1.5 19 is a million, eight. That's all. 20 THE COURT: That relates to the million, 21 eight. I understand. 22 MR. JIMMERSON: That's right. 23 THE COURT: It's a quantification issue. 24 MR. JIMMERSON: This trial was never about 25 1.8 million, and that's where I respectfully believe</p>

<p style="text-align: right;">Page 133</p> <p>1 Pardee has distorted in their motions and presentations 2 to this point, because they understood and you 3 understood no 3,000 acres had yet been purchased by 4 Pardee. We were debating on the 2,100 acres that was 5 purchased as to whether it was purchase property -- 6 THE COURT: I agree. 7 MR. JIMMERSON: -- or whether it was option 8 property. 9 And by the way, as it turns out, it may have 10 not made much of a difference, because you're still 11 multiplying by 1.5 percent above \$50 million, so it may 12 not have changed the actual dollars, but I do want to 13 make it clear that the defendant, Pardee, clearly knew 14 this was a theoretical possibility in the next 35 15 years, that this could be owed and certainly would be 16 owed if Pardee brought 3,000 acres of this real estate. 17 THE COURT: Hold on. I'm gonna let you. 18 MR. JIMMERSON: So what is a fair 19 characterization of what occurred was -- 20 THE COURT: What occurred, okay. 21 MR. JIMMERSON: Was our claim for additional 22 commissions was lost at trial. I totally understand 23 that. 24 THE COURT: Okay. We're on the same page. 25 MR. JIMMERSON: And in our proposed findings</p>	<p style="text-align: right;">Page 135</p> <p>1 all that. 2 MR. JIMMERSON: Absolutely. 3 THE COURT: That's why I had the disconnect 4 on the 1.8 million. I understand that. That's why 5 this was helpful. We're on the same page. 6 MR. JIMMERSON: Got it. 7 THE COURT: I certainly understand. 8 MR. JIMMERSON: So here's, here's an issue 9 for you. You found -- and one of the things that 10 disturbed me when I read this is the, the part of the 11 judgment, the finding in the first order which you've 12 stricken, it was completely outside of your findings. 13 You know, that was offensive to Mr. Wolfram and to 14 Mr. Wilkes and myself, because there was no attempt to 15 write a judgment that would mirror or, you know, state 16 in some fashion your findings, and so this whole issue 17 of \$1.8 million and somehow Pardee prevailed was 18 nowhere part of your findings, so it was just a 19 creativity by Pardee because they were looking for a 20 way to try to get their attorney's fees back. 21 I think I said I understand the pressure that 22 counsel is under for the defense, but it's not right to 23 distort the record to do that. 24 THE COURT: No. 25 MR. JIMMERSON: So hear me out. We asked for</p>
<p style="text-align: right;">Page 134</p> <p>1 and in the defense's proposed findings, you have both 2 sides of the issue of whether or not we're entitled to 3 a commission on the 225 acres or the Res. 5. The 4 reason that we broke it to Res. 5 was it was the one 5 parcel that had been platted and given to Clark County 6 as opposed to the whole 225 which resulted in that 7 30,000 -- 8 THE COURT: The other acres with the 9 geographical boundary issue, so we're all there. 10 MR. JIMMERSON: All right. So had you gone 11 with the plaintiffs' position, as part of the 12 accounting you would have had a discussion of what has 13 been purchased, what is owed. 14 THE COURT: Right, because -- 15 MR. JIMMERSON: Redesignation entitles the 16 plaintiffs to \$30,000. We have gone through that. 17 That would have been part of the accounting, but at no 18 time was anybody defending \$1.8 million. 19 THE COURT: And here's the issue -- 20 MR. JIMMERSON: Because the 3,000 acres 21 hadn't even been purchased. 22 THE COURT: And I understand they wanted you 23 to quantify, but you can't quantify until you find out 24 how much, through those documents, were actually, of 25 the option property, would go under it. I understand</p>	<p style="text-align: right;">Page 136</p> <p>1 141,000 -- excuse me, we asked for 150,000. I asked 2 for 146,000 plus 6,000. You gave us 135,500 plus 3 6,000. I lost \$10,000, but my point is I won that 4 claim, all right? 5 I didn't win the 30,000 for Res. 5, and I 6 didn't win a calculation of what dollars may be owed to 7 the plaintiffs for option property to the east of the 8 Parcel 1 boundary. I lost. 9 THE COURT: Okay. I agree. 10 MR. JIMMERSON: And we don't know what that 11 was. You see, when Ms. Lundvall stands here before 12 you, she nowhere can quote any testimony from 13 Mr. Wolfram or Mr. Wilkes or from anyone for the 14 defendant that quantifies what is owed. That's why the 15 whole \$1.8 million is a fugitive issue. 16 THE COURT: I think I was very clear when I 17 spoke with her that the 1.8 was my disconnect, and 18 Ms. Lundvall said to me if you have a quantification 19 issue -- I certainly do. 20 MR. JIMMERSON: Right. So all I'm trying to 21 say to the Court is that you have three claims, you 22 have a couple theories of damage, but they're not 23 theories of -- the claims are just accounting. The 24 three, they never changed, but we do have two aspects 25 or two components of damages, and we lost one.</p>

<p style="text-align: right;">Page 137</p> <p>1 THE COURT: Okay.</p> <p>2 MR. JIMMERSON: In the sense that we didn't</p> <p>3 win additional commissions. Okay, I mean I wasn't</p> <p>4 happy with that ruling, but that's what it was. But</p> <p>5 what was being discussed was the information.</p> <p>6 You see, where the defendant distorts this is</p> <p>7 they somehow say to you, We entirely spent 90 percent</p> <p>8 of our time defending against the money claim. Well,</p> <p>9 that wasn't this trial. They defended against the</p> <p>10 claim of accounting and breach of contract on damages.</p> <p>11 We spent all the time -- not damages, on the</p> <p>12 information.</p> <p>13 We spent all the time on what information was</p> <p>14 provided, and the defense argued that was sufficient to</p> <p>15 satisfy the requirement of the commission agreement</p> <p>16 letter to provide information, which the Court</p> <p>17 disagreed with. That's the thrust of this case.</p> <p>18 So I guess what I'm saying to you is when you</p> <p>19 win on accounting, when you win on breach of contract</p> <p>20 for failure to inform and you win \$141,500, and you</p> <p>21 lose some unknown amount of dollars, depending on what</p> <p>22 that may have been, to the east of Parcel 1, I mean was</p> <p>23 it \$50,000? Was it \$200,000? We don't know, because</p> <p>24 nobody quantified it, because we wouldn't know the</p> <p>25 number of acres to the east without an accounting.</p>	<p style="text-align: right;">Page 139</p> <p>1 testimony, Page 174, Lines 8 through 15 of the trial</p> <p>2 transcript.</p> <p>3 Our opening statement and our closing</p> <p>4 statement mirrors that point, that the evidence will</p> <p>5 demonstrate that he could have lost commissions, may</p> <p>6 have lost commissions, so we knew that, we believed we</p> <p>7 may have been entitled to that but we didn't know that.</p> <p>8 And there was so much discovery during the</p> <p>9 trial, because we didn't have access to Mr. Whittemore</p> <p>10 in the fashion that you did. You know, your</p> <p>11 questioning of him, okay, as well as some of the other</p> <p>12 witnesses, is very helpful, because they can, they can</p> <p>13 dance if I'm asking a question or opposing counsel is</p> <p>14 questioning, but when a judge asks you a question, you</p> <p>15 know, you tend to get a more honest, truthful response</p> <p>16 and a more, in this regard, comprehensive understanding</p> <p>17 of this, and the Court was probing him, if you look at</p> <p>18 the record.</p> <p>19 So all I'm getting at is we can't have</p> <p>20 revisionist history. Pardee cannot try to change what</p> <p>21 occurred, which was a struggle, a really hotly</p> <p>22 contested case. My compliments to the defense counsel</p> <p>23 with their eagerness. They certainly spent a lot of</p> <p>24 money on this case apparently in fees, but they didn't</p> <p>25 prevail, because their clients didn't do the right</p>
<p style="text-align: right;">Page 138</p> <p>1 Jon Lash I asked this specifically: How many</p> <p>2 acres are to the east of Parcel 1? I don't know,</p> <p>3 Mr. Jimmerson. Well, if he didn't know, no one's going</p> <p>4 to know, and that's what the second phase of this trial</p> <p>5 would have determined had you gone with that point.</p> <p>6 So I'm totally with defendants and with you</p> <p>7 to say that aspect of entitlement to additional</p> <p>8 commissions we lost, but that aspect had nothing to do</p> <p>9 with \$1.8 million, it had to do with the 30 acres</p> <p>10 Res. 5 and had to do with whether or not you allowed</p> <p>11 them to build east of the Parcel 1 boundary. That's</p> <p>12 it. That's what this trial was about.</p> <p>13 And when you read the deposition testimony --</p> <p>14 I'm sorry, when you read the trial testimony of</p> <p>15 Mr. Wolfram, and this was what was cross-examined by</p> <p>16 Ms. Lundvall, he testifies this: Plaintiff has --</p> <p>17 excuse me.</p> <p>18 Mr. Wolfram testifies: And this is, to me,</p> <p>19 the basis of my whole court case here. I don't, I</p> <p>20 don't care about money and all that stuff. My basis is</p> <p>21 that I've been breached on information. I should not</p> <p>22 have had to go to this particular map. There are other</p> <p>23 things too. Not my family could ever ever have tried</p> <p>24 to find out what's going on and do a map like this, I</p> <p>25 mean there is just not a chance, October 30th, 2013</p>	<p style="text-align: right;">Page 140</p> <p>1 thing. It's not the lawyers did right or wrong, their</p> <p>2 clients didn't do the right thing, as found by you.</p> <p>3 And I will tell you we're gonna have an issue</p> <p>4 on this judgment. This judgment has to say, has to</p> <p>5 mirror your findings. I have no problems saying that</p> <p>6 an unknown amount of money, an unquantified amount of</p> <p>7 money that the plaintiffs thought they may be entitled</p> <p>8 to were the Court to agree you can't redesignate to</p> <p>9 beat somebody out of commission, and you can't build</p> <p>10 east of the Parcel 1 without compensating them as</p> <p>11 option property, that would have been owed to them,</p> <p>12 but that, that is certainly the minor part of the case.</p> <p>13 The case was --</p> <p>14 THE COURT: But now you're going to the</p> <p>15 arguing of the prevailing, and I understand we both did</p> <p>16 it.</p> <p>17 MR. JIMMERSON: Right. I'm just saying, I'm</p> <p>18 demonstrating to you though --</p> <p>19 THE COURT: Right.</p> <p>20 MR. JIMMERSON: -- for purposes of today's</p> <p>21 motion, that any suggestion that they won any part of</p> <p>22 this case is false. They did defend successfully our</p> <p>23 claim for an unknown amount of commissions based upon</p> <p>24 their actions building east of the Parcel 1 or</p> <p>25 redesignating property that we discovered during trial.</p>

<p style="text-align: right;">Page 141</p> <p>1 I understand that, but that is really not what this 2 case was about. That's not what they did. They didn't 3 defend against Res. 5, they were defending against the 4 accounting. They were defending against their claim 5 that they didn't provide -- that they did provide 6 information, which the Court found against them on 7 those. That's what this case was about and that's what 8 the testimony was about. 9 And that's why when you ask questions of 10 opposing counsel, when she does choose to answer them, 11 she doesn't answer many of your questions, but when she 12 answered the question, Yes, there is nothing in the 13 record that talks about \$1.8 million, there's nothing 14 in the record that says this is a quantification, 15 because the whole thing going forward will be, as we'll 16 discuss later, I guess, that 1.8 million is bigger than 17 \$141,500; therefore, we should at least get a break on 18 his fees that he's entitled to as prevailing party on 19 the commission as well as exceeding the offer of 20 judgment. 21 That's where the mischief was. The mischief 22 by Pardee is I got to rewrite to the judgment to 23 reflect somehow that we won so that we can somehow 24 mitigate the damages that we obviously will owe to the 25 plaintiffs in the form of the attorney's fees, and</p>	<p style="text-align: right;">Page 143</p> <p>1 that we would have had a second trial. You ruled in 2 their favor with regard to those issues, but that 3 clearly was not the dominant part of that. 4 And when you look at your own finding, that 5 is really the final point. When you look at your own 6 finding, there's nothing in what you said that would 7 have supported what they wrote, and that's why you're 8 granting this motion to strike, in addition to the 9 irregularities with regard to how it got signed in the 10 first place. 11 THE COURT: Right. 12 MR. JIMMERSON: I'm not familiar with the 13 cover letter. I don't know that they produced the 14 cover letter. You didn't see the cover letter, but all 15 I'm trying to get at is it's an important document. 16 Both of sides know it. 17 I had an issue with the defendant not giving 18 me notice the previous October with regard to a 19 submission that they made to you. I wrote them a 20 letter to please add someone. They didn't do that, you 21 know. It's just a matter that they have an obligation. 22 I would no more submit a judgment without at least 23 contacting them and either having their name on the 24 document and slash it in case they refuse to cooperate, 25 but, of course, what would happen and what likely will</p>
<p style="text-align: right;">Page 142</p> <p>1 that's what will come later on, but I needed to correct 2 the record because it's not two theories, it's two 3 elements of a claim of damages, one of which we were 4 not successful on. 5 But when you talk in terms of the testimony, 6 if you just look at Jon Lash's testimony, Harvey 7 Whittemore's testimony, the plaintiffs' testimony, it 8 was not about quantification of damages, it was about 9 whether or not they breached their agreement to provide 10 information. And then the second part of the trial 11 that we had spoken to would have been that 12 quantification, that's true. 13 And I never said, respectfully, it's 14 upsetting to suggest that I never said this was not 15 about dollars. What I was saying to you is that we 16 didn't know. 17 And when you're at trial and Ms. Lundvall 18 asked Mr. Wolfram, What are you claiming? What are you 19 asking for? I don't know, I can't tell you. That's 20 about as clear as you need to have evidence to know 21 that this was about the liability portion of the case 22 in terms of establishing the right to an accounting, 23 establishing a breach of contract for failure to 24 provide information, and the implied covenant of good 25 faith and fair dealing to do the same, and then from</p>	<p style="text-align: right;">Page 144</p> <p>1 happen here is you will be given competing orders. 2 THE COURT: You know, we're kind of back to 3 where we would have been if this judgment was first 4 submitted, because I don't think you would have, based 5 on all that's happened it probably would have not, but 6 that's okay. 7 I just want to get us back to square one so 8 that then -- plus, in all honesty, if I would have 9 gotten competing judgments like that, I probably would 10 have asked for a hearing on it, because you've now 11 fleshed it out, in all honesty, so I feel bad we lost 12 some time, but we didn't, because it probably would 13 have done its normal course. 14 Does that make sense? 15 MR. JIMMERSON: I only -- 16 MS. LUNDVALL: Your Honor? 17 MR. JIMMERSON: Can I just mention one other 18 thing? 19 MS. LUNDVALL: What I would like to do is to 20 respond as far as to the comments. 21 THE COURT: Are you finished, Mr. Jimmerson? 22 MR. JIMMERSON: I do want to speak to the 23 stay for just a second. 24 THE COURT: Okay. 25 MR. JIMMERSON: Judge?</p>

<p style="text-align: right;">Page 145</p> <p>1 MS. LUNDVALL: The Court has made a ruling on 2 this. I guess this is a motion for reconsideration 3 now? 4 THE COURT: I'm gonna keep the stay, 5 Mr. Jimmerson. 6 MR. JIMMERSON: I understand. 7 THE COURT: Until I get this judgment clear, 8 and it's not going to be an easy -- I don't have a 9 crystal ball, but I feel like it will be contested, and 10 that's important. 11 So I'm not gonna let you execute on a 12 judgment until I know what I feel truly it should be. 13 MR. JIMMERSON: I appreciate it. 14 THE COURT: I'm not, I'm not gonna change 15 that. 16 MR. JIMMERSON: I don't agree, but I respect 17 your decision and I'm not rearguing. That's not my 18 style. 19 I just want to indicate a bond would have 20 been appropriate here, and they have not posted a bond. 21 See, I don't know what's going on with Pardee. 22 THE COURT: Did he -- when he did the stay, 23 did he ask for a bond? 24 MS. LUNDVALL: Your Honor, hold, hold, hold, 25 hold.</p>	<p style="text-align: right;">Page 147</p> <p>1 important to everybody. That has been blatantly clear 2 from day one of this case. I would stipulate everybody 3 has done great efforts. 4 MS. LUNDVALL: Thank you, your Honor. 5 One of the comments I want to make simply is 6 that the concession that Mr. Jimmerson made in the 7 remarks that he made to you, he identified the fact 8 that one of the theories that they were advancing was 9 the fact that we had purchased option property, and 10 he's absolutely correct in that regard. What we were 11 defending, what we were defending against is whether or 12 not that we had purchased option property. That, your 13 Honor, was 90 percent of your case. 14 THE COURT: Okay. 15 MS. LUNDVALL: And the Court found, the Court 16 found in our favor, that we had not purchased option 17 property. 18 Now, Mr. Jimmerson and the Court now has 19 identified that you quarrel with the quantification 20 that we put on that, but there is no question about the 21 fact that what they had suggested is that we had 22 purchased option property, but what we had defended 23 against is that we did not, and that you had found in 24 our favor on that point. 25 Now --</p>
<p style="text-align: right;">Page 146</p> <p>1 MR. JIMMERSON: He said no bond is necessary 2 because Pardee is a big company. I mean that's what 3 Judge Bonaventure said. 4 THE COURT: All right. I'm not gonna redo 5 that. I'm not going to require a bond, I'm not, but -- 6 MR. JIMMERSON: At some point, when a 7 judgment is entered, I would ask you to reconsider 8 that. 9 THE COURT: All right. Let's just, let's 10 just, let's just step back and let's get this judgment 11 done, because that is very critical. 12 And I'm more than letting you -- I agree. 13 MR. JIMMERSON: Is there a reason, is there a 14 reason why Ms. Lundvall is at the podium? 15 THE COURT: You know what, I would like to 16 hear everything while I've got it in my mind, because 17 this is argument I'm going to have to know about when 18 this judgment -- so I don't mind letting you respond. 19 MS. LUNDVALL: Thank you. 20 THE COURT: And if you need to, I'll stay 21 here all day, if you all fall over from hunger. This 22 is too important to me. I will stay. 23 MR. JIMMERSON: It's important to the 24 plaintiffs too, your Honor. 25 THE COURT: I would never infer it's not</p>	<p style="text-align: right;">Page 148</p> <p>1 THE COURT: I would have agreed to that if 2 you walked in from day one. My findings showed that, 3 and he understands that. 4 MS. LUNDVALL: Now -- 5 THE COURT: That could have been day one 6 stipulated, okay? 7 MS. LUNDVALL: One of the things I want to do 8 is that the Court has indicated that you had an 9 interest in some additional cases -- 10 THE COURT: Yes. 11 MS. LUNDVALL: -- that we had spoken to. 12 THE COURT: On the -- 13 MS. LUNDVALL: Prevailing party issue. 14 THE COURT: Yes. Sorry. 15 MS. LUNDVALL: Thank you. 16 THE COURT: I read every one. 17 MS. LUNDVALL: And that's why I'm standing at 18 the podium. 19 THE COURT: Okay. I appreciate it. Please 20 make sure they get it too. 21 MS. LUNDVALL: So a couple points I want to 22 make as far as a preface to this when giving these to 23 the Court, when I look at all of the papers and in 24 preparation for this hearing, in my opinion it's easy 25 to get lost, and so what I'm gonna try to do is my</p>

<p style="text-align: right;">Page 149</p> <p>1 level best to give a little bit of a road map on this 2 prevailing party issue then to the Court. 3 And the most important part that I think that 4 the Court needs to do is to start from why it is that 5 the Court's being asked to make this determination. 6 The reason that the Court is being asked to 7 make this determination is because there's a clause 8 within the commission agreement. 9 THE COURT: For attorney's fees. 10 MS. LUNDVALL: Correct. 11 THE COURT: I saw that. 12 MS. LUNDVALL: And there's, there's case law 13 that has been bounded about, in particular from 14 Mr. Jimmerson's office, that speaks to NRS 18.010 and 15 interpreting 18.010. 16 And what I want to do is to make sure that 17 the Court looks at the entirety of the statute, because 18 the statute says this: In requesting attorney's fees, 19 and making a determination for prevailing party under 20 18.010 -- 21 THE COURT: 18.010. 22 MS. LUNDVALL: -- it does not apply to a 23 private contract and there is a provision within the 24 private -- 25 THE COURT: Did you brief it that way?</p>	<p style="text-align: right;">Page 151</p> <p>1 this is gonna come up when we do our judgment. 2 MS. LUNDVALL: Your Honor, what I would hand 3 to the Court and what I would hand a copy then to 4 Mr. Jimmerson -- 5 THE COURT: Is that Nevada, I hope? 6 MS. LUNDVALL: Yes. This is from the Nevada 7 Supreme Court. It's called Davis versus Bailey. 8 THE COURT: Okay. 9 MS. LUNDVALL: It's 278 Pacific 3d 501. It's 10 a 2012 case. 11 The sum total of this case, which was a case 12 involving a contract provision that had a prevailing 13 party clause within that contract was that when there 14 is a successful defense, that successful defense can be 15 used as a foundation to argue that you are the 16 prevailing party, all right? It's pretty simple. 17 THE COURT: Okay. That's not too difficult. 18 MS. LUNDVALL: All right. The second 19 decision that I intend to offer the Court then -- 20 THE COURT: Did you -- you didn't cite this 21 in your brief, right? 22 MS. LUNDVALL: To be honest with you, I don't 23 know the answer to that. 24 THE COURT: Okay. 25 MS. LUNDVALL: If we did not, we are</p>
<p style="text-align: right;">Page 150</p> <p>1 MS. LUNDVALL: 18.010, Subsection -- 2 THE COURT: No, I have read it, 18.010. I 3 actually almost brought it up here until I realized 4 there was a judgment issue. 5 MS. LUNDVALL: All right. Section Sub .4, 6 and I'm going to quote, the Sections 2 and 3 upon which 7 they rely do not apply to any action arising out of a 8 written instrument or agreement which entitles the 9 prevailing party to an award of reasonable attorney's 10 fees. 11 THE COURT: Okay. 12 MS. LUNDVALL: So when they contend in their 13 brief that we did not get a monetary damage in our 14 favor, and therefore, we can't be the prevailing party, 15 they cite to NRS 18.010 cases, and guess what, those 16 cases don't apply. 17 And so what I did is I tried to laser focus 18 my research to be able to identify for the Court the 19 cases that arise from a contract provision -- 20 THE COURT: Right. 21 MS. LUNDVALL: -- that has a prevailing 22 party, because that's what's at issue, and so I've got 23 one. 24 THE COURT: I read, I read every one of 25 those. If you have another one, that's fine, because</p>	<p style="text-align: right;">Page 152</p> <p>1 supplementing. 2 THE COURT: It doesn't ring a bell to me, but 3 I've read so many I'm not gonna say you didn't. 4 You have another one? 5 MS. LUNDVALL: Now, the second one, it's 6 quite possible we did not cite this, and the reason why 7 was that there was recently a rule change for our 8 Nevada Supreme Court as to whether or not that you can 9 cite to unpublished decisions. 10 THE COURT: Yes. You're not supposed to, but 11 we all did it, but after January they'll actually say 12 it has authority. 13 Don't you love that? I think it's great what 14 they did. 15 MR. LUNDVALL: And here's one for the Court 16 then to consider, and I'm gonna hand a copy to 17 Mr. Jimmerson as well. 18 THE COURT: And I have to do it under the new 19 rule since it was December 20th, I get it. 20 MS. LUNDVALL: Understood. 21 And it's a case that's called Freedman versus 22 Freedman, and it's found at 2012 Westlaw 6681933. It's 23 a 2012 decision from our Nevada Supreme Court. And 24 what this decision, if you go through this, this dealt 25 with a marital agreement, and there was two parties</p>

<p style="text-align: right;">Page 153</p> <p>1 then that were obviously on opposite sides, and each 2 had differing views concerning that marital agreement, 3 but the marital agreement had a provision for 4 prevailing party. 5 THE COURT: Okay. 6 MS. LUNDVALL: All right. So what happened 7 in this case is that the plaintiff prevailed on a 8 portion of their case, and the defendant prevailed on a 9 portion of his, and what the Court did then in the 10 district court is it quantified the damages that were 11 entailed with the portion that the plaintiff prevailed 12 upon, compared that then to the portion that the 13 defendant prevailed upon, and created a net judgment in 14 accordance with the prevailing party provision. 15 THE COURT: Sure. 16 MS. LUNDVALL: And that's what we ask the 17 Court to do, and you can make that same determination 18 then in this case. 19 THE COURT: I see where you're coming from. 20 MS. LUNDVALL: Okay. So from the standpoint 21 you've already quantified the amount of attorney's fees 22 that they incurred by reason then of not getting the 23 information, and you made that a form of special 24 damages. 25 THE COURT: I did.</p>	<p style="text-align: right;">Page 155</p> <p>1 the opportunity then to argue our motions for 2 attorney's fees. 3 THE COURT: Absolutely. 4 MS. LUNDVALL: Thank you. 5 THE COURT: That's -- 6 MS. LUNDVALL: That's -- 7 THE COURT: If I didn't make that clear, 8 absolutely. When I worked through all this and then 9 when I looked it up and realized, whether you disagree 10 with me, I have a problem on the judgment. It has to 11 be right. And going back, I started to write one 12 myself, and I go, No, I'm gonna enforce my own rule. 13 And I wanted to give you an understanding why 14 I do not agree with this judgment. I would not have 15 agreed with that, and we went through why it happened. 16 Once again, I take responsibility. We didn't follow 17 our procedure, but once -- now we're gonna start with 18 that, okay, absolutely. 19 In fact, that's what I was going to go 20 through. Let me keep my notes here, one second. 21 Then my notes here, the only -- so then I've 22 got -- let's do this then. 23 MS. LUNDVALL: My prediction is that -- 24 THE COURT: Let's do this. The defendant's 25 -- then I can go through, I've got them all here.</p>
<p style="text-align: right;">Page 154</p> <p>1 MS. LUNDVALL: And we know what that sum is. 2 THE COURT: Right. 3 MS. LUNDVALL: So then what the issue becomes 4 then, we also know that Pardee prevailed on a portion 5 of this case, so then the issue is -- 6 THE COURT: Is the quantification. 7 MS. LUNDVALL: Precisely. 8 THE COURT: I get it, Ms. Lundvall. That's 9 what started me on the 1.8 million. 10 MS. LUNDVALL: All right. So let's focus on 11 our motion for attorney's fees. 12 THE COURT: No, I'm not gonna go there. 13 MS. LUNDVALL: But let -- 14 THE COURT: All I want to do is address the 15 quantification. I'm on the same page with you on the 16 prevailing party. I understand what you're saying. I 17 don't want to get -- I'm not going to go through the 18 attorney's fees. 19 My problem on this judgment, and I'm still 20 gonna stand with it, is the 1.8. The quantification 21 was an issue that just stuck out to me from the 22 beginning, and it still does. 23 MS. LUNDVALL: But what I understand then 24 that the Court will allow us to do, is once that you 25 finalized your new judgment, that you're gonna give us</p>	<p style="text-align: right;">Page 156</p> <p>1 Defendant's motion to amend the judgment entered 2 6/15/2015, this is your one on wanting to change on -- 3 now, here's what I looked at. Let me do this, and 4 maybe -- when I looked at your motion as far as the 5 Sandy Valley damages, you were saying you were amending 6 this judgment, the one I just said was erroneous. 7 Do you realize that's what it said here? 8 MS. LUNDVALL: Yes. 9 THE COURT: Okay. I realize that I need -- 10 this I can address, and I went through it extensively. 11 My only question to you was whether you're really 12 wanting to amend my findings of fact, conclusions of 13 law and order where I cited, or whether you can -- you 14 didn't waive anything by that, because obviously -- so 15 this is gonna, you're gonna do this, because it still 16 would -- that part is still gonna be in the new 17 judgment, based on my findings of fact and conclusions 18 of law. So, to me, then this would become moot, 19 obviously. 20 Is it still gonna be there? Absolutely. You 21 are not waiving anything. 22 Here's my question. I've read it a lot. If 23 you want to amend, supplement, fine, but I feel like I 24 have a lot of briefing on that, so this one I'm going 25 to deny without prejudice, because --</p>

<p style="text-align: right;">Page 157</p> <p>1 MS. LUNDVALL: May I explain to the Court why 2 it is we brought that motion? 3 THE COURT: No. 4 MS. LUNDVALL: Very simply, I have two lines, 5 and that is the one issue is we had not cited to Liu to 6 you. 7 THE COURT: I did. 8 MS. LUNDVALL: I recognize and acknowledge 9 you did, but we had not. 10 This is an issue that quite possibly may be 11 taken up on appeal. 12 THE COURT: Oh, Ms. Lundvall, I would 13 guarantee you it was from day one. 14 MS. LUNDVALL: I did not want an argument 15 coming from plaintiffs' counsel that we had not argued 16 Liu to you. 17 THE COURT: How could you, it came in after 18 the motion? 19 MS. LUNDVALL: I understand that. 20 I got another appeal that, where that 21 argument has been advanced, and we have been hashing 22 through those issues. And what I was trying to do is 23 to preserve my record. 24 I understand very likely where the Court may 25 come out on this, but I did not want to get any</p>	<p style="text-align: right;">Page 159</p> <p>1 THE COURT: I think that was kind of -- I 2 inferred that that was going to be an issue. I 3 understand you don't agree with that. I agree with 4 you, I actually, like I said, worked a lot on these 5 until I backed it up into realizing on this judgment. 6 I spent the longest time on this for obvious reasons, 7 because everything flows. 8 MR. JIMMERSON: The prevailing party analysis 9 as to published decisions makes it clear that -- 10 MS. LUNDVALL: The point that Mr. Jimmerson 11 just articulated though, two points to this, number 12 one, it assumes that he has a valid offer of judgment, 13 which he doesn't, and we briefed that and the Court is 14 gonna hear argument on that. 15 THE COURT: Right. 16 MR. JIMMERSON: Right. 17 MS. LUNDVALL: Number two, and that is that 18 the law he's now citing to the Court, which is why I'm 19 trying to underscore this, is under NRS 18.010, it's 20 not under the prevailing party provisions in a 21 contract, and so that there's a different analysis that 22 applies. 23 THE COURT: Okay. 24 MS. LUNDVALL: Even if by some strange thing 25 that the Court finds his offer of judgment valid, let</p>
<p style="text-align: right;">Page 158</p> <p>1 argument that somehow we have waived it by failing to 2 raise Liu in the court below. That's the reason, your 3 Honor, that we filed it. 4 MR. JIMMERSON: Judge, I want to add one 5 other factor that does cut into this that's quite 6 important, and it will help you in your calculation and 7 your calculus. 8 We have filed a motion for attorney's fees on 9 two different bases. 10 THE COURT: Right. I know. 11 MR. JIMMERSON: One under prevailing party. 12 The reason I say the fact that we offered a judgment 13 which was denied or declined and we exceeded that 14 judgment, you know, you need to be aware of it, because 15 that cuts off even an analysis for prevailing party. 16 In other words, when you look at the case 17 law, if the Court finds that the plaintiffs have 18 exceeded their offer of judgment and that the statutory 19 requirements under the then existing 17.115, which was 20 later delayed but it was applied at the time, that cuts 21 off the whole issue of prevailing party or you won on 22 three issues and you won on one issue, because the 23 offer of judgment resolves all matters, so I'm just 24 asking you, that's something you will need to look at 25 in conjunction with prevailing party.</p>	<p style="text-align: right;">Page 160</p> <p>1 alone if he beat his offer of judgment, because he 2 didn't under the plain language of it, but the point 3 being is it still does not cut off the Court's analysis 4 under the contract provision. 5 THE COURT: I appreciate that. I get it, so 6 let me clean this up. 7 And here's the other thing, I'm not gonna set 8 these all on one day, in fairness to all of us. I'm 9 gonna try -- you can see I got into a criminal trial, 10 but when I -- I wanted to reserve today to really do a 11 fair record for both of you on this judgment issue and 12 also give exactly what I did, give guidance on where I 13 feel we should go to at least give you some idea of 14 what I want. I accomplished that. That was my goal. 15 It took me -- but in fairness, I understand that. 16 So what I want to do is now clean this up. 17 As far as defendant's motion to amend judgment entered, 18 which basically I call them the Sandy Valley, as we all 19 know, damages, I'm going to deny this as moot because I 20 have stricken the judgment. 21 I'm keeping all this. You are not waiving 22 anything when this new judgment -- because it will have 23 the Sandy Valley damages in it, because -- and here's 24 the other thing: To be honest, I, I understand why you 25 now say you feel it was a record on appeal, I honestly</p>

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 02:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

JOINT APPENDIX – VOLUME 85 OF 88

McDONALD CARANO LLP
Pat Lundvall (NSBN 3761)
lundvall@mcdonaldcarano.com
Rory T. Kay (NSBN 12416)
rkay@mcdonaldcarano.com
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966

Attorneys for Appellant

Chronological Index to Joint Appendix

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alphabetical Index to Joint Appendix

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 28th day of February, 2018.

McDONALD CARANO LLP

By: /s/ Rory T. Kay
Pat Lundvall (NSBN 3761)
Rory T. Kay (NSBN 12416)
2300 W. Sahara Ave., 12th Floor
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com

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

1 WHEREFORE, Plaintiffs prays as follows:

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

9 DATED this 29 day of December 2010.

10 JIMMERSON HANSEN, P.C.

11
12 By 
13 JAMES J. JIMMERSON, ESQ.
14 Nevada Bar No. 000264
15 jjj@jimmersonhansen.com
16 415 So. Sixth St., Ste. 100
17 Las Vegas, NV 89101
18 (702) 388-7171
19 Attorney for Plaintiffs
20 JAMES WOLFRAM and WALT WILKES
21
22
23
24
25
26
27
28

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

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 JAMES WOLFRAM,
14 WALT WILKES,

15 Plaintiffs,

16 vs.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

CASE NO.:
DOCKET NO.:

19 **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

20 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
21 submitted for parties appearing in the above-entitled action as indicated below:

22 JAMES WOLFRAM	\$270.00	or	<input type="checkbox"/>	\$101.00
23 WALT WILKES	\$ 30.00			

1 ☐ Total of Continuation Sheet Attached \$ 300.00
2 TOTAL REMITTED (Required) \$ 300.00
3

4 DATED this 29 day of December 2010.
5

JIMMERSON HANSEN, P.C.

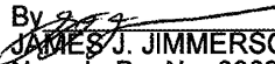
By 
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
jjj@jimmersonhansen.com
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
(702) 388-7171
Attorney for Plaintiffs
JAMES WOLFRAM and WALT WILKES

Exhibit 3

Exhibit 3

1 ORDER

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 JAMES WOLFRAM AND WALTER D. WILKES
6 and ANGELA L. LIMBOCKER-WILKES
7 LIVING TRUST, ANGELA L. LIMBOCKER-
8 WILKES, TRUSTEE,

9 Plaintiffs,

10 vs.

11 PARDEE HOMES OF NEVADA,

12 Defendant.

CASE NO.: A-10-632338-C
DEPT. NO.: IV Electronically Filed
05/16/2016 02:03:58 PM


CLERK OF THE COURT

13 JUDGMENT

14
15 On October 23, 2013, the above-referenced matter came on for bench trial before the
16 Honorable Judge Kerry Earley. The Court, having reviewed the record, testimony of witnesses, the
17 documentary evidence, stipulations of counsel, the papers submitted by the respective parties, and
18 considered the arguments of counsel at trial in this matter, entered Findings of Fact and Conclusions
19 of Law on June 25, 2014.

20
21 In the Findings of Fact and Conclusions of Law, the Court ordered the parties to provide
22 supplemental briefing within 60 days detailing what information Defendant Pardee homes of Nevada
23 ("Pardee") and its successors and/or assigns should provide Plaintiffs James Wolfram and Walt
24 Wilkes ("Plaintiffs") and their successors and/or assigns consistent with the Court's decision on the
25 accounting cause of action.

26
27 After reviewing the parties' supplemental briefing, the Court then entered an order on May
28 13, 2015 reflecting its decision on the supplemental briefing (the "Accounting Order"). Having

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

JA013396

1 considered the entire record presented at trial, including testimony of witnesses, the documentary
2 evidence, stipulations of counsel, the papers submitted by the respective parties, and the arguments
3 of counsel at trial in this matter, and in accordance with the findings of fact and conclusions of law
4 incorporated by reference in the May 13, 2015 Order and June 25, 2014 Order, this Court enters
5 judgment as follows:

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS
7 ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for breach of
8 contract and breach of the implied covenant of good faith and fair dealing. Plaintiffs are entitled to
9 damages from Pardee in an amount totaling \$141,500.00, of which \$6000.00 are consequential
10 damages from Pardee's breach of the Commission Agreement and the remaining \$135,500.00 are
11 special damages in the form of attorney's fees and costs.
12

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS
14 ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' cause of action for accounting.
15 Pardee shall provide Plaintiffs with future accountings related to the Commission Agreement
16 consistent with the Accounting Order entered by the Court on May 13, 2015.
17

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS
19 ENTERED in favor of Plaintiffs and against Pardee on Pardee's cause of action for the breach of
20 implied covenant of good faith and fair dealing.
21

22 The Court reserves jurisdiction over this Judgment regarding the issues of attorney's fees,
23 costs, and legal interest, therefore, this Judgment may be amended upon entry of any further awards
24 of interest, costs, and/or attorney's fees.

25 DATED: May 11, 2016.

26
27 
28 KERRY L. EARLEY, DISTRICT COURT JUDGE

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, I electronically served, sent by facsimile, emailed, or placed a copy of this order in the attorney's folder on the first floor of the Regional Justice Center as follows:

James J. Jimmerson, Esq. - The Jimmerson Law Firm
Michael C. Flaxman, Esq. - The Jimmerson Law Firm
Pat Lundvall, Esq. - McDonald Carano Wilson
Rory T. Kay, Esq. - McDonald Carano Wilson



Kelly Tibbs
Judicial Executive Assistant

Exhibit 4

Exhibit 4

<p style="text-align: center;">Page 1</p> <p style="text-align: center;">DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>1 2 3 4</p> <p>5 JAMES WOLFRAM,) 6 PLAINTIFF,) 7 vs.) 8 PARDEE HOMES OF NEVADA,) 9 DEFENDANT.)</p> <p style="text-align: center;">CASE NO. A632338</p> <p style="text-align: center;">REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p style="text-align: center;">BEFORE THE HONORABLE KERRY L. EARLEY DISTRICT COURT JUDGE</p> <p style="text-align: center;">HELD ON FRIDAY, JANUARY 15, 2016 AT 10:00 A.M. LAS VEGAS, NEVADA</p> <p>21 APPEARANCES:</p> <p>22 For the Plaintiff: JAMES J. JIMMERSON, ESQ. MICHAEL C. FLAXMAN, ESQ.</p> <p>23 For the Defendant: PATRICIA K. LUNDVALL, ESQ. RORY T. KAY, ESQ.</p> <p>25 Reported by: Loree Murray, CCR No. 426</p>	<p style="text-align: center;">Page 3</p> <p>1 them up. I have no idea what the calendar says. I 2 quit looking at it, it was so confusing to me, counsel, 3 so I will start with how I've done the orders so you 4 can kind of follow what the Court's doing.</p> <p>5 The first one I have, since some of them were 6 duplicates, I have plaintiffs' motion to strike 7 judgment entered June 15th, 2015, pursuant to NRCP 8 52(b) and NRCP 59 as unnecessary and duplicative orders 9 of final orders entered on June 25th, 2 thousand -- I 10 don't know if that's the right date -- June 25th, 2014, 11 and May 13th, and such that the, that judgment that was 12 entered on the 6/15/2015 was punitive -- no, fugitive.</p> <p>13 I'm starting with that, because that's a 14 procedural one. To me, that was a little bit easier, 15 so if we want to start with that, and I did look at 16 NRCP 58(a), Mr. Jimmerson.</p> <p>17 MR. JIMMERSON: Yes, your Honor.</p> <p>18 THE COURT: And I, I will tell you I do agree 19 that we do need a judgment. It does require the entry 20 of a judgment in this case. Convince me otherwise, 21 because I read through all the motions, and I did 22 extensive research as best I could on my own to see, 23 you know, when it came up, Hey, was the, was my order, 24 my findings of fact, conclusions of law order that was 25 entered on 6/25/2014, plus, as we know, the</p>
<p style="text-align: center;">Page 2</p> <p>1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 15, 2016 2 10:00 A.M. 3 4 * * * * *</p> <p>5 THE COURT: Good morning, counsel. 6 MR. JIMMERSON: Good morning. 7 MS. LUNDVALL: Good morning, your Honor. 8 THE COURT: Thank you very much for letting 9 me do this session today. I was in the middle of a 10 triple kidnapping. I thought it was unfair to you and 11 kind of unfair to the Court because I had worked on all 12 this, but I just could not give you the time in the 13 middle of that, so thank you for letting me reset it.</p> <p>14 MS. LUNDVALL: I'm hoping it wasn't you that 15 was being kidnapped.</p> <p>16 THE COURT: Not at all. We were in the trial 17 for a while, three weeks, but it was one of those cases 18 we were trying to complete before Christmas. We made 19 it, whatever, so we were just out of time. And typical 20 in criminal, you did not know it was going to go 21 forward but it did.</p> <p>22 Okay, here's what I've done, I have put these 23 motions in the order that I think they should go in. 24 Bear with me and make sure. 25 I've gone through them all, but I have broken</p>	<p style="text-align: center;">Page 4</p> <p>1 supplemental one which was required because I had asked 2 for that on the supplemental briefing regarding the 3 future accounting, and that was entered on 5/13/2015, 4 and had this judgment was subsequent, but you tell me.</p> <p>5 I do believe under NRCP 58(a) that a judgment 6 was required.</p> <p>7 MR. JIMMERSON: Right.</p> <p>8 THE COURT: Do you agree with me? Or if I'm 9 off, tell me why.</p> <p>10 MR. JIMMERSON: Thank you, Judge.</p> <p>11 THE COURT: Yes. I want to start there.</p> <p>12 MR. JIMMERSON: I do not agree with you, but 13 thank you very much.</p> <p>14 THE COURT: So I'm not doing substance. We 15 don't go to the substance yet. I really want to --</p> <p>16 MR. JIMMERSON: I read you loud and clear.</p> <p>17 THE COURT: I worked very hard to do issue by 18 issue, and I'm sure you feel the same way, because we 19 could be here -- okay, so I want to be very clear on 20 the record I'm not going to the substance, I'm strictly 21 doing it as whether it is, a judgment, would be a 22 fugitive document under NRCP 58(a).</p> <p>23 MR. JIMMERSON: Thank you, Judge.</p> <p>24 THE COURT: Okay. I'm not trying to be -- 25 loud and clear I guess is good.</p>

<p style="text-align: right;">Page 5</p> <p>1 MR. JIMMERSON: Yes, your Honor, and I 2 appreciate the direction, and I will speak to that, as 3 you say, and not to the substance. 4 THE COURT: Right. I'm not there yet. 5 MR. JIMMERSON: I will comply with the 6 Court's orders. 7 We had this trial submitted to you December 8 of 2013. You issued your first order, I believe it was 9 June 25 -- 10 THE COURT: 2014, yes, my findings of fact, 11 conclusions of law and order. 12 MR. JIMMERSON: Right. Now, you, you would 13 know what you intended. 14 THE COURT: Absolutely. 15 MR. JIMMERSON: I don't, I don't have, you 16 know, the opportunity to go inside your mind what you 17 were thinking, but I know what you produced, and I 18 think the work product that you did evidenced you spent 19 really a lot of time and effort and concern, and, you 20 know, every effort to be fair to both parties and a 21 very good effort to interpret the evidence as you 22 understood it, and you made your findings. 23 So what you did procedurally is you issued 24 your ruling on June 25, 2013. 25 THE COURT: And order.</p>	<p style="text-align: right;">Page 7</p> <p>1 MR. JIMMERSON: Exactly. 2 THE COURT: Absolutely, and that was very 3 explicit -- 4 MR. JIMMERSON: Right. 5 THE COURT: -- in my order, because I did not 6 have information at trial on how we could do that -- 7 MR. JIMMERSON: Correct. 8 THE COURT: -- when I looked through all the 9 evidence. That's very true. 10 MR. JIMMERSON: But then say I can't read 11 your mind, you would need to tell us whether you 12 intended that to be a final judgment on the monetary 13 issues and the -- 14 THE COURT: I will tell you I did not. I 15 envisioned, and I'm very honest and up front, I 16 envisioned after we did the second one, I expected, 17 after we did the supplemental and we got all that 18 worked out, and that was my second order, I envisioned 19 a final judgment. 20 MR. JIMMERSON: Okay. 21 THE COURT: And the reason I wanted that is 22 so both parties would know here's where we're at, and 23 here's, you know, especially in a case like this, and 24 everybody is a very zealous advocate, as we know, and 25 there were a lot of issues. That's why I worked so</p>
<p style="text-align: right;">Page 6</p> <p>1 MR. JIMMERSON: And you addressed all of the 2 issues that were presented by both sides at trial on 3 seven days between October and December 2013. And then 4 we also followed our request, plaintiffs' request for 5 an accounting, which the Court granted as part of its 6 findings of fact and conclusions of law of June 25. 7 THE COURT: Right. 8 MR. JIMMERSON: So what we had at that point, 9 in my judgment, was, and my interpretation of what you 10 had done is a final order and judgment. You didn't use 11 the word "judgment." 12 THE COURT: I did not. 13 MR. JIMMERSON: Okay. But you used the word 14 "order" where you have findings of fact, conclusions of 15 law and order that resolves all matters with regards to 16 our breach of contract, our breach of the implied 17 covenant of good faith and fair dealing and our need 18 for accounting, and you then granted our request which 19 we had made to you in our opening statement and 20 throughout the trial and our closing statements that 21 there be a second proceeding of some sort. 22 THE COURT: Right. I wanted supplemental 23 briefing on how we were going to decide, since I 24 granted the accounting, how we can agree this should be 25 done based on the evidence.</p>	<p style="text-align: right;">Page 8</p> <p>1 hard, you know, I'm not asking for -- I worked so hard. 2 MR. JIMMERSON: I understand. 3 THE COURT: I'm just saying that's why I 4 tried to be as explicit as I could in this one, and I 5 envisioned that going into a judgment. 6 MR. JIMMERSON: All right. 7 THE COURT: So I did, and that's why I did 8 not put "judgment." 9 MR. JIMMERSON: Okay. 10 THE COURT: I'll be honest, I thought about 11 it until I realized I need the supplemental briefing on 12 what we were gonna do on the accounting, and I wanted a 13 judgment under 58(a) to have no questions. 14 MR. JIMMERSON: Right. 15 THE COURT: And where each party, especially 16 in a case like this, I will tell both of you, since 17 there are future duties based on what Pardee may do in 18 the future, that's why, that's why I did what I did. 19 And if I would have found enough facts and 20 evidence in what was given at the trial to have done 21 the accounting thing, I would have, but until I ruled 22 on the accounting, I, I looked for -- there was not 23 enough evidence for me to feel comfortable in saying 24 what Pardee should do to comply with that future. 25 I felt like, and I'll be -- I, I wanted more</p>

<p style="text-align: right;">Page 9</p> <p>1 information to be able to then complete that part of 2 the order. 3 MR. JIMMERSON: And we agree, because -- 4 THE COURT: Okay. And that's why. In fact, 5 you agreed because you all worked on it for me very 6 hard. 7 MR. JIMMERSON: And in the fall of -- 8 THE COURT: I agree both of you worked very 9 hard to get me that -- 10 MR. JIMMERSON: Okay. 11 THE COURT: -- supplemental order, and that's 12 why I also didn't put "judgment" on that when it was 13 given to me, can I be very honest, on the one, and you 14 want me to be, 5/13/2015. 15 MR. JIMMERSON: May 13, yes, your Honor. 16 THE COURT: I'm telling you in my head that's 17 why when I had these two, then I did envision a final 18 judgment. 19 MR. JIMMERSON: Okay. 20 THE COURT: So we would have one document so 21 both parties would know where we're at, what was owed 22 and what was then -- and then I envisioned after the 23 judgment that we then would have the costs and the 24 attorney's fees and all the post-judgment, so I did, I 25 will be honest.</p>	<p style="text-align: right;">Page 11</p> <p>1 figured out what happened. 2 MR. JIMMERSON: If you, as you've been very 3 clear now to say that no, you did not intend, even with 4 the supplemental amendment of findings of fact, 5 conclusions of law in May of 2015 to have served as the 6 final order of the Court. 7 THE COURT: Final judgment. 8 MR. JIMMERSON: Final judgment then. 9 THE COURT: And that is why did I not put the 10 word "judgment." I thought about it, I mean I did, I 11 addressed it, but I did not for those reasons. 12 MR. JIMMERSON: Okay. 13 THE COURT: Because I wanted to have what 14 needed to be done with accounting, and I wanted one 15 document, a judgment, so that both the plaintiffs, 16 especially with these future issues, and Defendant 17 Pardee would know, especially on a case like this, 18 here's the document, here's what it means, especially 19 after this case, when -- 20 MR. JIMMERSON: Right. 21 THE COURT: -- I wanted to make sure what was 22 done here was explicit for both parties so hopefully 23 you would understand so we don't have any more 24 litigation over this commission agreement. 25 MR. JIMMERSON: Let me just finish.</p>
<p style="text-align: right;">Page 10</p> <p>1 MR. JIMMERSON: Okay. Well, then you have 2 resolved the matter. 3 THE COURT: Okay, so that's, that's why. So 4 that was when I -- 5 MR. JIMMERSON: The purpose for our, the 6 purpose for our motion, just so I can complete my 7 statement, was when you did issue your what is called 8 your amendment to findings of fact and conclusions of 9 law, your May 13th, 2015 supplemental order -- 10 THE COURT: Correct. 11 MR. JIMMERSON: -- that in our judgment 12 completed -- 13 THE COURT: No. 14 MR. JIMMERSON: -- your decision making 15 relative to facts and law and final order. No one took 16 an appeal from either order, June of '14 or May of 17 2015, so that became a final order. That is why I did 18 not believe it appropriate for Pardee to submit a 19 judgment as it did in the middle of June. 20 THE COURT: Right, and why you might not have 21 been looking for it. 22 MR. JIMMERSON: Well, I wasn't, correct. 23 THE COURT: I, I have put this all together. 24 MR. JIMMERSON: Okay. 25 THE COURT: It's like anything else, I</p>	<p style="text-align: right;">Page 12</p> <p>1 THE COURT: That's why I did it that way. 2 That's why when I got a judgment, I was not, I was 3 expecting it. 4 MR. JIMMERSON: Got it. 5 THE COURT: Does that makes sense? 6 MR. JIMMERSON: It does. 7 THE COURT: If I hadn't, I would have called 8 both parties and said, I don't expect a judgment. 9 MR. JIMMERSON: Let me just say that over 10 many years of litigation, as you have seen as well and 11 opposing counsel, I'm sure, that orders can be 12 interpreted -- 13 THE COURT: Absolutely. 14 MR. JIMMERSON: -- as a judgment and as 15 final -- 16 THE COURT: Absolutely. 17 MR. JIMMERSON: -- and appealable within the 18 Nevada rules of appellate procedure. 19 THE COURT: I agree with you. 20 MR. JIMMERSON: But nonetheless, if this was 21 your intent, then so be it. 22 THE COURT: I agree with you. That's why -- 23 but that was my intent. 24 And I want you to understand my thought 25 process, so that's why I did that, and my once again my</p>

<p style="text-align: right;">Page 13</p> <p>1 thought process, I want one judgment so both parties 2 will know here's where we're at, I mean, and make it as 3 explicit -- and that's why I went into as much detail 4 on the findings of fact from my order of 6/25/2014, and 5 that's why I worked diligently with you, as you know, 6 to come up with a supplemental. 7 And you worked together, I commend both of 8 you, so we could actually resolve that supplemental 9 issue on the accounting, so that's why I wanted a 10 supplemental, and you did, order on findings of fact, 11 okay? 12 MR. JIMMERSON: Very good. 13 THE COURT: So based on that, I hope I did it 14 right, I'm doing them in order here, I'm denying that 15 just pursuant to NRCP 58(a), that I did envision, I did 16 want a judgment, and that was this Court's intent on 17 this case, okay? 18 MR. JIMMERSON: Okay. 19 THE COURT: And I'm not -- okay. So that 20 takes -- I'm gonna put them here in order. 21 Okay. Then number two, this is plaintiffs' 22 motion pursuant to NRCP 52(b) and 59(a) to amend the 23 Court's judgment entered on June 15th, 2015, to amend 24 the findings of fact, conclusions of law and judgment 25 contained therein, specifically referring to the</p>	<p style="text-align: right;">Page 15</p> <p>1 case, whether it be a good practice or a poor practice, 2 I, personally, do not review many of my emails or any 3 of my emails on a daily basis. I have staff helping 4 me. This became an issue in this case prior to June of 5 2015. 6 In the fall of 2014, the defendant, Pardee, 7 through counsel, submitted a document to me by email 8 only and to myself addressed only and to no other staff 9 which I did not read. 10 By virtue that we had hearings and I 11 communicated my objection to that to the Court and my 12 custom and practice of not reviewing email, I wrote 13 correspondence to opposing counsel of Pardee, 14 explaining that and that I wanted to make sure that 15 they added my secretary, who still remains my 16 secretary, Kim Stewart, and the associate assigned to 17 the case at the time, which was Burak Ahmed, and so the 18 defendant clearly knew that sending me an email had a 19 fair chance of not being read based upon its prior 20 experience. 21 This repeated itself in June of 2015, as the 22 Court sees. The judgment as proposed by defendant was 23 submitted to me by an email, copied to no one, despite 24 my prior request that it be sent to my secretary, who 25 remained the same, and to the associate on the file.</p>
<p style="text-align: right;">Page 14</p> <p>1 language included in the judgment at Page 2, Lines 8 2 through 13 of the judgment, at Page 2, Lines 18 through 3 23, to delete the same or amend the same to reflect the 4 true fact that plaintiff prevailed on their entitlement 5 to the first claim for relief for an accounting and 6 damages for their second claim for relief of breach of 7 contract, and their third claim for relief for breach 8 of the implied covenant of good faith and fair dealing, 9 and that that defendant never received a judgment in 10 its form and against plaintiffs whatsoever as it 11 mistakenly stated within the Court's latest judgment, 12 and you were referring to the June 15th, 2015, okay. 13 This is the nuts and bolts. This is where 14 we're going now. 15 MR. JIMMERSON: Right. 16 THE COURT: Okay. 17 MR. JIMMERSON: All right, Judge. Thank you. 18 THE COURT: You're welcome. That's the place 19 to start. 20 MR. JIMMERSON: As the Court has properly 21 noted, we did not anticipate the need for a third 22 document called "Judgment," which the Court has already 23 discussed with us, and the Court's indicated otherwise 24 that it did want this judgment. 25 Now, as you saw from the history of this</p>	<p style="text-align: right;">Page 16</p> <p>1 That was not complied with. 2 You then received the judgment, and you, like 3 many other fine jurists, pause when you receive a 4 document like that. You don't immediately sign it the 5 next day, not only because you might have many other 6 things to do at that moment, but as a matter of good 7 practice. 8 THE COURT: Uh-huh. 9 MR. JIMMERSON: You want to make sure that 10 both side have some opportunity to object, to 11 communicate between themselves, you know, to take some 12 action to advise the Court with regard to the propriety 13 of entering such a document. 14 THE COURT: Well, it's not just, I will tell 15 you right now it's not just good practice, it's the 16 rules of this Court, the rules of this Court from the 17 beginning on this. And I actually have spent a long 18 time, the rules of Department IV have always been, from 19 the beginning, and they were complied with, I looked 20 back in the history, that when there is an order for a 21 -- and I consider a judgment an order, that it is to be 22 signed as to form and content and approved, whoever 23 drafted it, approved by the other, or then my rule is 24 if not, then if someone submits one that has not had 25 the approved to form and content, I am to receive</p>

<p style="text-align: right;">Page 17</p> <p>1 either a letter or information why, what efforts they 2 made, and if the other side wants to do it, they are to 3 either send me a letter to explain here's why we don't 4 approve it, or send me another proposed. 5 MR. JIMMERSON: Agreed. 6 THE COURT: I don't sign orders -- and I 7 looked back through this case, because that has been my 8 practice since I've been on the bench, since July of 9 2012, and I looked back, and this case did exactly 10 that, whether it was Ms. Lundvall's firm or whether 11 your firm, gave me the orders, and I looked back all 12 the way from 10/23/2013 it was done that way, 13 1/25/2013, 3/14/2013, 4/12/2013, 5/30/2013, 6/5/2013, 14 7/23/2013, 10/8/2013, 8/14/2014 and 5/13/2015. 15 The only order other than this judgment of 16 6/15/2015 that was not approved for form and content is 17 one done by Judge Bonaventure when I was, I think I was 18 at the judicial college that week, but whenever it was, 19 when there was a collection issue that I wasn't here, I 20 did not sign that. 21 My other ruling is when a senior judge or 22 someone else sits in here, I will not sign their orders 23 unless they either give me a letter or -- because I 24 can't always tell by minutes what exactly happened. 25 That is the only one.</p>	<p style="text-align: right;">Page 19</p> <p>1 MR. JIMMERSON: And what's deeply offensive 2 by Pardee here is that they knew that I don't read this 3 and I had requested them to have them sent to my staff 4 by virtue of there had been an issue in the fall of 5 2013 in a court hearing we had here in which 6 communication I had directly with Pardee's lead counsel 7 that they include in my staff, which they did not do in 8 the following June. 9 THE COURT: Okay. 10 MR. JIMMERSON: Now, when I say I can't look 11 into your mind, I want to say that again, but one thing 12 we can say is that this Court worked very hard and made 13 rulings in the findings of fact and conclusions of law 14 and order that you would recall, you know as your 15 findings -- 16 THE COURT: Absolutely. 17 MR. JIMMERSON: And let me say that if you, 18 and I have done this, if you compare your order to the 19 proposed findings of fact, conclusions of law of the 20 plaintiff and as the defendant, you drew upon both as 21 well as making your own independent findings within 22 this judgment, so it is very clear to me -- 23 THE COURT: I did not adopt your findings. 24 MR. JIMMERSON: Correct. 25 THE COURT: And did I not adopt --</p>
<p style="text-align: right;">Page 18</p> <p>1 So for the record, this judgment of 2 6/15/2015, it's not my good practice that I would 3 pause, it didn't comply with the known practice and the 4 standard order of this Court that both of you are aware 5 of and you complied with until this one on 6/15. 6 MR. JIMMERSON: This order -- 7 THE COURT: So I wanted that in the record. 8 And I looked back to make sure if for some reason I had 9 made a waiver in this case, and I certainly had not. 10 MR. JIMMERSON: And the Court should -- 11 THE COURT: I wanted that on the record. 12 MR. JIMMERSON: Thank you. 13 And the Court should note, of course, that I 14 was not given that opportunity to sign off on this 15 document. 16 THE COURT: It's my understanding from your 17 affidavit you were not. 18 MR. JIMMERSON: Correct. They sent me an 19 email that included this document. They knew that I 20 don't read my emails as a matter of course. They then 21 submitted it to you in a day or two following that and 22 you signed it, but on the face of the document the 23 judgment is very clear that I did not sign off on that, 24 and just the face of the document evidences the same. 25 THE COURT: It does.</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. JIMMERSON: Correct. 2 THE COURT: I literally spent a week of my 3 time off, I'm paid a lot, I'm supposed to do that, to 4 do that for you. 5 MR. JIMMERSON: Exactly. 6 THE COURT: So don't -- all you have to do is 7 look at your two proposed and you will see that's not 8 what I did. 9 MR. JIMMERSON: Absolutely right. 10 THE COURT: And I reviewed all the testimony 11 again, because as you recall, unfortunately after your 12 next week of trial, I had to start the Actos trial. 13 MR. JIMMERSON: Right. 14 THE COURT: Hopefully I never have to do that 15 again, I've learned if I do a bench trial I'm not gonna 16 let them back me up, but you learn when things happens. 17 So I will tell you for the record I read 18 every transcript again. I, wherever I sat, at home, I 19 read every -- because honestly, it's like the trier of 20 fact, I can't remember all of the testimony and it was 21 extensive. And we had that break also, remember, 22 Mr. Jimmerson? 23 MR. JIMMERSON: Yes, your Honor, I do. 24 THE COURT: Okay. So that is true. 25 MR. JIMMERSON: The point being that you well</p>

<p style="text-align: right;">Page 21</p> <p>1 know more than opposing counsel or myself your intent 2 and -- 3 THE COURT: I do. 4 MR. JIMMERSON: -- your convictions with 5 regard to the entry of findings, conclusions, and the 6 final order that you entered on June 25th of 2014 as 7 supplemented by your amended findings of May 13th of 8 2015. 9 Speaking to your findings of fact and 10 conclusions of law and order of June of 2014, you know, 11 having listened to all the testimony, from opening 12 statements to closing remarks and all the testimony in 13 between, that there was never a claim by the plaintiff 14 for \$1.9 million in damages that you have found in the 15 judgment that was asserted improperly by Pardee as part 16 of this judgment submitted to you in June and that you 17 signed on that date. 18 Here specifically what the finding says that 19 we ask pursuant to this motion be stricken or deleted, 20 and as you properly noted, Judge, it's at Page 2, 21 Lines 8 through 17, and again at Page 2 at Lines 18 22 through 23. 23 THE COURT: I marked it up. I got it. 24 MR. JIMMERSON: Plaintiffs' claimed 25 \$1,952,000 in total damages related to their causes of</p>	<p style="text-align: right;">Page 23</p> <p>1 THE COURT: Absolutely, I saw the dominoes. 2 MR. JIMMERSON: So I'm speaking to this -- 3 THE COURT: I worked on it. 4 MR. JIMMERSON: This is the central issue in 5 all seven motions, and once you resolve this, it will 6 help resolve every other issue. 7 THE COURT: I'm aware of that. I analyzed 8 it. I'm very aware of that, Mr. Jimmerson. Believe 9 me, I'm aware of that. 10 MR. JIMMERSON: All right. Judge, I think 11 that Pardee is really acting in bad faith by making 12 this type of a finding and making this kind of order, 13 which would never have been approved by me had I seen 14 it. Let's go through it. 15 The deposition of James Wolfram that was 16 taken in 2013 just before trial, at page -- it was also 17 taken in 2011. It was two volumes of the deposition of 18 James Wolfram, but reading from the deposition of 19 November 8th, 2011, Page 102, Ms. Lundvall, on behalf 20 of Pardee, asked Mr. Wolfram, on behalf of the 21 plaintiffs, she said this: 22 All right. Can you tell me -- I'm reading 23 from Lines 7 through 9 of his deposition. 24 All right. Can you tell me how much that you 25 believe you've been damaged, sir, and that</p>
<p style="text-align: right;">Page 22</p> <p>1 action. Specifically, Plaintiffs' claim \$1,800,000 in 2 damages related to lost future commissions from 3 Pardee's purported breach of the commission agreement, 4 \$146,500 in attorney's fees incurred as special damages 5 and for prosecuting the action, and \$6,000 in 6 consequential damages for time and effort expended 7 searching for information regarding what Pardee 8 purportedly owed them under the commission agreement. 9 And you make the order based on that Lines 18 10 through 22, It is hereby ordered, adjudged, and decreed 11 that judgment is entered against the plaintiffs and for 12 Pardee as to plaintiffs' claim for \$1,800,000 in 13 damages related to lost future commissions under the 14 commission agreement. 15 Pardee has not breached the commission 16 agreement in such way, any way in which as to deny 17 plaintiffs any future commissions, and Pardee has paid 18 all commissions due and owing under the commission 19 agreement. 20 This is a phony assertion of words that are 21 not supported by your findings of fact, conclusions of 22 law, and it's an attempt by them which followed 23 immediately after this for this ridiculous claim for 24 attorney's fees, that somehow they were the prevailing 25 party. You see the dominoes that fall.</p>	<p style="text-align: right;">Page 24</p> <p>1 you're seeking to recover from Pardee? 2 Mr. Wolfram: I can't. I don't know enough 3 about what I'm talking about. I don't know 4 enough about what I'm talking about. That's 5 the reason this whole thing has come about. 6 I can't tell you that. I don't have enough 7 information, end of quote. 8 That's during discovery, and that's Pardee's 9 direct inquiry. It is the only inquiry that Pardee 10 makes with regard to plaintiffs' damages. They never 11 serve any interrogatories, they never serve any 12 requests for production of documents that speak to 13 damages. They never inquire about that. 14 Nowhere in the opening statement does the 15 defendant speak to \$1.8 million. Nowhere does the 16 plaintiff speak to \$1.8 million. The \$1.8 million only 17 appeared as a number in two places, and I will tell you 18 exactly where they are, and none of them are part of 19 the court record in terms of the trial. 20 The first reference to \$1.8 million is filed 21 as a 16.1 supplemental disclosure by plaintiff in 22 2 thousand -- is it '11 -- 2013, that said that if the 23 30,000 acres were all designated single-family 24 production residential property as defined under the 25 option agreement, and if you were to take a \$40,000 per</p>

<p style="text-align: right;">Page 25</p> <p>1 acre, and multiply that over the number of acres that 2 are being built out over the next 40 years, and you 3 multiply that by 1.5 percent, our clients could be 4 entitled to up to \$1.8 million in damages, period. 5 That's it. 6 The second time that that number was raised 7 was in our opposition to the plaintiffs' motion for 8 summary judgment that was argued and briefed in 2013, 9 which was denied by the Court in denying the defense's 10 motion for summary judgment, where we stated that up to 11 30,000 acres could lead to future commissions of 12 \$1.8 million. 13 Neither one of those references were ever 14 introduced into evidence or spoken to you, and I say to 15 you more than anything, and we can talk for seven hours 16 today, but in the next three minutes, you can answer 17 this question. 18 Did you hear any testimony by the plaintiff 19 or by the defendant or any rebuttal or opposition by 20 the defendant or the plaintiff of any claim of 21 \$1.8 million? The answer is no. How do we know that? 22 Because you start with the opening statement of 23 plaintiff, Mr. Jimmerson, the opening statement of 24 Pardee, Ms. Lundvall. There's not one reference to a 25 claim for future commissions of \$1.8 million that is</p>	<p style="text-align: right;">Page 27</p> <p>1 THE COURT: The Court disagreed. 2 MR. JIMMERSON: Agreed. 3 THE COURT: I looked at the evidence, but 4 that's what you were talking about. 5 MR. JIMMERSON: That's exactly -- 6 THE COURT: Not future, as in future that I 7 would have thought of by this accounting. 8 MR. JIMMERSON: Correct. 9 THE COURT: So it wasn't future, so that was 10 very unclear until I -- 11 MR. JIMMERSON: Right. 12 THE COURT: That was not what it really was, 13 it was potentially past commissions -- 14 MR. JIMMERSON: You got it. 15 THE COURT: -- under the commission agreement 16 letter, which I'm, I almost know word for word right 17 now, the commission agreement based on your 18 interpretation, what your interpretation was. I 19 understood it. I read the testimony. 20 MR. JIMMERSON: Right. 21 THE COURT: Which I admit, during trial I did 22 not, I did not find that I thought any would be due and 23 owing. 24 MR. JIMMERSON: I understand. 25 THE COURT: There was never anything that I</p>
<p style="text-align: right;">Page 26</p> <p>1 due now. Not anything. 2 What is said, in fact, to you in our opening 3 statement by myself is we don't know. We're looking 4 for whether or not future commissions are owed. We 5 need the information. 6 THE COURT: And by "future commissions," you 7 mean if I had agreed that when they change, where -- 8 the option property, and if I had agreed with that, 9 that your claim was that they had already, Pardee had 10 already sold to -- bought from CSI, what property that 11 was option property, and that would have been due and 12 owing. 13 MR. JIMMERSON: Correct. 14 THE COURT: Under the commission. 15 MR. JIMMERSON: Right. 16 THE COURT: So when you say "future," that's 17 not really -- that's, that's -- I don't understand that 18 one, because not future, not for future if they were 19 selling in the future, but may have been owed if, once 20 you got all those documents and all those amendments 21 and we had discussion, I understand it completely, I 22 went through it, you felt like your position was that 23 they had already sold property under that option 24 agreement. 25 MR. JIMMERSON: Right.</p>	<p style="text-align: right;">Page 28</p> <p>1 -- I don't even remember if I had gone that way how I 2 would have figured an amount out. In fact, when I was 3 looking at it, I'm not gonna go through it, I didn't. 4 MR. JIMMERSON: Right. 5 THE COURT: I didn't go there, because I 6 found that I did not feel that what I said -- 7 MR. JIMMERSON: Right. 8 THE COURT: It's in my findings. 9 MR. JIMMERSON: Right. 10 THE COURT: I told you my reasoning. I did 11 not feel that there was anything more due and owing. 12 MR. JIMMERSON: You're correct. 13 THE COURT: And I felt that they -- that was 14 my choice. I was the trier of fact. I felt that the 15 changes that were done did not make it option property 16 and did not make it something that commissions were -- 17 I was very clear, and that was obviously -- 18 MR. JIMMERSON: I'm really glad, I'm really 19 glad that you prepared for today's hearing. You are a 20 hot bench right now. You really know this stuff. 21 THE COURT: Well, this -- 22 MR. JIMMERSON: So thank you. 23 THE COURT: I invested so much time for both 24 of you, I felt in my heart. I wanted this right, you 25 know.</p>

<p style="text-align: right;">Page 29</p> <p>1 This, this is the most distressful thing I've 2 ever gone through, I'll be honest, because, you know, 3 you work so hard, and, you know. 4 MR. JIMMERSON: Right. So I can explain to 5 you -- 6 THE COURT: It's a tough job. You work so 7 hard because I, as any judge would do, this was so 8 important -- 9 MR. JIMMERSON: So you understand. 10 THE COURT: -- that this be done right for 11 both of you, very much so. Whether you agree how I do 12 it or not, I certainly have put the time in and am 13 trying very hard to do what's fair for both of you, as 14 I'm supposed to. That's my job. 15 MR. JIMMERSON: You bet. 16 THE COURT: I'm not asking that you say, Good 17 Job, Earley, you're doing your job. That is my job. 18 But right or wrong, I will tell you I have invested the 19 time that I know was required, not only for all the 20 motions prior for the trial, but for all of this. 21 MR. JIMMERSON: Well, this motion certainly 22 is -- 23 THE COURT: You're not having a judge that 24 doesn't get it. I get. 25 MR. JIMMERSON: This motion is aimed at the</p>	<p style="text-align: right;">Page 31</p> <p>1 enough evidence within the option agreement and its 2 amendments to evidence that Pardee had the right to go 3 horizontally to the east and not vertically to the 4 north within Parcel 1. That's something we obviously 5 didn't agree with, but that was your findings. 6 THE COURT: That was my findings from looking 7 at the evidence, absolutely. 8 MR. JIMMERSON: But the important, the 9 pertinent part as a result of that is, as you correctly 10 characterized and analyzed what the issues were, there 11 was never a claim by Jim Wolfram or Walt Wilkes at 12 trial or in their depositions that they had an existing 13 obligation owed to them by Pardee of \$1.8 million or 14 any number that even resembled such a number. 15 His only claim for damages when he was asked 16 about that by Pardee's counsel, Ms. Lundvall was, I 17 spent, you know, hours trying to find information. I 18 used \$80 an hour. The Court awarded \$75 an hour, and 19 so I'm entitled to \$7,200. The Court awarded \$6,000, 20 and then the Court -- 21 THE COURT: That was based on the evidence. 22 MR. JIMMERSON: Right. And the Court looked 23 upon the testimony that I offered, as provided by the 24 Supreme Court rules, of approximately \$146,500. The 25 Court awarded \$135,500, combined for a judgment of</p>
<p style="text-align: right;">Page 30</p> <p>1 improper insertion of a finding that was not 2 appropriate. Certainly it was not something the Court 3 did. The Court found actually otherwise, the reverse 4 of that, in your order. 5 Just so you understand, the \$1.8 million is 6 based upon a theoretical purchase of all the remaining 7 property and assuming that all of it's designated by 8 Pardee as single family over the next 30 years. That's 9 how you got the \$1.8 million. This case wasn't about 10 \$1.8 million. It was exactly what you said. 11 We believed, which you found differently, but 12 we believed they only had the right to build within 13 Parcel 1, and if they went east of Parcel 1 it would be 14 the exercise of option property. 15 THE COURT: And that would have been past 16 damages. 17 MR. JIMMERSON: Exactly. And the amount of 18 those acres was unknown to us, because we didn't know 19 how much was to the east of the line on the east side 20 of Parcel 1, and that's why we were asking for the 21 accounting. 22 Now, you resolved that against the 23 plaintiffs -- 24 THE COURT: I did. 25 MR. JIMMERSON: -- and said that there was</p>	<p style="text-align: right;">Page 32</p> <p>1 \$141,500. That's what the Court did. The Court found 2 that there were no further commissions due and owing 3 because the Court found they had the right to build 4 east horizontally. I'm with you. 5 THE COURT: I was very detailed in my 6 findings of fact and conclusions of law and order. 7 MR. JIMMERSON: And the last part of that 8 was, as you know, during the course of the trial and 9 having listened to the testimony of Lash, Andrews, and 10 Whittemore, we double checked the County Commission 11 records and found that they had redesignated a 12 multi-family parcel, Res. 5, if you remember the map. 13 THE COURT: To single. 14 MR. JIMMERSON: To single-family production 15 real estate, and you ruled against us again there. 16 THE COURT: I did. 17 MR. JIMMERSON: Where you said -- 18 THE COURT: Based on the evidence. 19 MR. JIMMERSON: -- that the redesignation 20 would not entitle the plaintiffs to those damages. 21 THE COURT: Right. 22 MR. JIMMERSON: And as you've seen in both 23 the proposed findings that the plaintiffs submitted as 24 well as the testimony that Res. 5 was in the ballpark 25 of a 50 acre parcel which you could you multiply times</p>

<p style="text-align: right;">Page 33</p> <p>1 40,000 times 1/2 would be about a \$30,000 commission. 2 And we didn't know what that would be, that would be 3 something you would take up in the second part of the 4 trial, accounting trial, which was obviated by the 5 Court's ruling that they could redesignate. 6 THE COURT: I agree with that. I agree with 7 that in the record, yes, I do. 8 MR. JIMMERSON: So what I have to say to you 9 is sort of like this: If you stick to your guns with 10 regard to your findings of fact and conclusions of law 11 and order, then you can clearly see how Defendant 12 Pardee has misled the Court and has inserted a finding 13 that led to an order that somehow they prevailed in 14 this case is completely a mischaracterization and 15 distortion of this trial. 16 I want to go further, because there's just 17 nothing -- again, it's just a preposterous suggestion. 18 Judge, in the opening statement by either party, no one 19 raises the \$1.8 million. Number two, nobody ever 20 claims that that's been done, because the \$1.8 million 21 on its face is a hypothetical calculation of if 30,000 22 acres of option property in the next 35 years from the 23 time of trial were exercised, that would be a possible 24 commission due to the plaintiff. 25 THE COURT: Right.</p>	<p style="text-align: right;">Page 35</p> <p>1 Parcel Map 1, would have been option property. I got 2 it. 3 THE COURT: You can disagree, but -- 4 MR. JIMMERSON: Right. But that certainly 5 does not obviate the need and the obligation of Pardee 6 to pay a future commission in the event they, in the 7 future, by additional property, designate it 8 single-family production residential property, and that 9 would entitle the plaintiffs to additional commission. 10 In fact, you remember the testimony of 11 Jon Lash was that the next purchase by Pardee of option 12 property will be a commissionable event owed to the 13 plaintiffs. 14 THE COURT: And that's why we have the 15 supplement. 16 MR. JIMMERSON: Exactly. 17 THE COURT: To say if they do it, you'll have 18 the information, you'll be on the same page, and you'll 19 know that it was option property that was pursuant to 20 the commission agreement. 21 MR. JIMMERSON: The findings -- 22 THE COURT: I understand that. 23 MR. JIMMERSON: The findings of fact, 24 conclusions of law of yourself that was entered in 25 June --</p>
<p style="text-align: right;">Page 34</p> <p>1 MR. JIMMERSON: That's all, but everybody 2 understood that that wasn't the case. The case here 3 was for information. The breach of contract was 4 failure to give information. The first claim was for 5 an accounting. The second claim was for breach of 6 contract, not for money damages due and owing, but for 7 information, and the third is the breach of implied 8 covenant of good faith and fair dealing. 9 So all I'm gonna try to say to you is this, 10 You have the affidavit of plaintiffs' lead counsel who 11 says 90 percent of our time was devoted to defeating 12 their claim for \$1.8 million. Well, first of all, if 13 you just calculate the amount of time that they charged 14 their client, as evidenced by their bills through the 15 time in 2013 when this fifth disclosure was made, they 16 already had 20 percent of their time already expended, 17 so it couldn't be 90 percent, but beyond that, when you 18 look at the entries of their, the specific entries 19 within their billings, you don't see any reference to 20 \$1.8 million. It's just a phony claim. 21 What they won in your finding was that there 22 was no present commissions due to the plaintiffs beyond 23 what had been paid because the Court found that it had 24 the right, Pardee had the right to build east 25 horizontally and to, and that, at least in the first</p>	<p style="text-align: right;">Page 36</p> <p>1 THE COURT: June 25th, 2014, right. 2 MR. JIMMERSON: It makes no reference to a 3 \$1.8 million and makes no reference to the defendant 4 Pardee prevailing at all. I know you have but I did it 5 again, of course in preparation, read every single 6 finding of fact and conclusions of law of your findings 7 of fact, conclusions of law order, and you will find 8 the following: 9 One, that an accounting is warranted. The 10 first claim for relief by the plaintiffs is warranted, 11 and there will be an accounting that we will determine 12 how to do that by briefs 60 days from then, and that 13 there was an entitlement to accounting because of the 14 special relationship that existed between the 15 plaintiffs and Defendant Pardee because of the reliance 16 and the need, you know, and control that the plaintiffs 17 needed of the defendants and the defendant's control of 18 all the information that would be able to be and was 19 required by contract to be provided the plaintiffs that 20 hadn't been provided. 21 And third, that there had been an intentional 22 bad faith withholding of information, particularly as 23 it related to designation of property that the 24 defendant owed to the plaintiffs, and therefore, the 25 plaintiffs were entitled to accounting and we will do</p>

<p style="text-align: right;">Page 37</p> <p>1 so by supplemental brief.</p> <p>2 That's your findings with regard to the first</p> <p>3 claim.</p> <p>4 You have to understand from this case, and I</p> <p>5 know you do, this was never a case of plaintiffs are</p> <p>6 entitled to commissions in the amount of blank dollars.</p> <p>7 Read the complaint, read the second -- first amended</p> <p>8 complaint and the second amended complaint, they all</p> <p>9 say the same thing, the breach of contract is the</p> <p>10 failure to provide the information that this special</p> <p>11 relationship and superior knowledge that Pardee had,</p> <p>12 and we don't know whether or not there's additional</p> <p>13 monies due and owing, and if there is we want them to</p> <p>14 be paid to us but we need that information. And that</p> <p>15 was consistent throughout the case. You couldn't have</p> <p>16 found a more conservative complaint by any plaintiff</p> <p>17 against any defendant.</p> <p>18 These plaintiffs are taking on the behemoth</p> <p>19 of Pardee. They filed a complaint because they had</p> <p>20 written four or five letters beforehand requesting the</p> <p>21 information and they were not provided it.</p> <p>22 Mr. Lash independently tells Chicago Title</p> <p>23 not to give information to Mr. Wolfram, and the Court</p> <p>24 makes that finding within its orders. So when you look</p> <p>25 at that, you have your Court's specific findings,</p>	<p style="text-align: right;">Page 39</p> <p>1 find breach of that. There was certainly a covenant</p> <p>2 that ran with this contract, and the covenant of good</p> <p>3 faith and fair dealing was not complied with by Pardee,</p> <p>4 I find a breach and I find the same damages of</p> <p>5 \$141,500, and you have entered the order that says so,</p> <p>6 and then you have the accounting in 60 days.</p> <p>7 So I want you to know how preposterous, it's</p> <p>8 the only word I thought of it can be, you know. I</p> <p>9 could be melodramatic. I don't want to do that. I</p> <p>10 want to be as professional as we all can be, but it's a</p> <p>11 preposterous claim this be inserted into a complaint.</p> <p>12 You don't make any findings, any findings that the</p> <p>13 defendant prevailed. You don't make any findings</p> <p>14 that's in this judgment that says that the Court has</p> <p>15 ordered judgment in favor of defendant and against the</p> <p>16 plaintiff on this issue at all. It's not referenced</p> <p>17 anywhere. Why? Because it was not an issue tried at</p> <p>18 trial.</p> <p>19 I have gone back and have provided to you in</p> <p>20 this record the proposed --, the opening statements --</p> <p>21 well, I've given you the entire transcript. We have</p> <p>22 the entire transcript. It's part of the record, the</p> <p>23 entire transcript. There's not one word of</p> <p>24 \$1.8 million or the plaintiffs' claim for \$1.8 million.</p> <p>25 and therefore, your Honor, you should enter a judgment</p>
<p style="text-align: right;">Page 38</p> <p>1 plaintiff prevails as to the accounting.</p> <p>2 Second claim for relief, breach of</p> <p>3 contracted, granted. I find that there was a contract,</p> <p>4 I find that the duties of the plaintiffs have been</p> <p>5 fully satisfied, I find the duties of the defendant</p> <p>6 were not satisfied and that they did not provide the</p> <p>7 information required to do so, and I find in favor of</p> <p>8 the plaintiffs.</p> <p>9 What damages do I award? I award the special</p> <p>10 damages pursuant to Sandy Valley of the time and effort</p> <p>11 of Mr. Wolfram pursuant to decisional law both in</p> <p>12 California and elsewhere that allows for that in the</p> <p>13 modest amount of \$6,000, and I allow \$135,500 in</p> <p>14 attorneys fees out of I think we requested about</p> <p>15 \$146,000 in attorney's fees, that I'm satisfied is</p> <p>16 directly and devoted and required only as the result of</p> <p>17 the failure of the defendant to provide the information</p> <p>18 it was obliged to do, and that's the judgment, \$141,500</p> <p>19 plus interest as we go forward.</p> <p>20 That's your findings on breach of contract,</p> <p>21 and you were very specific to find there was a breach,</p> <p>22 and you find the bad faith of the defendant with regard</p> <p>23 to the failure to provide this information.</p> <p>24 The third claim for relief, breach of the</p> <p>25 implied covenant of good faith and fair dealing, you</p>	<p style="text-align: right;">Page 40</p> <p>1 in favor of us to say that we defeated them on that</p> <p>2 issue.</p> <p>3 In the opening statement of Pat Lundvall</p> <p>4 doesn't reference one thing about, you know, your</p> <p>5 Honor, the plaintiffs are making a claim of</p> <p>6 \$1.8 million, and you need to make a finding against</p> <p>7 them. That wasn't an issue, because it was a</p> <p>8 theoretical mathematical calculation of all the rest of</p> <p>9 the 30,000 acres, all of it being designated as</p> <p>10 single-family production real estate, and all of it</p> <p>11 being built out for the next 35 years at the time of</p> <p>12 trial. Everybody understood that, and the testimony of</p> <p>13 Jim Wolfram from his deposition first given in 2011</p> <p>14 right through the present evidenced that.</p> <p>15 My opening statement is recorded in our</p> <p>16 briefs. It simply states, Judge, this is a case about</p> <p>17 a need for information and the damages that followed</p> <p>18 therefor.</p> <p>19 The trial, at the trial Mr. Wolfram took the</p> <p>20 witness stand on two different occasions, Mr. Wilkes</p> <p>21 went one time, and the Court may remember the</p> <p>22 difficulty that Mr. Wolfram had on the first day in</p> <p>23 terms of some of the questions that were asked, but he</p> <p>24 was on the stand for many, many hours. At no time did</p> <p>25 plaintiffs' counsel -- excuse me, defendant's counsel,</p>

<p style="text-align: right;">Page 41</p> <p>1 let alone plaintiffs' counsel, but certainly at no time 2 did defendant's counsel ask a single question about 3 \$1.8 million. At no time was Mr. Wolfram asked a 4 question like: Are you claiming today that you were 5 entitled to lost commissions of \$1.8 million? That was 6 not asked. It's not part of this case. It was simply 7 a theoretical calculation of what could be owed in the 8 event of all this happening in the next 35 years, not 9 what's going on in 2013 when this case was tried, not 10 one question about that by Pardee's counsel, not one 11 question of Mr. Wilkes with regard to that. 12 There is no evidence, there is no exhibit 13 that references \$1.8 million. There is no entry of 14 time by Jimmerson Hansen by McDonald's Carano that 15 references \$1.8 million. 16 This case was about whether or not the 17 defendant had breached its duty to provide information 18 and whether or not it owed to the plaintiff an 19 accounting for that information. That's what this case 20 is. And it was hotly contested, as the Court 21 indicated, and there was a lot of, you know, intense 22 work, and it was very, the best way to describe it, a 23 hotly contested case, but at no time did the defendant 24 at any time make reference to plaintiffs' alleged claim 25 of \$1.8 million, because plaintiff never made that</p>	<p style="text-align: right;">Page 43</p> <p>1 THE COURT: I did. 2 MR. JIMMERSON: That has no basis to be part 3 of this judgment. 4 And then what they say is: It is hereby 5 ordered, adjudged, and decreed that judgment is entered 6 against plaintiffs and for Pardee. Read your findings 7 of fact and conclusions of law. 8 THE COURT: I did. 9 MR. JIMMERSON: Is there any entry of any 10 judgment against the plaintiffs in those findings? No. 11 It is concocted. Why is that? Because there's an 12 ulterior motive by Pardee. Pardee is trying to find a 13 way to get their attorney's fees back. 14 They expended an extraordinary amount of 15 money, \$550,000 they claim in this case, and they want 16 90 percent of it returned to them because they 17 prevailed on a claim that didn't exist, that you never 18 heard, that they introduced no evidence on somehow so 19 they would have the basis to make this claim. And then 20 what happens after this judgment is entered? They 21 filed a motion for attorney's fees which you will rule 22 upon today or in the future. 23 And then based upon this alleged finding that 24 plaintiffs claim \$1,952,000 or \$1.8 million in damages 25 related to lost future damages, and therefore a</p>
<p style="text-align: right;">Page 42</p> <p>1 claim in any complaint, any amendment to that complaint 2 and any document. There's not one piece of information 3 introduced in evidence or argued to you orally that 4 references that. 5 THE COURT: Right. 6 MR. JIMMERSON: So when I saw this judgment 7 here in June of 2015, having not been given the 8 opportunity to sign off on it as the Court's standard 9 rule would require, I moved to strike this document 10 specifically, as it found your finding plaintiffs' 11 claim \$1,950,000 in total damages. 12 Judge, none of the findings of fact and 13 conclusions of law of either side, plaintiff or 14 defendant, makes any reference to this, nor, as I 15 mentioned before, was there any interrogatories or 16 requests for production of documents or requests for 17 admissions or any use of depositions, Rules 30, 33, 34, 18 36 ever promulgated by the defendant on this issue of 19 alleged entitlement to \$1.8 million. 20 And you have your own recollection, which is 21 the most important. Did the plaintiff ever make a 22 claim during the course of this trial for 23 \$1.952 million? The plaintiffs claim \$1,952,000 in 24 total damages, that was a lie. That's untrue. And you 25 heard the trial.</p>	<p style="text-align: right;">Page 44</p> <p>1 judgment is entered, it is hereby ordered, adjudged and 2 decreed that judgment is entered against the plaintiffs 3 and for Pardee as to plaintiffs' claim for \$1,800,000 4 in damages related to lost future commissions under the 5 commission agreement, that can't possibly be, because 6 as you properly stated, we don't know what purchases 7 Pardee is going to make from CSI in the future for the 8 next 35 years, so how could we possibly have won a 9 claim that's going to be over the next 35 years when 10 everyone in this courtroom will be dead? 11 Please understand that was the whole purpose 12 of this judgment, because how is Sharon or Jim's 13 children going to follow what's going on in the next 35 14 years? 15 Now, we had no idea about the transfer of 16 Weyerhaeuser and all the other things and the 17 litigation with the Seeno brothers that may have 18 affected the future events, but as we tried this case, 19 nobody was asking for \$1.8 million or the like. 20 So then they enter order is against 21 plaintiffs for Pardee as to plaintiffs' claim for 22 \$1,800,000 in damages. We never made that claim. 23 There's not a document to support that. There is not 24 one piece of testimony about it. What can I say? The 25 words \$1.8 million or a claim for anything like that, a</p>

<p style="text-align: right;">Page 45</p> <p>1 million dollars, 1.3, 1.5 was never referenced in this 2 trial. 3 I reviewed the trial transcript. It's not 4 there. I reviewed the opening statements by both 5 parties. It's not there. I reviewed the findings of 6 fact proposed by both of parties. It's not there. 7 So you tried this case. You know it was not 8 there, and so your, you know, your entry of this 9 judgment based upon, as I understand, your receiving 10 this judgment from the defense counsel for Pardee, 11 waiting some time to hear from the Jimmerson Law Firm, 12 having heard nothing you entered the judgment. 13 THE COURT: I will clear up the record on 14 exactly what happened there. 15 MR. JIMMERSON: I don't know. 16 THE COURT: I know, so I will put everything 17 on the record. 18 MR. JIMMERSON: That's fine. 19 THE COURT: The record for you is you did not 20 approve this and you did not see it, and that's what 21 you're saying as a matter of law. 22 MR. JIMMERSON: That's exactly right. 23 THE COURT: I mean as an officer of the 24 Court, and that's fine, and I -- 25 MR. JIMMERSON: Regardless, regardless of</p>	<p style="text-align: right;">Page 47</p> <p>1 MR. JIMMERSON: In your own findings you 2 granted plaintiffs as the prevailing parties and 3 against the defendant, 141,500. That's fine. 4 Let me turn to the next page of the judgment. 5 THE COURT: I got it. 6 MR. JIMMERSON: And it concludes -- I guess 7 that's it, right? 8 THE COURT: Uh-huh. 9 MR. JIMMERSON: Am I missing a page? 10 THE COURT: It's three pages. I've got it 11 here. 12 MR. JIMMERSON: All right. And then you 13 referenced the need for the accounting and going 14 forward. 15 THE COURT: And it incorporated, I mean 16 incorporated my order of May 13th, 2015. 17 MR. JIMMERSON: Exactly. Exactly. So that's 18 that. 19 THE COURT: I'm very familiar with this 20 judgment. 21 MR. JIMMERSON: Now, because you really have 22 prepared for this, I'm so grateful for that, because 23 two years have passed and it's easy to miss some of the 24 nuances and minor details, which is understandable, but 25 having gone back, you will understand, you know,</p>
<p style="text-align: right;">Page 46</p> <p>1 that, Judge, is it an improper finding. 2 THE COURT: I understand we went the next 3 step, which is substance-wise, does that judgment 4 actually reflect my findings of fact and conclusions of 5 law -- 6 MR. JIMMERSON: You got it. 7 THE COURT: -- and order that was entered on 8 6/25/2014 and the subsequent one on 5/13/2015, I 9 understand. 10 MR. JIMMERSON: And I would submit that it 11 does not. 12 THE COURT: Okay. 13 MR. JIMMERSON: Now, the balance of the 14 judgment, although it wouldn't be how I would have 15 written it, but it does say that judgment in favor of 16 the plaintiffs against Pardee on causes of action 17 breach of contract, breach of implied covenant of good 18 faith and fair dealing, and the accounting. Listen, 19 Judge, there was never a claim for \$1.8 million. 20 That's my point. 21 THE COURT: I understand your position 22 exactly. 23 MR. JIMMERSON: I don't want to repeat 24 myself. 25 THE COURT: You don't have to.</p>	<p style="text-align: right;">Page 48</p> <p>1 otherwise I was prepared, am prepared, I'm sure counsel 2 will do the same on behalf of the defendant, I can walk 3 you through every single trial exhibit. Your Honor 4 remembers the -- 5 THE COURT: I am very aware of the trial 6 exhibits. 7 MR. JIMMERSON: There's no reference to it. 8 There's no evidence of plaintiffs claiming 9 \$1.8 million. 10 THE COURT: I understand. 11 MR. JIMMERSON: There's no ability, there was 12 never an ability of plaintiff to make that claim 13 because first of all, they didn't have the information. 14 Didn't know what they were entitled to, and more 15 importantly, we knew that they had only built out on 16 511 acres. You'll remember the first one was 1,500 17 acres. The second amendment in March of 2005 was 511 18 acres, everything else being option property, so my 19 point is we knew that they hadn't built out, you know, 20 10,000 acres, you know, you can drive out there and 21 know that, but we were claiming that they had built 22 east beyond where they were entitled to exercise option 23 property. 24 THE COURT: Right. I understand what you 25 were claiming.</p>

<p style="text-align: right;">Page 49</p> <p>1 MR. JIMMERSON: But because you understand 2 what we were claiming, you know that judgment was never 3 entered by you in favor of Pardee and against the 4 plaintiffs. It's just a fiction. And what's so 5 unhappy and unfortunate about it is what happens then 6 is that then becomes the basis for the request for 7 attorney's fees which should be denied as well, as 8 we'll discuss today.</p> <p>9 With that deletion, you have from your own 10 findings a very clear point: Plaintiffs prevailed on 11 its claim for accounting, plaintiffs prevailed on its 12 claim for breach of contract for information and the 13 damages and the special damages under Sandy Valley, and 14 by the way, and Liu, which you had read. They make a 15 motion to set aside, claiming you didn't read Liu. You 16 cited Liu in your conclusions of law.</p> <p>17 THE COURT: I'm very aware of that, 18 Mr. Jimmerson. I read that case. I found it on my own 19 in between the trial and when -- because there was the 20 delay of the Actos trial.</p> <p>21 MR. JIMMERSON: And you make reference to it 22 in your findings, and when you read Liu, it clarifies, 23 and the Morgan case and it makes it clear that there 24 are other situations in which attorney's fees can serve 25 as special damages and reversed the trial Court's</p>	<p style="text-align: right;">Page 51</p> <p>1 by that recollection.</p> <p>2 Thank you, ma'am.</p> <p>3 THE COURT: All right, Ms. Lundvall?</p> <p>4 MS. LUNDVALL: Your Honor, let me start with 5 a preface, and it is based upon the argument and the 6 exchange you just had with Mr. Jimmerson.</p> <p>7 THE COURT: Okay, because I would like to 8 start with the first argument on this, on what happened 9 with this judgment and why the standing order of 10 Department IV was not complied with, because I had 11 pieced it together, but maybe you can give -- what I 12 think happened based on me speaking and understanding 13 from staff members, but I would like an explanation. 14 Why was the standing order of Department IV not 15 complied with as far as the judgment that was entered 16 6/15/2015, because you agree it was not approved by 17 Mr. Jimmerson as to form and contented, correct?</p> <p>18 MS. LUNDVALL: I would.</p> <p>19 THE COURT: So please, I really do want to 20 know this. Why did you not follow that?</p> <p>21 MS. LUNDVALL: All right, so let me, as far 22 as --</p> <p>23 THE COURT: Let's do that before we get to 24 substance, because that is very, very critical to this 25 Court.</p>
<p style="text-align: right;">Page 50</p> <p>1 denial of that in the Liu case, and my point is that 2 you were very much aware of that issue.</p> <p>3 So when you have no evidence, no claim of the 4 plaintiffs for \$1.8 million, there's not a document -- 5 one thing that the defendant didn't do, as an example, 6 in the only two references to \$1.8 million, they didn't 7 introduce that into evidence. They didn't introduce 8 our disclosures. They didn't introduce the opposition 9 for the motion for summary judgment. They didn't 10 introduce any of that. That's not part of this record. 11 All that is is a theoretical calculation about what 12 might happen in the next 35 years if Pardee were to 13 complete its purchase and its rights under this option 14 agreement to buy the last 30,000 acres less what was 15 being taken down.</p> <p>16 I don't know what to say to you, Judge. This 17 was wrongly-filed judgment. It should be stricken as 18 to those points. And when it comes to the issue of who 19 prevailed in this case, it's just not close.</p> <p>20 When you have these arguments, it's just, you 21 know, it's disappointing that Pardee would put the 22 plaintiffs under the knife to have to respond to this 23 stuff, all these motions, when you know what happened 24 in this trial more than anyone, and I call upon you to 25 recall that, and I know plaintiffs will be served well</p>	<p style="text-align: right;">Page 52</p> <p>1 MS. LUNDVALL: All right. You entered your 2 findings of fact and conclusions of law first on 3 June 25th of 2015.</p> <p>4 THE COURT: I got that.</p> <p>5 MS. LUNDVALL: All right, so in that --</p> <p>6 MR. JIMMERSON: I think it was 2014, 7 Ms. Lundvall.</p> <p>8 THE COURT: It's 2014. 6/25/2014.</p> <p>9 MS. LUNDVALL: If that's not what I said, I 10 misspoke and my apologies.</p> <p>11 All right. In that findings, you requested 12 supplemental briefing.</p> <p>13 THE COURT: Absolutely.</p> <p>14 MS. LUNDVALL: Okay. So we did the 15 supplemental briefing.</p> <p>16 THE COURT: Uh-huh.</p> <p>17 MS. LUNDVALL: And in your supplemental 18 briefing you issued a minute order, and that minute 19 order found exactly in the briefing that Pardee had 20 submitted to you, incidentally.</p> <p>21 THE COURT: Right. You submitted, I agree 22 you submitted the order 5/13. Well, I filed it 23 5/13/2015, and it was signed according to Department 24 IV's -- correct?</p> <p>25 MS. LUNDVALL: Correct.</p>

<p style="text-align: right;">Page 53</p> <p>1 THE COURT: I mean do you agree with me on 2 the record, you prepared it and it does have 3 Mr. Jimmerson's reviewed and approved as to form and 4 content, correct? 5 MS. LUNDVALL: In your minute order, you 6 expressly informed us to work with Mr. Jimmerson. 7 THE COURT: Okay. 8 MS. LUNDVALL: So as to submit an order. 9 THE COURT: Okay. 10 MS. LUNDVALL: That was both approved as to 11 form and content by -- 12 THE COURT: Right. 13 MS. LUNDVALL: By Mr. Jimmerson. 14 THE COURT: And that is part of my standing 15 order, all right. 16 MS. LUNDVALL: And that's what we did. 17 THE COURT: No problem. 18 Then what happened on the June 15th, 2015 19 judgment? Why did you not comply? Why was it not -- I 20 mean why was it not either -- there's a section for 21 approved, and if you -- you either get his approval, or 22 the second thing that happens in this department, send 23 a cover letter saying you sent an email to 24 Mr. Jimmerson on this date, it has been so many days, 25 he has not responded, and so we're submitting it, you</p>	<p style="text-align: right;">Page 55</p> <p>1 THE COURT: Because I'm consistent on that 2 because it's a standing order. I usually try to put it 3 in the minutes. If not, I will tell you that is a 4 standing order, has been from day one. 5 MS. LUNDVALL: And -- 6 THE COURT: So I want -- so you did not -- 7 well, you did email it to him. 8 MS. LUNDVALL: I -- 9 THE COURT: Correct? 10 MS. LUNDVALL: I sent a letter to the Court, 11 the copy of the judgment, and we copied Mr. Jimmerson 12 on that letter, and so to the extent that we had no 13 ex parte communication with the Court, we weren't 14 trying to slide something under his nose. 15 THE COURT: Oh. 16 MS. LUNDVALL: Moreover, this Court would 17 have called me on something that, in fact, if I had 18 prepared an order that was not reflective of your 19 findings of fact. 20 THE COURT: And I would have done it on a 21 judgment too if -- and let me tell you what happened 22 then, because I have a recollection of this. 23 MS. LUNDVALL: Uh-huh. 24 THE COURT: Because -- 25 MS. LUNDVALL: And so do I.</p>
<p style="text-align: right;">Page 54</p> <p>1 know, without his form and content because he has not 2 responded? That was not done, correct? 3 MS. LUNDVALL: Your Honor, from our 4 perspective -- 5 THE COURT: Uh-huh. 6 MS. LUNDVALL: -- your standing order applies 7 to, and as I read it, it applies to orders. 8 THE COURT: Oh, my goodness, are you gonna 9 say to me -- oh, Ms. Lundvall, are you gonna literally 10 stand there to me and say, Judge, it doesn't apply to 11 judgments? 12 MS. LUNDVALL: Your Honor? 13 THE COURT: Is that your, is that your 14 position? 15 MS. LUNDVALL: What my understanding of your 16 standing order is, is that when we come before the 17 Court and we have contested hearings, and, in fact, 18 that you instructed Pardee by which then to prepare the 19 order. 20 THE COURT: No, no, no. I had a standing 21 order to do that and you know it. 22 Are you saying it's your understanding that 23 every time if I don't do the order, that you don't do 24 it? 25 MS. LUNDVALL: No. I'm saying --</p>	<p style="text-align: right;">Page 56</p> <p>1 THE COURT: I'm sure you do. 2 MS. LUNDVALL: What I'm trying to do is try 3 to explain to the Court what it is that we had did. 4 THE COURT: Done. 5 My understanding, okay, you submitted it. I 6 did not see the letter, but sometimes it goes to my law 7 clerk. 8 MS. LUNDVALL: We have a copy of the letter 9 that was appended as one of the exhibits then to our 10 opposition to his motion, and that letter was 11 transmitted to you, and it was copied to Mr. Jimmerson, 12 and so there should be no question about the fact that 13 he was aware of what we were submitting to the Court. 14 THE COURT: Okay. 15 MS. LUNDVALL: And so from that perspective, 16 the accusation that I somehow had ex parte 17 communications with the Court, that somehow I was gonna 18 try to pull the wool over your eyes, and that, 19 moreover, somehow you allowed yourself to have the wool 20 pulled over your eyes -- 21 THE COURT: Oh, no, I did not, I was not 22 asleep at the trigger. I love that expression, I was 23 not, but I will tell you what I was asleep at, I was 24 asleep at I -- I would never -- a judgment is the same 25 as an order. I have a standing order here, and I want</p>

<p style="text-align: right;">Page 57</p> <p>1 to put in the record what exactly occurred. 2 This was given to me by my law clerk at the 3 time. I said, Where's the approval for form and 4 content, I'm not even looking at it without approval to 5 form and content. It was given back. This is why 6 there was a time delay. 7 Then I said not only do you -- I want 8 approval as to form and content, I also want to make 9 sure that it is in compliance with my orders of 10 5/13/2015 and my findings of fact of 6/25/2014, because 11 that's my standing order. 12 I will tell you it came back to me, and I 13 don't know, and I will tell you exactly what happened. 14 It did not have that. I said, No, I will not sign 15 this. In fact, I actually, and I will tell you for the 16 record, was very uncomfortable with some of these 17 sections on Page 2, because I thought, Wait a minute, 18 and I, I'm gonna be very honest here, that's why I want 19 it to form and content, to make sure, because I, I 20 looked at the some of this, I go, Wait a minute, and I 21 was -- and I don't know if my staff person either 22 misunderstood, because it was -- misunderstood a 23 communication or was misinformed, I don't know 24 Ms. Lundvall, and I was told before I signed it, No, 25 Mr. Jimmerson was aware, and maybe it was my fault, I</p>	<p style="text-align: right;">Page 59</p> <p>1 that. I accepted information that it had been 2 approved, and I will tell you never again. I have a 3 new standing -- I will not even look at orders. They 4 are not even given to me, after this incident, unless I 5 have it approved to form and content or I have either 6 competing orders or a letter from both sides saying, 7 Here's what we disagree with, so that I can put it 8 together, because this is exactly what happens. 9 So I don't know what happened. I will tell 10 you I never got the cover letter, which can happen, you 11 know. What's given to me is the order, and I don't 12 even know what's in the cover letter. What's given to 13 me is the order. 14 What my distress is about and I own, I did 15 not enforce my procedure. My frustration thing is that 16 I do rely on people to comply with the standing order, 17 and I'm very frustrated. I'm very, I don't know, I 18 don't know what happened, but I will tell you I don't 19 make a distinction on something like a judgment. 20 To me this is so critical, Ms. Lundvall, 21 after all the work we did on this trial, all the work 22 we did on all those motions, and I'll be honest, all 23 the work this Court did to really do what I felt was 24 fair on the findings of fact, conclusions of law and 25 order and the supplemental envisioning -- and I agree</p>
<p style="text-align: right;">Page 58</p> <p>1 didn't cross-examine and do the next question and say, 2 And does he have any objection? 3 Because I, for the record, once -- once 4 again, if he's aware, and my idea of "aware" is he has 5 reviewed it and gotten back with the person who's 6 proposing it and has no objections. That's how I 7 understood it, because that's how -- I mean the 8 frustration is I so, I so go by that rule, 9 Ms. Lundvall. 10 And the one time I didn't, you know, I fell 11 asleep at my own procedure and not saying, You know 12 what, I want this in writing, but I usually, if it is 13 done this way, I want it in writing. 14 I'll be honest, because it was you and 15 Mr. Jimmerson and I have such high respect, I felt like 16 it must have been, he must have been aware of it and 17 said to you, I'm fine, or I would not have signed it. 18 And I'm telling you, as a judge, I take 19 responsibility that I did not enforce my procedure and 20 get it in writing. I took oral information from my 21 staff. I have to own that, and I own that, and I, I 22 will tell from my -- I'm not perfect. I'm obviously 23 not perfect. I try to have procedures, and you know 24 why, so things like this will not happen. 25 I mean the repercussions from this, I own</p>	<p style="text-align: right;">Page 60</p> <p>1 with you, it should be in a judgment. That's why 2 seeing a judgment did not surprise me, it's the content 3 that this would have happened, you know. 4 So your thought was I didn't -- you felt like 5 if a cover letter came to me that you sent it to him, 6 then it was up to the Court to call and see if he had, 7 and also Mr. Jimmerson to call us, right, or call you? 8 MS. LUNDVALL: Precisely, your Honor. 9 THE COURT: All right. 10 MS. LUNDVALL: We had taken your orders and 11 we had reduced them then to a judgment. 12 THE COURT: No, your version of the judgment, 13 I can see that very much. 14 MS. LUNDVALL: And so from that perspective, 15 and we sent those then along with the cover letter to 16 the Court explaining what it was that we had done. 17 THE COURT: Okay. 18 MS. LUNDVALL: And we, and we had copied that 19 letter to Mr. Jimmerson, so to the extent that there's 20 an accusation that somehow, that we did something in 21 bad faith, that we were trying to have -- 22 THE COURT: I don't find that at all, that's 23 why I said I own the responsibility. I can see very 24 well why I had those standing orders, and let me tell 25 you, nobody in Department IV is gonna get an order</p>

<p style="text-align: right;">Page 61</p> <p>1 after what happened here that does not have -- which 2 has been my standing order from day one. 3 I guess I, I'm a little distressed that you 4 would think somehow a judgment, which to me has even 5 more final implications than an order, would not, I 6 will be honest. And I was a practicing lawyer out 7 there like you are, and to me this is a more, I don't 8 want to say critical, but this has -- 9 MR. JIMMERSON: Sacred. 10 THE COURT: I'm thinking of my word. 11 This to me is even more, I'll say critical 12 that I have an agreement between the parties, or if 13 not, then I pull on -- because especially this kind of 14 case of what should be in the judgment, because this is 15 what both of you are gonna go to in the future when 16 this case hopefully is off my docket, and I'll miss you 17 two, come back, when this case is gone and these people 18 have finality and this client has finality, what you're 19 gonna be -- what the critical thing I think I started 20 this whole thing about is the judgment much more than 21 -- that's why I didn't look at these as -- so to me 22 this is even more critical that I have my rule of 23 findings of facts, conclusions of law approved to form 24 and content. 25 No, I will tell you, Ms. Lundvall, I don't</p>	<p style="text-align: right;">Page 63</p> <p>1 comes in here that a judgment, to me, is anything that 2 you want me to sign, whether it's an order, and I 3 consider a judgment an order, it has to be approved to 4 form and content. 5 And I can tell you now, I won't -- my law 6 clerk will not even give them to me now, because, you 7 know, they go through it all before for me to do it 8 easier with that, or I have to have competing orders or 9 letters explaining it, so that was distressful. 10 So I understand you felt like -- okay, I just 11 wanted that for my own edification, because I'll be 12 honest, I was distressed. And I own that I didn't 13 enforce my policy, and I accepted an oral, which, you 14 know, I own that responsibility. 15 So I don't feel like you did it devious, I'm 16 just angry that I did not enforce my own rules, and I, 17 I let something that I -- I got a misunderstanding, and 18 I don't know where it came from, and I'm not -- I don't 19 know, so I'm certainly not going to go after that. 20 So, okay, that explains to me, at least 21 somewhat, why it wasn't to form and content, okay. 22 MS. LUNDVALL: All right. 23 THE COURT: So now let's go to the substance, 24 right, of why you feel this is appropriate. 25 MS. LUNDVALL: So let's go to the next point</p>
<p style="text-align: right;">Page 62</p> <p>1 think you did anything devious. I truly believe you 2 have -- I read all your stuff. You truly believe and 3 you have a right, I mean, to believe that. You think 4 this was appropriate. You have a legal -- I'm not 5 saying you don't, okay? I worked on this a long time, 6 and I want both people to understand that. 7 I feel like you felt and you defended this, 8 that you felt you did have a legal basis. 9 I, you know, I agree. 10 MS. LUNDVALL: All right. 11 THE COURT: I'm not saying you were in bad 12 faith. What I'm saying is my frustration is that I 13 felt like my -- and I don't know how I got the 14 misinformation, because I did not fall asleep at the 15 switch, I was concerned that this judgment was approved 16 by both of you. That's what -- and the reason I do 17 that then is then once I have your approval, and that's 18 why I do it, then I can make sure that I'm comfortable 19 with it. 20 Does that makes sense? And so -- 21 MS. LUNDVALL: Then let's move on to the next 22 point. 23 THE COURT: I want you to know that was 24 distressful to me, I will tell you that, and I'm gonna 25 make it very clear to your firm and to any firm that</p>	<p style="text-align: right;">Page 64</p> <p>1 though as far as even before we get to the substance. 2 THE COURT: Okay. 3 MS. LUNDVALL: And that would be this, as the 4 Court is well advised: That even if the attorneys 5 bring an order to you, and even if there is approved to 6 form and content -- 7 THE COURT: I don't have to sign it. 8 MS. LUNDVALL: That's right, you don't have 9 to sign it. 10 THE COURT: Heck no. 11 MS. LUNDVALL: You've got to do your own job, 12 and you've already said you've done your job and that 13 you reviewed this judgment and that you signed it, and 14 that, in fact, you made it yours, no matter who drafted 15 it and no matter who approved it and who -- 16 THE COURT: Oh, I understand I had the 17 judgment. I understand I signed it, if that's what 18 you're saying to me, yes. 19 MS. LUNDVALL: And so from that perspective, 20 we respectfully submit that you did not fall asleep on 21 the job, as it was suggested by Mr. Jimmerson, so let's 22 look then at the substance. 23 MR. JIMMERSON: I never said that. 24 MS. LUNDVALL: And I want to start by the 25 very comment and the exchange that you had with</p>

<p style="text-align: right;">Page 65</p> <p>1 Mr. Jimmerson.</p> <p>2 THE COURT: Okay.</p> <p>3 MS. LUNDVALL: You exchanged with him the</p> <p>4 fact that if you had agreed with his theory about the</p> <p>5 purchases of option property, then there would have</p> <p>6 been monies that would have been due and owing.</p> <p>7 THE COURT: If I had had the testimony.</p> <p>8 MS. LUNDVALL: If you --</p> <p>9 THE COURT: If I'd had the testimony, which I</p> <p>10 didn't.</p> <p>11 MS. LUNDVALL: And it was --</p> <p>12 THE COURT: And you know what I was gonna do,</p> <p>13 Ms. Lundvall, I was gonna then have to do an accounting</p> <p>14 for it because I had absolutely no-- I didn't get to</p> <p>15 there, because I had no information on what it would</p> <p>16 have been.</p> <p>17 MS. LUNDVALL: Precisely. He set up his case</p> <p>18 in a two-part step. He set up his case alleging two</p> <p>19 different forms of breach of contract. The first --</p> <p>20 THE COURT: I agree, two different theories</p> <p>21 of liability.</p> <p>22 MS. LUNDVALL: Yes.</p> <p>23 THE COURT: For the breach.</p> <p>24 MS. LUNDVALL: Two different theories of</p> <p>25 liability. One is that there were purchases of option</p>	<p style="text-align: right;">Page 67</p> <p>1 was on what options, because there were facts that they</p> <p>2 were not aware of. He was not aware of any of that</p> <p>3 before he filed the lawsuit, don't you agree,</p> <p>4 Ms. Lundvall? He was not aware of the facts on moving</p> <p>5 easterly on the option, that theory, or he wasn't aware</p> <p>6 that they had sold, you know, first was it multi-family</p> <p>7 and then changed them -- well, yes, it was, remember,</p> <p>8 to multi and then single family, but I didn't find them</p> <p>9 single-family detached residential property, as you</p> <p>10 know.</p> <p>11 So I look at the case, I'll be honest, it was</p> <p>12 definitely a claim to get information, and then once he</p> <p>13 got the information, whether, based on that commission</p> <p>14 agreement, he had any other claims. I truly believe</p> <p>15 that, that this how it happened.</p> <p>16 MS. LUNDVALL: And you, as far as discussed</p> <p>17 with him in the course of this very hearing that if I</p> <p>18 had agreed with your theory concerning the purchases of</p> <p>19 option property, then, in fact, there would have been</p> <p>20 additional commissions that were due and owing.</p> <p>21 THE COURT: Past ones. Not future, past</p> <p>22 ones.</p> <p>23 MS. LUNDVALL: And he acknowledged that and</p> <p>24 he admitted that.</p> <p>25 THE COURT: Okay.</p>
<p style="text-align: right;">Page 66</p> <p>1 property, and therefore, that there would be</p> <p>2 commissions that were due and owing.</p> <p>3 His second theory was that there was</p> <p>4 insufficient information that was given to the</p> <p>5 plaintiffs.</p> <p>6 THE COURT: Okay, I would reverse that.</p> <p>7 MS. LUNDVALL: All right.</p> <p>8 THE COURT: In fairness, the first theory,</p> <p>9 when you look at the first, he didn't even have -- and</p> <p>10 let's be fair here, his first claim was to get</p> <p>11 information because of those amendments that were</p> <p>12 missing, as we know. We all went through them. Was it</p> <p>13 eight of them?</p> <p>14 MR. JIMMERSON: It was eight.</p> <p>15 THE COURT: Okay. And you had given, this is</p> <p>16 my recollection of the testimony, one and two but not</p> <p>17 -- some of them but not all of them prior to the case,</p> <p>18 so when you look at the case, he did the accounting and</p> <p>19 he did the original claim for breach because they</p> <p>20 didn't have information to find out if any more was due</p> <p>21 and owing. Once through discovery the amendments came</p> <p>22 and the different information came, only through</p> <p>23 discovery in this case, then he looked at the</p> <p>24 amendments and then said, Wow, I feel I have another --</p> <p>25 there may be in his mind, if I had done what his theory</p>	<p style="text-align: right;">Page 68</p> <p>1 MS. LUNDVALL: And so to the extent though,</p> <p>2 the point being made here is he lost on that.</p> <p>3 THE COURT: He lost on a theory of liability,</p> <p>4 but he didn't lose on a claim. That doesn't -- and</p> <p>5 you're trying to say that because he lost on that, that</p> <p>6 makes you the prevailing party?</p> <p>7 MS. LUNDVALL: Let me as far as see if I can</p> <p>8 as far as initially, because one, just because one of</p> <p>9 the things that I wanted to do then is to be able to</p> <p>10 walk the Court then through the history then of this</p> <p>11 case, so the Court --</p> <p>12 THE COURT: Oh, okay. I'm aware of it, but I</p> <p>13 would be glad to be walked again.</p> <p>14 MS. LUNDVALL: Well, what I want to do is to</p> <p>15 make sure that you understand that his theory and he</p> <p>16 was asking for money damages from the very beginning</p> <p>17 until all the way to the end, and he lost on that</p> <p>18 theory, your Honor. And the point that we had tried to</p> <p>19 make is that that loss on that theory, the flip side of</p> <p>20 that is a win to Pardee.</p> <p>21 THE COURT: No. You have to say the win</p> <p>22 makes you the prevailing party over him being the</p> <p>23 prevailing party over the other claims.</p> <p>24 MS. LUNDVALL: So what I'm trying to do is to</p> <p>25 stick as far as to this motion to amend.</p>

<p style="text-align: right;">Page 69</p> <p>1 THE COURT: Okay. So you're abandoning this 2 \$1.8 million case?</p> <p>3 MS. LUNDVALL: Absolutely not, your Honor, 4 because one of the things you're gonna see as far as 5 all the way through is they asked for money damages, 6 they quantified that amount at 1.8, and --</p> <p>7 THE COURT: Okay. No, I agree, if you're 8 saying, -- so you feel the quantify of what they wanted 9 for damages was 1.8 million, and you're gonna show me 10 where the evidence came in in trial and how that was 11 argued at trial, right?</p> <p>12 MS. LUNDVALL: So, in fact, let's start with 13 their complaint.</p> <p>14 THE COURT: Okay.</p> <p>15 MS. LUNDVALL: Their complaint alleged that 16 there was a financial relationship, that pursuant to 17 the commission letter that they were to be paid a 18 commission, and they prayed for compensatory damages in 19 excess of \$10,000.</p> <p>20 THE COURT: We all know that's true.</p> <p>21 MS. LUNDVALL: The second amended complaint 22 then made the same allegations. It was the same basic 23 allegations. In other words, they asked for money 24 damages once again.</p> <p>25 We get to their first 16.1 disclosure. In</p>	<p style="text-align: right;">Page 71</p> <p>1 information. Our motion for summary judgment is broken 2 into those two particular sections, all right?</p> <p>3 THE COURT: Right.</p> <p>4 MS. LUNDVALL: They opposed our motion for 5 summary judgment, and in opposing our motion for 6 summary judgment, they highlighted this theory that 7 they, that they advanced all the way through trial, is 8 it all depends upon what you call option property.</p> <p>9 THE COURT: Uh-huh.</p> <p>10 MS. LUNDVALL: They went on to say that we 11 had made a significant purchase of option property, 12 that we had purchased option property, and, in fact, 13 they went on to say that the damages that flowed from 14 our purchases of option property were being, that they 15 were being denied \$1.8 million in commissions. This is 16 their opposition.</p> <p>17 So it's not something that I fabricated, it's 18 not something that I made up, it's not something that I 19 pulled out of thin air, it's not something that I have 20 deceptively tried to put before the Court. This is 21 their theory. That's what we defended against.</p> <p>22 THE COURT: Okay. And when was that said? I 23 looked in the -- continue your presentation.</p> <p>24 MS. LUNDVALL: All right. We filed a motion 25 for summary --</p>
<p style="text-align: right;">Page 70</p> <p>1 Their first 16.1 disclosure, Mr. Jimmerson makes a big 2 deal out of the fact that they didn't serve me with any 3 interrogatories, they didn't send any requests for 4 production. I don't have to. Rule 16.1 obligates them 5 to set forth their damage theory and the amount of 6 their damages.</p> <p>7 THE COURT: Right.</p> <p>8 MS. LUNDVALL: So we relied upon that, and 9 that's what they, that's what they said to us.</p> <p>10 THE COURT: I understand NRCP 16.1.</p> <p>11 MS. LUNDVALL: Their first four disclosures 12 under rule 16.1, they just made the broad claim that 13 they were entitled to all damages that flowed from the 14 breach of the commission agreement, okay?</p> <p>15 THE COURT: Okay.</p> <p>16 MS. LUNDVALL: So then what we did is we 17 filed a motion for summary judgment. If you go back 18 and take a look at our motion for summary judgment, we 19 break out their case into the two theories that they 20 had advanced at that point in time during discovery, 21 number one is that we owed them more money in 22 commissions, and that number two, we had breached, and 23 that we had breached the agreement then by not paying 24 them those additional monies, and number two, that, in 25 fact, that we had not given them sufficient</p>	<p style="text-align: right;">Page 72</p> <p>1 THE COURT: I remember that.</p> <p>2 MR. JIMMERSON: It was never part of the 3 trial.</p> <p>4 MS. LUNDVALL: Our motion for summary 5 judgment --</p> <p>6 THE COURT: Mr. Jimmerson, in fairness, 7 Ms. Lundvall has her chance to make here record too, 8 all right? That's not fair.</p> <p>9 MS. LUNDVALL: We filed our motion in October 10 of 2012. My prediction is, is that the opposition that 11 they failed would have been then in November of 2012.</p> <p>12 THE COURT: Okay.</p> <p>13 MS. LUNDVALL: And my recollection is that 14 the Court issued an order on that in February of 2013, 15 something along that line.</p> <p>16 So if, in fact, if you want --</p> <p>17 THE COURT: I have one in March. Well, I 18 have 10/23. That wouldn't have been it, so probably my 19 March 14th of 2013. I went through all the orders.</p> <p>20 MS. LUNDVALL: And so as I indicated, my 21 prediction is that opposition could be found then in 22 the November of 2012 time frame.</p> <p>23 THE COURT: Okay.</p> <p>24 MS. LUNDVALL: And I'm quoting --</p> <p>25 THE COURT: I'm sure that's true.</p>