

Exhibit “1”

1 ORDR

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

9 Plaintiffs,

10 vs.

11 PARDEE HOMES OF NEVADA,

12 Defendant.

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


CLERK OF THE COURT

13 JUDGMENT

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

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

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

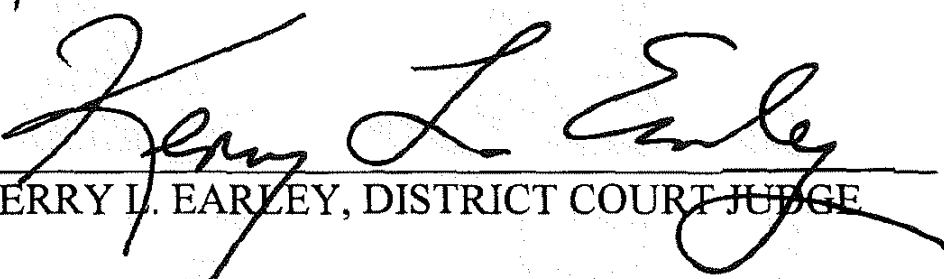
6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT IS
7 ENTERED in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for breach of
8 contract and breach of the implied covenant of good faith and fair dealing. Plaintiffs are entitled to
9 damages from Pardee in an amount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

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

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

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

25 DATED: May 11, 2016.

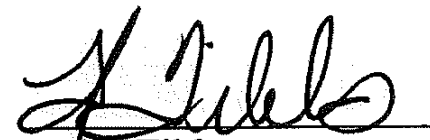
26
27 
28 KERRY L. EARLEY, DISTRICT COURT JUDGE

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

CERTIFICATE OF SERVICE

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

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



Kelly Tibbs
Judicial Executive Assistant

Exhibit “2”

AFFIDAVIT OF JAMES J. JIMMERSON, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

JAMES J. JIMMERSON, having been duly sworn, deposes and says:

1. That I testified at Trial in the above referenced matter as to the damages in the form of attorney fees that have been incurred as a result of parties failure to provide the most basic information required of them regarding the development of Coyote Springs as is evident from my billings, more than \$150,000.00 in attorney fees have been charged by our Firm in this case as of December 21, 2012. At that time, the Client had paid us only \$75,168.21, leaving a total of \$84,427.08 due and owing.

2. For purposes of calculating interest on the judgment awarded by the Court of \$135,500.00 in attorney fees, that sum was due and owing by our Clients to our Firm as of December 21, 2012 and in accordance with NRS 17.130, with a breach of contract occurring by the Defendant certainly by the date of the Court's Findings of Fact, Conclusions of Law and Order filed on or about June 25, 2014, if not earlier at the time of the service of the Complaint of February of 2011, interest should run on said sum of \$135,500.00 from at least June 25, 2014, if not the earlier date of December 21, 2012, when that money was due and owing to our Firm.

3. Finally \$6,000 of time spent by Mr. Wolfram and Mr. Wilkes to make an inquiry and demands for information that party owed it for information was not reasonably and timely produced, those charges were incurred before commencement of the lawsuit and certainly before the service of complaint in February of 2011. So as to the \$6,000, interest should from the date of service of the Complaint of February 2011 to the date in which the judgment is filed, of May 16, 2016, plus post judgment interest thereafter. The

1 \$135,500.00 should have interest commenced from at least June 25, 2014 until the May
2 16, 2016 judgment was entered, plus post judgment interest following the same.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.
4

5
6 
JAMES J. JIMMERSON, ESQ.

7 SUBSCRIBED and SWORN to before me
8 this 12th day of September, 2016.

9 
NOTARY PUBLIC in and
10

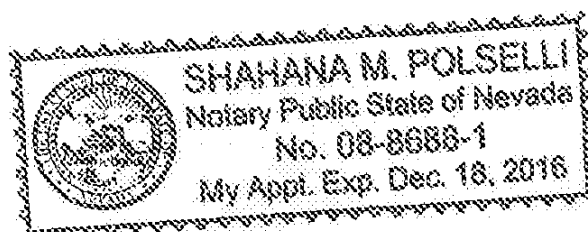


Exhibit “3”

PRIME INTEREST RATE

NRS 99.040(1) requires:

"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, . . ."

Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2016	3.50%	July 1, 2016	3.50%
January 1, 2015	3.25%	July 1, 2015	3.25%
January 1, 2014	3.25%	July 1, 2014	3.25%
January 1, 2013	3.25%	July 1, 2013	3.25%
January 1, 2012	3.25%	July 1, 2012	3.25%
January 1, 2011	3.25%	July 1, 2011	3.25%
January 1, 2010	3.25%	July 1, 2010	3.25%
January 1, 2009	3.25%	July 1, 2009	3.25%
January 1, 2008	7.25%	July 1, 2008	5.00%
January 1, 2007	8.25%	July 1, 2007	8.25%
January 1, 2006	7.25%	July 1, 2006	8.25%
January 1, 2005	5.25%	July 1, 2005	6.25%
January 1, 2004	4.00%	July 1, 2004	4.25%
January 1, 2003	4.25%	July 1, 2003	4.00%
January 1, 2002	4.75%	July 1, 2002	4.75%
January 1, 2001	9.50%	July 1, 2001	6.75%
January 1, 2000	8.25%	July 1, 2000	9.50%
January 1, 1999	7.75%	July 1, 1999	7.75%
January 1, 1998	8.50%	July 1, 1998	8.50%
January 1, 1997	8.25%	July 1, 1997	8.50%
January 1, 1996	8.50%	July 1, 1996	8.25%
January 1, 1995	8.50%	July 1, 1995	9.00%
January 1, 1994	6.00%	July 1, 1994	7.25%
January 1, 1993	6.00%	July 1, 1993	6.00%
January 1, 1992	6.50%	July 1, 1992	6.50%
January 1, 1991	10.00%	July 1, 1991	8.50%
January 1, 1990	10.50%	July 1, 1990	10.00%
January 1, 1989	10.50%	July 1, 1989	11.00%
January 1, 1988	8.75%	July 1, 1988	9.00%
January 1, 1987	Not Available	July 1, 1987	8.25%

*** Attorney General Opinion No. 98-20:**

If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a different rate of interest, unless the account is an open or store accounts as discussed herein. In the case of open or store accounts, interest may be imposed or awarded only by a court of competent jurisdiction in an action over the debt.

Exhibit “4”



JON E. LASH
Sr. Vice President
(310) 475-3525 ext. 251
(310) 446-1285

September 1, 2004

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

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

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

Gentlemen:

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

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

- (i) Pardee shall pay four percent (4%) of the Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the remaining Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the Option Property purchased by Pardee pursuant to paragraph 2 of the Option Agreement, Pardee shall pay one and one-half percent (1-1/2%) of the amount derived by multiplying the number of acres purchased by Pardee by Forty Thousand Dollars (\$40,000).

PH 000135

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

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

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

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

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

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

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

\\cslaw\info\O\usordata\Lawson\my documents\Land Acq - JEL\Letters\2004 Letters\Wilkes_04.08.02.doc

PH 000136

JA013588

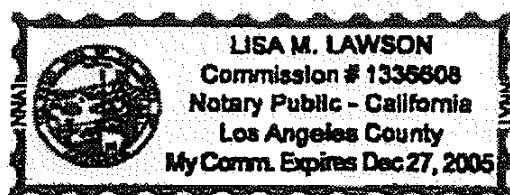
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 3

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


Sincerely,

PARDEE HOMES OF NEVADA,
a Nevada corporation

By: 
Jon E. Lash
Senior Vice President




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

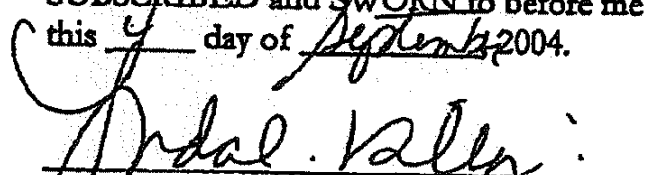

NOTARY PUBLIC in and for the County of
Los Angeles, State of California

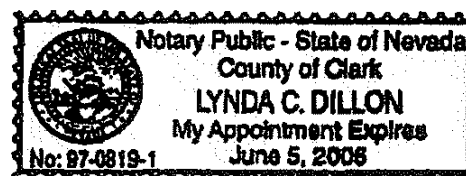
Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By: 
Walt Wilkes

SUBSCRIBED and SWORN to before me
this 4 day of September 2004.


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



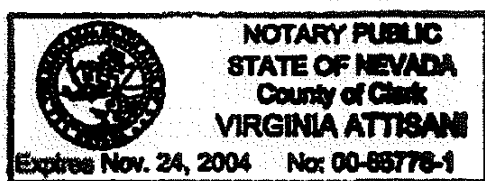
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 4

AWARD REALTY GROUP

By: Jim Wolfram
Jim Wolfram

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

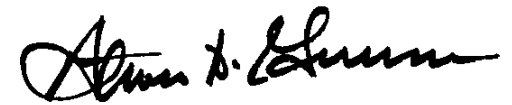
Virginia Attisani
NOTARY PUBLIC in and for the County
of Clark, State of Nevada



\\calad\mfr\0\userdata\Lawson\My documents\Land Acq - JEL\Letters\2004 Letters\Wilkes_04.09.02.doc

PH 000138

JA013590



CLERK OF THE COURT

SB
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

**PARDEE'S SUPPLEMENTAL BRIEF
REGARDING PRE- AND POST-
JUDGMENT INTEREST PURSUANT TO
THE COURT'S ORDER**

AND RELATED CLAIMS

I. INTRODUCTION

In their previously filed Motion for Attorney's Fees and Costs, Plaintiffs James Wolfram and Walk Wilkes claimed they were entitled to \$39,138.32 in prejudgment interest. This equaled interest on all of their compensatory damages calculated using the start date as the day they served the Complaint upon Pardee. Now, however, they concede Pardee's argument that Plaintiffs are only entitled to prejudgment interest on certain of their compensatory damages, and more specifically their attorney's fees as special damages, from the date they actually sustained those damages. That date is well beyond when they served the Complaint upon Pardee.

In their Supplemental Brief on Interest Pursuant to the Court's Order Entered August 15, 2016 (the "Supplemental Brief"), Plaintiffs have identified this date as June

25, 2014, when the Court entered its Findings of Fact and of Law (“Findings and Conclusions”). Accordingly, Plaintiffs have reduced their demand for prejudgment interest to \$15,370.16 to better reflect the date when they sustained their compensable damages.¹ As detailed within, this new position was not the one advanced by Plaintiffs during the parties’ meet and confer session conducted before filing these current briefs.

Nevertheless, though Pardee conceptually agrees that Plaintiffs are not entitled to pre-judgment interest on their special damages until the date on which they sustained or paid those attorney’s fees, Plaintiffs have failed to provide any evidence showing that Plaintiffs actually incurred these attorney’s fees such that they are entitled to receive prejudgment interest on them. Simply put, Plaintiffs have not met their burden of proof. Plaintiffs are not entitled to interest until they actually paid such fees to their attorneys in this matter. Because they have failed to provide the Court with proof of payment, they have not carried their burden in claiming prejudgment interest on those fees.²

Finally, the Court awarded Plaintiffs their attorney’s fees and costs in a post-judgment hearing on August 15, 2016. Because Plaintiffs have yet to propose a draft amended judgment to Pardee regarding that award and thus the Court has not entered the same, Plaintiffs’ discussion about post-judgment interest is premature. Indeed, Plaintiffs concede as much by stating that “post-judgment interest cannot be calculated at this juncture.” Supplemental Brief at 8:18-20. Consequently the issue is not yet ripe for the Court’s consideration, and so Plaintiffs must apply for post-judgment interest at a

¹ This amount equals \$13,575.06 in prejudgment interest on the portion of Plaintiffs’ compensatory damages for attorney’s fees as special damages and \$1,795.10 as interest on the portion of Plaintiffs’ compensatory damages for time and effort expended searching for information regarding Plaintiffs’ commissions. See Supplemental Brief at 7:1-19.

² This does not influence Plaintiffs’ claim to prejudgment interest on the \$6,000 in compensatory damages for time and effort searching for information because the Court has already found Plaintiffs incurred those damages. See Findings and Conclusions at 14:7-14.

1 later date once they have proposed a draft amended judgment and the Court has
2 signed and entered the same.

3 II. FACTUAL HISTORY

4 A. Plaintiffs File Their Lawsuit and Then Amend the Original Complaint to
5 Claim Post-Filing Special Damages Regarding Their Attorney's Fees.

6 On December 29, 2010, Plaintiffs filed their Complaint in this lawsuit, in which
7 they alleged causes of action against Pardee for an accounting, for breach of contract,
8 and for breach of the implied duty of good faith and fair dealing. See Complaint,
9 **attached as Exhibit A.** Nowhere in the Complaint did Plaintiffs allege that they had
10 suffered special damages in the form of attorney's fees. See *generally id.*

11 Indeed, it was not until over two years later, on March 21, 2013, that Plaintiffs
12 moved the Court for leave to amend their Complaint (a second time) by alleging they
13 had incurred attorney's fees as special damages. See Plaintiffs' Motion for Leave to
14 File a Second Amended Complaint, **attached as Exhibit B.** This was the first time
15 Plaintiffs suggested that they incurred attorney's fees that were compensable as special
16 damages. See *generally id.*

17 B. The Matter Proceeds to Trial in Late 2013 and the Court Awards Plaintiffs
18 Attorney's Fees Incurred After Filing the Lawsuit.

19 In its Findings and Conclusions, the Court awarded Plaintiffs certain of their
20 attorney's fees as special damages they were billed for "pursu[ing] the Plaintiffs' claim
21 for acquiring the information from Pardee related to the Plaintiffs' commission
22 amounts." See Findings and Conclusions at 14:27-15:3, **attached as Exhibit C.** As
23 the Court expressly held, these damages were based on "the billings contained in
24 exhibits 31A" presented during trial and totaled \$135,500.00 for "reasonable attorney's
25 fees and costs." See *id.* at 15:2-3. In other words, Plaintiffs' special damages for
26 attorney's fees corresponded directly with those that Plaintiffs had highlighted in
27 Plaintiffs' Trial Exhibit 31A.

1 Trial Exhibit 31A reveals that Plaintiffs' counsel billed almost all of these fees and
2 costs well after Plaintiffs filed the Complaint on December 29, 2010. See Trial Exhibit
3 31A, **attached as Exhibit D**. Indeed, as Trial Exhibit 31A shows, only \$4,300 of the
4 \$135,500 awarded for attorney's fees occurred before the Plaintiffs filed their
5 Complaint. See Trial Exhibit 31 at Page 31a-006.³ The remainder of the time entries
6 are from 2011 and 2013, including twelve out of Trial Exhibit 31A's twenty-six pages
7 that cover time entries for attorney's fees billed in 2013.

8 Moreover, not only did Plaintiffs' counsel bill the majority of the attorney's fees as
9 special damages well after Plaintiffs filed and served the Complaint, but Plaintiffs'
10 counsel's declaration attached in support of their supplemental brief concedes that as
11 of December 21, 2012, Plaintiffs had only paid (i.e. incurred) \$75,168.21 in attorney's
12 fees and costs. See Declaration of James J. Jimmerson attached to Supplemental
13 Brief.⁴

14 Finally, in the Findings and Conclusions, the Court also awarded Plaintiffs
15 \$6,000 in compensatory damages for Wolfram's "time and efforts attempting to obtain
16 the information" regarding Plaintiffs' purported commissions under the Commission
17 Agreement. Findings and Conclusions at 14:7-14. Plaintiffs sustained these damages
18 before filing the Complaint. See *id.*

19 C. The Court Further Awards Plaintiffs Their Attorney's Fees and Costs in a
20 Post-Judgment Hearing on August 15, 2016.

21 On August 15, 2016, the Court awarded Plaintiffs \$428,262.75 in attorney's fees
22 and \$56,129.56 in costs incurred during the litigation. However, Plaintiffs have yet to

23 ³ For the Court's reference, each page of Trial Exhibit 31A, which is 26 pages total, is
24 labeled in the upper right hand corner with a notation from "31a-001" to "31a-026."
25 When Pardee references a specific page in this Supplemental Brief, it does so by
reference to those notations.

26 ⁴ And there is nothing in counsel's declaration that demonstrates his firm had been paid
27 the fees actually awarded by the Court. Plaintiffs' counsel states that by December 21,
28 2013, Plaintiffs had paid his firm \$145,869.56 in legal fees and costs. See
Supplemental Brief at Footnote 7. But Plaintiffs do not attach any billing statements or
proof of that payment to their Supplemental Brief to prove up those payments of fees
and costs. See *generally id.*

1 propose a draft judgment regarding this award, and so the Court has not entered any
2 judgment as of this date including these attorney's fees and costs.

3 III. ARGUMENT

4 A. Legal Standard for Pre- and Post-Judgment Interest

5 1. Pre-judgment Interest

6 NRS 17.130(2) states that, when no rate of interest is provided by contract or
7 otherwise by law, a "judgment draws interest from the time of service of the summons
8 and complaint until satisfied, except for any amount representing future damages,
9 which draws interest only from the time of entry of the judgment until satisfied, at a rate
10 equal to the prime rate at the largest bank in Nevada . . . plus 2 percent." NRS 99.040,
11 which applies to judgments "upon contracts, express or implied, other than book
12 accounts," similarly sets the interest rate for pre-judgment interest at the prime rate plus
13 2 percent. NRS 99.040(1)(a). Consequently, under either statute, the appropriate pre-
14 judgment interest rate is prime plus 2 percent.

15 In construing these statutes, the Nevada Supreme Court has noted that the
16 Court must distinguish between compensatory damages suffered before Plaintiffs
17 served the Complaint and those suffered after serving it. See, e.g., *Las Vegas-*
18 *Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283,
19 289-90, 792 P.2d 386, 390 (1990) ("[W]e conclude that interest should begin to accrue
20 from the time damages actually occur if they are sustained after the complaint is served
21 or from the date of judgment.); see also *Keystone Realty v. Osterhus*, 107 Nev. 173,
22 807 P.2d 1385 (1991). In doing so, pre-judgment interest on damages sustained
23 before the filing of a complaint runs from the date of service of the complaint, while
24 interest on damages sustained after service of the complaint is allowed only "from the
25 date the damages were actually sustained." *Keystone Realty*, 107 Nev. at 178, 807
26 P.2d at 1388.

27 Vitally important to this analysis is that a plaintiff bears the burden of showing
28 that it actually sustained damages and can "specifically quantif[y]" them to prove up

pre-judgment interest. *Las Vegas-Tonopah*, 106 Nev. at 289-90, 792 P.2d at 390; see also *Jacobsen v. Manfredi*, 100 Nev. 226, 233, 679 P.2d 251, 256 (1984) (noting a plaintiff bears the “burden of proof” to “support an award of interest based on past damages”). This burden of proof is a “preponderance of the evidence” standard. *Las Vegas-Tonopah*, 106 Nev. at 289-90, 792 P.2d at 389-90.

After a plaintiff proves it sustained damages in specific amounts, the trial court must then set the date from which prejudgment interest is calculated on each subset of damages and apply the relevant interest rate to reach a total figure for pre-judgment interest owed by the defendant. *Id.*

2. Post-Judgment Interest

NRS 18.120 provides that a monetary judgment shall bear interest from the time it is entered until it is satisfied by a defendant. *Kerala Properties, Inc. v. Familian*, 122 Nev. 601, 605, 137 P.3d 1146, 1150 (2006). Post-judgment interest similarly equals the prime rate plus 2 percent. See *id.* As the statute’s plain language makes clear, a plaintiff is not entitled to post-judgment interest on damages until a judgment covering those damages is entered. See generally NRS 18.120.

B. The Court Should Deny Plaintiffs’ Claims to Pre-Judgment Interest.

1. Plaintiffs Finally Concede They Are Not Entitled to Pre-Judgment Interest on the Award of Attorney’s Fees as Special Damages From the Date They Served the Complaint.

Unlike their previous motions, Plaintiffs now state that the appropriate day to begin calculating pre-judgment interest on the \$135,500 award of attorney’s fees as special damages is June 25, 2014, when the Court entered its Findings and Conclusions. See Plaintiffs’ Supplemental Brief at 5:22-6:19 (calculating pre-judgment interest from June 25, 2014 through May 16, 2016). This is a change from their previous claim, which was that Plaintiffs were entitled to pre-judgment interest on all their damages from the day they served their Complaint upon Pardee.

However, Pardee must correct Plaintiffs’ statements that “Pardee’s counsel would not even agree to utilize th[is] conservative date[]” to calculate pre-judgment

1 interest during a telephonic meet and confer on September 12, 2016. See *id.* at 9:23-
2 10:2. On that call, Plaintiffs did not assert the “conservative” June 14, 2014 date as the
3 one on which pre-judgment interest would start on Plaintiffs’ award of special damages
4 for their attorney’s fees. Rather Plaintiffs, just as they did in their prior motion for
5 attorney’s fees and costs, claimed the appropriate date on which pre-judgment interest
6 would start on the special damages was when they served their complaint on Pardee,
7 or February 9, 2011. In other words, Plaintiffs wanted pre-judgment interest on those
8 damages for over three additional years between 2011 and 2014, though as Trial
9 Exhibit 31A shows they had not been billed those fees until well after February 9, 2011.
10 See Plaintiffs’ Motion for Attorney’s Fees and Costs at 14:5-9 (claiming pre-judgment
11 interest equal to \$39,138.32 for the “timeframe between the date of service (February 9,
12 2011) . . . to the entrance of the Final Judgment (May 16, 2016)”). Pardee cited *Las*
13 *Vegas-Tonopah* and *Keystone Realty* in arguing that the appropriate date was when
14 Plaintiffs sustained their attorney’s fees as special damage, or in other words, when
15 Plaintiffs paid their counsel for these attorney’s fees and costs. Plaintiffs’ counsel
16 refused these dates and instead maintained February 9, 2011 was the appropriate date
17 for pre-judgment interest to begin on all of Plaintiffs’ compensatory damages.

18 In the end, Plaintiffs conceded much of Pardee’s argument. If the Court awards
19 them pre-judgment interest on the \$135,500 in special damages for attorney’s fees, and
20 as *Las Vegas-Tonopah* and *Jacobsen* hold, that interest should run only from the date
21 that Plaintiffs paid Mr. Jimmerson’s firm for attorney’s fees and costs. That is the true
22 date that Plaintiffs “sustained” damages for their attorney’s fees. But neither the Court
23 nor Pardee has any evidence of that date(s). Without that evidence, Plaintiffs have
24 failed in their burden of prof.

25 And pre-judgment interest on the Plaintiffs’ \$6,000.00 compensatory damages
26 award runs from the February 9, 2011 date when they served the Complaint on Pardee.

27 ///

28 ///

2. However, Plaintiffs Have Not Proven They Sustained the Attorney's Fees Sufficient to Award Pre-Judgment Interest on Them.

As *Las Vegas-Tonopah* and *Jacobsen* make clear, Plaintiffs must prove by a preponderance of the evidence that they actually sustained these attorney's fees as special damages before they are entitled to pre-judgment interest on them. See 106 Nev. at 289-90, 792 P.2d at 390, and 100 Nev. at 233, 679 P.2d at 256, respectively. In other words, Plaintiffs must actually show by a preponderance of the evidence that they paid counsel for billed fees and costs, and therefore "sustained" damages from such payments. It is not enough that Plaintiffs' counsel merely billed them for these fees, as Plaintiffs did not "sustain" damages until they paid out of pocket for them.

But Plaintiffs make no such showing in their Supplemental Brief. Indeed, though Footnote 7 of the Supplemental Brief states that "by December 21, 2013, Plaintiffs had paid the total sum of \$145,869.56 to The Jimmerson Law Firm, P.C.," Mr. Jimmerson's declaration does not confirm this amount. Instead, he only states that "as of December 21, 2012 . . . the Client had paid us only \$75,168.21, leaving a total of \$84,427.08 due and owing." Declaration at ¶ 1. Nowhere does Mr. Jimmerson's declaration cite the December 21, 2013 date or any additional payment from Plaintiffs to his firm equal to \$145,869.56. See *generally id.*

Perhaps more importantly, Plaintiffs do not include as exhibits The Jimmerson Law Firm's billing statements showing Plaintiffs' payments or alternatively any checks or proof of receipts that show the same. Rather Plaintiffs have not included any evidence, let alone the obvious documentary evidence which may exist, showing they have paid Mr. Jimmerson's firm.

Consequently, Plaintiffs have failed to prove by a preponderance of the evidence that they "sustained" damages by paying Jimmerson's law firm out of pocket for attorney's fees. Indeed, they have provided no documentary evidence at all. Accordingly, they are not entitled to pre-judgment interest on the Court's award of attorney's fees as special damages.

1 3. Plaintiffs Cannot Correct Their Lack of Documentary Evidence In a
2 Reply Brief Because Doing So Would Deprive Pardee of a Chance
3 to Rebut Their Evidence.

4 Finally, Plaintiffs are not entitled to correct their failure to provide evidence by
5 appending it to their reply brief. In filing a motion or an opening brief, the moving party
6 must make all arguments and present all evidence it believes supports its conclusion.
7 *See Weaver v. State Dept. of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 198-99
8 (2005) (declining to consider an argument first raised in a reply brief). This is because
9 reply briefs are limited to matters “set forth in the opposing brief,” and introducing
10 evidence or a new argument in a reply brief deprives the other party of its due process
11 rights and the ability to respond to that new argument or brief. *Bongiovi v. Sullivan*, 122
12 Nev. 556, 570 fn. 5, 138 P.3d 433, 444 (2006).

13 Here, Plaintiffs have not supplied the Court with any evidence of their payments
14 to Mr. Jimmerson’s law firm, i.e. when they “sustained” their attorney’s fees as
15 damages, and they cannot do so in a reply brief. Consequently, because they failed to
16 provide the evidence, doing so in a reply would deprive Pardee of the right to respond
17 to that evidence. And so as *Weaver* and *Bongiovi* hold, Plaintiffs have failed to carry
18 their burden of proof to justify an award of pre-judgment interest on the special
19 damages for attorney’s fees.

20 C. Discussion of Post-Judgment Interest is Premature Because the Court
21 Has Not Yet Entered an Amended Judgment After the August 15, 2016
22 Hearing.

23 Plaintiffs recognize that it would be inappropriate for the Court to award any
24 post-judgment interest at this time because “the Judgment from the August 15, 2016
25 hearing is still not filed with the Court” and therefore “post-judgment interest cannot be
26 calculated at this juncture.” Supplemental Brief at 8:18-20. Therefore the Court should
27 not and cannot award post-judgment interest until Plaintiffs submit a proposed
28 amended judgment and the Court signs and enters the same.

27 ///
28 ///

1 D. Plaintiffs' Unilateral Interpretation of the Commission Agreement's Interest
2 Provision Is Inappropriate Because That Issue Is Not Properly Before the
3 Court.

4 Curiously, in their section labeled "Conclusion," Plaintiffs attempt to introduce a
5 new argument that the Commission Agreement's interest provision applies to the
6 monetary judgment in this matter. Specifically, that provision states that if "any sum of
7 money due [under the Commission Agreement] remains unpaid for a period of thirty
8 (30) days, said sum shall bear interest at the rate of ten percent (10%) per annum from
9 the date due until paid." See Exh. 4 to Supplemental Brief at p. 2. Although the parties
10 clearly intended that provision and the "sum of money" phrase to apply solely to any
11 commissions due and owing to Plaintiffs, which the Court found Pardee did not owe,
12 Plaintiffs claim that the "sum of money" also includes a monetary judgment and so they
13 are entitled to 10% post-judgment interest if Pardee fails to satisfy the judgment within
14 30 days after its entry. See Supplemental Brief at 9:18-22.

15 Not only is Plaintiffs' interpretation of that provision wildly incorrect, but the Court
16 ordered additional briefing exclusively on the pre-judgment issue. Plaintiffs' argument
17 regarding a post-judgment contractual provision is not properly before the Court at this
18 time. See August 15, 2016 Hearing Transcript at 97:7-102:10, **attached as Exhibit E**.
19 Thus, if Plaintiffs wish to advance their incorrect argument regarding the Commission
20 Agreement's interest provision and its post-judgment application, they must do so by
21 separate motion rather than by trying to backdoor it into briefing the Court requested
22 exclusively on pre-judgment interest.

23 Moreover, it is entirely inappropriate to include that argument—with no legal
24 citations or evidence to support Plaintiffs' incorrect contractual interpretation—in the
25 conclusion section of their brief. If Plaintiffs wish to argue a matter of contractual
26 interpretation before the Court, they should brief it fully and include testimony or other
27 evidence from the parties who negotiated the Commission Agreement. They have not
28 done so in their Supplemental Brief.

There will come a day when Pardee gets to show the folly of Plaintiffs' interpretation. But under the Court's request for supplemental briefing, that day is not this one, and so the Court should entirely ignore Plaintiffs' unsolicited argument regarding the Commission Agreement's interest provision.

IV. CONCLUSION

Though the Plaintiffs finally conceded that they are not entitled to calculate pre-judgment interest on their award of attorney's fees as special damages from the date they served the Complaint, they have failed to adequately prove up by a preponderance of the evidence that they have "sustained" such damages by paying Mr. Jimmerson's firm for billed fees and costs. Accordingly, they are not entitled to pre-judgment interest on the Court's award of special damages in the form of attorney's fees.

Moreover, as Plaintiffs concede, because they have not submitted a draft amended judgment from the Court's August 15, 2016 hearing, the issue of post-judgment interest is not yet ripe and cannot be calculated until that judgment is entered.


Consequently, Pardee respectfully requests that the Court deny the majority of Plaintiffs' request for pre-judgment interest, and instead award them \$1,795.10 in pre-judgment interest associated with the \$6,000 compensatory damages award from Plaintiffs' time and effort searching for information about Pardee's development of the Coyote Springs Project.

DATED this 17th day of October, 2016.

McDONALD CARANO WILSON LLP

/s/ Rory T. Kay
PAT LUNDVALL (NBSN #3761)
RORY T. KAY (NSB #12416)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

Attorneys for Pardee Homes of Nevada

 McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 26070 • RENO, NEVADA 89501-0670
PHONE 775-786-2000 • FAX 775-788-2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 17th day of October, 2016, I e-served and e-filed a true and correct copy of the foregoing **PARDEE’S SUPPLEMENTAL BRIEF REGARDING PRE- AND POST-JUDGMENT INTEREST PURSUANT TO THE COURT’S ORDER** via Wiznet, as utilized in the Eighth Judicial District in Clark County, Nevada, on the following:

James J. Jimmerson
Lynn M. Hansen
JIMMERSON HANSEN, P.C.
415 S. Sixth Street, Suite 100
Las Vegas, Nevada 89101

Attorney for Plaintiffs

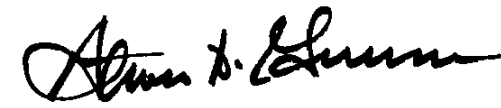
and

John W. Muije
John W. Muije & Assoc.
1840 E. Sahara Ave., #106
Las Vegas, NV 89104

Co-Counsel for Plaintiffs

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

370958.1



CLERK OF THE COURT

1 RIS

2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No.: 00264

4 MICHAEL C. FLAXMAN, ESQ.
5 Nevada Bar No.: 12963

6 THE JIMMERSON LAW FIRM, P.C.
7 415 South 6th Street, Suite 100
8 Las Vegas, Nevada 89101

9 Tel No.: (702) 388-7171;

10 Fax No.: (702) 388-6406

11 jjj@jimmersonlawfirm.com

12 mcf@jimmersonlawfirm.com

13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

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

PLAINTIFFS' REPLY BRIEF IN
SUPPORT OF BRIEF ON INTEREST
PURSUANT TO THE COURT'S ORDER
ENTERED ON AUGUST 15, 2016

19 COMES NOW Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-
20 WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES
21 LIVING TRUST (hereinafter collectively "Plaintiffs"), by and through their counsels of
22 record JAMES J. JIMMERSON, ESQ., and MICHAEL C. FLAXMAN, ESQ., of The
23 Jimmerson Law Firm, P.C., and files their Reply Brief in Support of their Brief regarding
24 interest pursuant to the Court's Order entered on August 15, 2016.
25

26 ///

27 ///

1 I. ARGUMENT

2 A. *Legal Standard for Pre- and Post-Judgment Interest*

3 The parties hereto are in agreement with respect to the controlling statutory
4 authority with respect to pre-judgment interest in the instant matter, with NRS 17.130,
5 along with NRS 99.040, controlling the computation of interests against monetary
6 judgments as provides:

7 1. In all judgments and decrees, rendered by any court of justice, for any
8 debt, damages or costs, and in all executions issued thereon, the amount
9 must be computed, as near as may be, in dollars and cents, rejecting
10 smaller fractions, and no judgment, or other proceedings, may be
11 considered erroneous for that omission.

12 2. When no rate of interest is provided by contract or otherwise by
13 law, or specified in the judgment, the judgment draws interest from
14 the time of service of the summons and complaint until satisfied,
15 except for any amount representing future damages, which draws interest
16 only from the time of the entry of the judgment until satisfied, at a rate
17 equal to the prime rate at the largest bank in Nevada as ascertained by
18 the Commissioner of Financial Institutions on January 1 or July 1, as the
19 case may be, immediately preceding the date of judgment, plus 2 percent.
The rate must be adjusted accordingly on each January 1 and July 1
thereafter until the judgment is satisfied.

20 [Emphasis added.]

21 Regarding any and all applicable post-judgment interest, NRS 18.120 is the
22 controlling statutory authority.

23 NRS 18.120 provides that: "[t]he clerk shall include in the judgment entered up by
24 the clerk any interest on the verdict or judgment of the court or master, from the time it
25 was rendered or made, and the costs, if the same have been taxed or ascertained; and
26

1 the clerk shall, within 2 days after the same shall be taxed or ascertained, if not included
2 in the judgment, insert the same in a blank to be left in the judgment for that purpose,
3 and shall make a similar insertion of the costs in the copies and docket of the
4 judgment.”

5 ***B. Plaintiffs’ Are Entitled to Pre-Judgment Interest***

6 Pursuant to the controlling statutory authority, the \$141,500.00 awarded to
7 Plaintiffs in this Court’s May 16, 2016 Judgment should accumulate prejudgment
8 interest. In the Court’s June 25, 2014 Findings of Fact, Conclusion of Law and Order,
9 Plaintiffs were awarded \$135,500.00 in special damages (attorney’s fees) and
10 \$6,000.00 in foreseeable damages (Mr. Wolfram’s time).
11

12 As previously discussed in Plaintiff’s Opening Brief, neither the underlying
13 contract in the instant matter, the Commission Agreement, nor the Court’s Judgments
14 entered May 16, 2016 and August 15, 2016 respectively, provide for an interest rate to
15 be applied against any monetary judgments awarded to either party. Therefore,
16 pursuant to NRS 17.130 and NRS 99.040, the \$141,500.00 awarded to Plaintiffs in this
17 Court’s May 16, 2016 Judgment should accumulate prejudgment interest from June 25,
18 2014, the date of the Court’s initial award of attorney’s fees to Plaintiffs’ as special
19 damages, through May 16, 2016, the date of the entry of the Court’s Judgment.
20
21

22 The Plaintiffs have *not* failed to meet their burden of proof. James J.
23 Jimmerson, Esq., counsel for Plaintiffs and an officer of the Court, testified at the time of
24 trial with respect to the fees incurred on behalf of the Plaintiffs, as well as the fees paid
25 to the firm by the Plaintiffs. Additionally, as Exhibit “6” to Plaintiffs’ initial Motion for
26 Attorney’s Fees and Costs (“Summary of Plaintiffs’ Attorney’s Fees and Damages”),
27
28

1 filed June 29, 2015, Plaintiffs detailed the attorney's fees and costs incurred in these
2 proceedings. Moreover, at the post-trial hearings in this matter, Mr. Jimmerson has
3 advised this Court of the fees paid by Plaintiffs' to the firm.

4 Plaintiffs have fully evidenced the amount of fees and costs incurred and paid by
5 Plaintiffs in this matter. Plaintiffs have met their burden of proof. Plaintiffs' judgment
6 in the amount of \$135,500.00 shall accrue interest from June 25, 2014 through May 16,
7 2016. The computations for the accrued interest, in light of the modification to the
8 Nevada prime interest rate in or about December 2015, are detailed in Plaintiff's
9 Opening Brief.
10

11 Attached hereto as Exhibit "1" is a detailed Client Ledger Report evidencing any
12 and all payments made by Plaintiffs to The Jimmerson Law Firm, P.C. Despite
13 Defendant's counsel's argument that Plaintiffs are not entitled to provide said
14 documentation and evidence to this Court at this time, this aversion simply is untrue.
15 Firstly, by attaching the same, Plaintiffs are not proffering any "new" arguments before
16 this Court that have not been previously addressed. The evidence, which was
17 inadvertently omitted from Plaintiffs' June 8, 2016 Motion for Attorney's Fees and Costs,
18 is now presented in *response* to Defendant's Supplemental Brief, filed October 17,
19 2016. Secondly, this evidence requires no response from Defendant or its counsel.
20 Allowing this evidence into the record does not deprive Defendant of any substantive or
21 procedural due process rights. The evidence speaks for itself, is attested to by
22 undersigned counsel as an officer of the Court and will only prove beneficial to this
23 Court in its calculation and determination of pre-judgment interest on its prior Judgment.
24
25
26

27 There is absolutely no prohibition to a party providing the Court with evidence to
28

1 contradict statements made by counsel in an Opposition or Supplemental Brief.
2 Defendant has raised this issue in its Brief, and Plaintiff provides this Court with
3 evidence to contradict these averions.

4 The parties agree that, pursuant to NRS 17.130, pre-judgment interest on the
5 \$6,000.00 awarded to Plaintiff as compensatory damages shall run from February 9,
6 2011, date Complaint was served upon Defendant, until the date of Judgment, May 16,
7 2016. Defendant concedes that Plaintiffs shall be entitled to the sum of \$1,795.10 in
8 prejudgment interest associate with this compensatory damage award. Plaintiff agree.
9

10 Plaintiffs have identified the most conservative dates for this Court to calculate
11 any interest on the judgments awarded to Plaintiffs. Plaintiffs have met and exceeded
12 their burden of proof. As such, Plaintiffs are entitled to an award of prejudgment
13 interest as enumerated.
14

15 **C. Plaintiffs Are Entitled to Post-Judgment Interest, In An Amount to Be**
16 **Determined**

17 Plaintiffs concede that any post-judgment interest shall be calculated from the
18 date of entry of the Judgment, until paid in full. As the Judgment from the August 15,
19 2016 hearings has not been entered as of the filing of the instant brief, post-judgment
20 interest cannot be calculated *at this time*. Presently, Plaintiffs are awaiting
21 Defendant's proposed modifications to the draft Orders from the August 15, 2016
22 hearings. Upon the filing of said Orders, this Court will be able to properly calculate the
23 appropriate and applicable amounts of post-judgment interest on the \$428,262.75 in
24 attorney's fees and \$56,129.56 in costs awarded to Plaintiffs on August 15, 2016.
25

26 ///

1 II. CONCLUSION

2 Pursuant to Plaintiff's Opening and Reply Briefs, Plaintiffs respectfully request
3 the following:

- 4 1) \$15,246.30 in prejudgment interest on the principal sum of judgment in the
5 amount of \$141,500.00; and
6 2) Post-judgment interest on the \$428,262.75 in attorney's fees and
7 \$56,129.56 in costs awarded to Plaintiffs on August 15, 2016, which has yet
8 to be determined.

9
10 Respectfully submitted,

11 DATED this 4th day of November, 2016.

12 THE JIMMERSON LAW FIRM, P.C.

13 Michael C. Flaxman

14 JAMES J. JIMMERSON, ESQ.

15 Nevada Bar No.: 00264

16 MICHAEL C. FLAXMAN, ESQ.

17 Nevada Bar No.: 12963

18 415 South 6th Street, Suite 100

19 Las Vegas, Nevada 89101

20 Tel No.: (702) 388-7171;

21 Fax No.: (702) 388-6406

22 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' BRIEF ON INTEREST PURSUANT TO THE COURT'S ORDER ENTERED ON AUGUST 15, 2016 was made on the 12th day of September, 2016, as indicated below:

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

X By Electronic Service

___ By facsimile, pursuant to EDCR 7.26 (as amended)

___ By receipt of copy as indicated below

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, NV 89102
Attorneys for Defendant


An employee of The Jimmerson Law Firm, P.C.

Exhibit "1"

Primary Timekeeper: 1 J.J. JIMMERSON
Thru 11/04/2016

Date	Ref #	Stmnt #	Fee Amount	Hours	Expense Amount	Advance Amount	Finance Charge	Fee Tax	Payment Amount	Apply to Stmt #	Bill Total	Balance Due
4886.01M WILKES/ WOLFRAM												
RE: VS. PARDEE HOMES OF NEVADA												
09/02/2004	1	1	1,946.25	8.35				24.04			1,970.29	1,970.29
09/27/2004	2	2	2,918.75	13.55				37.97			2,956.72	4,927.01
10/14/2004	3	4							4,958.26R			-31.25
11/09/2004	4	4	660.00	2.20				8.40			668.40	637.15
11/22/2004	6	5										637.15
12/09/2004	5	5							637.15F	4		0.00
09/21/2007	7	4313	663.75	2.75							663.75	663.75
10/19/2007	8	4578							331.88R			331.87
10/19/2007	9	4578							331.87R	4313		0.00
10/19/2007	10	4578							43.75R			-43.75
10/21/2007	11	4578	43.75	0.25							43.75	0.00
11/21/2007	12	4857	218.75	1.25	4.50						223.25	223.25
12/21/2007	13	5118	140.00	0.80							140.00	363.25
01/09/2008	14	5373							223.25R	4857		140.00
01/11/2008	15	5373							140.00R	5118		0.00
01/21/2008	16	5373										0.00
05/21/2008	17	6287	601.25	1.55							601.25	601.25
06/20/2008	18	6485							300.00R			301.25
06/21/2008	19	6485										301.25
07/21/2008	20	6882					0.15				0.15	301.40
08/20/2008	21	6791							301.40R			0.00
08/21/2008	22	6791										0.00
04/21/2009	23	8832	1,037.50	2.50							1,037.50	1,037.50
05/20/2009	26	9105							1,037.50R	8832		0.00
05/21/2009	27	9105	1,089.00	2.20							1,089.00	1,089.00
06/09/2009	28	9386							1,089.00R	9105		0.00
06/21/2009	29	9386										0.00
09/21/2009	30	10543	275.00	0.50				4.13			279.13	279.13
10/21/2009	31	10804					4.13				4.13	283.26
11/17/2009	32	10966							283.26R	10804		0.00
11/21/2009	33	10966	550.00	1.00				8.25			558.25	558.25
12/21/2009	36	11352	550.00	1.00				8.25			558.25	1,116.50
01/20/2010	35	11352							558.25R	10966		558.25
02/21/2010	37	11802					17.07				17.07	575.32
03/21/2010	39	12215	715.00	1.30			7.94	10.73			733.67	1,308.99
04/21/2010	41	12380	1,760.00	3.20				23.10			1,783.10	3,092.09
04/28/2010	40	12380							1,308.99R	12215		1,783.10
05/21/2010	42	12642	165.00	0.30			26.38	2.48			193.86	1,976.96
05/27/2010	43	13004							1,976.96R	12642		0.00
06/21/2010	44	13004										0.00
11/21/2010	45	14091	3,200.00	14.00				48.00			3,248.00	3,248.00
12/21/2010	50	14265	100.00	2.00			33.26	16.50			149.76	3,397.76
01/05/2011	51	14640							1,698.88R	14091		1,698.88
01/05/2011	52	14640							1,698.88R	14091		0.00
01/21/2011	53	14640	537.50	2.00		285.10		4.13			826.73	826.73
02/21/2011	56	14926				3.50					3.50	830.23
02/22/2011	54	14926							413.37R	14640		416.86
02/22/2011	55	14926							413.36R	14640		3.50
03/21/2011	57	15114				83.50	0.05				83.55	87.05
04/21/2011	58	15395	550.00	1.00			1.33	8.25			559.58	646.63
05/20/2011	59	15683							646.63R	15395		0.00
05/21/2011	60	15683				3.50					3.50	3.50
06/21/2011	61	16103					0.05				0.05	3.55
07/21/2011	62	16393					0.05				0.05	3.60
08/21/2011	63	16679	3,805.00	10.40			0.06	57.08			3,862.14	3,865.74
09/20/2011	64	16724							1,932.87R	16679		1,932.87
09/21/2011	66	16724	4,870.00	13.70				73.05			4,943.05	6,875.92
09/22/2011	65	16724							1,932.87R			4,943.05
10/21/2011	68	17019	4,700.00	10.40	194.40	5.50	36.56	70.50			5,006.96	9,950.01
10/27/2011	67	17019							2,471.53R	16724		7,478.48
11/21/2011	71	17186	15,142.50	56.00	425.00	128.88	111.36	227.14			16,034.88	23,513.36
12/21/2011	72	17642	6,637.50	23.80	310.00	1,885.35	347.87	99.56			9,280.28	32,793.64
01/03/2012	76	17924							14,266.25R	17186		18,527.39
01/12/2012	77	17924							10,502.64R			8,024.75
01/21/2012	78	17924	3,485.00	14.10	210.00	326.21	122.68	52.28			4,196.17	12,220.92
02/21/2012	86	18231	3,015.00	12.20	329.49	3,859.07		45.23			7,248.79	19,469.71
03/06/2012	85	18231							7,365.98R			12,103.73
03/21/2012	89	18561	135.00	0.30		156.50		2.03			293.53	12,397.26
03/26/2012	87	18561							2,000.00R			10,397.26
03/26/2012	88	18561							2,854.94R			7,542.32
04/19/2012	90	18936							3,771.16R			3,771.16
04/21/2012	91	18936	360.00	1.10		5.10		5.40			370.50	4,141.66
05/10/2012	92	19274							2,070.83R			2,070.83
05/21/2012	93	19274	2,475.00	5.50	-2,000.00			37.13			512.13	2,582.96
06/26/2012	94	19665							2,000.00R			582.96
06/29/2012	95	19665	450.00	1.00				6.75			456.75	1,039.71
07/21/2012	96	20093	4,710.00	13.70		120.00		70.65			4,900.65	5,940.36
08/13/2012	98	20309							512.13R	19274		5,428.23
08/13/2012	99	20309							0.00R	19274		5,428.23
08/13/2012	100	20309							456.75R	19665		4,971.48
08/13/2012	101	20309							2,450.32R	20093		2,521.16
08/20/2012	97	20309							70.83R	18936		2,450.33
08/27/2012	102	20309	4,162.50	13.25		8.00		62.44			4,232.94	6,683.27
09/21/2012	104	20693	11,130.00	32.40	5.00	987.08		166.95			12,289.03	18,972.30
09/28/2012	103	20693							2,116.47R	20309		16,855.83
10/21/2012	105	21022	36,924.00	98.03		2,540.11		553.86			40,017.97	56,873.80
11/21/2012	107	21802	9,577.50	32.75	1,025.00	3,076.56		143.66			13,822.72	70,696.52
12/21/2012	108	454630	-27,331.52	10.60		41.40		50.33			-27,239.79	43,456.73

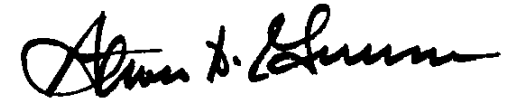
Primary Timekeeper: 1 J.J. JIMMERSON
 Thru 11/04/2016

	Date	Ref #	Stmnt #	Fee Amount	Hours	Expense Amount	Advance Amount	Finance Charge	Fee Tax	Payment Amount	Apply to Stmt #	Bill Total	Balance Due
4886.01M WILKES/WOLFRAM			(continued)										
	01/21/2013	110	555250	2,512.50	7.35		219.30		37.69			2,769.49	46,226.22
	01/29/2013	118	555586							21,728.26R			24,497.96
	02/21/2013	119	555586	1,487.50	12.25		594.40		82.31			2,164.21	26,662.17
	03/13/2013	120	556048							10.25R			26,651.92
	03/21/2013	121	556048	28,712.50	84.55		1,179.04		430.69			30,322.23	56,974.15
	04/08/2013	122	556113							16,243.23R			40,730.92
	04/21/2013	123	556113	11,412.50	34.05		989.34		171.19			12,573.03	53,303.95
	05/16/2013	124	556403							6,286.51R			47,017.44
	05/21/2013	125	556403	20,962.50	63.15	111.10	-232.43		314.44			21,155.61	68,173.05
	06/21/2013	126	556689	9,735.00	25.00		592.10		138.68			10,465.78	78,638.83
	07/21/2013	127	557039	20,747.50	57.15	644.40	2,028.04		302.96			23,722.90	102,361.73
	08/21/2013	129	557638	15,845.00	42.10	557.00	1,300.12		195.68			17,897.80	120,259.53
	09/21/2013	131	557644	9,650.00	25.60	326.20	575.46		144.75			10,696.41	130,955.94
	09/30/2013	132	558054							20,000.00R			110,955.94
	10/21/2013	133	558054	44,007.50	109.75	1,243.40	4,332.06		660.11			50,243.07	161,199.01
	10/28/2013	134	558836							1,433.10R			159,765.91
	11/21/2013	135	558836	87,657.50	204.85	1,368.00	4,540.97		1,301.36			94,867.83	254,633.74
	12/11/2013	136	590714							5,000.00R			249,633.74
	12/21/2013	137	590714	87,937.50	198.15	5,696.40	9,961.88		1,319.06			104,914.84	354,548.58
	01/21/2014	138	591174	750.00	2.00	12.80			11.25			774.05	355,322.63
	02/20/2014	139	591591							25,000.00R			330,322.63
	02/21/2014	140	591591			2.60						2.60	330,325.23
	03/21/2014	141	591821	112.50	0.25	20.40	90.50		1.69			225.09	330,550.32
	04/21/2014	142	593178	150.00	0.60		148.00		2.25			300.25	330,850.57
	05/21/2014	143	594338	105.00	0.30	7.00			1.58			113.58	330,964.15
	06/21/2014	144	595438	5,040.00	13.70	7.40	3.50		75.60			5,126.50	336,090.65
	07/21/2014	145	595896	17,360.00	44.90	28.40	372.50		260.40			18,021.30	354,111.95
	08/21/2014	146	596088	9,302.50	21.65	70.80	61.50		139.54			9,574.34	363,686.29
	09/21/2014	147	597323	6,275.00	15.85	22.60	3.50		94.13			6,395.23	370,081.52
	10/21/2014	148	600484	140.00	0.40				2.10			142.10	370,223.62
	11/21/2014	149	600711										370,223.62
	12/20/2014	150	600945										370,223.62
	01/20/2015	151	601157										370,223.62
	02/20/2015	152	604320										370,223.62
	03/20/2015	153	604783	275.00	0.50				4.13			279.13	370,502.75
	04/20/2015	154	604994										370,502.75
	05/20/2015	155	605253										370,502.75
	06/20/2015	156	605466	2,642.50	12.45	6.60	3.50		39.64			2,692.24	373,194.99
	07/20/2015	157	606060	62,941.25	202.15	740.60	583.69		853.74			65,119.28	438,314.27
	08/20/2015	158	606114	24,275.00	62.90	15.00	662.83		363.60			25,316.43	463,630.70
	09/14/2015	159	606507							38,000.00R	606114		425,630.70
	09/20/2015	160	606507	32,220.00	77.90	81.40	12,763.67		436.95			45,502.02	471,132.72
	10/20/2015	161	606920	1,850.00	4.60	5.00			27.75			1,882.75	473,015.47
	10/30/2015	162	609750							15,000.00R			458,015.47
	11/20/2015	163	609750	4,780.00	12.00	0.40			71.70			4,852.10	462,867.57
	12/20/2015	165	610138	5,822.50	15.75		12.00		87.34			5,921.84	468,789.41
	01/20/2016	166	611330	23,120.00	56.45	523.20	991.36		346.80			24,981.36	493,770.77
	02/20/2016	167	611788	4,185.00	12.30				62.78			4,247.78	498,018.55
	03/20/2016	168	612516	4,540.00	18.20	9.60	2,127.39		68.10			6,745.09	504,763.64
	04/20/2016	169	616245	4,585.00	16.00		7.00		68.78			4,660.78	509,424.42
	05/20/2016	170	616491	452.50	1.20	277.20	141.64		6.79			878.13	510,302.55
	06/20/2016	171	616917	15,540.00	61.60	24.60	1,219.45		233.10			17,017.15	527,319.70
	07/20/2016	172	619316	2,565.00	11.40	11.60	1,865.14		38.48			4,480.22	531,799.92
	08/20/2016	173	619806	10,115.00	24.20	68.00	539.30		151.73			10,874.03	542,673.95
	09/20/2016	174	620046	11,195.00	30.50		171.72		167.93			11,534.65	554,208.60
	10/20/2016	175	620500	2,635.00	6.90	7.40			39.53			2,681.93	556,890.53
Subtotal				695,610.23	2,001.53	12,392.49	61,363.83	708.94	10,684.60	223,869.56		780,760.09	556,890.53
Total for Primary Timekeeper: 1				695,610.23	2,001.53	12,392.49	61,363.83	708.94	10,684.60	223,869.56		780,760.09	556,890.53

ORDR

JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 0012963
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6406
jjj@jimmersonlawfirm.com
mcf@jimmersonlawfirm.com
Attorneys for Plaintiffs

Electronically Filed
01/09/2017 10:22:17 AM



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES
and ANGELA L. LIMBOCKER-WILKES
LIVING TRUST, ANGELA L.
LIMBOCKER-WILKES, TRUSTEE,

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

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

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S
MOTION TO AMEND JUDGMENT**

This matter coming on for a hearing on the 15th day of August, 2016, upon Defendant, PARDEE HOMES OF NEVADA's (hereinafter "Pardee"), Motion to Amend Judgment and James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST and Plaintiff, James Wolfram, being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on behalf of Defendant and no

1 corporate representative being present, and the Court having reviewed the papers and
2 pleadings on file herein, and heard the arguments of counsel, and for good cause
3 appearing:

4 THE COURT HEREBY NOTES that it ~~was aware~~ ^{considered} of the decision in *Liu v.*
5 *Christopher Homes, LLC*, 130 Nev. Adv. Op. 17, 321 P.3d 875 (2014) at the time it
6 entered its Findings of Fact and Conclusions of Law, filed on June 25, 2014, and in fact,
7 expressly cited to the decision at page 14, lines 23 to 25 of the Court's Findings of Fact,
8 Conclusions of Law and Order filed on June 25, 2014.
9

10 THE COURT HEREBY FINDS that the decision in *Liu* did not limit, but rather
11 broadened, the circumstances under which the Court could award Plaintiffs attorney's
12 fees as special damages.
13

14 THE COURT FURTHER FINDS that after the Court's review of *Liu*, *Sandy Valley*
15 *Assoc. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 35 P.2d 964 (2001), and
16 *Horgan v. Felton*, 123 Nev. Adv. Op. 53 (2007), and that after review of the relevant
17 facts and controlling legal authority, there is no legal or factual basis pursuant to NRCP
18 52(b) and NRCP 59(e) to grant Defendant's Motion to Amend Judgment.
19

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion
2 to Amend Judgment is denied.

3 DATED this 5 day of January, ²⁰¹⁷~~2016~~.

4
5
6 
7 DISTRICT COURT JUDGE

8
9 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

10 Dated this __ day December, 2016.

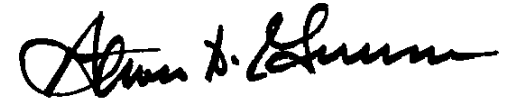
Dated this __ day December, 2016.

11 THE JIMMERSON LAW FIRM,
12 P.C.

McDONALD CARANO WILSON, LLP

13
14
15 JAMES J. JIMMERSON, ESQ.
16 Nevada State Bar No. 000264
MICHAEL C. FLAXMAN, ESQ.
17 Nevada Bar No. 012963
18 415 South Sixth St., Ste. 100
Las Vegas, NV 89101
19 Attorneys for Plaintiffs

PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant



CLERK OF THE COURT

ORDR

JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 0012963
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6406
jjj@jimmersonlawfirm.com
mcf@jimmersonlawfirm.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES
and ANGELA L. LIMBOCKER-WILKES
LIVING TRUST, ANGELA L.
LIMBOCKER-WILKES, TRUSTEE,

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

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

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

This matter coming on for a hearing on the 15th day of August, 2016, upon Plaintiffs', JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST, Motion for Attorney's Fees and Costs, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs and Plaintiff James Wolfram being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on behalf of Defendant and no corporate representative being present, and the Court

1 having reviewed the papers and pleadings on file herein, and heard the arguments of
2 counsel, and for good cause appearing:

3 THE COURT HEREBY NOTES that it has analyzed the proposed attorney's fees
4 presented by Plaintiffs pursuant to the controlling case of *Brunzell v. Golden Gate Nat'l*
5 *Bank*, 85 Nev. 345, 455 P.2d 31 (1969) and NRPC 1.5, conducted an extensive review
6 of all documentation supporting Plaintiffs' requested attorney's fees and also,
7 Defendant's Opposition thereto;
8

9 THE COURT HEREBY FINDS that Plaintiffs' Offer of Judgment, remitted to
10 Defendant on or about April 29, 2013, contained a conditional provision and as such,
11 does not provide Plaintiffs with a basis to recover attorney's fees.
12

13 THE COURT FURTHER FINDS that Plaintiffs are the prevailing party in the
14 instant litigation pursuant to the Court's Findings of Fact and Conclusions of Law, filed
15 June 25, 2014, the Findings of Fact and Conclusions of Law and Supplemental Briefing
16 Regarding Future Accounting, filed May 13, 2015 and the final Judgment entered on
17 May 16, 2016.
18

19 THE COURT FURTHER FINDS that, the Commission Agreement, executed by
20 the parties on or about September 1, 2004, specifically provides that, in the event either
21 party brings an action to enforce its right under that agreement, the prevailing party shall
22 be awarded reasonable attorney's fees and costs.

23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion
24 for Attorney's Fees and Costs is granted. Based upon the pleadings before the Court,
25 and upon the Affidavit of James J. Jimmerson, Esq. and the evidentiary documentation
26 provided by both parties before the Court, Plaintiffs' request for \$428,462.75 is
27 reasonable, necessarily incurred, and is separate from, and in addition to, Plaintiff's
28

1 attorney's fees damages in the amount of \$135,500.00 as part of the \$141,500.00 in
2 damages awarded in favor of Plaintiffs and against Defendant within its final Judgment,
3 filed May 16, 2016. As such, Plaintiffs shall take Judgment in favor of Plaintiffs and
4 against Defendant, Pardee Homes of Nevada in the sum of \$428,462.75, plus legal
5 interest until paid in full, collectible by any and all lawful means.
6

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to
8 the commencement date for prejudgment interest, the parties shall brief the issue for
9 the Court. Plaintiffs' brief shall be filed on or before September 12, 2016, with
10 Defendant's Opposition to be filed on or before October 17, 2016. Plaintiffs' Reply brief
11 shall be filed on or before October 31, 2016. The Court shall conduct a hearing on the
12 issue of prejudgment interest on December 12, 2016 at 3:00 a.m., in chambers.
13

14 DATED this 6 day of January, 2016. 2 D17
15 Kerry L. Early
16 DISTRICT COURT JUDGE
17

18 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

19 Dated this ___ day December, 2016.

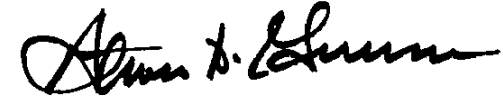
Dated this ___ day December, 2016.

20 THE JIMMERSON LAW FIRM,
21 P.C.

McDONALD CARANO WILSON, LLP

22
23 JAMES J. JIMMERSON, ESQ.
24 Nevada State Bar No. 000264
25 MICHAEL C. FLAXMAN, ESQ.
26 Nevada Bar No. 012963
27 415 South Sixth St., Ste. 100
28 Las Vegas, NV 89101
Attorneys for Plaintiffs

PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant



CLERK OF THE COURT

ORDR

JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 0012963
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6406
jjj@jimmersonlawfirm.com
mcf@jimmersonlawfirm.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES
and ANGELA L. LIMBOCKER-WILKES
LIVING TRUST, ANGELA L.
LIMBOCKER-WILKES, TRUSTEE,

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

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

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

This matter coming on for a hearing on the 15th day of August, 2016, upon Defendant, PARDEE HOMES OF NEVADA's (hereinafter "Pardee"), Motion for Attorney's Fees and Costs, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST and Plaintiff James Wolfram being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on

1 behalf of Defendant and no corporate representative being present, and the Court having
2 reviewed the papers and pleadings on file herein, and heard the arguments of counsel,
3 and for good cause appearing:

4 THE COURT HEREBY FINDS that after a thorough review of the relevant case
5 law and facts of the case, the most substantial issues in Plaintiffs' case, from pre-litigation
6 through Trial, this case was fundamentally filed and maintained in order to obtain
7 information Defendant, Pardee Homes of Nevada. Defendant was required to provide
8 the information, and to provide to the Plaintiffs an accounting so they could determine
9 the location and extent of the development and contracts, and whether they were due
10 any additional commissions and to ensure proper monitoring of any possible future
11 commissions Plaintiffs may be entitled to, as this was a contract that will hold up for fort-
12 six (46) years going forward. KUE

15 THE COURT FURTHER FINDS ~~that this information was the only reason~~
16 ~~Plaintiffs initiated the instant litigation.~~ That Plaintiffs, despite their efforts, had no other
17 way, prior to litigation, to obtain the information they were entitled to in order to learn of
18 the needed information and to determine whether they were due any past or future
19 commissions.
20

21 THE COURT FURTHER FINDS that Plaintiffs were the prevailing party and were
22 successful on the most substantial issues in the matter, obtaining information and an
23 accounting, and that Plaintiffs were the prevailing party on each of their three (3) claims
24 for relief, and Defendant, near the close of trial, withdrew its one (1) claim for relief as
25 confirmed within the Court's Findings of Fact, Conclusion of Law and Decision filed June
26 25, 2014, and within its Judgment filed May 16, 2016. Defendant's Motion for Attorney's
27 Fees and Costs has no legal or factual basis under the terms of the Commission
28

1 Agreement as filed under the Court's first Judgment, dated May 16, 2016. As such,
2 Defendant was not the prevailing party in the instant matter; and good cause appearing,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's
4 Motion for Attorney's Fees and Costs is denied.

5 DATED this 5 day of January, ²⁰¹⁷~~2016~~.
6

7 
8 DISTRICT COURT JUDGE
9

10
11 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

12 Dated this ___ day December, 2016.

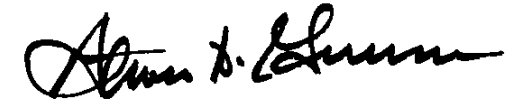
Dated this ____ day December, 2016.

13
14 THE JIMMERSON LAW FIRM,
15 P.C.

McDONALD CARANO WILSON, LLP

16
17 _____
18 JAMES J. JIMMERSON, ESQ.
19 Nevada State Bar No. 000264
20 MICHAEL C. FLAXMAN, ESQ.
21 Nevada Bar No. 012963
22 415 South Sixth St., Ste. 100
23 Las Vegas, NV 89101
24 Attorneys for Plaintiffs

PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant



CLERK OF THE COURT

1 **NEOJ**

2 **THE JIMMERSON LAW FIRM, P.C.**

3 **JAMES J. JIMMERSON, ESQ.**

4 Nevada Bar No. 000264

5 **MICHAEL C. FLAXMAN, ESQ.**

6 Nevada Bar No. 0012963

7 415 South Sixth Street, Suite 100

8 Las Vegas, Nevada 89101

9 Telephone: (702) 388-7171

10 Facsimile: (702) 380-6406

11 jjj@jimersonlawfirm.com

12 mcf@jimersonlawfirm.com

13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

14 **JAMES WOLFRAM and WALTER D. WILKES**

15 **and ANGELA L. LIMBOCKER-WILKES**

16 **LIVING TRUST, ANGELA L.**

17 **LIMBOCKER-WILKES, TRUSTEE,**

18 Plaintiffs,

19 v.

20 **PARDEE HOMES OF NEVADA,**

21 Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

Courtroom No. 16B

**NOTICE OF ENTRY OF ORDER
AND JUDGMENT FROM AUGUST
15, 2016 HEARINGS REGARDING
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS**

22 PLEASE TAKE NOTICE that an ORDER AND JUDGMENT FROM AUGUST 15,
23 2016 HEARINGS REGARDING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND
24 COSTS was entered in the above-captioned matter on January 9, 2017. A true and correct
25 file -stamped

26 ///

27 ///

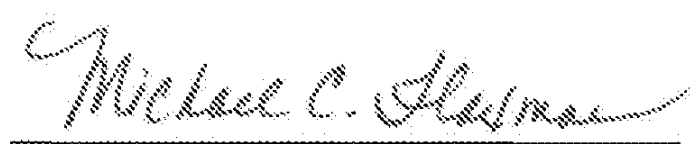
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

copy of said Order is attached hereto as Exhibit "1".

Dated this 10th day of January, 2017.

THE JIMMERSON LAW FIRM, P.C.



JAMES J. JIMMERSON, ESQ.
Nevada State Bar No.: 00264
MICHAEL C. FLAXMAN, ESQ.
Nevada State Bar No.: 12963
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE JIMMERSON LAW FIRM, P.C.
that on the 10th day of January, 2017, service of the above and foregoing NOTICE
OF ENTRY OF ORDER AND JUDGMENT FROM AUGUST 15, 2016 HEARINGS
REGARDING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS was
made as indicated below:

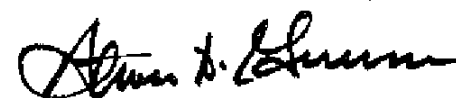
- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
Administrative Order 14-2 captioned "In the Administrative Matter of
Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a
sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;
- ☐ by electronic mail;
- ☐ by hand-delivery with signed Receipt of Copy

To the attorney(s) listed below at the address, email address, and/or facsimile number
indicated below:

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant


An employee of THE JIMMERSON LAW FIRM, P.C.

Exhibit "1"



CLERK OF THE COURT

ORDER

JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 0012963
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6406
jjj@jimmersonlawfirm.com
mcf@jimmersonlawfirm.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES
and ANGELA L. LIMBOCKER-WILKES
LIVING TRUST, ANGELA L.
LIMBOCKER-WILKES, TRUSTEE,

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

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

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

This matter coming on for a hearing on the 15th day of August, 2016, upon Plaintiffs', JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST, Motion for Attorney's Fees and Costs, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs and Plaintiff James Wolfram being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on behalf of Defendant and no corporate representative being present, and the Court

1 having reviewed the papers and pleadings on file herein, and heard the arguments of
2 counsel, and for good cause appearing:

3 THE COURT HEREBY NOTES that it has analyzed the proposed attorney's fees
4 presented by Plaintiffs pursuant to the controlling case of *Brunzell v. Golden Gate Nat'l*
5 *Bank*, 85 Nev. 345, 455 P.2d 31 (1969) and NRPC 1.5, conducted an extensive review
6 of all documentation supporting Plaintiffs' requested attorney's fees and also,
7 Defendant's Opposition thereto;

8
9 THE COURT HEREBY FINDS that Plaintiffs' Offer of Judgment, remitted to
10 Defendant on or about April 29, 2013, contained a conditional provision and as such,
11 does not provide Plaintiffs with a basis to recover attorney's fees.

12 THE COURT FURTHER FINDS that Plaintiffs are the prevailing party in the
13 instant litigation pursuant to the Court's Findings of Fact and Conclusions of Law, filed
14 June 25, 2014, the Findings of Fact and Conclusions of Law and Supplemental Briefing
15 Regarding Future Accounting, filed May 13, 2015 and the final Judgment entered on
16 May 16, 2016.

17
18 THE COURT FURTHER FINDS that, the Commission Agreement, executed by
19 the parties on or about September 1, 2004, specifically provides that, in the event either
20 party brings an action to enforce its right under that agreement, the prevailing party shall
21 be awarded reasonable attorney's fees and costs.

22
23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion
24 for Attorney's Fees and Costs is granted. Based upon the pleadings before the Court,
25 and upon the Affidavit of James J. Jimmerson, Esq. and the evidentiary documentation
26 provided by both parties before the Court, Plaintiffs' request for \$428,462.75 is
27 reasonable, necessarily incurred, and is separate from, and in addition to, Plaintiff's
28

1 attorney's fees damages in the amount of \$135,500.00 as part of the \$141,500.00 in
2 damages awarded in favor of Plaintiffs and against Defendant within its final Judgment,
3 filed May 16, 2016. As such, Plaintiffs shall take Judgment in favor of Plaintiffs and
4 against Defendant, Pardee Homes of Nevada in the sum of \$428,462.75, plus legal
5 interest until paid in full, collectible by any and all lawful means.
6

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to
8 the commencement date for prejudgment interest, the parties shall brief the issue for
9 the Court. Plaintiffs' brief shall be filed on or before September 12, 2016, with
10 Defendant's Opposition to be filed on or before October 17, 2016. Plaintiffs' Reply brief
11 shall be filed on or before October 31, 2016. The Court shall conduct a hearing on the
12 issue of prejudgment interest on December 12, 2016 at 3:00 a.m., in chambers.
13

14 DATED this 6 day of January, 2016. 2 D17
15 Kerry L. Early
16 DISTRICT COURT JUDGE
17

18 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

19 Dated this ___ day December, 2016.

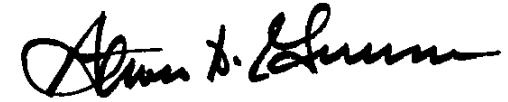
Dated this ___ day December, 2016.

20 THE JIMMERSON LAW FIRM,
21 P.C.

McDONALD CARANO WILSON, LLP

22
23 JAMES J. JIMMERSON, ESQ.
24 Nevada State Bar No. 000264
25 MICHAEL C. FLAXMAN, ESQ.
26 Nevada Bar No. 012963
27 415 South Sixth St., Ste. 100
28 Las Vegas, NV 89101
Attorneys for Plaintiffs

PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant



CLERK OF THE COURT

1 NEOJ

2 THE JIMMERSON LAW FIRM, P.C.

3 JAMES J. JIMMERSON, ESQ.

4 Nevada Bar No. 000264

5 MICHAEL C. FLAXMAN, ESQ.

6 Nevada Bar No. 0012963

7 415 South Sixth Street, Suite 100

8 Las Vegas, Nevada 89101

9 Telephone: (702) 388-7171

10 Facsimile: (702) 380-6406

11 jjj@jimersonlawfirm.com

12 mcf@jimersonlawfirm.com

13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

14 JAMES WOLFRAM and WALTER D. WILKES

15 and ANGELA L. LIMBOCKER-WILKES

16 LIVING TRUST, ANGELA L.

17 LIMBOCKER-WILKES, TRUSTEE,

18 Plaintiffs,

19 v.

20 PARDEE HOMES OF NEVADA,

21 Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

Courtroom No. 16B

**NOTICE OF ENTRY OF ORDER
AND JUDGMENT FROM AUGUST
15, 2016 HEARINGS REGARDING
DEFENDANT'S MOTION FOR
ATTORNEY'S FEES**

22 PLEASE TAKE NOTICE that an ORDER AND JUDGMENT FROM AUGUST 15,
23 2016 HEARINGS REGARDING DEFENDANT'S MOTION FOR ATTORNEY'S FEES was
24 entered in the above-captioned matter on January 9, 2017. A true and correct file -stamped

25 ///

26 ///

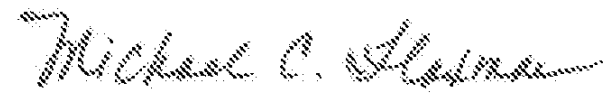
27 ///

28 ///

1 copy of said Order is attached hereto as Exhibit "1".

2 Dated this 10th day of January, 2017.

3
4 THE JIMMERSON LAW FIRM, P.C.

5 

6 JAMES J. JIMMERSON, ESQ.
7 Nevada State Bar No.: 00264
8 MICHAEL C. FLAXMAN, ESQ.
9 Nevada State Bar No.: 12963
10 415 South 6th Street, Suite 100
11 Las Vegas, Nevada 89101
12 Attorneys for Plaintiffs
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE JIMMERSON LAW FIRM, P.C.
that on the 10th day of January, 2017, service of the above and foregoing NOTICE
OF ENTRY OF ORDER AND JUDGMENT FROM AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S MOTION FOR ATTORNEY'S FEES was made as
indicated below:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
Administrative Order 14-2 captioned "In the Administrative Matter of
Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;
☐ by placing same to be deposited for mailing in the United States Mail, in a
sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;
☐ by electronic mail;
☐ by hand-delivery with signed Receipt of Copy

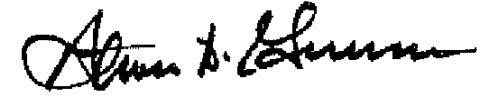
To the attorney(s) listed below at the address, email address, and/or facsimile number
indicated below:

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant



An employee of THE JIMMERSON LAW FIRM, P.C.

Exhibit "1"



CLERK OF THE COURT

ORDR

JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
MICHAEL C. FLAXMAN, ESQ.
Nevada Bar No. 0012963
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6406
jjj@jimmersonlawfirm.com
mcf@jimmersonlawfirm.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES
and ANGELA L. LIMBOCKER-WILKES
LIVING TRUST, ANGELA L.
LIMBOCKER-WILKES, TRUSTEE,

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

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

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

This matter coming on for a hearing on the 15th day of August, 2016, upon Defendant, PARDEE HOMES OF NEVADA's (hereinafter "Pardee"), Motion for Attorney's Fees and Costs, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST and Plaintiff James Wolfram being present, and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on

1 behalf of Defendant and no corporate representative being present, and the Court having
2 reviewed the papers and pleadings on file herein, and heard the arguments of counsel,
3 and for good cause appearing:

4 THE COURT HEREBY FINDS that after a thorough review of the relevant case
5 law and facts of the case, the most substantial issues in Plaintiffs' case, from pre-litigation
6 through Trial, this case was fundamentally filed and maintained in order to obtain
7 information Defendant, Pardee Homes of Nevada. Defendant was required to provide
8 the information, and to provide to the Plaintiffs an accounting so they could determine
9 the location and extent of the development and contracts, and whether they were due
10 any additional commissions and to ensure proper monitoring of any possible future
11 commissions Plaintiffs may be entitled to, as this was a contract that will hold up for fort-
12 six (46) years going forward. KLE

15 THE COURT FURTHER FINDS ~~that this information was the only reason~~
16 ~~Plaintiffs initiated the instant litigation.~~ That Plaintiffs, despite their efforts, had no other
17 way, prior to litigation, to obtain the information they were entitled to in order to learn of
18 the needed information and to determine whether they were due any past or future
19 commissions.

21 THE COURT FURTHER FINDS that Plaintiffs were the prevailing party and were
22 successful on the most substantial issues in the matter, obtaining information and an
23 accounting, and that Plaintiffs were the prevailing party on each of their three (3) claims
24 for relief, and Defendant, near the close of trial, withdrew its one (1) claim for relief as
25 confirmed within the Court's Findings of Fact, Conclusion of Law and Decision filed June
26 25, 2014, and within its Judgment filed May 16, 2016. Defendant's Motion for Attorney's
27 Fees and Costs has no legal or factual basis under the terms of the Commission
28

1 Agreement as filed under the Court's first Judgment, dated May 16, 2016. As such,
2 Defendant was not the prevailing party in the instant matter; and good cause appearing,
3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's
4 Motion for Attorney's Fees and Costs is denied.

5 DATED this 5 day of January, ²⁰¹⁷~~2016~~.

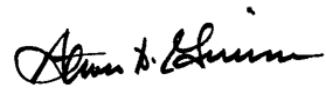
6
7
8 
9 DISTRICT COURT JUDGE

10
11 Respectfully submitted by: APPROVED AS TO FORM AND CONTENT:

12 Dated this ___ day December, 2016. Dated this ____ day December, 2016.

13 THE JIMMERSON LAW FIRM, P.C. McDONALD CARANO WILSON, LLP
14
15

16
17
18 JAMES J. JIMMERSON, ESQ. PAT LUNDVALL, ESQ.
19 Nevada State Bar No. 000264 Nevada State Bar No. 3761
20 MICHAEL C. FLAXMAN, ESQ. RORY T. KAY, ESQ.
21 Nevada Bar No. 012963 Nevada State Bar No. 12416
22 415 South Sixth St., Ste. 100 2300 West Sahara Ave., Ste. 1200
23 Las Vegas, NV 89101 Las Vegas, Nevada 89102
24 Attorneys for Plaintiffs Attorneys for Defendant
25
26
27
28



CLERK OF THE COURT

NEOJ

THE JIMMERSON LAW FIRM, P.C.

JAMES J. JIMMERSON, ESQ.

Nevada Bar No. 000264

MICHAEL C. FLAXMAN, ESQ.

Nevada Bar No. 0012963

415 South Sixth Street, Suite 100

Las Vegas, Nevada 89101

Telephone: (702) 388-7171

Facsimile: (702) 380-6406

jjj@jimmersonlawfirm.com

mcf@jimmersonlawfirm.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM and WALTER D. WILKES

and ANGELA L. LIMBOCKER-WILKES

LIVING TRUST, ANGELA L.

LIMBOCKER-WILKES, TRUSTEE,

Plaintiffs,

v.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

Courtroom No. 16B

**NOTICE OF ENTRY OF ORDER
AND JUDGMENT FROM AUGUST
15, 2016 HEARINGS REGARDING
DEFENDANT'S MOTION TO
AMEND JUDGMENT**

PLEASE TAKE NOTICE that an ORDER AND JUDGMENT FROM AUGUST 15,
2016 HEARINGS REGARDING DEFENDANT'S MOTION TO AMEND JUDGMENT was
entered in the above-captioned matter on January 9, 2017. A true and correct file -stamped

///

///

///

///

1 copy of said Order is attached hereto as Exhibit "1".

2 Dated this 10th day of January, 2017.

3
4 THE JIMMERSON LAW FIRM, P.C.

5 

6 JAMES J. JIMMERSON, ESQ.

7 Nevada State Bar No.: 00264

8 MICHAEL C. FLAXMAN, ESQ.

9 Nevada State Bar No.: 12963

10 415 South 6th Street, Suite 100

11 Las Vegas, Nevada 89101

12 Attorneys for Plaintiffs
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE JIMMERSON LAW FIRM, P.C.
that on the 10th day of January, 2017, service of the above and foregoing NOTICE
OF ENTRY OF ORDER AND JUDGMENT FROM AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S MOTION TO AMEND JUDGMENT was made as
indicated below:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
Administrative Order 14-2 captioned "In the Administrative Matter of
Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;
☐ by placing same to be deposited for mailing in the United States Mail, in a
sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;
☐ by electronic mail;
☐ by hand-delivery with signed Receipt of Copy

To the attorney(s) listed below at the address, email address, and/or facsimile number
indicated below:

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant

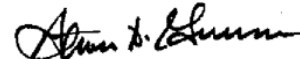

An employee of THE JIMMERSON LAW FIRM, P.C.

Exhibit "1"

1 **ORDR**

2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No. 000264
4 MICHAEL C. FLAXMAN, ESQ.
5 Nevada Bar No. 0012963
6 THE JIMMERSON LAW FIRM, P.C.
7 415 South Sixth Street, Suite 100
8 Las Vegas, Nevada 89101
9 Telephone: (702) 388-7171
10 Facsimile: (702) 380-6406
11 jjj@jimmersonlawfirm.com
12 mcf@jimmersonlawfirm.com
13 Attorneys for Plaintiffs

Electronically Filed
01/09/2017 10:22:17 AM



CLERK OF THE COURT

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 JAMES WOLFRAM and WALTER D. WILKES
17 and ANGELA L. LIMBOCKER-WILKES
18 LIVING TRUST, ANGELA L.
19 LIMBOCKER-WILKES, TRUSTEE,

20 Plaintiffs,

21 v.

22 PARDEE HOMES OF NEVADA,

23 Defendant.

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

**ORDER AND JUDGMENT FROM
AUGUST 15, 2016 HEARINGS
REGARDING DEFENDANT'S
MOTION TO AMEND JUDGMENT**

24 This matter coming on for a hearing on the 15th day of August, 2016, upon
25 Defendant, PARDEE HOMES OF NEVADA's (hereinafter "Pardee"), Motion to Amend
26 Judgment and James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE
27 JIMMERSON LAW FIRM, P.C. appearing on behalf of Plaintiffs, JAMES WOLFRAM and
28 ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA
L. LIMBOCKER-WILKES LIVING TRUST and Plaintiff, James Wolfram, being present,
and Pat Lundvall, Esq. and Rory T. Kay, Esq. appearing on behalf of Defendant and no

1 corporate representative being present, and the Court having reviewed the papers and
2 pleadings on file herein, and heard the arguments of counsel, and for good cause
3 appearing:

4 THE COURT HEREBY NOTES that it ~~was aware~~ ^{considered} of the decision in *Liu v.*
5 *Christopher Homes, LLC*, 130 Nev. Adv. Op. 17, 321 P.3d 875 (2014) at the time it
6 entered its Findings of Fact and Conclusions of Law, filed on June 25, 2014, and in fact,
7 expressly cited to the decision at page 14, lines 23 to 25 of the Court's Findings of Fact,
8 Conclusions of Law and Order filed on June 25, 2014.

10 THE COURT HEREBY FINDS that the decision in *Liu* did not limit, but rather
11 broadened, the circumstances under which the Court could award Plaintiffs attorney's
12 fees as special damages.

14 THE COURT FURTHER FINDS that after the Court's review of *Liu*, *Sandy Valley*
15 *Assoc. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 35 P.2d 964 (2001), and
16 *Horgan v. Felton*, 123 Nev. Adv. Op. 53 (2007), and that after review of the relevant
17 facts and controlling legal authority, there is no legal or factual basis pursuant to NRCP
18 52(b) and NRCP 59(e) to grant Defendant's Motion to Amend Judgment.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

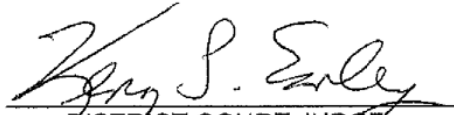
26 ///

27 ///

28 ///

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion
2 to Amend Judgment is denied.

3 DATED this 5 day of January, ~~2016~~ ²⁰¹⁷
4

5 
6 DISTRICT COURT JUDGE
7

8
9 Respectfully submitted by:

APPROVED AS TO FORM AND CONTENT:

10 Dated this ___ day December, 2016.

Dated this ___ day December, 2016.

11 THE JIMMERSON LAW FIRM,
12 P.C.

McDONALD CARANO WILSON, LLP

13
14
15 JAMES J. JIMMERSON, ESQ.
16 Nevada State Bar No. 000264
17 MICHAEL C. FLAXMAN, ESQ.
18 Nevada Bar No. 012963
19 415 South Sixth St., Ste. 100
20 Las Vegas, NV 89101
21 Attorneys for Plaintiffs

PAT LUNDVALL, ESQ.
Nevada State Bar No. 3761
RORY T. KAY, ESQ.
Nevada State Bar No. 12416
2300 West Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Defendant


CLERK OF THE COURT

ORDR
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

**ORDER ON PLAINTIFFS'
COUNTERMOTION FOR ATTORNEY'S
FEES AND COSTS PURSUANT TO
NRS 18.010 AND EDCR 7.60**

AND RELATED CLAIMS

On August 15, 2016, the Court heard argument on Plaintiffs James Wolfram and Angela Limbocker-Wilkes as Trustee of the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust's ("Plaintiffs") Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60 (the "Countermotion"). James J. Jimmerson and Michael C. Flaxman, of the law firm JIMMERSON LAW FIRM P.C., appeared on Plaintiffs' behalf. Mr. Wolfram also attended the hearing. Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP, appeared on Defendant Pardee Homes of Nevada's ("Pardee") behalf.

1 The Court reviewed the papers and pleadings on file, and heard the arguments
2 of counsel presented at the hearing. For good cause appearing, the Court hereby finds
3 as follows:

4 THE COURT HEREBY FINDS that Pardee did not file its Motion to Amend the
5 Court's Judgment in bad faith.

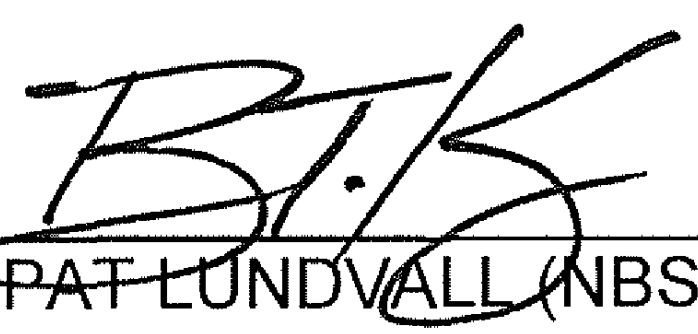
6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs'
7 Countermotion **IS DENIED.** *January, 2017.*

8 DATED this 5 day of December, 2016.

9 
DISTRICT COURT JUDGE

11 Submitted by:

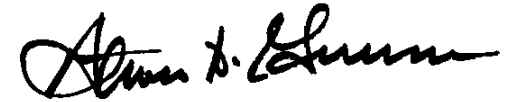
12 McDONALD CARANO WILSON LLP

13 
14 PAT LUNDVALL (NBSN #3761)
15 RORY T. KAY (NSB #12416)
16 2300 West Sahara Avenue, Suite 1200
17 Las Vegas, Nevada 89102
18 Attorneys for Pardee Homes of Nevada

Approved/Disapproved by:

JIMMERSON LAW FIRM, P.C.

19 
20 JAMES J. JIMMERSON (NBSN #0264)
21 MICHAEL C. FLAXMAN (NSB #12963)
22 415 South 6th Street, Suite 100
23 Las Vegas, Nevada 89101
24 Attorneys for Plaintiffs



CLERK OF THE COURT

1 **NEOJ**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

DISTRICT COURT

CLARK COUNTY, NEVADA

13 JAMES WOLFRAM,
14 WALT WILKES

15 Plaintiffs,

16 vs.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

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

**NOTICE OF ENTRY OF
ORDER**

19 PLEASE TAKE NOTICE that an **ORDER ON PLAINTIFFS'**
20 **COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRS**
21 **18.010 AND EDCR 7.60** was entered in the above-referenced case on the 12th day
22 of January, 2017, a copy of which is attached hereto.

23 DATED this 12th day of January, 2017.

24 McDONALD CARANO WILSON LLP

25 /s/ Rory T. Kay
26 PAT LUNDVALL (#3761)
27 RORY T. KAY (#12416)
28 2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

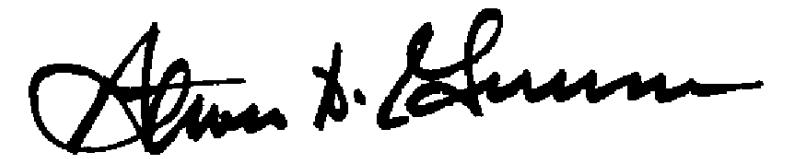
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 12th day of January, 2017, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

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

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

377343



CLERK OF THE COURT

ORDR
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

**ORDER ON PLAINTIFFS'
COUNTERMOTION FOR ATTORNEY'S
FEES AND COSTS PURSUANT TO
NRS 18.010 AND EDCR 7.60**

AND RELATED CLAIMS

On August 15, 2016, the Court heard argument on Plaintiffs James Wolfram and Angela Limbocker-Wilkes as Trustee of the Walter D. Wilkes and Angela L. Limbocker-Wilkes Living Trust's ("Plaintiffs") Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60 (the "Countermotion"). James J. Jimmerson and Michael C. Flaxman, of the law firm JIMMERSON LAW FIRM P.C., appeared on Plaintiffs' behalf. Mr. Wolfram also attended the hearing. Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP, appeared on Defendant Pardee Homes of Nevada's ("Pardee") behalf.

1 The Court reviewed the papers and pleadings on file, and heard the arguments
2 of counsel presented at the hearing. For good cause appearing, the Court hereby finds
3 as follows:

4 THE COURT HEREBY FINDS that Pardee did not file its Motion to Amend the
5 Court's Judgment in bad faith.

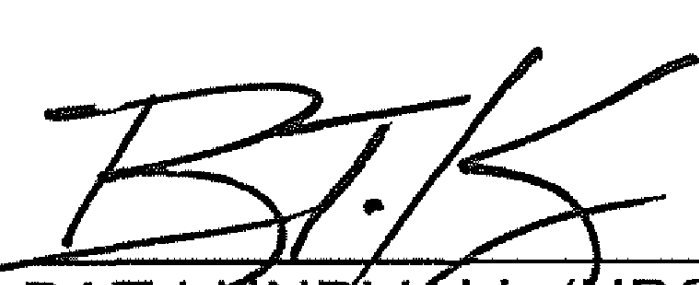
6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs'
7 Countermotion **IS DENIED.** *January, 2017.*

8 DATED this 5 day of December, 2016.

9 
DISTRICT COURT JUDGE

11 Submitted by:

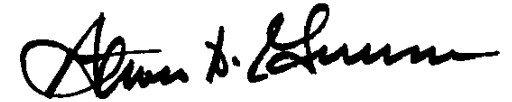
12 McDONALD CARANO WILSON LLP

13 
14 PAT LUNDVALL (NBSN #3761)
15 RORY T. KAY (NSB #12416)
16 2300 West Sahara Avenue, Suite 1200
17 Las Vegas, Nevada 89102
18 Attorneys for Pardee Homes of Nevada

Approved/Disapproved by:

JIMMERSON LAW FIRM, P.C.

19 
20 JAMES J. JIMMERSON (NBSN #0264)
21 MICHAEL C. FLAXMAN (NSB #12963)
22 415 South 6th Street, Suite 100
23 Las Vegas, Nevada 89101
24 Attorneys for Plaintiffs



CLERK OF THE COURT

ORDR
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

**ORDER ON DEFENDANT'S MOTION
TO RETAX PLAINTIFFS'
MEMORANDUM OF COSTS FILED
MAY 23, 2016**

AND RELATED CLAIMS

On August 15, 2016, the Court heard Defendant PARDEE HOMES OF NEVADA's (hereinafter "Pardee") Motion to Retax Plaintiffs' Memorandum of Costs (the "Motion"). James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON LAW FIRM, P.C. appeared for Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST. Plaintiff James Wolfram also attended. Pat Lundvall and Rory T. Kay appeared for Pardee.

The Court, having reviewed the papers and pleadings on file herein, and heard the arguments of counsel, and for good cause appearing, rules as follows:

1 THE COURT FINDS that, pursuant to NRS 18.020, NRS 18.110 and the
2 Judgment entered on May 16, 2016, Plaintiffs are entitled to certain of their costs.

3 THE COURT FURTHER FINDS that, pursuant to NRS 18.005, Plaintiffs cannot
4 recover the costs detailed in Plaintiffs' Memorandum of Costs, filed May 23, 2016, for
5 John Muije, Esq.'s professional services and expert fees in the cumulative amount of
6 \$13,265.71.

7 THE COURT FURTHER FINDS that, pursuant to NRS 18.005, Plaintiffs can
8 recover all other costs in Plaintiffs' Memorandum of Costs, filed May 23, 2016. Under
9 the standard in *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15 (2015), the
10 Court finds that these remaining costs were reasonable, necessary and actually
11 incurred. Exhibit 4 of Plaintiffs' Opposition to Pardee's Motion to Retax Plaintiffs'
12 Memorandum of Costs provides the level of detail required by *Cadle Co.*

13 Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
14 Pardee's Motion is granted in part and denied in part.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs cannot
16 recover the specific costs associated with John Muije, Esq.'s expert services, totaling
17 \$13,264.55, which equals a \$12,651.81 professional legal services fee and a \$613.22
18 expert witness fee.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court
2 awards Plaintiffs all remaining costs enumerated in its Memorandum of Costs, filed May
3 23, 2016, in the amount of \$56,129.56.

4 DATED this 6 day of January, ²⁰¹⁷~~2016~~.

5
6
7 
8 DISTRICT COURT JUDGE


9 Respectfully submitted by:
10 Dated this 15th day December, 2016.

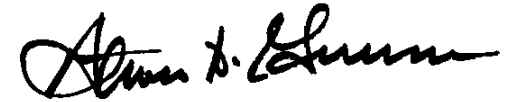
11 McDONALD CARANO WILSON, LLP

12
13
14 
15 PAT LUNDVALL
16 Nevada State Bar No. 3761
17 RORY T. KAY
18 Nevada State Bar No. 12416
19 2300 West Sahara Ave., Ste. 1200
20 Las Vegas, Nevada 89102

21 *Attorneys for Defendant*

22
23
24 375309
25
26
27
28

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



CLERK OF THE COURT

1 **NEOJ**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

DISTRICT COURT

CLARK COUNTY, NEVADA

13 JAMES WOLFRAM,
14 WALT WILKES

15 Plaintiffs,

16 vs.

17 PARDEE HOMES OF NEVADA,

18 Defendant.

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

**NOTICE OF ENTRY OF
ORDER**

19 PLEASE TAKE NOTICE that an **ORDER ON DEFENDANT'S MOTION TO**
20 **RETAX PLAINTIFFS' MEMORANDUM OF COSTS FILED MAY 23, 2016** was
21 entered in the above-referenced case on the 12th day of January, 2017, a copy of
22 which is attached hereto.

23 DATED this 12th day of January, 2017.

24 McDONALD CARANO WILSON LLP

25 /s/ Rory T. Kay
26 PAT LUNDVALL (#3761)
27 RORY T. KAY (#12416)
28 2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 12th day of January, 2017, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

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

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

377343v2


CLERK OF THE COURT

ORDR
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

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

**ORDER ON DEFENDANT'S MOTION
TO RETAX PLAINTIFFS'
MEMORANDUM OF COSTS FILED
MAY 23, 2016**

AND RELATED CLAIMS

On August 15, 2016, the Court heard Defendant PARDEE HOMES OF NEVADA's (hereinafter "Pardee") Motion to Retax Plaintiffs' Memorandum of Costs (the "Motion"). James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON LAW FIRM, P.C. appeared for Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST. Plaintiff James Wolfram also attended. Pat Lundvall and Rory T. Kay appeared for Pardee.

The Court, having reviewed the papers and pleadings on file herein, and heard the arguments of counsel, and for good cause appearing, rules as follows:

1 THE COURT FINDS that, pursuant to NRS 18.020, NRS 18.110 and the
2 Judgment entered on May 16, 2016, Plaintiffs are entitled to certain of their costs.

3 THE COURT FURTHER FINDS that, pursuant to NRS 18.005, Plaintiffs cannot
4 recover the costs detailed in Plaintiffs' Memorandum of Costs, filed May 23, 2016, for
5 John Muije, Esq.'s professional services and expert fees in the cumulative amount of
6 \$13,265.71.

7 THE COURT FURTHER FINDS that, pursuant to NRS 18.005, Plaintiffs can
8 recover all other costs in Plaintiffs' Memorandum of Costs, filed May 23, 2016. Under
9 the standard in *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15 (2015), the
10 Court finds that these remaining costs were reasonable, necessary and actually
11 incurred. Exhibit 4 of Plaintiffs' Opposition to Pardee's Motion to Retax Plaintiffs'
12 Memorandum of Costs provides the level of detail required by *Cadle Co.*

13 Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
14 Pardee's Motion is granted in part and denied in part.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs cannot
16 recover the specific costs associated with John Muije, Esq.'s expert services, totaling
17 \$13,264.55, which equals a \$12,651.81 professional legal services fee and a \$613.22
18 expert witness fee.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court
2 awards Plaintiffs all remaining costs enumerated in its Memorandum of Costs, filed May
3 23, 2016, in the amount of \$56,129.56.

4 DATED this 6 day of January, ²⁰¹⁷~~2016~~.


DISTRICT COURT JUDGE

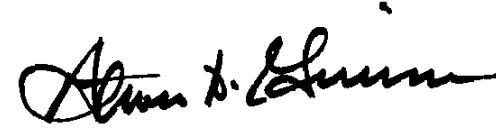
5
6
7
8
9 Respectfully submitted by:
10 Dated this 15th day December, 2016.

11 McDONALD CARANO WILSON, LLP

12
13
14 
15 PAT LUNDVALL
16 Nevada State Bar No. 3761
17 RORY T. KAY
18 Nevada State Bar No. 12416
19 2300 West Sahara Ave., Ste. 1200
20 Las Vegas, Nevada 89102

21 *Attorneys for Defendant*

22
23
24 375309
25
26
27
28



CLERK OF THE COURT

1 **NOAS**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

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

15 JAMES WOLFRAM,
16 WALT WILKES

17 Plaintiffs,

18 vs.

19 PARDEE HOMES OF NEVADA,
20 Defendant.

21 **AND RELATED CLAIMS**

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

**PARDEE HOMES OF NEVADA'S
NOTICE OF APPEAL REGARDING
JUDGMENT AND POST-JUDGMENT
ORDERS**

22 Notice is hereby given that defendant Pardee Homes of Nevada appeals to the
23 Supreme Court of Nevada from the following Orders and Judgment:

- 24 - Findings of Fact and Conclusions of Law, notice of which was entered on
25 June 27, 2014
- 26 - Judgment, entered on May 16, 2016;

- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment, notice of which was entered on January 10, 2017;¹
- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs, notice of which was entered on January 10, 2017;
- Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs, notice of which was entered January 10, 2017; and
- Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016, notice of which was entered on January 13, 2017.

True and correct copies of the above-referenced Judgment and Orders are attached hereto.

DATED this 8th day of February, 2017.

MCDONALD CARANO WILSON LLP

/s/ Rory T. Kay

Pat Lundvall (NSBN 3761)
Rory T. Kay (NSBN 12416)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile

Attorneys for Defendant Pardee Homes of Nevada

¹ This Motion to Amend Judgment pursuant to NRCP 52 and 59 was directed at the Judgment entered May 16, 2016 and the Findings of Fact and Conclusions of Law.

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
3 and that on the 8th day of February, 2017, I e-served and e-filed a true and correct copy
4 of the foregoing **PARDEE HOMES OF NEVADA'S NOTICE OF APPEAL**
5 **REGARDING JUDGMENT AND POST-JUDGMENT ORDERS** via Wiznet, as utilized
6 in the Eighth Judicial District in Clark County, Nevada, on the following:

7 James J. Jimmerson
8 Michael Flaxman
9 JIMMERSON LAW FIRM, P.C.
10 415 S. Sixth Street, Suite 100
Las Vegas, Nevada 89101

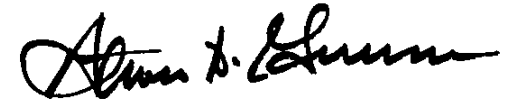
11 And by U.S. Mail:

12 John W. Muije
13 John W. Muije & Associates
14 1840 E. Sahara Avenue #106
Las Vegas, Nevada 89104

15 *Attorney for Plaintiffs*

16
17
18 /s/ CaraMia Gerard
19 An Employee of McDonald Carano Wilson LLP
20
21
22

23 379227.1
24
25
26
27
28



CLERK OF THE COURT

MSTE
PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, WALT WILKES,
Plaintiffs,
vs.
PARDEE HOMES OF NEVADA,
Defendant.

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

**PARDEE'S MOTION TO STAY
EXECUTION OF JUDGMENT AND
POST-JUDGMENT ORDERS**

Hearing Date:

Time:

AND RELATED CLAIMS

Pursuant to Rule 62(d) of the Nevada Rules of Civil Procedure, defendant Pardee Homes of Nevada ("Pardee") moves the Court for an Order staying plaintiffs James Wolfram and Angela L. Limbocker-Wilkes'¹ attempts to execute on the Judgment this Court entered on May 11, 2016 (the "Judgment") and the post-judgment Orders this Court entered on January 5 and 6, 2017. Specifically, the Court signed the following orders on or around January 5 and 6:

¹ Limbocker-Wilkes is the trustee of the Wilkes Living Trust.

- Order and Judgment from August 15, 2016 Hearings Regarding Plaintiffs' Motion for Attorney's Fees and Costs ("Order on Plaintiff's Attorneys' Fees and Costs");
- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs ("Order on Defendant's Attorneys' Fees and Costs");
- Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment ("Order on Defendant's Motion to Amend");
- Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016 ("Order on Defendant's Motion to Retax"); and
- Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60.²

The Court also issued a minute order on January 23, 2017 granting Plaintiffs pre-and post-judgment interest on the various monetary awards in this matter. Pardee then appealed the Judgment and all the Post-Judgment Orders on February 8, 2017.

NRCP 62(d) provides that when a party files an appeal, the Court may stay enforcement of a judgment or order until the Nevada Supreme Court hears and rules on the appeal. Although NRCP 62(d) gives the Court discretion to require the appealing party to provide a supersedeas bond to secure the judgment, the Nevada Supreme Court has held the Court can waive this bond requirement if the appealing party maintains a consistent presence in the jurisdiction and shows financial strength and the ability to pay the judgment after the appeal.

As previous filings before the Court explained, the Judgment against Pardee in this case is backed by Weyerhaeuser NR Company ("WNR"), a subsidiary of Weyerhaeuser Company ("Weyerhaeuser"). Weyerhaeuser is a publicly traded company with over \$19 billion in assets and \$6.3 billion in revenues in 2016, and it will be able to satisfy Plaintiffs' monetary award after Pardee's appeal. Moreover, there is no risk that Plaintiffs' collection efforts will be more difficult after appeal.

² Collectively Pardee refers to these as the Post-Judgment Orders.

1 Accordingly, Pardee respectfully requests that the Court enter an Order staying
2 Plaintiffs' enforcement of the Judgment and Post-Judgment Orders until the Nevada
3 Supreme Court rules on Pardee's appeal.

4 DATED this 7th day of April, 2017.

5 McDONALD CARANO LLP

6 /s/ Rory T. Kay

7 PAT LUNDVALL (NBSN #3761)

8 RORY T. KAY (NSB #12416)

9 2300 West Sahara Avenue, Suite 1200

10 Las Vegas, Nevada 89102

11 *Attorneys for Pardee Homes of Nevada*

12 **NOTICE OF MOTION**

13 TO: All Parties and Their Counsel of Record:

14 PLEASE TAKE NOTICE that the undersigned will bring the foregoing
15 **PARDEE'S MOTION TO STAY EXECUTION OF JUDGMENT AND POST-**
16 **JUDGMENT ORDERS** for hearing before the above-entitled Court on the 17 day of
17 MAY, 2017 at the hour of 9 AM in Department IV of the above-entitled Court, or
18 as soon thereafter as counsel can be heard.

19 MCDONALD CARANO LLP

20 /s/ Rory T. Kay

21 PAT LUNDVALL (NSBN 3761)

22 RORY KAY (NSBN 12416)

23 2300 West Sahara Avenue, Suite 1000

24 Las Vegas, Nevada 89102

25 *Attorneys for Pardee Homes of Nevada*

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

The Court is no doubt familiar with the substantial facts of this case. Thus, Pardee only includes those facts most relevant to the Motion.

On May 16, 2016, the Court entered a Judgment in this case in Plaintiffs' favor. See Judgment Dated May 16, 2016, on file with the Court. Specifically, the Court awarded \$141,500.00 to Plaintiffs, including \$6,000.00 in consequential damages from Pardee's alleged breach of the parties' Commission Agreement and \$135,500.00 in special damages for certain of Plaintiffs' attorney's fees and costs. See *id.* at 2:6-13. The Court further reserved jurisdiction over the Judgment for the purposes of considering post-judgment attorney's fees, costs and legal interest, and explained that the Judgment could be amended upon entry of any further awards of interest, costs, or attorney's fees. See *id.* at 2:22-25.

After the Court entered the Judgment, each party filed various post-judgment motions covering attorney's fees, costs and interest. Pardee filed a Motion for Attorney's Fees and Costs, a Motion to Amend Judgment, and a Motion to Retax Plaintiffs' Memorandum of Costs (collectively, "Pardee's Post-Judgment Motions"). Plaintiffs filed a Memorandum of Costs, a Motion for Attorney's Fees and Costs, and a Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60 (collectively, "Plaintiffs' Post-Judgment Motions"). The Court heard Pardee's and Plaintiffs' Post-Judgment Motions on August 15, 2016, during which time the Court ordered additional supplemental briefing regarding whether it should award Plaintiffs prejudgment interest. See Transcript of August 15, 2016 Hearing at 107:10-110:8, attached as **Exhibit A**.

Pursuant to the Court's instruction, the parties completed the supplemental briefing on prejudgment interest. Plaintiffs filed their opening brief on September 12, 2016, and Pardee filed its responding brief on October 17. Plaintiffs then filed their reply brief on November 4. The Court set the matter for its chambers calendar in

1 December and issued a minute order on January 23, 2017 awarding Plaintiffs pre-and
2 post-judgment interest in their monetary awards.³

3 On January 5 and 6, 2017, the Court then signed Orders regarding Pardee's and
4 Plaintiffs' Post-Judgment Motions. See Orders, on file with the Court. These Orders
5 did not address the prejudgment interest issue or the parties' supplemental briefings.
6 See *id.* Plaintiffs served Notices of Entry of Orders on January 10, 2017 regarding
7 Pardee's Motion to Amend Judgment, Pardee's Motion for Attorney's Fees and Costs,
8 and Plaintiffs' Motion for Attorney's Fees. See Notices of Entry, on file with the Court.
9 Pardee served Notices of Entry of Orders on January 12 and 13 regarding Pardee's
10 Motion to Retax Plaintiffs' Memorandum of Costs and Plaintiffs' Countermotion for
11 Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60. See *id.*

12 Pardee appealed the Judgment and Post-Judgment Orders on February 8, 2017.
13 See Notice of Appeal, on file with the Court. As of the current date, the Court has not
14 yet entered an Amended Judgment to incorporate its award of additional attorney's
15 fees, costs and pre- and post-judgment interest to Plaintiffs.

16 **II. ARGUMENT**

17 **A. Legal Standard.**

18 NRCP 62(d) permits the Court in its discretion to stay the execution of a
19 judgment during an appeal challenging its validity. Although the rule generally calls for
20 the appealing party to give a supersedeas bond to protect the judgment creditor, the
21 Nevada Supreme Court has recognized that such conditions are only necessary if the
22 judgment creditor needs protection from loss resulting from staying execution. See
23 *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 330 (1983). Even where
24 execution may be stayed pending a lengthy appeal, the trial court should consider five
25 factors before imposing conditions upon the party moving for the stay:

26
27 ³ Counsel for Plaintiffs and Pardee are currently working on reducing this minute order
28 to a proposed written order to submit to the Court. Plaintiffs' counsel is reviewing
Pardee's requested revisions to the proposed order.

- (1) The complexity of the collection process;
- (2) The amount of time required to obtain a judgment after it is affirmed on appeal;
- (3) The degree of confidence that the district court has in the availability of funds to pay the judgment;
- (4) Whether the defendant's ability to pay the judgment is so plain that the loss of the bond would be a waste of money; and
- (5) Whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other conditions of the defendant in an insecure position.

Nelson v. Heer, 121 Nev. 832, 836. 122 P.3d 1252, 1254 (2005). The focus when deciding whether to waive a bond is on preserving the status quo and protecting the judgment creditor pending appeal. *Id.*

B. The Court Should Stay Execution on the Judgment and Post-Judgment Orders Until It Issues an Amended Judgment.

As discussed above, the Court has not entered any Amended Judgment including the additional attorney's fees and costs it awarded Plaintiffs during post-judgment motion practice as well as pre- and post-judgment interest. On these bases alone, any attempt by Plaintiffs to execute upon the Judgment and Post-Judgment Orders is premature.

C. Pardee is Entitled to a Stay of Execution Without Any Conditions or Supersedeas Bond Until the Nevada Supreme Court Rules on Pardee's Appeal.

Although the Court has not yet entered an Amended Judgment, Pardee has appealed the underlying Judgment and Post-Judgment Orders. As such, Pardee now seeks a stay pursuant to NRCP 62(d). Moreover, Pardee requests that the Court waive any supersedeas bond requirement or other conditions because the *Nelson v. Heer* factors weigh in favor of doing so.

1 1. Plaintiffs' Collection Process Will Not be Complicated and They
2 Should be Able to Collect in a Short Amount of Time After the
3 Appeal.

4 If the Nevada Supreme Court affirms the Amended Judgment or Judgment and
5 Post-Judgment Orders on appeal, Plaintiffs' collection process should not be difficult.
6 Pardee maintains numerous current projects in the Las Vegas Valley, it still owns
7 substantial land in the area, and Plaintiffs had previously begun collection efforts before
8 the Court entered a stay in this case. See Order on Pardee's Emergency Motion to
9 Stay Execution of Judgment, on file with the Court. Indeed, during post-judgment
10 proceedings, Plaintiffs admitted that attorney John Muije had done substantial collection
11 work already on their behalf. See **Exh. A**, August 15, 2016 Transcript at 31:21-32:4
12 (Plaintiffs' counsel explaining Muije's efforts to collect on the previously entered
13 judgment). Finally, as previously affirmed before the Court, WNR fully backs the
14 monetary award in this case and is owned by publicly traded Weyerhaeuser. See
15 Affidavit of Conrad Smucker and May 14, 2015 Letter of Pat Lundvall, attached as
16 **Exhibit B**. WNR and Weyerhaeuser are easily locatable by Plaintiffs. Consequently,
17 there is no risk that a stay of execution will somehow make Plaintiffs' collection efforts
18 more difficult after appeal.

19 2. WNR Has Substantial Funds Available to Pay the Judgment After
20 Appeal and its Ability to Pay is so Plain That a Supersedeas Bond
21 is Unnecessary.

22 As the Court learned during post-trial briefing, Pardee assigned its rights and
23 obligations under the Commission Agreement to WNR. See *id.* Accordingly, WNR is
24 responsible for paying any monetary award that survives appeal in this matter. See *id.*
25 WNR is the wholly-owned subsidiary of Weyerhaeuser, a publicly traded company that
26 disclosed over \$19 billion in assets and \$6.3 billion in revenues in its latest annual
27 filings with the Securities and Exchange Commission. See Weyerhaeuser Company's
28 FY 2016 Form 10-K, attached as **Exhibit C**. It is a financially strong company that
 Plaintiffs can easily locate to collect their award, and there is no risk that Weyerhaeuser
 will be financially insolvent before Plaintiffs could collect. Accordingly, there is no need

1 for a supersedeas bond to maintain the status quo or protect Plaintiffs pending appeal.
2 See *Nelson*, 121 Nev. at 835, 122 P.3d at 1254 (stating the purpose of a bond is to
3 “preserv[e] the status quo and prevent[] prejudice to the creditor arising from the stay.”).
4 There will be no prejudice to Plaintiffs during the appeal.

5 **III. CONCLUSION**

6 Although Plaintiffs’ execution on the Judgment and Post-Judgment Orders is
7 premature until such time as the Court can enter an Amended Judgment including the
8 additional attorney’s fees, costs, and pre- and post-judgment interest, Pardee moves to
9 stay execution pursuant to NRCP 62(d) out of an abundance of caution. Pardee has
10 appealed the Court’s Judgment and Post-Judgment Orders, and intends to amend that
11 appeal to include any Amended Judgment once the Court enters it.

12 While that appeal is pending, Pardee requests that the Court stay execution and
13 also waive any requirement for Pardee to provide a supersedeas bond. Weyerhaeuser,
14 which backs the monetary award against Pardee, is a financially strong company that is
15 publicly traded and easily locatable. No bond is needed to preserve the status quo and
16 protect Plaintiffs as judgment creditors during the pendency of the appeal.

17 DATED this 7th day of April, 2017.

18
19 MCDONALD CARANO LLP

20
21 /s/ Rory T. Kay
22 Pat Lundvall (NSBN 3761)
23 Rory T. Kay (NSBN 12416)
24 2300 West Sahara Avenue, Suite 1200
25 Las Vegas, Nevada 89102
26 (702) 873-4100
27 (702) 873-9966 Facsimile

28 *Attorneys for Defendant Pardee Homes of Nevada*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that on the 7th day of April, 2017, I e-served and e-filed a true and correct copy of the foregoing **PARDEE'S MOTION TO STAY EXECUTION OF JUDGMENT AND POST-JUDGMENT ORDERS** via Wiznet, as utilized in the Eighth Judicial District in Clark County, Nevada, on the following:

James J. Jimmerson
Michael Flaxman
JIMMERSON LAW FIRM, P.C.
415 S. Sixth Street, Suite 100
Las Vegas, Nevada 89101

And by U.S. Mail:

John W. Muije
John W. Muije & Associates
1840 E. Sahara Avenue #106
Las Vegas, Nevada 89104

Attorney for Plaintiffs

/s/ Michelle Wade
An Employee of McDonald Carano LLP

1 as what Mr. Jimmerson said was very similar in his
2 pleading. And when I look at the first condition,
3 that you owe for single-detached production
4 residential single family, which included lots in
5 which custom homes are constructed. Obviously that
6 is something that was disputed in trial.

7 So I looked for the conditions. That's
8 their interpretation of w0hat they thought the was
9 in the Commission Agreement but I find that
10 conditional because that was actually litigated. I
11 just wanted it --

12 MR. KAY: -- I wasn't going to rehash
13 it --

14 THE COURT: -- but that is my reasoning
15 when I --

16 MR. JIMMERSON: My experience of
17 winning, you sit down.

18 THE COURT: I just -- I just wanted you
19 to know. I looked at it. Unless you want to put
20 something --

21 MR. KAY: No. The only thing I wanted to
22 clarify is Mr. Jimmerson's misstatement. Provision
23 one of the offer of judgment appears in the
24 Commission Agreement. And that was that. As you
25 correctly recognized, that's their interpretation.

1 If you look at the Commission Agreement,
2 none of that language appears as you reiterated.
3 And that's the only thing.

4 THE COURT: I got that. I listen.

5 MR. KAY: I wanted to make sure that was
6 on the record that we had done that.

7 THE COURT: I just didn't want you to
8 have to spend a lot of time. I looked at it very
9 carefully. I am very familiar of conditional
10 offers of judgment.

11 MR. KAY: I appreciate that, Your Honor.
12 I'm glad that Mr. Jimmerson conceded that they were
13 attempted to double recover certain of their fees.
14 I will say that that doesn't give me a great deal
15 of faith of their other line item entries for
16 attorneys fees and costs.

17 Of course, they have the burden under
18 Brunzell to prove those to you. I think that
19 should be considered by the Court with respect to
20 the rest of their fees. And I'm not going to
21 rehash prevailing party analysis other than to say
22 with respect to this motion, I think it takes a
23 slightly different approach in the sense that they
24 are, through this motion, claiming their entitled
25 to \$441,000 in fees and costs as the prevailing

1 party under the Commission Agreement, now that
2 we've got the offer of judgment basis out of the
3 way.

4 But if you look at what plaintiffs
5 really recovered in this case, it really isn't
6 anything even close to what would justify \$41,000
7 in fees.

8 THE COURT: He has it down \$428,462.75.

9 MR. JIMMERSON: Correct.

10 MR. KAY: Even in there, if you look at
11 your judgment entered in May of 2016, you only
12 awarded them \$6,000 of consequential damages.

13 So I think when we look at the ratio of
14 fees incurred to compensatory damages awarding, I
15 think it's not correct to say that the plaintiffs'
16 prevailed. It may be correct to say that Mr.
17 Jimmerson's law firm prevailed in the sense that
18 they were awarded fees, obviously the special
19 damages fees under Sandy Valley is substantially
20 more than what they're client recovered.

21 And then I would think that analysis not
22 only is informed by the Commission Agreement and
23 prevailing party analysis but I think it goes to
24 the Brunzell factors and whether the plaintiffs
25 actually achieved what they were seeking here.

1 And again, we've already been through
2 the commission discussion, but I would submit to
3 you that \$6,000 in compensatory damages for the
4 plaintiff and hundreds of thousands of dollars in
5 fees for Mr. Jimmerson's law firm is not a
6 prevailing matter, if you will, under the contract.

7 It's not an esteemed result under
8 Brunzell. In fact, I don't think you can say that
9 the plaintiffs prevailed in this matter. And I
10 would submit to you that the Commission Agreement
11 is not a proper basis to award this \$441,000 in
12 fees and costs.

13 Again, I think at this point in time,
14 he's conceded just about everything else. The
15 other documentation issues we had, if the Court has
16 any questions, otherwise, I just don't think they
17 provided you a basis under the Commission Agreement
18 or obviously the offer of judgment to recover fees
19 and costs.

20 THE COURT: As I said, I felt it was a
21 conditional offer of judgment. I certainly looked
22 at the same and you're going --

23 MR. JIMMERSON: I just --

24 THE COURT: -- Commission Agreement. It
25 went both ways. It's a little hard to not go with

1 that.

2 MR. JIMMERSON: It is.

3 THE COURT: I know what you're going to
4 say, I think.

5 MR. JIMMERSON: When you pull out your
6 civil registry, your docket, you'll see the
7 extensive nature where there's motions for summary
8 judgment, motion opposing motion to amend
9 complaint, numerous motions with regard to motions
10 in limine, evidence, the like, the discovery
11 commissioner.

12 There's a registry of actions that are
13 very long. And there were \$141,500 in damages
14 awarded that the defense case was lost.

15 I think there's a point that you know
16 that I do want to make a record to the extent the
17 defendant's, when they seek to appeal that this was
18 why was it such a fight. Why was it necessary to
19 gain the information to have this Court make its
20 rulings.

21 First of all, you have an agreement to
22 interpret under the Option Agreement. You had to
23 combine that with the Commission Agreement to see
24 how it applied. Both parties had very different
25 positions of how it applied. And we were

1 contending that they weren't providing the
2 information necessary and that we were forced to
3 litigate as noted in Sandy Valley, Liu, Horgan and
4 other cases.

5 But when you get right down to why you
6 would have this type of struggle, the answer is
7 because it was a 31-year contract yet remaining.
8 My clients would be dead and buried. One is dead
9 and buried. Mr. And Mrs. Wolfram would be dead and
10 buried before the 31 years has past.

11 Now, the collapse and the litigation
12 that occurred years later was not known by Pardee
13 and CSI or known by any of us who tried the case in
14 October, December 2013. But when you indicate why
15 did we do this, it's because we were fighting for a
16 legacy of 31 more years under a 40-year contract
17 that would otherwise entitle my clients children
18 and their children to potentially commissions from
19 Pardee who intended to develop CSI in Lincoln
20 County. That's why we had this litigation. That's
21 where the \$141,500 is a fine win and we recognize
22 it where the plaintiffs are the prevailing party.

23 Thank you.

24 THE COURT: Okay. This Court finds that
25 plaintiffs are the prevailing party pursuant to the

1 Court's decision of June 25th, 2014; the Court's
2 decision of May 13th, 2015 and the final judgment
3 that was entered on May 16th, 2016.

4 This Court awards plaintiffs' attorneys
5 fees and costs pursuant to the Commission Agreement
6 executed on September 1st, 2004 that specifically
7 states: In the event either party brings an action
8 to enforce its rights under that agreement, the
9 prevailing party shall be awarded reasonable
10 attorneys fees and costs and do not find that there
11 is a basis on the offer of judgment for the
12 attorneys fees.

13 The Court has analyzed the proposed
14 attorneys fees presented by plaintiffs pursuant to
15 the guiding case of Brunzell versus Golden Gate
16 National Bank, 85 Nevada 345.

17 The Court conducted an extensive review
18 of all of the documentation supporting the proposed
19 attorneys fees utilizing the following factors to
20 determine the reasonableness of the attorneys fees,
21 which is, one, the quality of the advocate; two,
22 the character of the work done; three, the work
23 actually performed; and, four, the result obtained,
24 which we all referred to as the Brunzell factor.

25 Based upon said review of the supporting

1 affidavit, evidentiary documentation and taking
2 into account, which Mr. Jimmerson even discussed,
3 it's duplicative and inapplicable fees.

4 The Court finds that \$428,462.75 cents
5 are reasonable attorneys fees to be awarded
6 plaintiffs in this case.

7 There was -- was there an issue on the
8 interest of judgment? I put this down as a
9 question mark. It wasn't addressed. Am I bringing
10 up an issue I don't need to?

11 I also picked up in the plaintiffs'
12 motion they wanted interest to be added to the
13 existing judgment.

14 MR. JIMMERSON: Judge, we're entitled to
15 prejudgment interest through a date that we could
16 agree, for example, today. There would be a
17 prejudgment interest two over prime and that would
18 be added to the dollars. A judgment would be
19 entered today or entered at a date, September 1,
20 that was a Court's order.

21 THE COURT: I just picked it up as an
22 issue.

23 MR. JIMMERSON: So we would include in
24 this prejudgment interest and we'll check the
25 calculation with defense counsel.

1 THE COURT: Okay. That is an issue. I
2 didn't want to make -- obviously I picked it up as
3 a potential issue.

4 MS. LUNDVALL: I believe, Your Honor, as
5 far as within one of the briefs that we had filed,
6 they're not entitled to prejudgment interest from
7 the date by which that they calculated.

8 THE COURT: That's why I put this down.

9 MS. LUNDVALL: That's correct.
10 Mr. Jimmerson claims he is entitled to prejudgment
11 interest from the date that the complaint was filed
12 and from that point forward until today. He cites
13 that he is entitled to the prejudgment interest on
14 the entirety of the 140 some-odd-thousand in the
15 Court's findings of fact --

16 THE COURT: Just -- don't interrupt me,
17 please. Let me try to find out. It wasn't clear
18 to me because I put it down. Ms. Lundvall. So I
19 am trying to figure it out.

20 MS. LUNDVALL: Thank you, Your Honor.
21 As the case law that indicates when the damages
22 then awarded occur after the filing of the
23 complaint.

24 In other words, in this case, you know
25 that \$140,000 in attorneys fees that were awarded,

1 they were incurred after the filing of the
2 complaint.

3 So the plaintiff is not entitled in that
4 circumstance then to prejudgement interest
5 beginning at the filing of the complaint. There's
6 a different analysis that applies.

7 So to the extent that we brought the
8 legal issue to the Court's attention, that you're
9 correct, it isn't before you. But the specific
10 calculations are not before you.

11 THE COURT: That's why -- obviously I
12 brought up the legal issue. Yes, I would like you
13 to be heard, if I need to look at that issue.

14 MR. JIMMERSON: We addressed that as
15 legal interest would begin upon service upon the
16 defendant and not upon the filing of the complaint.

17 THE COURT: Service.

18 MR. JIMMERSON: Service upon the
19 defendant in this case was in February of 2011.
20 The complaint was filed in January 2011. The
21 service took about 30 days. Interest in our
22 interest calculations start from February of 2011
23 through the date's that are indicated in these
24 calculations, but I don't think there's a
25 disagreement that the legal interest of two over

1 prime applies from the date of service in February
2 2011 to the present date.

3 MS. LUNDVALL: There is, Your Honor, a
4 disagreement.

5 THE COURT: There is or isn't?

6 MS. LUNDVALL: There is a disagreement.

7 THE COURT: I want to make sure I heard
8 what you said.

9 MS. LUNDVALL: The simple analysis
10 begins with this. We know that the attorneys fees
11 that Mr. Jimmerson sought on behalf of were
12 incurred before the time that they served the
13 complaint upon us.

14 MR. JIMMERSON: That's true.

15 MS. LUNDVALL: We know that. So how
16 is --

17 THE COURT: That's not disputed.

18 MS. LUNDVALL: I know.

19 THE COURT: Getting them is disputed but
20 when they occurred is not disputed.

21 MS. LUNDVALL: What I'm saying is this.
22 Common sense says that you don't get interest. You
23 don't get the time use of money.

24 THE COURT: If you didn't have it owed
25 at the time.

1 MS. LUNDVALL: If you didn't have it
2 owed and you hadn't even incurred it at the time.

3 THE COURT: Correct. Because they got a
4 date. I must have brought it up.

5 I don't know where it was. So I tried
6 to go through everything. I don't know where it
7 was included in all these pleadings, Ms. Lundvall
8 and Mr. Jimmerson. Obviously I have a note. I
9 figured out there was an issue. Can we come up
10 with a date or do you want me to try to figure out
11 a time to go back?

12 MS. LUNDVALL: What's interesting is in
13 this circumstance, if you look at the case law, the
14 case law that says that you don't look at one
15 single date certain. The burden of proof is on the
16 plaintiffs to identify the point in time by which
17 that they incurred these.

18 THE COURT: They incurred --

19 MS. LUNDVALL: You have to make the
20 calculation then on a going forward basis. So
21 there are multiple dates that apply when it comes
22 to the prejudgment interest.

23 That burden is on the plaintiffs at this
24 point in time. They have not discharged that
25 burden. They've only claimed. They've only

1 claimed their entitlement to that but what they
2 have not addressed then is the issue that we have
3 raised asserting them.

4 THE COURT: So we have another issue
5 that probably needs to be -- obviously I pulled it
6 up, Mr. Jimmerson, in the middle of all of that
7 trial. I tried to be all inclusive as I could so
8 nothing more would come up. I am not trying to
9 shoot myself in the foot. I'm trying so
10 desperately so everything is fully briefed.

11 MR. JIMMERSON: I think there's an
12 agreement and disagreement.

13 THE COURT: An agreement and
14 disagreement.

15 MR. JIMMERSON: There is no question
16 that you couldn't have interest in February of 2001
17 on \$428,000 that hasn't been incurred yet, but
18 there would be interest accruing and you would have
19 a choice. You would have a choice, Judge. We
20 argue that the interest accrue from June 25,
21 2014 --

22 THE COURT: From the entry of the order?

23 MR. JIMMERSON: On the attorneys fees --

24 THE COURT: Okay.

25 MR. JIMMERSON: -- and costs.

1 THE COURT: That's when I entered my
2 order.

3 MR. JIMMERSON: Right. And we were the
4 prevailing party then and entitled to our costs.
5 That would be the appropriate date.

6 THE COURT: Okay.

7 MR. JIMMERSON: Another date you could
8 use, \$141,500 from February of 2011 through the
9 present date, and you could choose to award \$56,000
10 and \$428,000 today and have run interest from
11 today. I mean, it's another choice.

12 Ms. Lundvall's says there's different
13 points to run. The Court needs to analyze what
14 would be the appropriate dates. And under Paradise
15 Homes, 99.040 and 17.130.

16 Paradise Homes is a decision, NRS 99.040
17 and also 17.130, which are interest statutes that
18 talks about liquidation. When is the amount
19 liquidated.

20 Generally speaking, in a breach of
21 contract case as opposed to a tort case, it's
22 liquidated when there's the breach. So we would
23 measure it from February of 2011, the date the
24 complaint was served. There was a breach effective
25 then. That's what we would argue.

1 Ms. Lundvall's -- at least that's
2 \$428,000. It wasn't liquidated until today because
3 the judge ordered today for the first time the
4 amount of attorneys' fees. I would say yes, but
5 those attorneys fees became due and payable on June
6 25 of 2014.

7 THE COURT: This is easy for this Court.

8 MR. JIMMERSON: That's something you can
9 point to. Ms. Lundvall. That's why I said I agree
10 and disagree as to exact dates I disagree but I do
11 agree with her there's a different measure.
12 \$141,500 starts February of 2011.

13 MS. LUNDVALL: No.

14 THE COURT: I saw --

15 MR. JIMMERSON: That's plaintiffs'
16 interpretation.

17 THE COURT: Yes.

18 MR. JIMMERSON: And the costs start
19 today. From June of 2014 and so do the attorneys
20 fees. That's our issue. One of the factors,
21 because there will be an issue, under the
22 Commission Agreements, a judgment will be entered.

23 THE COURT: Right.

24 MR. JIMMERSON: And if it is not paid in
25 full within 30 days, the commission calls for not

1 two over prime but ten percent interest calculation
2 on the amount due and owing.

3 So I just want to alert the Court that a
4 judgment will be entered in a bond in the full
5 amount of two years interest may or may not be
6 posted by Pardee, however under the agreements, the
7 interest there would run at ten percent, not two
8 over prime. I want to alert you to the issues. It
9 doesn't have to be decided today.

10 THE COURT: No. I am trying very hard
11 to keep on top of the issues as they come. I did
12 read that and I wasn't sure where you were going to
13 go with that.

14 Let's do this. I want briefing on the
15 interest because obviously I was not sure where to
16 go and all of us have come too far from both sides,
17 including the Court, to get best record we can.

18 So let's do this: Let's do a briefing
19 schedule on the interest. You do have the burden
20 because I saw it. Let's do that. Let's come up
21 with a briefing schedule so I can calendar my time.

22 MR. JIMMERSON: What I would also ask
23 you to do is compel a meet and confer between
24 counsel to try to do the math calculation before we
25 get before you again.

1 THE COURT: If you think we can do it
2 again.

3 MR. JIMMERSON: We just need to do --
4 let's do the math together so we have no
5 disagreement as to the math.

6 THE COURT: The different positions.
7 You just want to do the math based on the different
8 positions.

9 MR. JIMMERSON: And exactly right.

10 THE COURT: It's not my strong suit.

11 MR. JIMMERSON: The defense, for
12 example, says the \$56,420 only comes to today.
13 Okay. And I say it comes a year or two go. We can
14 do the calculations, Judge, for each date and then
15 you'll make your own choice. That way we have an
16 understanding of where each side is coming from.

17 MS. LUNDVALL: Your Honor, I have no
18 problem voluntarily meeting.

19 THE COURT: You don't need me to --

20 MS. LUNDVALL: You don't need to but I
21 guess the last little issue then --

22 THE COURT: We're doing a briefing
23 schedule here for me.

24 MS. LUNDVALL: Your Honor, what I want
25 to address is I don't want the record to be silent

1 that we agree with their issues concerning post
2 date bond. The Nelson versus had all the stuff
3 that was just on them those are all issues.

4 THE COURT: That would be forthcoming.

5 MS. LUNDVALL: Thank you, Your Honor.

6 THE COURT: The Court actually assumed
7 that but you're right. We don't want any
8 assumptions on the record.

9 MR. JIMMERSON: Yeah.

10 THE COURT: Let's do this: Since you do
11 need to do the opening brief, you are the one
12 proposing the interest, tell me when you would like
13 to file it by because I just need my dates.

14 MR. JIMMERSON: I would like 30 days.

15 THE COURT: So --

16 THE CLERK: September 30 days?

17 MR. JIMMERSON: Do you want to give the
18 defense 30 days?

19 THE COURT: Is 30 days enough? Are you
20 going to be around?

21 MR. KAY: That's fine.

22 MS. LUNDVALL: I hope I'm still here.

23 THE COURT: What I mean not out of town
24 or not in a trial.

25 MR. JIMMERSON: Then two weeks.

1 THE COURT: Is what I meant for
2 unavailable. Nothing to do with death.

3 MR. JIMMERSON: The opposition is due 30
4 days.

5 THE CLERK: October 17th.

6 THE COURT: And then.

7 MR. JIMMERSON: Two weeks for the reply.

8 THE COURT: Reply.

9 THE CLERK: October 31st.

10 THE COURT: Can we set a hearing then?

11 MR. JIMMERSON: Yes.

12 MS. LUNDVALL: Your Honor, one issue
13 that we're going to run into setting a hearing is
14 that I'm in trial in federal court that takes me
15 through the end of the year.

16 THE COURT: At that time. Here's what
17 I'll do. I'll put it on chambers, if you're
18 uncomfortable with that. I'm very cautious with
19 attorneys. If I put something on chambers, if I
20 have issues, if I want to ask questions, I'll work
21 with your office to do a hearing date. Let's do it
22 that way.

23 MS. LUNDVALL: Thank you, Your Honor.

24 THE COURT: If there is something, I
25 prefer to be able to ask questions, you know. Not

1 prefer. I require it. Because it's important to
2 me. So we'll put it on chambers calendar. I do
3 those on Monday.

4 MR. JIMMERSON: So in case the case
5 settles --

6 THE COURT: I'm off in November so we'll
7 have to do it in December.

8 MR. JIMMERSON: That would be fine,
9 Judge.

10 THE CLERK: So are you granting the
11 motion for attorneys fees today?

12 THE COURT: I'm sorry. Poor, April.

13 THE CLERK: So the supplemental briefing
14 is on the interest?

15 MR. JIMMERSON: That's right.

16 THE COURT: It's not even --

17 THE CLERK: December 11th in chambers.
18 December 12th. Sorry.

19 THE COURT: So this is interest. We're
20 good with that, okay. So it's not going to be
21 duplicative if you've had it in here. You can put
22 it in your new one. So no one needs to say
23 anything about two weeks duplicative. I just want
24 to be very clear about that, okay.

25 MR. JIMMERSON: Thank you, Judge.

1 THE COURT: It's going to be a motion
2 for interest on judgment.

3 MR. JIMMERSON: Motion to access
4 interest on the judgment.

5 THE COURT: Let's do it that way.

6 MR. JIMMERSON: Thank you, Your Honor.

7 THE COURT: Thank you very much,
8 Counsel. Anything else we need to do?

9 MS. LUNDVALL: Your Honor, one point of
10 clarification.

11 Given the comment that was made by
12 Mr. Jimmerson is that you want to have the interest
13 issue addressed so that you can determine what and
14 how much of an amount then to be included within
15 the judgment?

16 THE COURT: Correct. Yes.

17 MS. LUNDVALL: Thank you.

18 THE COURT: Absolutely. Yes. Yes, that
19 is correct. That's what -- what I was referring
20 to, yes. Yes. Okay?

21 MR. KAY: Thank you.

22 THE COURT: I brought it up because I
23 could see it an issue and I didn't feel it was
24 dispositive of what we were doing today, but I
25 didn't want it to fall through the cracks and why

1 the Court brought it up. Does that makes sense for
2 the record? I just wanted to make sure you knew
3 why I brought it up.

4 I want to be clear on that. I am not
5 trying to make issues that aren't there, all right?

6 Thank you.

7 -oOo-

8
9 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
10 PROCEEDINGS.

11 /s/Gina M. Shrader

12 _____
13 Gina M. Shrader, CCR 647, RPR

14

15

16

17

18

19

20

21

22

23

24

25

\$	\$613 [2] - 37, 79 \$613.90 [4] - 35, 42 \$618.53 [1] - 32 \$631 [1] - 37 \$642,000 [1] - 81 \$646,000 [1] - 81 \$69,000 [2] - 35, 37 \$69,395 [2] - 31, 37 \$7,934.83 [1] - 32 \$700,000 [1] - 61 \$82 [1] - 89 \$916.13 [1] - 32	19th [2] - 40, 74 1A [1] - 2 1st [1] - 96 1th [1] - 67	4	acceptance [1] - 56 accepts [1] - 86 access [1] - 110 accommodating [1] - 35 according [3] - 2, 33, 61 account [1] - 97 accountant [1] - 79 accountants [1] - 34 accounting [9] - 62, 67-68, 76, 87 accrue [1] - 102 accruing [1] - 102 accumulated [1] - 16 ACCURATE [1] - 111 accurately [1] - 29 achieved [2] - 83, 92 acknowledge [1] - 79 acquired [1] - 13 acres [2] - 65, 88 act [1] - 86 action [16] - 7-10, 15-17, 48, 62, 67, 80, 96 actions [3] - 16, 66, 94 actual [1] - 35 add [5] - 58, 63-64, 69, 85 added [8] - 14, 32, 59, 63-64, 97 addition [5] - 9, 54, 70, 83, 88 additional [27] - 5, 11, 13-14, 42, 48, 51-55, 59-60, 74-75, 77, 81, 83, 86, 88 address [7] - 4, 11, 55-56, 71-72, 106 addressed [10] - 21, 26, 56, 64, 82, 97, 99, 102, 110 addressing [1] - 70 adduced [1] - 15 admitted [1] - 64 adopt [1] - 59 Adv [2] - 19, 43 advise [1] - 78 advised [2] - 33 advocate [1] - 96 affidavit [3] - 61, 81, 97 affidavits [1] - 34 afterwards [1] - 6 ago [2] - 27 agree [10] - 20, 22, 24, 65, 75, 79, 97, 104, 107				
\$1,765.35 [1] - 35 \$1,800,000 [1] - 65 \$1,930,000 [1] - 50 \$10,000 [1] - 48 \$100 [1] - 33 \$107.33 [1] - 35 \$12,000 [4] - 28, 31, 36 \$12,600 [1] - 79 \$12,651 [2] - 35 \$12,651.31 [1] - 37 \$12,651.81 [4] - 37, 42 \$12,766 [2] - 79 \$13,000 [1] - 31 \$13.00 [1] - 35 \$130,000 [2] - 63, 81 \$130,500 [1] - 14 \$135,500 [3] - 13, 62, 80 \$140,000 [1] - 98 \$140.41 [1] - 32 \$141,500 [10] - 13, 62, 78, 83, 85, 94-95, 103 \$149,000 [3] - 84 \$19,000 [2] - 28, 38 \$19,888.10 [1] - 32 \$20,000 [2] - 28, 32 \$20,350.24 [1] - 32 \$200,000 [1] - 35 \$22 [1] - 88 \$220,000 [2] - 81, 83 \$4,817.14 [1] - 35 \$4.50 [1] - 35 \$40,000 [2] - 88 \$41,000 [1] - 92 \$428,000 [3] - 102 \$428,462.675 [1] - 81 \$428,462.75 [5] - 79, 83, 92, 97 \$434 [1] - 35 \$441,000 [2] - 91, 93 \$441,228.75 [1] - 79 \$50,000 [2] - 31, 38 \$56,000 [1] - 103 \$56,129.56 [1] - 43 \$56,164.55 [1] - 35 \$56,164.56 [1] - 37 \$56,164.58 [1] - 36 \$56,420 [1] - 106 \$56,673 [1] - 37 \$6,000 [5] - 13, 36, 92 \$6,0020 [1] - 62 \$6,170 [1] - 21 \$6,190 [1] - 37 \$6,400 [1] - 57 \$600,000 [1] - 61	1 1 [7] - 67, 80, 87, 89, 97 1(a) [1] - 4 1.8 [6] - 18, 50, 59, 61, 66, 73 1.9 [3] - 54 10 [3] - 50, 65 103 [1] - 19 11 [4] - 23, 50 11th [2] - 2, 109 12 [1] - 63 12th [2] - 39, 109 13 [3] - 64, 79, 84 131 [1] - 43 136 [1] - 80 13th [5] - 80, 84-85, 96 14 [2] - 13, 19 140 [2] - 56, 98 146 [1] - 59 146,149 [1] - 56 149 [1] - 56 15 [6] - 1, 15, 33-34, 43 15th [5] - 15, 21, 31, 61 16 [1] - 63 16.1 [1] - 49, 51-52, 54, 57, 62-63, 73 168 [1] - 72 16th [8] - 16, 21, 31, 41, 78, 96 17 [1] - 19 17.06 [1] - 4 17.115 [1] - 89 17.130 [2] - 103 17th [1] - 108 18 [1] - 30 18.005 [10] - 27, 30, 41 18.010 [7] - 4, 20, 32-33, 45, 55 18.010(2)(b) [1] - 20 18.020 [1] - 41 18.110 [1] - 41	2 2 [8] - 8-10, 29, 63, 80, 86 2(a) [1] - 4 2001 [1] - 102 2004 [4] - 67, 80, 87, 96 2009 [1] - 74 2011 [8] - 85, 99-100, 103 2012 [3] - 39 2013 [17] - 12, 65-66, 79-80, 83-85, 87, 95 2014 [15] - 12, 15-16, 19, 21, 61, 68, 83, 96, 102, 104 2015 [7] - 21, 43, 61, 82, 87, 96 2016 [23] - 1, 5, 15-16, 21, 26, 31, 34, 41, 61, 78, 82, 92, 96 20th [4] - 33, 79 21 [1] - 13 22 [1] - 39 23 [1] - 19 23rd [3] - 26, 85 25 [9] - 12, 15-16, 19, 21, 31, 102, 104 25th [4] - 19, 61, 68, 96 26 [1] - 21 26th [3] - 16, 21, 82 27 [1] - 13 28 [1] - 65 29 [1] - 84	5 5 [4] - 8, 16, 33, 86 50 [3] - 64 50,000 [2] - 27, 31 52(b) [1] - 19 55 [1] - 37 55.00 [1] - 35 56 [2] - 37, 64 57 [1] - 64 58 [1] - 37 59(e) [1] - 19	6 6 [1] - 56 647 [2] - 1, 111 69,000 [1] - 27	7 7.60 [4] - 5, 20	8 8 [1] - 87 8/4/08 [1] - 64 85 [1] - 96 875 [1] - 19 880 [1] - 8	9 9 [2] - 56, 64 90 [1] - 61 99.040 [2] - 103 9:00 [1] - 1 9:03 [1] - 2	A A-10-632338-C [1] - 1 A.M [2] - 1 able [6] - 14, 19, 58, 82, 84, 108 above-referenced [2] - 14, 78 abrogating [1] - 16 abrogation [1] - 23 absolutely [5] - 6, 52, 75, 110 accede [1] - 83 accept [1] - 86
	3 3 [4] - 33, 86, 88 3,000 [1] - 65 30 [1] - 34, 66, 80, 86, 99, 104, 107 30-day [1] - 33 30th [1] - 82 31 [3] - 87, 95 31-year [1] - 95 31st [1] - 108 321 [1] - 19 33 [1] - 87 345 [1] - 96 35 [1] - 66 36 [1] - 27 3d [1] - 19							

<p>agreement [14] - 14, 20, 46, 59, 67, 74, 80, 83, 87, 94, 96, 102</p> <p>Agreement [27] - 6, 44, 50, 57, 64, 76, 78, 80, 86-87, 89-94, 96</p> <p>Agreements [1] - 104</p> <p>agreements [3] - 83, 105</p> <p>Aktos [1] - 24</p> <p>alert [2] - 105</p> <p>allege [1] - 10</p> <p>alleged [2] - 7, 10</p> <p>alleging [3] - 9, 47</p> <p>allow [2] - 9, 14</p> <p>allowed [1] - 67</p> <p>almost [2] - 28, 31</p> <p>alone [1] - 81</p> <p>alternative [2] - 14, 16</p> <p>amend [10] - 5, 7, 11, 15, 28, 44, 94</p> <p>Amend [2] - 2, 4</p> <p>amended [1] - 14</p> <p>amendments [2] - 32, 77</p> <p>amount [13] - 20, 43, 73, 78, 80, 82-83, 88, 103-105, 110</p> <p>analysis [17] - 16, 30, 45, 47, 59-60, 72, 77, 91-92, 99</p> <p>analyze [1] - 103</p> <p>analyzed [1] - 96</p> <p>analyzing [1] - 14</p> <p>AND [2] - 1, 111</p> <p>Andrews [1] - 63</p> <p>ANGELA [2] - 1</p> <p>annum [1] - 80</p> <p>answer [2] - 25, 95</p> <p>answered [2] - 18, 58</p> <p>answering [1] - 58</p> <p>apart [3] - 21, 78, 85</p> <p>Apartment [1] - 55</p> <p>apparent [1] - 69</p> <p>appeal [7] - 21-24, 26, 94</p> <p>appear [1] - 69</p> <p>APPEARANCES [1] - 1</p> <p>appearances [1] - 2</p> <p>appendix [1] - 44</p> <p>applicable [1] - 83</p> <p>application [1] - 19</p> <p>applied [3] - 45, 94</p> <p>applies [3] - 83, 99</p> <p>apply [3] - 45, 101</p> <p>appreciate [4] - 2, 18,</p>	<p>71, 91</p> <p>approach [6] - 8, 46, 49, 56-57, 91</p> <p>approached [5] - 53, 56</p> <p>approaching [1] - 56</p> <p>appropriate [3] - 89, 103</p> <p>appropriately [2] - 50, 65</p> <p>approval [1] - 19</p> <p>approved [1] - 26</p> <p>April [8] - 15, 21, 82-85, 109</p> <p>architects [1] - 63</p> <p>area [1] - 20</p> <p>argue [2] - 102</p> <p>argued [1] - 36</p> <p>arguing [1] - 27</p> <p>argument [14] - 6, 11, 14, 21, 30, 33, 38, 51-52, 55-56, 83</p> <p>arguments [2] - 7, 76</p> <p>arise [1] - 17</p> <p>arising [1] - 17</p> <p>aside [1] - 84</p> <p>aspect [1] - 11</p> <p>assert [1] - 51</p> <p>asserted [2] - 47, 51</p> <p>asserting [2] - 9, 102</p> <p>assertion [1] - 17</p> <p>assessing [1] - 34</p> <p>assist [1] - 58</p> <p>associate [1] - 40</p> <p>associated [5] - 32, 50, 79</p> <p>Associates [1] - 14</p> <p>Association [2] - 14, 55</p> <p>assume [3] - 19, 57</p> <p>assumed [1] - 107</p> <p>assuming [2] - 23, 51</p> <p>assumptions [1] - 107</p> <p>astronomically [1] - 27</p> <p>AT [1] - 1</p> <p>attached [3] - 33, 35, 80</p> <p>attempt [2] - 28, 71</p> <p>attempted [1] - 91</p> <p>attempts [2] - 61, 85</p> <p>attention [5] - 8, 12, 29, 99</p> <p>ATTEST [1] - 111</p> <p>attorney's [1] - 4</p> <p>attorneys [87] - 5-10, 13-18, 20-21, 25, 28, 30, 35, 38, 44, 47, 50, 61-62, 69,</p>	<p>78-81, 83-85, 89, 91, 96-98, 100, 102, 104, 108</p> <p>attorneys' [1] - 104</p> <p>AUGUST [2] - 1</p> <p>authority [1] - 11</p> <p>avail [1] - 13</p> <p>available [1] - 30</p> <p>award [10] - 5, 14, 20, 64, 68, 72, 89, 93, 103</p> <p>awarded [16] - 21, 36, 46-47, 62, 80-81, 92, 94, 96</p> <p>awarding [3] - 7, 16, 92</p> <p>awards [2] - 43, 96</p> <p>aware [9] - 5, 7, 18-19, 30, 70-71, 74, 78</p>	<p>between [4] - 13, 79-80, 105</p> <p>beyond [3] - 38, 40</p> <p>big [1] - 68</p> <p>billing [1] - 80</p> <p>billings [1] - 33</p> <p>bills [1] - 33</p> <p>binder [1] - 40</p> <p>bit [5] - 24, 44-45, 48, 55</p> <p>blank [1] - 29</p> <p>blood [1] - 37</p> <p>blush [1] - 25</p> <p>board [1] - 62</p> <p>Bonaventure [3] - 28, 32, 38</p> <p>bond [2] - 105, 107</p> <p>bottom [2] - 50</p> <p>bought [1] - 59</p> <p>bounds [1] - 61</p> <p>breach [28] - 7-10, 17, 47, 50, 54, 67-68, 74, 103</p> <p>breached [2] - 46</p> <p>breaches [1] - 62</p> <p>breaching [3] - 6, 8, 17</p> <p>break [1] - 43</p> <p>brief [5] - 7, 22-23, 107</p> <p>briefed [3] - 11, 45, 102</p> <p>briefing [11] - 18, 24-25, 68, 105-106, 109</p> <p>briefly [1] - 58</p> <p>briefs [3] - 18, 22, 98</p> <p>bring [1] - 23</p> <p>bringing [4] - 9, 97</p> <p>brings [2] - 80, 96</p> <p>broadened [1] - 19</p> <p>brought [14] - 7, 10, 17, 22-23, 25, 99, 101, 110</p> <p>Brunzell [7] - 81, 83, 91-93, 96</p> <p>build [1] - 67</p> <p>built [1] - 67</p> <p>bulk [6] - 6, 28, 30, 50</p> <p>burden [6] - 28, 91, 101, 105</p> <p>buried [3] - 95</p> <p>business [1] - 84</p> <p>BY [1] - 1</p>	<p>Cadle-type [1] - 31</p> <p>calculate [2] - 50, 88</p> <p>calculated [3] - 84, 98</p> <p>calculation [7] - 63, 65, 97, 101, 105</p> <p>calculations [6] - 49, 89, 99, 106</p> <p>calendar [2] - 105, 109</p> <p>calmness [1] - 61</p> <p>cancellation [1] - 69</p> <p>cancelled [2] - 32</p> <p>cannot [7] - 5, 8, 10, 34, 40</p> <p>Carano [2] - 3, 36</p> <p>carefully [4] - 41, 59-60, 91</p> <p>case [119] - 5-10, 12, 15, 17-28, 34, 36, 38, 41, 43-49, 51-55, 57, 59-60, 64, 68, 72, 75-77, 81-85, 87, 92, 94-99, 101, 103, 109</p> <p>CASE [1] - 1</p> <p>case's [3] - 53, 60, 76</p> <p>cases [15] - 6, 10, 14, 24, 45-46, 55, 68, 72, 95</p> <p>categories [3] - 32</p> <p>categorized [1] - 34</p> <p>caused [2] - 8, 17</p> <p>causes [6] - 7, 15-17, 62, 67</p> <p>cautious [1] - 108</p> <p>CCR [2] - 1, 111</p> <p>center [1] - 64</p> <p>centers [1] - 6</p> <p>cents [3] - 37, 83, 97</p> <p>certain [8] - 5, 28-29, 38, 87, 91, 101</p> <p>certainly [26] - 7, 11, 15, 18, 21-22, 24, 56, 60, 71, 75, 81-84, 89, 93</p> <p>certified [1] - 34</p> <p>chambers [4] - 108</p> <p>chance [2] - 7, 22</p> <p>changed [3] - 3, 63</p> <p>changes [1] - 5</p> <p>changing [2] - 2</p> <p>Chapter [2] - 30, 72</p> <p>character [1] - 96</p> <p>chares [1] - 35</p> <p>charges [4] - 32, 35, 37</p> <p>check [3] - 32, 36, 97</p> <p>checks [1] - 32</p> <p>Chelsea [1] - 63</p>
B				
<p>bad [6] - 6, 61, 70</p> <p>Bailey [2] - 45, 54</p> <p>Bank [1] - 96</p> <p>barred [1] - 36</p> <p>base [1] - 36</p> <p>based [17] - 20, 24-25, 34, 43-44, 46, 75, 77, 80, 96, 106</p> <p>basic [1] - 22</p> <p>basis [19] - 17, 19-20, 25, 78-80, 83, 85, 89, 92-93, 96, 101</p> <p>bate [2] - 40</p> <p>Bate [2] - 40</p> <p>Bates [3] - 29, 80</p> <p>bates [7] - 32, 40, 64</p> <p>bear [3] - 80, 86</p> <p>became [2] - 70, 104</p> <p>become [1] - 8</p> <p>becomes [2] - 6, 60</p> <p>BEFORE [1] - 1</p> <p>began [1] - 15</p> <p>begin [2] - 65, 99</p> <p>beginning [5] - 63, 86-87, 99</p> <p>begins [2] - 16, 100</p> <p>behalf [6] - 3, 14, 82, 100</p> <p>behind [1] - 63</p> <p>belabor [1] - 30</p> <p>belief [1] - 74</p> <p>believes [1] - 72</p> <p>bench [2] - 22, 42</p> <p>benefit [1] - 21</p> <p>Berkla [6] - 46, 54, 60, 72</p> <p>best [4] - 41, 105</p> <p>better [3] - 41, 83, 85</p>				
C				
<p>c [1] - 44</p> <p>Cadle [23] - 27-31, 33-34, 40</p>				

children [2] - 95 choice [4] - 102, 106 choose [1] - 103 Christopher [8] - 7, 14, 18-19, 25 Circuit [2] - 46 circumstance [4] - 6, 54, 99, 101 cite [4] - 19, 41, 55, 85 cited [19] - 6-8, 10, 19, 21-22, 29, 46, 55, 60, 68, 72, 77, 80, 84 cites [2] - 87, 98 civil [2] - 26, 94 civilized [1] - 36 claim [27] - 9, 31, 41, 48, 50, 54, 57, 60-61, 68, 70, 72-74, 81 claimed [5] - 47, 57, 61, 101 claiming [4] - 27, 53, 75, 91 claims [16] - 5, 11, 15, 44, 46, 52, 62, 68, 72, 80, 98 clarification [1] - 110 clarify [4] - 4, 16, 70, 90 Clark [2] - 32, 35 CLARK [1] - 1 classified [1] - 53 clear [11] - 22, 26, 43, 47, 51, 60, 70, 75, 98, 109, 111 clearly [4] - 15, 55, 61 clerk [1] - 26 CLERK [6] - 107 client [4] - 22, 33, 92 client's [1] - 74 clients [5] - 48, 52, 82, 95 close [2] - 67, 92 closely [1] - 23 closing [5] - 18, 52, 54, 66, 76 clothed [1] - 34 cloud [1] - 17 clue [2] - 29, 40 co [1] - 26 co-counsel [1] - 26 code [1] - 83 cognisant [1] - 24 cognizant [1] - 23 collapse [1] - 95 collection [1] - 28 color [1] - 40 combine [1] - 94	comfortable [1] - 4 coming [1] - 106 commenced [1] - 66 comment [1] - 110 comments [1] - 84 commission [15] - 20, 51-52, 63-64, 74, 86-89, 93, 104 Commission [25] - 6, 44, 50, 57, 76, 78, 80, 86-87, 89-94, 96, 104 commissioner [1] - 94 Commissions [1] - 66 commissions [34] - 5, 11, 18, 48, 50-54, 56, 59-60, 65-66, 73-78, 95 commitments [1] - 81 common [2] - 45, 100 communication [1] - 61 Company [12] - 29, 40 comparison [2] - 3, 81 compel [2] - 35, 105 compelled [1] - 69 compensatory [3] - 48, 92 complaining [1] - 34 Complaint [7] - 10, 14, 32, 48, 53, 85 complaint [11] - 31, 66, 94, 98-100, 103 completely [2] - 23, 60 complexity [2] - 81 compliance [1] - 69 complicated [1] - 53 complied [1] - 57 comply [1] - 22 component [7] - 43, 47-48, 54, 58 components [2] - 50, 58 comports [1] - 33 Computation [1] - 65 computation [1] - 53 conceded [3] - 38, 91, 93 conceding [1] - 30 concerned [1] - 16 concerning [1] - 107 conclude [1] - 16 concluded [4] - 15, 17, 54, 88 conclusion [6] - 16, 40, 54, 60, 64, 74 Conclusions [10] - 7, 12-13, 16, 19, 54, 66, 68, 76, 82	conclusions [2] - 17, 54 condition [11] - 73, 86 conditional [6] - 55, 73, 89-91, 93 conditions [17] - 55, 58-59, 83, 86 conduct [2] - 50, 65 conducted [1] - 96 confer [1] - 105 conference [1] - 28 confidentiality [2] - 14, 83 confining [1] - 16 conflict [1] - 36 confusion [1] - 33 conjunction [1] - 4 consequential [1] - 92 consider [1] - 21 consideration [1] - 12 considered [3] - 62, 72, 91 consistent [2] - 10, 75 constitute [1] - 17 constructed [1] - 90 construction [1] - 88 contact [1] - 6 contending [1] - 95 content [2] - 19, 26 contention [2] - 9 contested [2] - 32, 36 context [4] - 39, 44, 52, 74 continue [1] - 23 continues [1] - 17 continuing [1] - 12 contract [43] - 5-10, 17, 45-47, 50, 54, 66-69, 85-87, 93, 95, 103 contracts [1] - 55 contractual [2] - 44, 72 contribute [1] - 36 conversation [1] - 36 copies [19] - 29, 40 copy [3] - 7, 41, 49 core [1] - 7 correct [22] - 2, 5, 7, 9, 30, 38, 45, 48, 57, 73, 79, 92, 98-99, 101, 110 corrected [1] - 70 correctly [2] - 45, 90 cost [5] - 29, 31, 38, 43 costs [92] - 4, 9, 13-14, 20, 26-38, 41-44, 46-47, 53, 55, 76, 78, 80, 83-85, 89, 91, 93, 96, 102	Costs [2] - 26 Counsel [3] - 2, 37, 110 counsel [24] - 21, 23, 26, 43, 51, 61-62, 65-66, 70-71, 75, 78, 83-84, 86-87, 97, 105 counsel's [2] - 52, 70 count [1] - 71 counted [1] - 79 counter [10] - 4, 11, 18, 20, 22-23, 68 county [1] - 63 County [3] - 32, 35, 95 COUNTY [1] - 1 couple [2] - 55, 71 course [19] - 15, 18, 26, 30, 33, 35, 45, 50, 59, 62-65, 72, 75, 91 court [8] - 3, 16, 20, 23-24, 28, 34, 108 COURT [175] - 1-8, 11-12, 18, 20-23, 25-27, 30-31, 35, 37-45, 48-49, 51, 55-60, 63-65, 69-71, 73-76, 78-79, 89-95, 97 Court [126] - 5-9, 11-22, 25-27, 29, 31, 33-34, 36, 38, 41-43, 45-46, 51, 54, 58, 60-69, 71, 73-74, 78, 80-88, 91, 93-97, 103-105, 107, 111 Court's [19] - 12, 21-22, 32, 36-37, 65, 70, 79, 83, 96 covenant [2] - 67 cover [1] - 11 covers [1] - 15 Coyote [7] - 48, 51, 64, 74, 77 cracks [1] - 110 created [1] - 67 credibility [1] - 30 credit [1] - 62 criminal [1] - 3 critical [1] - 34 criticized [1] - 35 crux [1] - 50 crystal [1] - 34 CSI [8] - 13, 69, 74, 88, 95	current [1] - 85 custom [1] - 90 cuts [1] - 55 D damage [3] - 9, 65 damaged [1] - 75 damages [69] - 5-10, 13-19, 46-51, 53-54, 57, 62, 64-66, 72-73, 76, 92-94, 98 Damages [1] - 65 date [20] - 80, 84-85, 97-98, 100-101, 103, 106 date's [1] - 99 dated [1] - 64 dates [4] - 101, 103-104, 107 Davis [6] - 45, 54, 60, 72 days [10] - 26, 32, 80, 99, 104, 107 dead [3] - 95 deal [2] - 78, 91 dealing [3] - 59, 67 death [1] - 108 December [11] - 12, 15, 65-66, 82, 87, 95, 109 decided [1] - 105 deciding [1] - 20 decision [9] - 12, 16, 34, 84, 96, 103 declaratory [1] - 6 declare [1] - 61 deduct [1] - 35 deducted [4] - 43, 79 deducting [1] - 43 deem [1] - 89 defeat [1] - 85 Defendant [1] - 1 defendant [37] - 6, 9, 12-13, 16-17, 20-21, 32-36, 46-47, 61, 67, 69, 72, 78-79, 81, 83-87, 99 defendant's [12] - 6, 13, 47, 61-62, 68-69, 94 defendants [9] - 16, 18, 35, 46, 69, 82 Defendants [1] - 1 defendants' [4] - 18, 39, 50 defended [2] - 47, 60 defending [4] - 9, 17, 61 defense [7] - 5, 11,
--	--	--	---	---

80, 94, 97, 106 defenses [2] - 44, 46 defer [1] - 2 defined [1] - 67 definitely [1] - 27 definition [1] - 64 delivery [1] - 35 demand [1] - 52 demands [1] - 55 demonstrated [1] - 16 denied [13] - 13, 15, 18-19, 21, 31, 68-69, 80, 82, 85 deny [4] - 23, 25, 31, 41 denying [2] - 20, 78 department [2] - 32, 70 deposition [1] - 52 depositions [2] - 28, 32 DEPT [1] - 1 derived [1] - 88 describes [1] - 29 description [1] - 41 designation [3] - 13, 63, 88 designations [1] - 13 designed [1] - 53 desperately [1] - 102 despite [1] - 84 detached [1] - 90 detailed [3] - 32 determination [2] - 12, 64 determinative [1] - 9 determine [5] - 13, 76-77, 96, 110 determining [1] - 25 develop [1] - 95 development [1] - 64 different [20] - 9, 20, 40, 46, 48, 53-55, 59, 91, 94, 99, 103-104, 106 differently [1] - 45 difficult [2] - 47, 53 direct [1] - 74 directly [5] - 11, 13, 48, 70, 80 disagree [2] - 104 disagreed [3] - 65, 67, 78 disagreement [6] - 99, 102, 106 disagrees [1] - 72 disbursements [1] - 42 discharge [2] - 50, 65	discharged [1] - 101 disclose [3] - 49, 73 disclosed [5] - 51, 53, 62, 73 disclosure [9] - 49-52, 54, 57, 73 disclosures [5] - 49, 62, 73, 75 discount [1] - 42 discounting [1] - 42 discovered [5] - 12, 63-64, 81 discovery [2] - 52, 94 discrete [1] - 61 discretion [1] - 36 discuss [1] - 14 discussed [2] - 55, 97 discussion [4] - 44, 57, 83, 93 dismiss [1] - 14 dismissed [2] - 34, 68 dispositive [2] - 16, 110 dispute [2] - 6, 17 disputed [4] - 90, 100 distinct [1] - 61 distinction [1] - 45 distinctly [1] - 77 distinguished [1] - 89 district [2] - 23 DISTRICT [2] - 1 divorce [1] - 46 docket [1] - 94 docs [2] - 40 document [4] - 13, 49, 62, 65 documentation [5] - 27, 38, 93, 96 documents [13] - 33, 35, 44, 48, 52-53, 64, 77, 82, 84 dollar [2] - 58, 66 dollars [10] - 32, 35, 43, 68, 79, 81, 83, 88, 93, 97 done [10] - 2, 23, 67, 71, 85, 91, 96 double [3] - 79, 91 doubt [1] - 21 down [16] - 3, 7, 24, 28, 42-43, 58, 60, 79, 89-90, 92, 95, 97 draw [2] - 8, 29 due [15] - 14, 74-77, 80, 89, 104-105, 108 duplication [2] - 79 uplicative [4] - 79, 97, 109 during [7] - 15, 62, 64,	68, 77, 81 duty [1] - 65 E EARLEY [1] - 1 earth [1] - 82 easier [1] - 20 east [2] - 67 easy [4] - 24, 71, 104 echoed [1] - 52 EDCR [3] - 4, 20 effect [1] - 87 effective [1] - 103 effort [5] - 58, 62, 82 efforts [10] - 32, 35-36, 77-78, 81-82, 84 eight [1] - 63 Eighth [2] - 65, 73 either [8] - 41, 44, 66, 78, 80, 85, 96 Electric [1] - 68 eleven [1] - 63 encourage [2] - 53, 74 end [7] - 62, 64-65, 68, 78, 80, 108 enforce [2] - 80, 96 ensure [1] - 44 ensuring [1] - 80 entered [23] - 2, 5, 11, 15-16, 19, 31, 41, 70, 78-79, 81-82, 92, 96-97, 103 entire [3] - 10, 28, 53 entirely [3] - 23, 31, 53 entirety [7] - 41, 48, 53, 60, 72, 76, 98 entitle [3] - 63, 88, 95 entitled [21] - 30, 41, 47-48, 52, 54, 59, 61, 64-66, 68, 91, 97-99, 103 entitlement [7] - 51, 53, 55, 73, 86, 102 entitles [1] - 55 entries [3] - 30, 41, 91 entry [5] - 29, 39-40, 102 equitable [1] - 14 Erickson [1] - 43 erroneous [1] - 82 error [1] - 70 especially [3] - 27, 38, 58 ESQ [4] - 1 essence [1] - 59 essentially [3] - 10, 73 established [2] - 46	establishing [1] - 15 estate [1] - 89 Estate [1] - 3 Estates [1] - 14 esteemed [1] - 93 estimates [2] - 34 event [3] - 80, 96 evidence [7] - 15, 62, 64, 75, 81-82, 94 evidenced [1] - 36 evidentiary [1] - 97 exact [1] - 104 exactly [2] - 38, 106 example [4] - 29, 40, 97, 106 exceeded [2] - 85 exception [3] - 6 excepts [1] - 86 excess [1] - 50 exclude [1] - 84 exclusive [1] - 84 excuse [2] - 26, 51 execute [1] - 5 executed [1] - 96 executions [1] - 38 exhausted [1] - 82 exhibit [3] - 3, 30, 39 Exhibit [7] - 38, 42, 64, 74, 80 exhibits [1] - 29 existed [5] - 14, 65, 87 existing [1] - 97 expand [1] - 23 expense [4] - 33, 36, 50 expenses [2] - 33, 35 experience [2] - 26, 90 expert [3] - 35, 43 expired [3] - 84 explain [3] - 24, 41, 67 explanation [1] - 88 explicit [1] - 89 explicitly [1] - 10 exposure [1] - 57 expressly [3] - 12, 44, 54 extended [1] - 82 extends [1] - 48 extensive [6] - 16, 25, 40, 82, 94, 96 extent [4] - 57, 59, 94, 99 extremely [1] - 32 eye [1] - 34 F face [1] - 56	Fact [7] - 7, 13, 19, 54, 66, 68, 82 fact [17] - 4, 8, 14-15, 24, 30, 38, 41, 53, 63, 73, 82, 93, 98 factor [1] - 96 factors [6] - 81, 92, 96, 104 facts [3] - 14, 17 Facts [4] - 12, 16, 76 factual [2] - 19, 47 failed [1] - 17 failing [1] - 65 failure [4] - 50, 61, 67 fair [3] - 21, 67 faith [14] - 6, 20, 23, 25, 44, 61, 68, 70-71, 91 faithfully [1] - 50 fall [2] - 27, 110 familiar [6] - 6, 20, 42-43, 91 family [6] - 63, 89 far [5] - 74, 85, 98, 105 fault [2] - 71, 82 favor [1] - 87 fax [1] - 35 February [8] - 85, 99-100, 102 federal [1] - 108 fee [4] - 35, 43, 79, 82 fees [129] - 4-10, 13-18, 20-21, 25, 28, 30, 32, 35-36, 38, 41-42, 44, 46-47, 49-50, 55, 61-62, 69, 76, 78-81, 83-85, 89, 91-93, 96-98, 100, 102, 104, 109 felt [15] - 19, 24, 42-44, 70, 74, 77-78, 93 fess [1] - 77 few [2] - 29, 84 fifteen [1] - 63 fifty [1] - 43 fifty-six [1] - 43 fight [1] - 94 fighting [1] - 95 figure [3] - 18, 98, 101 figured [1] - 101 file [7] - 14-16, 26, 56, 107 file-stamped [2] - 15 filed [20] - 4, 13-14, 18-20, 26-28, 31, 34, 48, 66, 98 Filed [1] - 26
--	---	--	--	---

filing [8] - 20, 32, 82, 98 final [2] - 32, 96 financial [1] - 47 findings [8] - 13-15, 17, 54, 61, 98 Findings [11] - 7, 12-13, 16, 19, 54, 66, 68, 76, 82 fine [4] - 4, 95, 107, 109 finish [1] - 58 firm [4] - 33, 62, 92 firm's [1] - 36 firmly [1] - 19 firms [2] - 62, 82 first [20] - 2, 5, 11, 15, 25-27, 33, 44-45, 50, 55-56, 60-61, 65, 90, 94, 104 fits [1] - 10 five [3] - 22, 29, 54 five-plus [1] - 54 fixed [1] - 70 flag [1] - 27 Flaxman [2] - 3 FLAXMAN [1] - 1 Fletcher [3] - 84 Flora [1] - 22 flow [3] - 7, 44, 48 flows [1] - 30 fly [1] - 63 focuses [4] - 5, 30, 63 folks [1] - 63 follow [1] - 49 following [6] - 12, 15, 73, 82, 86, 96 follows [1] - 13 foot [1] - 102 Footnote [4] - 8-10, 29 footnote [2] - 16 force [1] - 87 forced [2] - 61, 95 foreseeable [1] - 13 form [3] - 13, 19, 26 former [2] - 17 formulated [1] - 72 forth [6] - 65, 81, 86 forthcoming [1] - 107 forward [5] - 69, 98, 101 four [8] - 12, 18, 22, 24, 64, 82, 96 fourth [2] - 14, 21 framed [4] - 47, 53, 55 frankly [3] - 27, 29, 38 Freedman [2] - 54 Freidman [3] - 45, 73	Friedman [3] - 46, 72 Friedmann [1] - 60 frivolous [1] - 23 front [1] - 37 frustration [1] - 71 FULL [1] - 111 full [7] - 22, 24, 74, 87, 104 fully [1] - 102 furnished [1] - 62 future [7] - 14, 56, 67, 77, 86, 89	hereunder [1] - 80 herself [2] - 9, 17 high [1] - 36 higher [1] - 35 highlight [2] - 8, 49 highlighted [4] - 8, 49, 65, 78 highly [1] - 36 himself [1] - 17 history [2] - 15, 20 hold [2] - 39, 79 holding [1] - 47 holds [2] - 20, 22 holistic [2] - 45, 47 Homes [14] - 2-4, 7, 14, 18-19, 25, 103 homes [4] - 64, 88 HOMES [1] - 1 honest [2] - 25, 74 honestly [1] - 39 Honor [45] - 2-5, 11-12, 20, 22, 25-26, 28, 31, 37, 39, 41, 43-44, 49, 52-53, 58-60, 74, 76, 78, 89, 91, 98, 100, 106-108, 110 honor [1] - 86 Honor's [1] - 54 HONORABLE [1] - 1 honored [2] - 87 hope [1] - 107 Horgan [5] - 10, 17-19, 95 horse [1] - 51 hours [1] - 82 housing [1] - 63 huge [1] - 14 hundreds [4] - 33, 82, 93 hurdle [2] - 27 hurry [1] - 3 hypothetical [2] - 49, 73	inadvertently [2] - 34, 66 inapplicable [1] - 97 inappropriate [1] - 23 incentivize [1] - 44 include [3] - 84, 97 included [8] - 32, 35, 37, 47, 90, 101, 110 includes [2] - 33, 44 including [7] - 6, 15, 36, 49, 80, 105 inclusive [2] - 84, 102 incorrect [1] - 23 increase [1] - 31 incur [2] - 10, 17 incurred [32] - 9, 13, 16-17, 20, 26, 28-29, 33, 36, 38, 43, 73, 80-81, 83-84, 92, 99 indicate [4] - 28, 36, 84, 95 indicated [2] - 84, 99 indicates [1] - 98 indicating [1] - 26 individual [2] - 39, 72 inform [1] - 86 information [43] - 13-17, 47-48, 51-54, 58, 66-69, 75-77, 86-88, 94 informed [2] - 68, 92 inherently [1] - 41 injunctions [1] - 6 insert [1] - 71 instead [3] - 8, 27, 53 instructed [1] - 14 intended [1] - 95 interceding [1] - 32 interest [39] - 58, 78, 80, 83-85, 97-103, 105, 107, 109 interested [1] - 60 interesting [6] - 25, 35, 58, 72, 101 interim [1] - 24 interject [1] - 25 interpret [4] - 6, 45, 94 interpretation [5] - 6, 59, 90, 104 interpreting [1] - 68 interrupt [1] - 98 intimately [1] - 6 introduced [2] - 32 invalid [2] - 55 investigating [1] - 58 invite [1] - 38 involved [8] - 6-8, 10,	46 involving [2] - 55, 72 irrespective [1] - 89 issue [45] - 5, 7, 19, 22, 25, 27, 29-30, 46-47, 50, 53-54, 56, 60, 73, 76-77, 97-99, 101-102, 104, 106, 108, 110 issued [2] - 22, 36 issues [19] - 19, 21, 36, 43, 45-47, 59-61, 93, 105, 107-108, 111 item [12] - 29, 33-34, 38-42, 91 Item [1] - 64 itemized [4] - 33, 38 items [8] - 29, 37, 40-41, 43 itself [2] - 77, 85 IV [1] - 1
G				
gain [1] - 94 Gate [1] - 96 generally [3] - 66, 69, 103 generously [1] - 68 Gina [1] - 111 GINA [1] - 1 given [5] - 12, 21, 26, 60, 110 glad [1] - 91 goal [1] - 46 Golden [1] - 96 grant [2] - 19, 76 granted [1] - 85 granting [2] - 15, 109 great [1] - 91 grounds [1] - 23 Group [1] - 3 guess [6] - 6, 11, 60, 70, 106 guiding [1] - 96				
H				
half [3] - 24, 88 hand [1] - 35 handle [1] - 62 handled [1] - 70 Hanifin [1] - 63 hard [3] - 2, 93, 105 Harvey [2] - 62, 67 head [1] - 62 Headnote [1] - 16 hear [3] - 7, 21, 83 heard [13] - 3, 7, 12, 15, 23, 27-28, 38, 69, 71, 84, 99 hearing [7] - 3, 16, 21, 47, 108 hearings [3] - 3, 15, 61 held [3] - 10, 17, 61 help [2] - 20, 43 helpful [1] - 22 helps [2] - 49, 71				
I				
idea [3] - 37, 56, 59 identical [2] - 21, 86 identify [1] - 101 ignored [1] - 16 Ill [1] - 65 impermissible [1] - 38 implied [2] - 67 important [7] - 8, 26, 45, 48, 73, 109 importantly [1] - 22 imposed [1] - 27 impression [1] - 52				
J				
James [1] - 63 JAMES [2] - 1 January [7] - 3, 12, 15, 21, 61, 99 JEA [1] - 70 Jerry [1] - 63 Jim [2] - 3, 63 JIMMERSON [75] - 1-4, 12, 20, 25-26, 31, 35, 37-39, 42-43, 60, 63-65, 71, 78-79, 90, 92-94, 97, 99-100, 102 Jimmerson [31] - 3, 12-13, 20-22, 38, 48-49, 52-53, 59-60, 63, 72, 74-75, 81, 90-91, 97-98, 100-102, 110 Jimmerson's [6] - 37, 72, 76, 90, 92 John [3] - 28, 32, 35 Jon [2] - 35, 88 JUDGE [1] - 1 Judge [10] - 2, 26, 28, 32, 38, 60, 102, 106, 109 judge [4] - 24, 57, 97, 104 judgement [5] - 5, 84 Judgment [3] - 2, 4, 20 judgment [78] - 2, 5, 11, 13, 16, 21,				

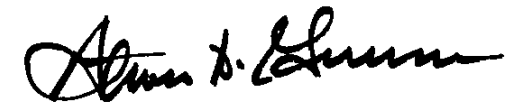
27-28, 31-32, 34-35, 41, 53, 55-56, 58-62, 70-71, 78, 81-94, 96-97, 104-105, 110 judicial [1] - 28 July [1] - 34 June [25] - 12, 15-16, 19, 21, 31, 34, 61, 67-68, 79-80, 82-83, 96, 102, 104 jurisdictions [3] - 10, 17, 46 justify [1] - 92	law [10] - 3, 16, 37, 68, 76, 92-93, 98, 101 Law [12] - 3, 7, 12-13, 16, 19, 32, 54, 66, 68, 76, 82 lawsuit [2] - 15, 66 lawyer [1] - 34 learned [4] - 62, 67 least [4] - 40, 56, 63, 104 leave [1] - 89 left [1] - 35 legacy [1] - 95 Legal [1] - 35 legal [11] - 6, 17, 19, 32, 78, 85, 99 length [1] - 82 lengthy [1] - 82 less [3] - 38, 56, 83 letter [5] - 48, 66, 74, 87 Letter [2] - 66, 87 letters [3] - 52, 76 liability [6] - 47, 72 life [1] - 53 light [1] - 18 LIMBOCKER [2] - 1 LIMBOCKER-WILKES [2] - 1 limine [1] - 94 limited [2] - 19, 24 limiting [1] - 59 Lincoln [1] - 95 Line [3] - 65, 86 line [20] - 10, 29-30, 38-43, 51, 91 Lines [2] - 13, 19 liquidated [3] - 103 liquidation [1] - 103 list [4] - 2, 35, 40, 49 listed [2] - 2, 39 listen [2] - 58, 91 lit [1] - 47 litany [1] - 30 literally [1] - 87 litigate [1] - 95 litigated [2] - 82, 90 litigating [1] - 36 litigation [25] - 8, 10, 14, 39, 42-44, 46-47, 52-53, 66, 74, 76-77, 85, 95 Liu [30] - 6-10, 12, 14, 16-19, 22-25, 80, 95 LIVING [1] - 1 LLP [1] - 43 local [1] - 23 located [1] - 7 look [56] - 7, 16, 19,	24-25, 27-29, 31-33, 35-36, 38-39, 45, 47-55, 57, 62, 64-65, 72-73, 76, 82-84, 88, 90-92, 99, 101 looked [18] - 23-25, 38-39, 57-59, 77, 90-91, 93 looking [4] - 8, 39, 70 lose [1] - 72 losing [1] - 48 loss [2] - 69, 81 lost [8] - 34, 52, 54, 73, 76-77, 94 LUNDVALL [31] - 1, 3, 43, 58-59, 98, 100-101, 104, 106-108, 110 Lundvall [6] - 3, 58, 61, 98, 101, 104 Lundvall's [2] - 103	meritorious [1] - 68 met [3] - 30, 43 MICHAEL [1] - 1 Michael [1] - 3 middle [3] - 62, 102 might [3] - 10, 56, 77 million [11] - 18, 50, 54-56, 59, 61, 66, 73, 88 mind [1] - 69 mindful [2] - 34 mine [1] - 8 minus [1] - 79 minute [1] - 39 misbehavior [1] - 14 misinformation [2] - 26, 71 misstated [2] - 66, 73 misstatement [1] - 90 misunderstanding [1] - 33 modest [1] - 12 Monday [2] - 2, 109 MONDAY [2] - 1 monetary [3] - 54, 68, 72 money [6] - 20, 31, 52, 75, 80, 100 monitor [2] - 69, 77 month [7] - 24, 32 moot [1] - 31 morning [5] - 2, 12 morning's [1] - 78 most [9] - 47, 53, 60, 76 Motion [4] - 2, 4, 26 motion [79] - 3-5, 7, 9, 11-23, 25-26, 28-31, 33-34, 38, 40-41, 44, 53, 61, 63, 69, 74, 76, 78, 80-81, 91, 94, 97, 109 motions [18] - 3, 21, 27, 40, 42, 44-45, 53, 60, 80, 82, 94 motivation [1] - 71 MR [156] - 2-8, 11-12, 20, 22, 25-27, 30-31, 35, 37-45, 48-49, 51, 55-58, 60, 63-65, 69-71, 73-76, 78-79, 90-94, 97, 99-100, 102 MS [30] - 3, 43, 58-59, 98, 100-101, 104, 106-108, 110 Muije [5] - 35, 42, 79 Muije's [5] - 28, 32, 36, 38, 41 multi [2] - 63	multi-family [2] - 63 multiple [2] - 59, 101 multiplying [1] - 88 must [2] - 57, 101
N				
narrow [2] - 6, 17 National [1] - 96 natural [1] - 38 nature [1] - 94 near [2] - 37, 62 nearly [2] - 53, 61 necessarily [4] - 16, 22, 81 necessary [9] - 26, 29, 40, 42-43, 94 necessity [1] - 21 need [16] - 3, 11, 26, 52-53, 61, 89, 97, 99, 106-107, 110 needed [4] - 42, 48, 52 needing [1] - 53 needs [4] - 6, 102-103, 109 negotiated [1] - 89 Nelson [1] - 107 neutral [2] - 51, 75 Nev [2] - 19, 43 NEVADA [3] - 1 Nevada [12] - 3, 6, 8, 22, 45, 55, 72, 83-84, 96 Nevada's [2] - 2, 4 never [4] - 18, 26, 70, 74 new [29] - 2-4, 15, 24, 27-28, 33, 62-66, 73, 86-89, 109 newly [1] - 81 next [10] - 4, 9, 26, 33, 44, 80, 88 nine [2] - 63, 87 Ninth [2] - 46 NO [3] - 1 non [2] - 6, 8 non-breaching [2] - 6, 8 none [2] - 7, 91 north [1] - 28 notated [1] - 45 note [6] - 35, 55, 62, 82, 85, 101 noted [3] - 22, 53, 95 notes [4] - 3-5, 52 nothing [6] - 10, 27, 36, 88, 102, 108 notice [3] - 38, 47, 74 notify [1] - 86				

November [1] - 109 NRCP [8] - 19, 49, 51-52, 54, 57, 73 NRS [18] - 4, 20, 27-28, 30, 41-43, 45, 55, 103 Number [8] - 13, 63-64, 80, 87, 89 number [10] - 22, 35, 37-38, 56, 58, 76, 87 numbered [2] - 39, 64 numbers [3] - 36, 56 numerous [3] - 13, 42, 94	36, 38-39, 41-42, 44, 46, 50, 53, 58, 60, 68, 72, 75-76, 81, 87-90, 95-96, 98, 101, 104, 107 one-half [1] - 88 ongoing [1] - 88 oOo [2] - 2, 111 Op [2] - 19, 43 opening [6] - 18, 51, 54, 66, 76, 107 openings [1] - 55 opinion [6] - 7, 22-23, 75 opinions [1] - 22 opportunity [2] - 7, 66 opposed [2] - 88, 103 opposing [12] - 21, 43, 65-66, 78, 83-84, 86-87, 94 opposite [1] - 49 opposition [11] - 4, 12-13, 22, 31-32, 34, 38, 108 Option [9] - 48, 51-52, 64, 87-89, 94 oral [1] - 11 order [28] - 2, 4, 7, 16, 19, 22, 25, 32-33, 43, 51, 67, 69-71, 78, 82-83, 85, 87, 97, 102 ordered [5] - 62, 69, 88, 104 ordering [1] - 35 orderly [1] - 69 orders [5] - 15, 20 Oregon [1] - 16 original [2] - 63, 88 originally [1] - 67 otherwise [2] - 93, 95 outlined [2] - 8, 28 outside [1] - 59 overreaching [1] - 61 overtures [1] - 59 overturned [1] - 16 owe [3] - 57, 90 owed [4] - 51, 76, 100 owing [2] - 89, 105 own [4] - 12, 36, 106 Owners [1] - 14	74, 80, 84, 104 papers [1] - 81 Paradise [2] - 103 paragraph [1] - 80 paraphrase [1] - 74 Parcel [3] - 67, 89 parcel [2] - 67, 86 Pardee [50] - 2-4, 12-14, 23-24, 31, 44, 47-48, 51-53, 55-62, 65, 69, 74, 76, 86, 88, 95, 105 PARDEE [1] - 1 Pardee's [21] - 5, 10-11, 19, 23, 26, 36-37, 44, 50, 55, 65-66, 70, 74, 76, 78 part [22] - 16, 18, 21, 31, 35, 60-63, 69-71, 83-87, 89 particular [4] - 5, 8, 44, 54 particularly [2] - 62, 82 parties [15] - 5, 7, 21, 23, 27, 34, 49, 73, 75, 80, 82, 85, 94 parts [1] - 43 party [66] - 6, 8, 10, 14, 16-17, 20, 27, 30, 34, 44-47, 51, 61, 66, 68-69, 71-78, 80-81, 89, 91-92, 95-96, 103 party's [1] - 17 past [2] - 24, 95 Patricia [1] - 3 PATRICIA [1] - 1 pay [1] - 88 payable [1] - 104 Peltier [1] - 63 people [2] - 70 people's [1] - 71 per [1] - 80 percent [10] - 27, 34, 47, 61, 80, 85, 88-89, 105 perfect [1] - 4 performed [2] - 86, 96 perhaps [1] - 34 period [4] - 33, 80, 82, 84 permissible [3] - 86, 89 permitted [2] - 31, 64 perspective [2] - 46, 51 phonetic [2] - 22, 46 photocopies [1] - 32 picked [3] - 97	plaintiff [24] - 6, 8-9, 13-14, 16, 19, 31-32, 36, 46, 48, 50, 54, 67, 72, 78, 83, 86, 93, 99 plaintiffs [5] - 4, 47, 78 Plaintiffs [1] - 26 plaintiffs [53] - 3, 7-8, 13-16, 18, 21, 28, 30, 34-35, 41, 49-50, 52-53, 62-66, 68-69, 72, 76, 80-81, 87-88, 92-93, 95-97, 101 Plaintiffs [2] - 1 plaintiffs' [31] - 4, 11, 20, 27-28, 38, 42-43, 48, 51, 54-55, 57, 62, 68, 71, 76-77, 84, 86, 89, 92, 96-97, 104 Plaintiffs' [1] - 26 plan [1] - 64 plans [1] - 63 pleading [2] - 89 pleadings [4] - 3, 42, 70, 101 pleasure [1] - 11 pled [1] - 10 plenty [1] - 21 plus [8] - 14, 37, 43, 54, 59, 78, 83 point [20] - 5, 15, 22-23, 27, 30, 36, 45, 52, 54, 71-72, 93-94, 98, 101, 104, 110 points [6] - 5, 55, 58, 71, 103 Pombo [6] - 55, 83-84, 86-87, 89 poor [1] - 109 portion [3] - 8, 73, 88 position [6] - 11, 31, 54, 67, 73 positions [3] - 94, 106 possible [1] - 69 post [5] - 21, 27, 53, 107 post-judgment [2] - 27, 53 post-trial [1] - 21 posted [1] - 105 potential [1] - 98 potentially [1] - 95 pouring [1] - 51 Power [1] - 22 pre [7] - 46, 52, 74, 76 pre-lit [1] - 47	pre-litigation [6] - 46, 52, 74, 76 precedent [1] - 73 prefer [2] - 108 prejudgement [1] - 99 prejudgment [7] - 97, 101 premature [1] - 38 prepare [5] - 19, 25, 43, 78 present [6] - 3, 12, 35, 65, 100, 103 presentation [2] - 61 presented [4] - 62, 65-66, 96 preserve [1] - 22 pretrial [1] - 15 prevail [4] - 45, 60, 72 prevailed [12] - 15, 21, 46-47, 68, 72, 92 prevailing [40] - 16, 20, 30, 34, 44-47, 61, 68-69, 71-72, 74, 76-78, 80-81, 85, 89, 91-93, 95-96, 103 prevails [1] - 45 previous [5] - 5, 16, 19, 28 previously [3] - 64, 88 prime [6] - 85, 97, 100, 105 printing [1] - 32 problem [2] - 39, 106 procedural [4] - 23 proceed [2] - 45, 55 proceeding [2] - 45, 55 PROCEEDINGS [2] - 1, 111 process [2] - 35, 72 processes [1] - 14 produced [1] - 52 production [5] - 63, 88 professional [4] - 35, 42, 81, 83 proof [1] - 101 proper [1] - 93 property [6] - 6, 17, 88 Property [6] - 48, 51-52, 88 proposed [3] - 66, 96 proposing [1] - 107 proposition [2] - 23, 55 prosecuting [5] - 8 protected [1] - 23 prove [7] - 27-29, 51, 55, 91
O oath [1] - 88 objecting [1] - 31 objective [3] - 46, 60, 76 objective-based [1] - 46 objectives [2] - 46 obligated [1] - 87 obligation [10] - 22, 24, 40, 74, 83, 86 obligations [4] - 50, 57, 74 obliged [1] - 67 observed [1] - 81 obtain [3] - 13 obtained [2] - 81, 96 obtaining [2] - 32 obvious [2] - 42, 77 obviously [18] - 3, 22, 24, 44, 48, 51, 57-58, 60, 76, 90, 92-93, 98-99, 101-102, 105 occasions [3] - 13, 36, 59 occur [3] - 17, 66, 98 occurred [6] - 10, 66-67, 80, 95, 100 October [7] - 12, 15, 82, 95, 108 odd [2] - 43, 98 OF [3] - 1, 111 Offer [1] - 20 offer [30] - 55, 58-60, 83-90, 92-93, 96 offers [2] - 85, 91 office [1] - 108 often [1] - 24 old [1] - 26 once [7] - 18, 24, 70, 77 one [65] - 6, 9, 13, 18-19, 23-26, 33-34,	P Page [13] - 8, 19, 50, 63, 65, 80, 86, 88 page [5] - 16, 34, 39, 64 pages [1] - 64 paid [9] - 32, 35, 66,	74, 80, 84, 104 papers [1] - 81 Paradise [2] - 103 paragraph [1] - 80 paraphrase [1] - 74 Parcel [3] - 67, 89 parcel [2] - 67, 86 Pardee [50] - 2-4, 12-14, 23-24, 31, 44, 47-48, 51-53, 55-62, 65, 69, 74, 76, 86, 88, 95, 105 PARDEE [1] - 1 Pardee's [21] - 5, 10-11, 19, 23, 26, 36-37, 44, 50, 55, 65-66, 70, 74, 76, 78 part [22] - 16, 18, 21, 31, 35, 60-63, 69-71, 83-87, 89 particular [4] - 5, 8, 44, 54 particularly [2] - 62, 82 parties [15] - 5, 7, 21, 23, 27, 34, 49, 73, 75, 80, 82, 85, 94 parts [1] - 43 party [66] - 6, 8, 10, 14, 16-17, 20, 27, 30, 34, 44-47, 51, 61, 66, 68-69, 71-78, 80-81, 89, 91-92, 95-96, 103 party's [1] - 17 past [2] - 24, 95 Patricia [1] - 3 PATRICIA [1] - 1 pay [1] - 88 payable [1] - 104 Peltier [1] - 63 people [2] - 70 people's [1] - 71 per [1] - 80 percent [10] - 27, 34, 47, 61, 80, 85, 88-89, 105 perfect [1] - 4 performed [2] - 86, 96 perhaps [1] - 34 period [4] - 33, 80, 82, 84 permissible [3] - 86, 89 permitted [2] - 31, 64 perspective [2] - 46, 51 phonetic [2] - 22, 46 photocopies [1] - 32 picked [3] - 97	plaintiff [24] - 6, 8-9, 13-14, 16, 19, 31-32, 36, 46, 48, 50, 54, 67, 72, 78, 83, 86, 93, 99 plaintiffs [5] - 4, 47, 78 Plaintiffs [1] - 26 plaintiffs [53] - 3, 7-8, 13-16, 18, 21, 28, 30, 34-35, 41, 49-50, 52-53, 62-66, 68-69, 72, 76, 80-81, 87-88, 92-93, 95-97, 101 Plaintiffs [2] - 1 plaintiffs' [31] - 4, 11, 20, 27-28, 38, 42-43, 48, 51, 54-55, 57, 62, 68, 71, 76-77, 84, 86, 89, 92, 96-97, 104 Plaintiffs' [1] - 26 plan [1] - 64 plans [1] - 63 pleading [2] - 89 pleadings [4] - 3, 42, 70, 101 pleasure [1] - 11 pled [1] - 10 plenty [1] - 21 plus [8] - 14, 37, 43, 54, 59, 78, 83 point [20] - 5, 15, 22-23, 27, 30, 36, 45, 52, 54, 71-72, 93-94, 98, 101, 104, 110 points [6] - 5, 55, 58, 71, 103 Pombo [6] - 55, 83-84, 86-87, 89 poor [1] - 109 portion [3] - 8, 73, 88 position [6] - 11, 31, 54, 67, 73 positions [3] - 94, 106 possible [1] - 69 post [5] - 21, 27, 53, 107 post-judgment [2] - 27, 53 post-trial [1] - 21 posted [1] - 105 potential [1] - 98 potentially [1] - 95 pouring [1] - 51 Power [1] - 22 pre [7] - 46, 52, 74, 76 pre-lit [1] - 47	pre-litigation [6] - 46, 52, 74, 76 precedent [1] - 73 prefer [2] - 108 prejudgement [1] - 99 prejudgment [7] - 97, 101 premature [1] - 38 prepare [5] - 19, 25, 43, 78 present [6] - 3, 12, 35, 65, 100, 103 presentation [2] - 61 presented [4] - 62, 65-66, 96 preserve [1] - 22 pretrial [1] - 15 prevail [4] - 45, 60, 72 prevailed [12] - 15, 21, 46-47, 68, 72, 92 prevailing [40] - 16, 20, 30, 34, 44-47, 61, 68-69, 71-72, 74, 76-78, 80-81, 85, 89, 91-93, 95-96, 103 prevails [1] - 45 previous [5] - 5, 16, 19, 28 previously [3] - 64, 88 prime [6] - 85, 97, 100, 105 printing [1] - 32 problem [2] - 39, 106 procedural [4] - 23 proceed [2] - 45, 55 proceeding [2] - 45, 55 PROCEEDINGS [2] - 1, 111 process [2] - 35, 72 processes [1] - 14 produced [1] - 52 production [5] - 63, 88 professional [4] - 35, 42, 81, 83 proof [1] - 101 proper [1] - 93 property [6] - 6, 17, 88 Property [6] - 48, 51-52, 88 proposed [3] - 66, 96 proposing [1] - 107 proposition [2] - 23, 55 prosecuting [5] - 8 protected [1] - 23 prove [7] - 27-29, 51, 55, 91

<p>prove-up [4] - 27, 29, 51, 55</p> <p>proven [2] - 29, 73</p> <p>provide [9] - 14, 17, 20, 27, 67-69, 87</p> <p>provided [9] - 14, 35, 52, 67, 69, 77, 93</p> <p>provides [1] - 44</p> <p>providing [1] - 95</p> <p>Provision [1] - 45</p> <p>provision [5] - 80, 86, 89</p> <p>provisions [2] - 44, 53</p> <p>pull [1] - 94</p> <p>pulled [3] - 24, 102</p> <p>purchase [3] - 52, 88</p> <p>purchased [5] - 65, 67-68, 88</p> <p>purchases [2] - 13, 69</p> <p>purported [2] - 10, 53</p> <p>purportedly [4] - 50-52, 54</p> <p>pursuant [11] - 4, 13, 19-20, 41, 78, 88, 95</p> <p>pursuit [1] - 15</p> <p>put [15] - 4, 42, 57, 70, 89-90, 97-98, 108</p>	<p>86, 105</p> <p>reading [2] - 13, 70</p> <p>reads [1] - 34</p> <p>real [5] - 6, 17, 22, 48, 89</p> <p>realize [1] - 18</p> <p>really [14] - 5, 7, 9-10, 27, 29-30, 48, 50-52, 63, 92</p> <p>reason [6] - 7, 31, 48, 77</p> <p>reasonable [21] - 14, 16-17, 20-21, 26-27, 29, 36, 40, 42-43, 80-81, 83, 89, 96</p> <p>reasonableness [3] - 38, 82, 96</p> <p>reasonably [3] - 13, 68, 86</p> <p>reasoning [1] - 90</p> <p>reasons [4] - 25, 36, 38, 88</p> <p>reassured [1] - 42</p> <p>recitation [1] - 37</p> <p>reclaim [1] - 66</p> <p>reclassification [4] - 48, 64</p> <p>reclassified [1] - 48</p> <p>reclassify [2] - 51, 66</p> <p>reclassifying [1] - 52</p> <p>recognize [2] - 47, 95</p> <p>recognized [4] - 6, 86, 88, 90</p> <p>recollection [2] - 34, 64</p> <p>record [36] - 2-4, 15-16, 21-24, 33, 42, 44, 47, 49, 53, 58, 60-61, 63, 70, 75, 82, 84, 89, 91, 94, 105-107, 111</p> <p>Recorder [1] - 35</p> <p>recording [1] - 35</p> <p>recover [22] - 6, 8-10, 17, 28-30, 54, 72, 76, 91, 93</p> <p>recoverable [9] - 27, 41</p> <p>recovered [3] - 47, 92</p> <p>recovering [1] - 44</p> <p>recovery [5] - 13, 16, 28, 44, 73</p> <p>red [1] - 27</p> <p>reduce [2] - 44, 53</p> <p>reducing [1] - 34</p> <p>reference [3] - 18, 39, 59</p> <p>referenced [4] - 14, 37, 75, 78</p> <p>references [2] - 29, 66</p>	<p>referred [1] - 96</p> <p>referring [1] - 110</p> <p>reflect [1] - 46</p> <p>reflecting [1] - 51</p> <p>reflects [1] - 52</p> <p>regard [7] - 14, 22, 61, 69, 82, 88, 94</p> <p>regarding [2] - 13, 64</p> <p>regardless [1] - 82</p> <p>registry [2] - 94</p> <p>rehash [2] - 90</p> <p>reinsert [1] - 11</p> <p>reiterated [1] - 91</p> <p>reiteration [1] - 87</p> <p>rejected [2] - 59, 68</p> <p>related [1] - 50</p> <p>relations [1] - 88</p> <p>relative [1] - 15</p> <p>relevant [3] - 22, 45</p> <p>relief [3] - 6, 15, 62</p> <p>relies [1] - 9</p> <p>rely [1] - 34</p> <p>remain [2] - 86</p> <p>remained [1] - 87</p> <p>remaining [2] - 66, 95</p> <p>remains [1] - 80</p> <p>remarkably [1] - 67</p> <p>remedy [1] - 14</p> <p>remember [6] - 3, 23, 65, 77, 89</p> <p>remind [1] - 13</p> <p>remove [1] - 16</p> <p>rendered [1] - 83</p> <p>repeatedly [1] - 18</p> <p>reply [4] - 11, 55, 108</p> <p>REPORTED [1] - 1</p> <p>REPORTER'S [1] - 1</p> <p>reporters [1] - 28</p> <p>request [3] - 14, 83</p> <p>requested [8] - 13, 78-79, 81</p> <p>require [2] - 68, 109</p> <p>required [12] - 10, 13-14, 17, 41, 43, 49, 59, 67, 83, 86</p> <p>requirement [1] - 29</p> <p>requirements [6] - 12, 15, 34, 38, 59, 89</p> <p>requires [3] - 41, 73</p> <p>requisite [2] - 14</p> <p>research [1] - 32</p> <p>reserve [1] - 66</p> <p>residential [2] - 88, 90</p> <p>resolve [3] - 84</p> <p>respect [15] - 5, 11, 30, 47-48, 53, 55, 73, 75, 84, 88, 91</p> <p>respectfully [1] - 66</p> <p>respective [2] - 80, 82</p>	<p>respond [1] - 21</p> <p>response [1] - 31</p> <p>responsibility [3] - 79, 81, 83</p> <p>responsible [1] - 82</p> <p>responsive [1] - 13</p> <p>rest [4] - 29, 57, 74, 91</p> <p>restatement [2] - 87, 89</p> <p>result [3] - 83, 93, 96</p> <p>results [1] - 81</p> <p>Retax [2] - 26</p> <p>retax [2] - 26, 31</p> <p>retreat [1] - 17</p> <p>reverse [1] - 61</p> <p>review [9] - 7, 40, 43, 49, 74, 76, 96</p> <p>reviewed [9] - 3, 17-18, 37, 42, 44</p> <p>reviewing [3] - 19, 42, 77</p> <p>Revised [1] - 72</p> <p>revisit [1] - 24</p> <p>revisited [1] - 24</p> <p>revisiting [1] - 16</p> <p>rights [2] - 80, 96</p> <p>risen [1] - 27</p> <p>Rizzi [1] - 63</p> <p>robbed [2] - 51, 66</p> <p>Rory [1] - 3</p> <p>RORY [1] - 1</p> <p>roughly [1] - 87</p> <p>RPR [2] - 1, 111</p> <p>Rule [4] - 23, 62, 89</p> <p>rule [5] - 5, 20, 36, 69, 73</p> <p>ruled [4] - 12, 15, 18, 22</p> <p>rules [3] - 23, 70</p> <p>ruling [7] - 18, 26, 31, 52, 79</p> <p>rulings [1] - 94</p> <p>run [5] - 32, 103, 105, 108</p>	<p>scenario [2] - 65</p> <p>schedule [3] - 105</p> <p>school [1] - 37</p> <p>scope [1] - 59</p> <p>scorched [1] - 82</p> <p>second [13] - 5, 11, 15, 18, 20, 50, 61, 64, 76, 83, 85, 89</p> <p>see [40] - 8, 14, 19, 24, 28-31, 33, 35-36, 38, 46, 49-50, 52, 54, 59, 63-65, 71, 76, 83, 88, 94, 110</p> <p>See [1] - 14</p> <p>seeing [1] - 36</p> <p>seek [4] - 16, 28, 49, 94</p> <p>seeking [9] - 6, 8-9, 18, 23, 53-54, 74, 92</p> <p>segregated [1] - 61</p> <p>self [1] - 36</p> <p>send [2] - 43, 78</p> <p>Senior [1] - 28</p> <p>sense [9] - 45, 59, 66, 72, 91-92, 100, 111</p> <p>sentence [2] - 9, 50</p> <p>separate [11] - 13, 20-21, 23, 36-37, 51, 59, 78, 85</p> <p>separated [2] - 33, 61</p> <p>September [7] - 39, 80, 96-97, 107</p> <p>seriously [2] - 24</p> <p>served [11] - 48-50, 62, 83-85, 100, 103</p> <p>service [7] - 32, 35, 99</p> <p>services [2] - 35, 42</p> <p>set [8] - 2, 64-65, 81, 86-87, 108</p> <p>setting [4] - 2, 21, 87, 108</p> <p>settlement [11] - 53, 55</p> <p>settles [1] - 109</p> <p>seven [3] - 82</p> <p>Seventh [1] - 65</p> <p>several [3] - 34, 43, 60</p> <p>shall [5] - 80, 87-88, 96</p> <p>shameful [1] - 62</p> <p>shared [1] - 35</p> <p>shoot [1] - 102</p> <p>short [1] - 27</p> <p>show [1] - 29</p> <p>showed [1] - 85</p> <p>shows [3] - 50, 73</p> <p>SHRADER [1] - 1</p> <p>Shrader [1] - 111</p> <p>sic [1] - 4</p>
<p>Q</p> <p>qualify [1] - 89</p> <p>quality [1] - 96</p> <p>quantification [1] - 59</p> <p>quantified [1] - 59</p> <p>quarter [1] - 61</p> <p>questioning [1] - 52</p> <p>questions [7] - 11, 25, 60, 75, 93, 108</p> <p>quick [1] - 71</p> <p>quickly [1] - 71</p> <p>quite [4] - 27, 29, 51, 56</p> <p>quote [4] - 36, 74, 80</p>	<p>R</p> <p>race [1] - 51</p> <p>raised [3] - 27, 61, 102</p> <p>Ranch [1] - 14</p> <p>rate [1] - 85</p> <p>rather [1] - 6</p> <p>ratio [1] - 92</p> <p>re [1] - 63</p> <p>re-designation [1] - 63</p> <p>read [32] - 3, 5, 7, 11, 15-16, 18-19, 24, 34, 42, 45, 55, 59-60, 70, 73, 84,</p>	<p>S</p> <p>sales [1] - 74</p> <p>sanctions [1] - 23</p> <p>sandy [1] - 9</p> <p>Sandy [25] - 6, 9-12, 14, 16-19, 24-25, 57, 77, 80, 92, 95</p> <p>sat [4] - 51, 66, 75</p> <p>satisfied [1] - 13</p> <p>save [1] - 30</p> <p>saw [7] - 18, 53, 55, 62, 67, 104</p>		

side [5] - 10, 36, 39, 56, 106 sides [7] - 24, 36, 77-78, 80-81, 105 sign [2] - 83 signed [1] - 67 significant [2] - 15, 29 silent [1] - 106 silly [1] - 31 similar [5] - 36, 46, 54, 90 simple [2] - 7, 100 simply [19] - 10, 23, 26, 29-31, 36, 41, 48, 50, 61, 63, 66, 73, 87, 89 single [9] - 33, 63-64, 89-90, 101 single-detached [1] - 90 single-family [2] - 64, 89 sit [1] - 90 situation [1] - 23 situations [1] - 6 six [2] - 5, 43 Sky [1] - 14 slightly [1] - 91 slow [2] - 3, 79 so-and-so [1] - 64 softer [1] - 12 some-odd [1] - 43 some-odd-thousand [1] - 98 someone [1] - 77 somewhere [1] - 37 sorry [2] - 109 sort [9] - 6, 8, 40, 45-47, 51 sought [7] - 31, 49, 54, 81, 85, 100 spans [1] - 32 speaking [4] - 11, 68-69, 103 special [26] - 2, 5-10, 13-15, 17-18, 62, 92 specific [7] - 8, 13, 17, 33, 84, 99 specifically [5] - 10, 13, 21, 29, 96 speculative [1] - 73 spend [1] - 91 spent [4] - 39, 42, 81 Springs [7] - 48, 51, 64, 74, 77 staff [1] - 79 staffs' [2] - 12 stamp [2] - 40 Stamp [1] - 80	stamped [6] - 15, 32, 40 stamping [2] - 29, 32 stamps [3] - 40 stand [4] - 51, 54, 75 standard [8] - 25, 27, 30-31, 41, 43-44, 81 standing [2] - 45, 70 standpoint [1] - 59 stands [3] - 34, 55, 77 start [9] - 2, 4, 37-40, 70, 99, 104 started [3] - 27, 77, 87 starts [1] - 104 state [1] - 14 statement [6] - 66, 70, 87 statements [3] - 18, 54 Stater [1] - 63 states [1] - 96 statues [1] - 55 statute [6] - 5, 33, 36, 45 statutes [1] - 103 Statutes [1] - 72 statutory [1] - 72 still [8] - 19, 21, 45, 51, 53, 72, 107 straightforward [2] - 6, 84 strike [2] - 14, 28 striking [1] - 62 strong [1] - 106 strongest [1] - 37 struck [2] - 11, 61 struggle [1] - 95 stuff [4] - 40, 107 submission [1] - 12 submit [11] - 28, 41, 48, 53-54, 73, 93 submitted [6] - 61-63, 66 substance [1] - 24 substance-wise [1] - 24 substantial [16] - 27, 41, 45-47, 53-54, 56, 60, 73, 76 substantially [3] - 27, 55, 92 substantive [4] - 23, 71 substantively [2] - 23, 25 subtract [3] - 37 subtracted [2] - 37 subtracting [1] - 37 succeeded [5] - 46,	54, 60, 76 successful [1] - 34 successfully [2] - 47, 60 suffered [2] - 13 sufficient [1] - 85 suggest [5] - 31, 40, 49, 55, 65 suggesting [2] - 48, 67 suggests [1] - 49 suit [4] - 14, 16, 37, 106 sum [4] - 21, 80 summary [1] - 94 summertime [1] - 15 superfluous [1] - 54 superior [1] - 67 supplement [1] - 58 Supplement [5] - 49, 62-63, 65, 73 supplemental [2] - 62, 109 supplements [2] - 63 support [4] - 9, 18-19, 22 supported [2] - 19, 24 supporting [4] - 33, 38, 96 supports [2] - 16 Supreme [9] - 6, 8-9, 19, 22, 34, 83 suspect [2] - 35, 55	78-79, 89-95, 97 theme [1] - 51 themselves [1] - 10 theories [3] - 47, 51 theory [10] - 47, 63, 72-73, 77 therefore [5] - 19, 23, 47, 78, 83 therein [1] - 29 they've [9] - 9, 21, 54, 85, 101 third [15] - 6, 8, 10, 14-17, 50-51, 57, 75 third-party [5] - 6, 8, 10, 17 Thirteenth [3] - 49, 62 thoroughly [2] - 82 thousand [2] - 43, 98 thousands [1] - 93 three [20] - 6, 16, 21, 36, 47, 50, 62, 64, 66, 68, 72, 82, 85, 96 throughout [2] - 21, 49 title [1] - 17 today [16] - 18, 31-32, 36, 97-98, 103-106, 109 together [8] - 4, 32, 34, 46, 57, 67, 106 tones [1] - 12 took [5] - 33, 51, 99 top [2] - 50, 105 tort [1] - 103 total [4] - 13, 32, 37, 43 totally [1] - 61 tough [1] - 25 town [1] - 107 transaction [2] - 13, 35 TRANSCRIPT [2] - 1, 111 transcript [2] - 28, 41 transcripts [8] - 28, 32, 35, 51 travel [3] - 32, 35, 41 trial [54] - 3, 15, 21, 23-24, 29, 33-36, 42, 48-49, 51-52, 54, 56, 59, 62-68, 73, 75, 77, 80-82, 90, 102, 107 tried [11] - 9, 24, 28, 69, 75, 87, 95, 101 true [3] - 72, 74, 100 TRUE [1] - 111 TRUST [1] - 1 trustee [1] - 1	truthful [1] - 72 try [8] - 20, 23-24, 71, 98, 101, 105 trying [9] - 2, 29, 41, 76, 98, 102, 105, 111 turn [2] - 62, 64 turned [2] - 56, 85 twelve [1] - 63 two [23] - 5, 7, 21, 36, 46, 51, 53, 58, 78, 85, 87-88, 96-97, 99, 105 twofold [1] - 79 type [6] - 16, 31, 56, 63, 89, 95 types [1] - 50
U				
ultimately [2] - 22, 79 unavailable [1] - 108 uncomfortable [1] - 108 under [70] - 6, 10, 15, 17, 19-20, 25, 27-30, 32, 40-45, 47, 49-50, 52, 55, 57, 60, 63-65, 68, 72, 74, 80, 83-84, 86-87, 89, 91-96, 103 underneath [4] - 40 understood [2] - 22, 24 undertaken [1] - 81 unfair [1] - 51 unique [3] - 19, 23, 51 unity [1] - 17 unless [2] - 60, 90 unnecessary [1] - 13 unpaid [2] - 18, 80 unreasonable [1] - 36 unreliable [5] - 29-31, 41 untrue [1] - 73 unusual [3] - 10, 86 unverified [1] - 26 up [31] - 27-29, 41, 43, 49, 51, 55, 60, 62, 70, 75, 77, 97-99, 101-102, 105, 110 UPS [1] - 32 upset [1] - 70 utilizing [1] - 96				
V				
vague [1] - 29 validate [1] - 87				

validating ^[1] - 83 Valley ^[27] - 6, 9-12, 14, 16-19, 24-25, 57, 68, 77, 80, 92, 95 various ^[2] - 17, 80 VEGAS ^[1] - 2 vehicle ^[1] - 15 verbatim ^[1] - 87 verified ^[3] - 32, 34, 87 verses ^[1] - 55 versus ^[12] - 6, 14, 18-19, 25, 84, 96, 107 view ^[2] - 63, 89 viewpoint ^[1] - 24 vigilant ^[1] - 36 violated ^[1] - 38 violates ^[1] - 7 virtue ^[2] - 69, 81 voluntarily ^[1] - 106 vs ^[1] - 1	WOLFRAM ^[1] - 1 Wolfram ^[8] - 3, 9-10, 51, 62, 67, 95 wolfram ^[1] - 13 Wolframs ^[1] - 3 won ^[6] - 62, 68, 72 wonderful ^[1] - 53 wondering ^[1] - 60 Woods ^[1] - 43 words ^[4] - 50, 65, 86, 98 write ^[1] - 43 written ^[2] - 36, 53 wrongful ^[1] - 6 wrote ^[3] - 48, 58, 60
W	Y
w0hat ^[1] - 90 wait ^[1] - 11 waiving ^[1] - 30 Walter ^[1] - 3 WALTER ^[1] - 1 wants ^[2] - 2, 26 ways ^[1] - 93 website ^[2] - 70 weeks ^[3] - 107 welcome ^[1] - 12 West ^[1] - 32 wherein ^[1] - 19 Whitemore ^[6] - 51, 62, 67, 75 Whitemore's ^[1] - 75 wife ^[1] - 46 WILKES ^[3] - 1 Wilkes ^[4] - 3, 9-10, 51 Wilkes' ^[1] - 10 willing ^[2] - 58 Wilson ^[1] - 3 win ^[1] - 95 Wings ^[1] - 35 winning ^[1] - 90 wise ^[1] - 24 wishes ^[1] - 72 withdrawn ^[1] - 68 withstanding ^[1] - 36 witness ^[5] - 35, 54, 63 witnesses ^[4] - 63, 76 wolf ^[1] - 75	year ^[12] - 12, 27, 34, 54, 65-66, 70, 106, 108 years ^[16] - 21, 37, 53, 66, 82, 85-87, 95, 105 yellow ^[1] - 65 yourself ^[1] - 12



CLERK OF THE COURT

1 **BREF**
2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No.: 00264
4 MICHAEL C. FLAXMAN, ESQ.
5 Nevada Bar No.: 12963
6 THE JIMMERSON LAW FIRM, P.C.
7 415 South 6th Street, Suite 100
8 Las Vegas, Nevada 89101
9 Tel No.: (702) 388-7171;
10 Fax No.: (702) 388-6406
11 jjj@jimmersonlawfirm.com
12 mcf@jimmersonlawfirm.com
13 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

15 vs.

16 PARDEE HOMES OF NEVADA,

17 Defendant.

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

**PLAINTIFFS' BRIEF ON INTEREST
PURSUANT TO THE COURT'S ORDER
ENTERED ON AUGUST 15, 2016**

18
19 COMES NOW Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-
20 WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES
21 LIVING TRUST (hereinafter collectively "Plaintiffs"), by and through their counsels of
22 record JAMES J. JIMMERSON, ESQ., and MICHAEL C. FLAXMAN, ESQ., of The
23 Jimmerson Law Firm, P.C., and files their Brief regarding interest pursuant to the Court's
24 Order entered on August 15, 2016.
25

26 ///

27 ///

1 **I. INTRODUCTION**

2 On or about May 16, 2016, this Court entered its Judgment relative to the extensive
3 Trial that occurred in the instant matter between October 2013 and December 2013.

4 In its May 16, 2016 Judgment, this Court held, in part, that:¹

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT
6 JUDGMENT IS ENTERED in favor of Plaintiffs and against Pardee on
7 Plaintiffs' causes of action for breach of contract and breach of the implied
8 covenant of good faith and fair dealing. Plaintiffs are entitled to damages
9 from Pardee in an amount totaling \$141,5000.00, of which \$6000 are
 consequential damages from Pardee's breach of the Commission
 Agreement and the remaining \$135,500.00 are special damages in the form
 of attorney's fees and costs.

10 This Court also held in the May 16, 2016 Judgment that:²

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

15 As a result of this Court's Judgment, on or about June 8, 2016, Plaintiffs filed their
16 Motion for Attorney's Fees and Costs, wherein Plaintiffs requested the sum of \$441,228.75
17 from Pardee as and for reasonable attorney's fees incurred by Plaintiffs in this matter. On
18 or about June 28, 2016, Pardee Homes of Nevada (hereinafter "Pardee"), filed its
19 Opposition to Plaintiffs' Motion for Attorney's Fees and Costs, wherein Pardee alleged that
20 Plaintiffs were not entitled to any attorney's fees and/costs as Plaintiffs were not the
21 prevailing party, despite this Court's clear and concise Judgment from May 16, 2016
22 finding that Plaintiffs prevailed on all three (3) causes of action against Pardee and that
23 Pardee failed in its lone cause of action against Plaintiffs.
24

25
26
27 ¹ See May 16, 2016 Judgment attached hereto as Exhibit "1" at 2:6-12.

28 ² Id. at 2:13-17.

1 On or about August 15, 2016, this Court held a hearing related to Plaintiffs'
2 Motion for Attorney's Fees and Costs, among other related requests for relief. At said
3 hearing, this Court found in part that "...Plaintiffs are the prevailing party pursuant to
4 the Court's decision of June 25th, 2014; the Court's decision of May 13, 2015 and the
5 final judgment that was entered on May 16th, 2016"³ and that "...the Commission
6 Agreement executed on or about September 1st, 2004 that specifically states: In the
7 event either party brings an action to enforce its right under that agreement, the
8 prevailing party shall be awarded reasonable attorney's fees and costs."⁴ As a result,
9 this Court awarded \$428, 262.75 as "reasonable attorney[']s fees to be awarded
10 Plaintiffs [to] in this case."⁵

11
12 In addition to their request for an award of attorney's fees, on or about May 23,
13 2016, Plaintiffs filed their Memorandum of Fees and Costs, seeking the sum of
14 \$69,395.27 in costs incurred during the litigation. On or about August 15, 2016, this
15 Court found that "pursuant to the judgment entered May 16th, 2016, that the [P]laintiffs
16 are entitled to costs pursuant to NRS 18.020 and NRS 18.110"⁶ and awarded Plaintiffs
17 reasonable and necessarily incurred costs in the amount of \$56,129.56, plus legal
18 interest, until paid in full.
19
20

21 At the August 15, 2016 hearing, this Court requested additional information related
22 to the interest accrued on Plaintiffs' monetary judgments against Pardee.

23 ///

24 ///

25
26 ³ See August 15, 2016 hearing transcript at 95:25-96:3.

27 ⁴ Transcript at 96:5-10.

⁵ Transcript at 97:5-6.

⁶ Transcript at 41:21-24.

1 II. ARGUMENT

2 A. *Interest Calculation on Plaintiffs' Award of \$135,500.00 in Special*
3 *Damages*

4 The Plaintiffs' have been awarded two (2) monetary judgments from this Court
5 against Pardee. On or about May 16, 2016, judgment was entered against Pardee in the
6 amount of 141,500.00. On or about August 15, 2016, this Court entered judgment against
7 Pardee in the amount of \$428, 262.75 in attorney's fees, along with an additional sum of
8 \$56,129.56 in reasonable costs incurred during the litigation.

9 The only remaining issue to be addressed by this Court relative to these
10 monetary judgments is the amount of interest that shall be assessed and/or that has
11 accrued against these figures.

12 NRS 17.130, along with NRS 99.040, controls the computation of interests
13 against monetary judgments as provides:

14 1. In all judgments and decrees, rendered by any court of justice, for any
15 debt, damages or costs, and in all executions issued thereon, the amount
16 must be computed, as near as may be, in dollars and cents, rejecting
17 smaller fractions, and no judgment, or other proceedings, may be
18 considered erroneous for that omission.

19 2. **When no rate of interest is provided by contract or otherwise by**
20 **law, or specified in the judgment, the judgment draws interest from**
21 **the time of service of the summons and complaint until satisfied,**
22 except for any amount representing future damages, which draws interest
23 only from the time of the entry of the judgment until satisfied, at a rate
24 equal to the prime rate at the largest bank in Nevada as ascertained by
25 the Commissioner of Financial Institutions on January 1 or July 1, as the
26 case may be, immediately preceding the date of judgment, plus 2 percent.
27 The rate must be adjusted accordingly on each January 1 and July 1
28 thereafter until the judgment is satisfied.

[Emphasis added.]

1 Neither the underlying contract in the instant matter, the Commission Agreement,
2 nor the Court's Judgments entered May 16, 2016 and August 15, 2016 respectively,
3 provide for an interest rate to be applied against any monetary judgments awarded to
4 either party. Additionally, the interest calculations vary for each of the two (2) monetary
5 judgments. As such, these judgments must be bifurcated below in order to properly
6 ascertain the proper amount of interest that has accumulated on each.
7

8 ***A. Interest Calculation on \$135,500.00 Awarded to Plaintiffs as***
9 ***Special Damages on or about May 16, 2016***

10 Pursuant to the controlling statutory authority, the \$141,500.00 awarded to
11 Plaintiffs in this Court's May 16, 2016 Judgment should accumulate prejudgment
12 interest. In the Court's June 25, 2014 Findings of Fact, Conclusion of Law and Order,
13 Plaintiffs were awarded \$135,500.00 in special damages (attorney's fees) and
14 \$6,000.00 in foreseeable damages (Mr. Wolfram's time).⁷
15

16 Prejudgment interest is recoverable on an attorney fees award when the attorney
17 fees are awarded as an element of damages... and the fees award draws interest from
18 the time of service of the summons and complaint; prejudgment interest statute
19 provides that prejudgment interest is awarded on judgments for any damages. *Albios*
20 *v. Horizon Communities, Inc.*, 132 P.3d 1022, 122 Nev. 409 (2006).
21

22 In *Campbell v. Lake Terrace, Inc.*, 111 Nev. 1329, 1333, 905 P.2d 163, 165
23 (1995), the Court held that "[a]s a general rule, compound interest is not favored by the
24 law and is generally allowed only in the presence of a statute or an agreement between
25

26 ⁷ Please note that by December 21, 2012, Plaintiffs had incurred attorney's fees from the The Jimmerson Law
27 Firm, P.C. in excess of \$141,500.00 and that by December 21, 2013, Plaintiffs had paid the total sum of \$145,869.56
28 to The Jimmerson Law Firm, P.C. See Affidavit of James J. Jimmerson, Esq. attached hereto as Exhibit "2" and
fully incorporated herein.

1 the parties allowing for compound interest.” In *Lee v. Ball*, 121 Nev. at 396, 116 P.3d
2 at 67 (2005), the Court held that that the term “until satisfied” in NRS 17.130(2) occurs
3 upon the entry of the judgment in the district court. Therefore, the termination date of
4 the calculation of prejudgment interest on the special damages awarded to Plaintiffs
5 should be May 16, 2016, the date of the entry of the Court’s Judgment. Additionally, as
6 the Commission Agreement and the Court’s Judgments are silent with respect to how to
7 calculate interest on these awards, the interest calculation on Plaintiffs’ monetary
8 judgment in the amount of \$141,500.00, along with the other monetary awards to
9 Plaintiffs, to be discussed hereinbelow, shall be calculated utilizing simple interest.

11 The prime rate for interest in the State of Nevada on June 25, 2014 (date of
12 Findings of Fact, Conclusions of Law and Order) was 3.25%.⁸ On or about December
13 31, 2015, the prime rate for interest in the State of Nevada was increased to the rate of
14 3.50%.⁹

16 NRS 99.040 provides in pertinent part:

17 1. When there is no express contract in writing fixing a different rate of interest,
18 interest must be allowed at a rate equal to the prime rate at the largest bank in
19 Nevada, as ascertained by the Commissioner of Financial Institutions, on
20 January 1 or July 1, as the case may be, immediately preceding the date of the
transaction, plus 2 percent, upon all money from the time it becomes due, in the
following cases:

21 (a) Upon contracts, express or implied, other than book accounts.

22 As such, the simple interest to be utilized in calculating the amount of interest
23 that has accumulated on Plaintiffs’ judgment in the amount of \$135,500.00 shall be
24 5.25% (3.25% + 2%) for the period of June 25, 2014 through December 30, 2015 (date
25

26 ⁸ See Prime Rate Interest worksheet attached hereto as Exhibit “3” and fully incorporated herein.

27 ⁹ Id.

1 prior to day interest rate was modified and increased in Nevada). The interest that
2 accrued on Plaintiffs' judgment in the amount of \$135,500.00 from June 25, 2014
3 through December 30, 2015 was \$10,777.82. The interest that accrued on Plaintiffs'
4 judgment in the amount of \$135,500.00 from December 31, 2015 through May 16, 2016
5 was \$2,797.24. Therefore, the total judgment on the \$135,500.00 awarded to Plaintiffs,
6 to include prejudgment interest, amounts to \$149,075.06.
7

8 Additionally, Plaintiffs are entitled to prejudgment interest on the \$6,000.00
9 Judgment awarded to them on or about June 25, 2014. As these expenses were
10 incurred by Plaintiffs even prior to the filing of the Complaint, NRS 17.130 allows for
11 prejudgment interest from the date of service of the Complaint upon Pardee (February
12 2011) through the date of Judgment (May 16, 2016). As a result, the prejudgment
13 interest that has accrued on the \$6,000.00 award is \$1,671.24 (\$1,547.38 in interest
14 from February 2011 (date of service) through December 30, 2015 (date prior to interest
15 rate increase) + \$123.86 in interest from December 31, 2015 (date of interest rate
16 increase) through May 16, 2016 (date of Judgment), for a total judgment in the amount
17 of \$7,671.24.
18

19 Therefore, with prejudgment interest, Plaintiffs are entitled to a judgment against
20 Pardee from the May 16, 2016 Judgment in the amount of \$156,746.30 (\$149,075.06 +
21 \$7,671.24).
22

23 As the Judgment from the August 15, 2016 hearing has not been entered to date,
24 post-judgment interest cannot be calculated at this time.
25

26 ///

27 ///

B. Post-Judgment Interest Calculation on \$428,262.75 Awarded to Plaintiffs as Attorney's Fees and the \$56,129.56 Awarded to Plaintiffs as and for Costs on or about August 15, 2016

From the commencement of the instant proceedings, through the end of Trial on or about December 13, 2013, Plaintiffs incurred reasonable attorney's fees in the amount of \$270,517.50. From the termination of the Trial on December 13, 2013 through May 16, 2016, the date of entry of this Court's Judgment, Plaintiffs incurred reasonable attorney's fees in the amount of \$170,711.25. On or about August 15, 2016, this Court awarded Plaintiffs a judgment against Pardee in the sum of \$428,262.75 in attorney's fees. Moreover, on or about August 15, 2016, Plaintiffs were awarded \$56,129.56 in reasonable costs incurred in this instant litigation.

These amounts, \$428,262.75 (attorney's fees) and \$56,129.56 (costs), were not awarded to Plaintiffs until the August 15th, 2016 hearings. As such, interest on these amounts should be calculated from the date of entry of Judgment from the August 15, 2016 hearing, forward. As of the August 15, 2016, the prime interest rate for the State of Nevada was, and remains, 3.50%.¹⁰ Post-judgment interest can only be calculated upon entry of the Judgment. As the Judgment from the August 15, 2016 hearing is still not filed with the Court, the post-judgment interest cannot be calculated at this juncture.

III. CONCLUSION

As of the date of the filing of the instant briefing, Plaintiffs are entitled to the following monies from Pardee with respect to the monetary judgments entered by this Court on May 16, 2016 and August 15, 2016, to wit:

1) Plaintiffs' award in the May 16, 2016 Judgment:

¹⁰ See Exhibit "3."

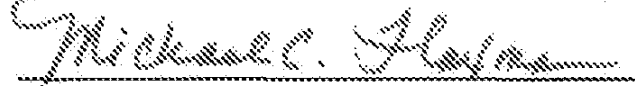
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 meet and confer telephone conference with Pardee's counsel on or about September
2 12, 2016, Pardee's counsel would not even agree to utilize these conservative dates.

3 Respectfully submitted,

4 DATED this 12th day of September, 2016.

5 THE JIMMERSON LAW FIRM, P.C.

6 

7 JAMES J. JIMMERSON, ESQ.

8 Nevada Bar No.: 00264

9 MICHAEL C. FLAXMAN, ESQ.

10 Nevada Bar No.: 12963

11 415 South 6th Street, Suite 100

12 Las Vegas, Nevada 89101

13 Tel No.: (702) 388-7171;

14 Fax No.: (702) 388-6406

15 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' BRIEF ON INTEREST PURSUANT TO THE COURT'S ORDER ENTERED ON AUGUST 15, 2016 was made on the 12th day of September, 2016, as indicated below:

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

X By Electronic Service

____ By facsimile, pursuant to EDCR 7.26 (as amended)

____ By receipt of copy as indicated below

Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, NV 89102
Attorneys for Defendant



An employee of The Jimmerson Law Firm, P.C.

1 If we look at the -- how to interpret
2 the sort of prevailing party language, I think
3 there's some relevant cases. First of all, I know
4 last time we briefed this, NRS 18.010 applied.

5 The Court correctly notated that
6 Provision 4 of that statute says if there's a
7 contract, that the analysis under NRS 18.010 does
8 not apply.

9 THE COURT: That does not apply. I'm
10 still standing with that.

11 MR. KAY: That's an important point
12 because the cases that interpret prevailing party
13 analysis under contract do so a bit differently
14 than they proceed under the statute.

15 THE COURT: I read your cases.

16 MR. KAY: That's an important
17 distinction here. If we look to the Nevada cases,
18 of course, Davis v. Bailey and Freidman v.
19 Freidman, when proceeding under a contract, it's
20 sort of, if you will, a holistic analysis.

21 It's not a prevailing party has to
22 prevail on all of the issues. It's more of a
23 common sense who prevails on the motions
24 substantial issues of the case, correct.

25 If we look at the Davis case, each party

1 prevailed on some of their claims of defenses on
2 their case, yet the Court awarded te defendants its
3 fees and costs of the prevailing party substantial
4 issue.

5 Again Friedman v. Friedman. It was a
6 divorce case. It involved a marital agreement
7 contract. Not all that much different than the one
8 at issue being a contract that called for
9 prevailing party fees and costs.

10 The Court found that the prevailing
11 party was the defendant. That the defendant
12 prevailed on the majority of the issues even though
13 the Court had found the wife in the case had
14 breached the marital agreement.

15 Those two cases actually sort of reflect
16 what you see from other jurisdictions as well. We
17 cited you to another case from the Ninth Circuit,
18 the Berkla (phonetic) case. Again, similar
19 language. Similar goal here.

20 Use an objective-based approach which
21 party established all of their litigation or
22 majority or pre-litigation objectives. In that
23 case, not all together different in terms of a
24 damages perspective from this one.

25 The plaintiff in that case succeeded on

1 their liability theory in alleging the defendant
2 had breached their contract, yet, after all that,
3 they only recovered three percent of their claimed
4 damages.

5 The Ninth Circuit awarded the defendant
6 their attorneys fees and costs of the prevailing
7 party holding that they had successfully defended
8 against defendant's pre-lit and litigation that may
9 have included a substantial financial damages
10 component.

11 Now, if we look at the factual record in
12 this case, under that sort of holistic analysis,
13 and we look at which party established their
14 litigation objectives, if you will, or succeeded
15 on, I believe as we framed it, the most substantial
16 issue in the case.

17 I think it's a difficult case as you've
18 mentioned, but I do think it is clear that Pardee
19 prevailed in the litigation on the most substantial
20 issues, therefore they're entitled to their fees
21 and costs.

22 I notice in the last hearing you
23 recognize plaintiff's asserted sort of three
24 theories of liability with respect to the breach of
25 contract. There was an information component to

1 that --

2 THE COURT: Correct.

3 MR. KAY: There was also a component of
4 where they claim that they were losing additional
5 commissions because plaintiff and Coyote Springs
6 reclassified Option Property in this case.

7 Now, I think what's important there is
8 most of those theories of liability of damages that
9 flow directly from that. Obviously information
10 theory. It's simply a matter of getting the
11 documents that they wanted. The theory with
12 respect to commissions is a little bit different.

13 And I would submit to you that it's the
14 real reason why plaintiffs' maintain that action
15 through trial. And this goes all the way back to
16 before the plaintiffs' filed the Complaint. Mr.
17 Jimmerson wrote a letter to Pardee suggesting not
18 only that he needed more information but also that
19 he needed -- that his clients believed they were
20 entitled to additional commissions on that
21 reclassification.

22 And that theory really extends through
23 the entirety of this case. If you look at their
24 claim for damages in the Complaint, they ask for
25 over \$10,000 in compensatory damages. They served

1 NRCP 16.1 disclosures all the way throughout the
2 case including up to the very last day of trial.
3 And I want to highlight some key language in there,
4 if I may. If I may approach. I highlighted it
5 just for the record in case you want to review it
6 later.

7 THE COURT: I follow everything,
8 anything that helps.

9 MR. KAY: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. KAY: We know that NRCP 16.1 -- just
12 for the record, I'm giving a copy of this to
13 Mr. Jimmerson as well.

14 THE COURT: This is the Thirteenth
15 Supplement.

16 MR. KAY: This was served on the last
17 day of trial. I know that plaintiffs had said to
18 you that they have not sought those fees or they
19 didn't seek those fees in trial. I would suggest
20 to you that this document served again on the last
21 day of trial suggests just the opposite.

22 If you look at their damages disclosure
23 again under 16.1, this isn't a hypothetical list of
24 calculations. Parties are required to disclose
25 what they believe their damages to be. You'll see

1 three components.

2 The first sentence really is the one
3 that shows the crux of the issue, which is the
4 plaintiffs -- and this is where their words
5 calculate their damages to be in excess of
6 \$1,930,000 associated with the defendants' breach
7 of contract and the defendants' failure to
8 faithfully meet their obligations to the plaintiff.

9 Of course, it was obligations
10 purportedly under the Commission Agreement. If
11 you'll look at their damages, you'll see that they
12 claim basically three types of damages at the
13 bottom of Page 10 and the top of Page 11. You'll
14 see that they believe they have the damages -- and
15 this is the bulk of their damages. Something --
16 \$1.8 million of commissions related to Pardee's
17 conduct in failure to appropriately discharge fees
18 under the Commission Agreement.

19 Their second claim for damages, of
20 course, is the one we talked about earlier and
21 that's the claim for attorneys fees. And then
22 their third claim for damages is time and expense
23 at the bottom of Page 11 of their damages
24 disclosure.

25 That is simply, again, served on the

1 last day, assuming the theme. They took not only
2 that it was about information, but the information
3 was really a means by which they could prove-up
4 their entitlement to these additional commissions.

5 That's why they disclosed these damages.
6 That's why they asserted two separate theories. If
7 you look, again, I know they said they didn't
8 assert this at trial. If you look at the trial
9 order, and I sat in sort of a unique perspective
10 here, and obviously I wasn't around for trial. But
11 I came around and got the task of pouring through
12 the transcripts line by line.

13 THE COURT: Me too. So did the Court.

14 MR. KAY: The things quite clear in the
15 transcripts from the opening argument of
16 plaintiffs' counsel, he mentioned that it was
17 unfair for Pardee -- excuse me. Coyote Springs to
18 reclassify this land that was purportedly Option
19 Property. And doing so, had robbed plaintiffs' of
20 their commission reflecting NRCP 16.1 disclosure.

21 Mr. Wolfram and Mr. Wilkes took the
22 stand. They told you that they believed they were
23 still owed commission. Mr. Whitmore took the
24 stand, a neutral third party with no horse in the
25 race. When asked what he thought the case was

1 about, I thought the case was about money. It was
2 about lost commissions.

3 And Mr. Jimmerson asked where he got
4 that impression from and he said from the
5 questioning in his deposition and all of the
6 documents he had been provided in the case.

7 We get to counsel's closing argument,
8 again, claims that his clients were entitled to
9 additional commission. Again, echoed the language
10 you see right here in this NRCP 16.1 disclosure
11 that it wasn't just a case about information. It
12 was a case about Pardee purportedly reclassifying
13 land and ruling out additional commissions for the
14 plaintiffs.

15 Again, that reflects pre-litigation
16 demand letters. And I would point out that if this
17 case was only about information, Your Honor, then
18 there was no need to go to trial.

19 All of the information, all of the
20 Option Property purchase notes, they were all
21 produced in discovery. There was absolutely no
22 need to go to trial. Plaintiffs had all the
23 information they needed.

24 And really, I think when we look at
25 this, again, under the context that these

1 provisions are designed to encourage settlement and
2 reduce litigation costs, if the plaintiffs would
3 have just classified or written their Complaint as
4 one seeking information, if they would have
5 disclosed their damages instead of all of this,
6 this wonderful computation from Mr. Jimmerson with
7 respect to these commissions, they would have just
8 disclosed their damages as needing information,
9 this would be an entirely different case.

10 But I think we do look at the entire
11 life of the record. They were claiming not only
12 the need for information, but also their purported
13 entitlement to additional commissions. And I would
14 submit to you that that was, in fact, the case's
15 most substantial issue.

16 It framed of the entirety of how Pardee
17 approached settlement. It framed the motion you
18 saw before you. I would submit that if this case
19 was only about information, it wouldn't be nearly
20 as complicated or difficult as Your Honor has noted
21 it was.

22 As Mr. Jimmerson said, we're now two
23 years post judgment and we're still going through
24 post-judgment motions. If this case was just about
25 information, just about entitlement to documents, I

1 would submit to you it would not be a five-plus
2 year case at this point in time.

3 So when you look at the Berkla case in
4 particular, in addition to Davis v. Bailey and
5 Freedman v. Freedman, you see another similar
6 circumstance where the plaintiff in Berkla actually
7 succeeded on the breach of contract claim. But
8 they did not recover a substantial component of the
9 monetary damages they sought.

10 I would submit to you that plaintiffs'
11 position isn't much different than that. They've
12 sought as they say in their NRCP 16.1 disclosure,
13 in their opening and closing statements, in their
14 statements before the Court from the witness stand.
15 They were seeking \$1.9 million in purportedly lost
16 commissions.

17 They lost on that issue at trial. Your
18 Findings of Fact and Conclusions of Law went and
19 expressly stated they were not entitled to
20 additional commissions. If this case wasn't about
21 commissions, that finding and conclusion would be
22 superfluous.

23 But as Your Honor's findings and
24 conclusions concluded, it was commissions. It was
25 about information, but information was a means by

1 which they could prove-up their additional
2 entitlement.

3 Now, I am going to make a couple points
4 with respect to plaintiffs' argument and we address
5 these a bit in our reply. I'll note first that
6 they don't cite to cases involving contracts
7 proceeding under cases we discussed in statutes, and
8 if we just got openings, this case would proceed in
9 a substantially different manner than it would if
10 it was NRS 18.010.

11 They also suggest their offer of
12 judgment entitles them to fees, but that it also
13 cuts off Pardee's fees and costs. We cited Pombo
14 verses Nevada Apartment Association. It clearly
15 stands for the proposition that a conditional offer
16 of judgment is invalid. If you look at the
17 plaintiffs' offer of judgment, I suspect this would
18 get to --

19 THE COURT: I saw the conditions. I
20 read them.

21 MR. KAY: It's clearly laid out there.

22 THE COURT: You said something in your
23 argument. You said that this \$1.9 million, those
24 kinds of demands was how Pardee framed their
25 settlement.

1 How did Pardee address that offer of
2 judgment then having addressed settlement because
3 the offer of judgment was 140 -- 146,149.

4 MR. KAY: It was 149, I believe.

5 THE COURT: I could have turned the 6
6 and 9.

7 MR. KAY: Right.

8 THE COURT: You just told me in your
9 argument that, you know, it was much more about
10 future commissions and that's how Pardee approached
11 settlement.

12 How did Pardee approach settlement when
13 they got right before trial this type of offer of
14 judgment.

15 MR. KAY: I think the first issue there
16 is that the offer of judgment was invalid on its
17 face.

18 THE COURT: That they also had to know
19 approaching settlement. They didn't file an
20 acceptance of offer of judgment. That at least
21 gives you, the other side, an idea of where we are
22 in what numbers they might have.

23 How did they use that? That certainly
24 doesn't -- that's certainly quite a substantial
25 number less than you're using that \$1.9 million.

1 How do you approach --

2 MR. KAY: We can go right back to the
3 NRCP 16.1 disclosure.

4 THE COURT: It's right here.

5 MR. KAY: If you look at the rest of the
6 plaintiffs' claimed damages which --

7 THE COURT: For Sandy Valley.

8 MR. KAY: Correct. Obviously we've had
9 that discussion.

10 THE COURT: So you looked at Sandy
11 Valley, said hey, the judge was wrong on Sandy
12 Valley. So basically the case -- is that how they
13 looked at it?

14 I assume when you look at it, I put it
15 together. I assume that's how they approached
16 settlement then. So we don't owe anything.

17 MR. KAY: I don't know that they owe
18 anything. I think --

19 THE COURT: They must have.

20 MR. KAY: Pardee thought that they
21 complied with all of their obligations under the
22 Commission Agreement. But to the extent they did
23 not, their maximum exposure is actually right here
24 at the plaintiffs' third claim for damages, which
25 is I believe \$6,400 for their time and -- time and

1 effort investigating the information.

2 THE COURT: Okay. That's what I wanted
3 on the record. I just wanted --

4 MR. KAY: I want to be.

5 MS. LUNDVALL: May I very briefly --

6 THE COURT: No. Let him finish. I'll
7 let you supplement.

8 MS. LUNDVALL: I just wanted to be able
9 to assist the Court in answering your question.

10 THE COURT: I thought he had answered
11 it, did he not?

12 MS. LUNDVALL: I don't think so, Your
13 Honor.

14 THE COURT: I am more than willing, Ms.
15 Lundvall, you know. I just found that very
16 interesting, especially if that's how Pardee
17 approached settlement. I just wrote that down.

18 So if -- and to add something, I am more
19 than willing to listen to it. I find that of
20 interest obviously.

21 MS. LUNDVALL: Two points, Your Honor.
22 Number one, when we got the offer of judgment, the
23 offer of judgment had two components to it. It had
24 a dollar component and a conditions.

25 And when you looked at the conditions,

1 the conditions bought into the idea that they were
2 entitled to all these additional commissions.

3 So to the extent that when we looked at
4 it and quantified it, that quantification was the
5 146 plus and additional \$1.8 million. So that's
6 how it was looked at in an analysis standpoint.

7 That's with the conditions, in essence,
8 the conditions required us to adopt their
9 interpretation of the agreement, which you rejected
10 then at the time of trial.

11 THE COURT: Okay. So you added that as
12 a component. I read it very carefully too. And I
13 could see how you can separate it but that makes
14 sense too.

15 MS. LUNDVALL: There were additional
16 requirements dealing with settlement, Your Honor
17 and there were additional overtures that Pardee had
18 made across the course of this trial to Mr.
19 Jimmerson on multiple different occasions that are
20 outside of the scope of the offer of judgment.

21 THE COURT: Sure.

22 MS. LUNDVALL: So I know that when
23 Mr. Kay makes reference of how they approached this
24 case through settlement, it's not limiting it to
25 the offer of judgment issues.

1 THE COURT: I would -- I just was
2 interested because obviously I read the offer of
3 judgment very carefully several times. It's part
4 of these motions. I just was wondering.

5 MR. KAY: So in conclusion, I guess,
6 Your Honor, what I would say is that if we go
7 through the analysis as to who succeeded on the
8 most substantial issues under Davis, under
9 Friedmann, under the Berkla case we've cited, I
10 think given the entirety of the record, it becomes
11 clear that Pardee did prevail.

12 Not on all the issues, but certainly on
13 the case's most substantial issue. Pardee had
14 successfully defended against this claim for
15 additional commissions, which was the main
16 objective, if you will, for Pardee in the case.
17 With that, unless you have any questions, I would
18 ask --

19 THE COURT: I don't. I just came up
20 with that one because I wrote down what you said.

21 MR. KAY: Thank you, Your Honor.

22 THE COURT: I understand it completely.
23 Mr. Jimmerson.

24 MR. JIMMERSON: Thank you, Judge.
25 First, may it please the Court. There are some

1 distinct and discrete issues that need to be
2 separated or segregated that are raised here in the
3 presentation by defendant's counsel.

4 First, their motion was a motion for
5 attorneys fees for you to declare the defendant to
6 be the prevailing party, for which they were
7 entitled to the \$600,000 nearly \$700,000 according
8 to their memorandum of fees.

9 There is the affidavit of counsel for
10 the defendant, Ms. Lundvall, that says 90 percent
11 of her time was defending a \$1.8 million claim.

12 This Court knows from the hearings that
13 it held on January 15th, 2016, of the overreaching
14 on the part of Pardee with regard to the judgment
15 that was submitted to you in June of 2015.

16 The Court struck the second quarter,
17 which claimed to have Pardee as the prevailing
18 party as clearly out of bounds and totally a
19 failure to meet their record there before it.

20 In the calmness of this communication of
21 this presentation, I will simply say that it's
22 Pardee that has forced bad faith attempts to
23 reverse the findings of the Court that was found on
24 June 25th of 2014.

25 All the findings that are found, there

1 were three claims for relief of three causes of
2 action. The plaintiffs won all three. They were
3 ordered to be awarded accounting. They were
4 ordered \$141,500 made up of \$6,0020, Mr. Wolfram,
5 and \$135,500 attorneys fees as special damages.
6 And the Court found that there been breaches across
7 the board.

8 The effort on the part of Pardee to turn
9 this trial on its head is shameful. It's not a
10 credit to Pardee. And the Court saw that by
11 striking the judgment that was submitted.

12 If you look at the document that the
13 defendant's counsel tendered to you, plaintiffs'
14 Thirteenth Supplement, which was served at or near
15 the end of trial, you will note how our firm and
16 many other firms will handle supplemental
17 disclosures.

18 You will recall that during the course
19 of the trial, and particularly the testimony of Mr.
20 Whitmore, Harvey Whitmore, we learned of new maps
21 that had been submitted by Pardee, but had not been
22 disclosed by the Rule 16.1, were furnished during
23 the middle of trial. We presented those maps to
24 you and considered those maps as part of the
25 evidence at trial.

1 When we learned the middle of trial, you
2 would recall, that there was a re-designation from
3 multi-family to single family production housing,
4 which would entitle the plaintiffs to a commission
5 of at least under the view of the motion that
6 really focuses theory by our calculation, which was
7 of course on the fly -- was about \$130,000 the
8 Court recalls as part of the record.

9 When we discovered those maps and the
10 witnesses behind it, you will see in this
11 Thirteenth Supplement that we simply add what is
12 new.

13 So in original type, you will see
14 beginning at Page 2, the witnesses that haven't
15 changed. These witnesses have been in all the 12
16 prior supplements, 16.1 supplements, all the way
17 through eight, nine, ten, eleven, twelve, fifteen,
18 James Jimmerson, until we get to Number 16, Klif
19 Andrews. And he's added as a new witness and he,
20 in fact, did testify at trial.

21 THE COURT: He did testify.

22 MR. JIMMERSON: Chelsea Peltier from
23 architects, Jerry Stater. Again, these are the
24 folks who submitted the plans of the county that
25 was discovered. Ken Hanifin, Jim Rizzi, who was

1 talked about at trial but who did not testify to my
2 recollection. And they are added.

3 And then if you look, you'll see all the
4 documents before are not changed. But what is
5 added, if you turn three, four pages into it, you
6 see a new set of documents beginning at Item Number
7 50.

8 THE COURT: 50.

9 MR. JIMMERSON: Page 9 of 13. And then
10 you have 50 documents regarding Coyote Springs
11 major plan dated 8/4/08 previously bates numbered
12 so-and-so. And then we add these documents that
13 are discovered during the course of this that speak
14 to the reclassification and the tentative map.

15 If you look at Exhibit Number 56 that
16 the Court addressed and admitted into evidence,
17 Number 57, the second tender had to do with the
18 reclassification of multi-family homes right in the
19 center of development to single-family production
20 under the definition of the Option Agreement, would
21 entitled the plaintiffs to commission.

22 Now, the Court, at the end of the case,
23 made a determination that the reclassification was
24 permitted by Coyote Springs and did not award
25 damages for that. That is a conclusion of the

1 Court that the plaintiffs --

2 THE COURT: Disagreed with.

3 MR. JIMMERSON: Did not agree with.

4 THE COURT: I remember.

5 MR. JIMMERSON: But that was the Court's
6 finding. I only mention that to you because you'll
7 see that the calculation of damages is not new.

8 You'll see what opposing counsel
9 highlighted in yellow would suggest that there was
10 something new here. No. The damage calculation
11 and the words that begin at Page 10, Computation of
12 Damages, III. That language had been present for
13 more than a year since the Eighth Supplement
14 finding, maybe the Seventh, and was not new and was
15 not presented for the first time in December of
16 2013 at the end of the trial. It had already been
17 set forth.

18 If you will look at the language of the
19 document at Page 10, Line 28, which we've been over
20 this so many times before, if 3,000 acres were
21 purchased by Pardee under this scenario. Scenario.
22 Not what existed at the time. Pardee -- plaintiffs
23 would be entitled to \$1,800,000 in commissions.

24 However, Pardee's course of conduct in
25 failing to appropriately discharge the duty of the

1 Commissions Letter robbed plaintiffs of this
2 opportunity to be paid these commissions. Pardee's
3 actions reclassify language generally labeled going
4 on --

5 So this was all again submitted a year
6 earlier. This is not something that was new
7 presented to the Court in December of 2013.

8 Now, you sat through this trial. All
9 counsel sat through the trial. There is not a
10 proposed Findings of Fact, Conclusions of Law by
11 either party. There is not an opening statement or
12 closing statement that references \$1.8 million in
13 damages or any dollar damage like that. Why?
14 Because everybody knew that this was something that
15 could occur in the remaining 30 years or 35 years
16 of this contract of a 40-year contract and not what
17 had occurred.

18 We asked for information because we
19 didn't know respectfully through opposing counsel
20 that inadvertently misstated the letter that
21 commenced before litigation, before the complaint
22 being filed by myself simply says we don't know
23 whether or not we're entitled to commissions.

24 But if we are, we reserve our right to
25 reclaim the sense. And then the lawsuit was three

1 causes of action: Breach of contract, failure to
2 provide information, breach of the implied covenant
3 and fair dealing signed contract that they provide
4 the required information and the accounting. You
5 are in a superior position should you be obliged by
6 order of the Court an accounting to us as to what
7 you've done out there, what you've built on and
8 what you would be doing in the future.

9 And as the Court saw again, another
10 finding against the plaintiff that we disagreed
11 with, was you allowed them to build east and not
12 within Parcel 1 as originally defined within the
13 agreement of June 1th, 2004.

14 All I'm suggesting to the Court though
15 that we learned together at trial through the
16 testimony of Harvey Whitmore what the defendant
17 had done -- had actually done, we didn't know. And
18 there was no information ever provided by the
19 defendant that would tell us.

20 Mr. Wolfram created a map that was
21 remarkably close to what occurred, actually
22 submitted to Mr. Lash and he came back with another
23 map that didn't explain anything. And we had to go
24 out there and we learned together what parcel to
25 the east of Parcel 1 was purchased, when it was

1 purchased, and the like, only during the trial.

2 The Court had found that there was a
3 breach of the contract to provide the information
4 and to keep the plaintiffs reasonably informed.
5 The Court found the breach of the implied covenant
6 of good faith and fair dealing. And the Court
7 found that the plaintiffs were entitled to the
8 accounting.

9 The only three claims and the
10 plaintiffs' prevailed on all. The Court should
11 know that in terms of briefing and the case law,
12 the Valley Electric case that we cited and other
13 cases require there to be a, generously speaking,
14 monetary award. That's one of the big keys for
15 interpreting the prevailing party.

16 Here the defendant's only counter claim
17 withdrawn at the end of the trial. The defendant's
18 then were also found to not be meritorious in the
19 Findings of Fact and Conclusions of Law on June
20 25th of 2014.

21 So the plaintiffs not only won on their
22 three claims, each and every claim, and not only
23 won dollars under each of the other claims, but
24 also the defendant's claims were rejected and
25 denied and dismissed and the accounting the Court

1 ordered.

2 There has been generally speaking I
3 think compliance by the defendant with regard to
4 that. And because of that, defendant's apparent
5 loss of cancelation of its contract with CSI going
6 forward, there does not appear to be any further
7 purchases by Pardee possible to monitor it going
8 forward.

9 And that was in part by virtue of the
10 order of the Court that you provided in May that
11 compelled the defendants to provide that
12 information to us.

13 Now, you know you tried. You know what
14 you heard. You know that the plaintiffs are the
15 prevailing party. The defendant's are not the
16 prevailing party. The defendant's motion should be
17 denied.

18 Did the Court want me to go forward on
19 the attorneys fees?

20 THE COURT: Let me rule on this, if you
21 don't mind. If we can do everything as orderly as
22 we can. We you did your motion. Did you want to
23 add anything else?

24 MR. KAY: I do, yeah.

25 THE COURT: I want to make sure you get

1 the record. Everybody gets the record in addition
2 to all the pleadings.

3 MR. KAY: Thank you. I just want to
4 start by addressing counsel's claim that the
5 judgment you entered last year was in bad faith.

6 He doesn't know. That's a statement
7 directly to me and I'll tell you this: In looking
8 at your Court's standing order, just like I do with
9 every other department --

10 THE COURT: I guess it was corrected.
11 My JEA was a little upset about that.

12 MR. KAY: There was no bad faith on
13 Pardee's part. It was my error in reading the
14 Court's website. This was --

15 THE COURT: I never read the website. I
16 thought I made it very clear but people should
17 not -- it had been handled.

18 MR. KAY: I want to clarify.

19 THE COURT: I fixed it once I became
20 aware because she put it up.

21 But whatever it is -- and once again,
22 now because of that I tell counsel every time -- I
23 just did it. That these are my rules, you know.
24 So I will tell you I did not find bad faith.

25 I felt people were -- it was more

1 frustration on my part.

2 MR. KAY: I want --

3 THE COURT: -- about misinformation.

4 MR. KAY: Counsel used the term "bad
5 faith."

6 MR. JIMMERSON: I wasn't talking about
7 the order. I was talking about the attempt to
8 insert into the judgment --

9 THE COURT: The prevailing language.

10 MR. JIMMERSON: -- the prevailing party
11 language. Not that the Court said --

12 THE COURT: All I can say is I'm aware
13 of everything and of people's motivation and I
14 don't count it, if that helps.

15 MR. KAY: Sure, yeah.

16 THE COURT: I'm not. I try not to find
17 fault. I try to do substantive because, you know,
18 it's not always easy.

19 MR. KAY: What I see is you've done
20 that. So we certainly do appreciate that. I know
21 it's not easy at times. I just want to address
22 quickly a couple of quick points.

23 THE COURT: Substantive points.

24 MR. KAY: Substantive point that I heard
25 from plaintiffs' counsel.

1 One of the things he said is that he won
2 or the plaintiffs won on all three claims. Of
3 course, "won" is an interesting term in the sense
4 that he said that they prevailed on -- he believes
5 they prevailed on a theory of liability as to all
6 three claims. I don't believe anybody disagrees on
7 that.

8 If we look at the Davis case, Friedman
9 case, a party can prevail on liability as to an
10 individual claim and still lose that claim in the
11 sense of prevailing party analysis. Because it is
12 not as formulated as Mr. Jimmerson wishes it was.

13 He cited you again cases involving the
14 statutory process. I believe he said if you
15 recover any monetary award, that they be truthful
16 under Chapter 168 under the Nevada Revised
17 Statutes. It's not true under the contractual
18 analysis.

19 Again the Berkla case, the plaintiff
20 prevailed on their theory of liability but they did
21 not prevail as to their claims of the entirety or
22 majority of their damages, which is why the
23 defendant in that case was considered the
24 prevailing party.

25 I want to address Mr. Jimmerson's point

1 with respect to the 16.1 disclosures because I
2 think he misstated my position. My position is not
3 that it was a new disclosure at trial. In fact,
4 like he said, they disclosed these damages since
5 their Eighth Supplement, which I think is important
6 because it shows what those damages were at issue.

7 NRCP 16.1 requires parties to disclose
8 their damages that they actually claim, not those
9 hypothetical damages, not speculative damages, not
10 conditional damages. The language of the rule
11 requires the party to disclose the damages that
12 have actually incurred.

13 In fact, if you read their damages
14 disclosure, the portion that he read, what it
15 essentially says, it's a condition of entitlement
16 to those commissions if they had proven to you --

17 THE COURT: On that theory.

18 MR. KAY: Correct. And so for him to
19 say that that wasn't an issue is untrue because he
20 lost condition precedent to recovery on that
21 damages theory.

22 Again, as their damages disclosure
23 shows, \$1.8 million is a substantial amount to be
24 at issue. So I would submit that following Berkla,
25 Davis, and Freidman, the Court can simply look at

1 that and come to the conclusion that Pardee was the
2 prevailing party. But we can go way before that.

3 If you'll notice Mr. Jimmerson talked
4 about his pre-litigation letter and said that there
5 was no claim in it to additional commissions. It's
6 Exhibit M to our motion, Your Honor. I encourage
7 the Court to review it. It's the May 19th, 2009
8 letter.

9 I am going to quote Mr. Jimmerson. He
10 says that it is his client's belief they have not
11 been paid for all sales which are due. That's a
12 direct quote.

13 And then I'm going to paraphrase the
14 rest of it. He says that is a breach of Pardee's
15 obligations under the obligation commission
16 agreement. So it's not true that they were never
17 seeking commissions that they --

18 THE COURT: They didn't know because
19 they were aware things were going on in Coyote
20 Springs and Pardee and CSI. I understand the full
21 context on it to be very honest. And they --

22 MR. KAY: -- they do know, Your Honor.
23 It was not only that they said they did not know.
24 As far as that, they also felt they were due
25 additional commissions.

1 THE COURT: Absolutely, based on the
2 information that they thought they had. I agree.
3 They testified to that, both Mr. Wolf --

4 MR. KAY: Absolutely. They sat up on
5 the stand and told you they were due additional
6 commissions.

7 THE COURT: One did and another one said
8 they weren't due and another one did -- they did.

9 MR. KAY: Sure. I certainly understand
10 why they tried to back away from it. But the
11 evidence that did come up, of course all of their
12 disclosures for that said that they were claiming
13 they had been damaged.

14 With respect to Mr. Whitemore, I know
15 Mr. Jimmerson referenced it. His testimony was at
16 the time it was what he thought.

17 THE COURT: I just went through the
18 trial testimony, as you know.

19 MR. KAY: Sure. And I just want to make
20 that clear is that here we have a neutral third
21 party, Mr. Whitemore, believing that based on the
22 questions asked of him by both parties counsel,
23 that this case was about money.

24 And I think that Mr. Whitemore's opinion
25 is consistent with everything in the record. That

1 if you look at the entirety of the case from the
2 pre-litigation objective to plaintiffs and Pardee,
3 Mr. Jimmerson's letters, all way through the
4 damages disclosures, all the way through opening
5 and closing arguments, and the testimony of
6 witnesses, you'll see that they were trying to
7 recover lost commissions that they believed they
8 were owed.

9 And that that was the case's most
10 substantial issue, an issue which Pardee as your
11 Findings of Facts and Conclusions of Law succeeded
12 on. And so we would ask that you grant our motion
13 as Pardee's the prevailing party in terms of the
14 Commission Agreement for its fees and costs, Your
15 Honor.

16 THE COURT: Thank you.

17 MR. KAY: Thank you.

18 THE COURT: I did obviously review the
19 case law and I find that the plaintiffs -- the most
20 substantial issue in plaintiffs' case
21 pre-litigation and through litigation was to get
22 the information and also to get the accounting so
23 that they could determine, number one, whether they
24 were due more fees, commissions; and second of all,
25 to make sure there was an accounting so they could

1 make sure they could monitor if they were due
2 anymore future commissions.

3 It was to me the only reason the case
4 got started is because they -- which is obvious. I
5 felt that that's why I based the Sandy Valley fess,
6 they had no way pre-litigation and they made
7 efforts as the letters you cited to both sides, to
8 get the information, to determine what they were
9 due, whether there were any commissions that were
10 due, lost commissions, or what would be due in the
11 future based on what was going on up at the Coyote
12 Springs, which they didn't have all the
13 information.

14 So on that analysis, I do find that the
15 plaintiffs' were the prevailing party and what I
16 felt was the most substantial issue in the case.
17 The case stands for itself that once the
18 information did come in and was provided, and it
19 was provided, someone provided it during trial, I
20 remember that distinctly.

21 They looked at it and came up with what
22 they felt reviewing it, and they got the additional
23 amendments to Coyote Springs documents and things
24 like that.

25 They felt they might have a theory,

1 which I disagreed with, to get commissions. I'm
2 very aware of that.

3 So the Court finds that there's no legal
4 basis for Pardee's motion for attorneys fees and
5 costs pursuant to either the judgment entered on
6 May 16th, 2016 or the Commission Agreement as this
7 Court has felt and finds that the defendant was not
8 the prevailing party on either of the
9 above-referenced basis and therefore I am denying
10 it.

11 MR. JIMMERSON: Thank you, Your Honor.
12 I will prepare the order and send it to opposing
13 counsel. Our last motion.

14 THE COURT: Plaintiff's motion for
15 attorneys fees and costs, yes.

16 MR. JIMMERSON: There are two basis for
17 that and a good deal of that has already been
18 highlighted by the Court -- to the Court by both
19 sides through this morning's efforts and I thank
20 opposing counsel and the Court.

21 So let's go to the end and I'll advise
22 the Court the amount of attorneys fees that are
23 requested by the plaintiff to be entered into a
24 judgment against the defendant separate and apart
25 from the \$141,500 plus interest that the Court has

1 entered --

2 THE COURT: Hold on. Slow down for me.

3 MR. JIMMERSON: I said attorneys fees
4 that are requested are \$428,462.75. Let's go
5 through it.

6 I have deducted because of the Court's
7 ruling, all dollars associated with Mr. Muije.

8 THE COURT: Okay.

9 MR. JIMMERSON: \$12,600 and the \$613.

10 THE COURT: Okay.

11 MR. JIMMERSON: I've also deducted
12 \$12,766, which the defendant is correct, was a
13 duplicative fee.

14 THE COURT: Yes.

15 MR. JIMMERSON: Between May 13, 2013
16 June 20th, 2013.

17 THE COURT: I agree with that.

18 MR. JIMMERSON: That was double counted
19 by my accountant and staff and myself. I take
20 responsibility. Ultimately I want to acknowledge
21 that was a duplication. It should be deducted.

22 When you take \$441,228.75 in fees minus
23 the \$12,766 in the duplication, that's how you get
24 to the \$428,462.75, which we requested.

25 The basis for it are twofold. There is

1 prevailing party provision within the Commission
2 Agreement of September 1, 2004 at Bates Stamp
3 Number 136. It's at Page 2 of the Commission
4 Agreement, which is Exhibit 1 at trial and attached
5 by both sides to the various motions that are
6 before you.

7 And in the next to the last paragraph of
8 Page 2 is this language: In the event any sum of
9 money due hereunder remains unpaid for a period of
10 30 days, said sum shall bear interest in the amount
11 of ten percent per annum from the date until paid.

12 In the event either party brings an
13 action to enforce its rights under this agreement,
14 the prevailing party shall be awarded reasonable
15 attorneys fees and costs, end of quote. Both
16 parties have cited this as a basis for the
17 respective claims for attorneys fees but the
18 defense motion to now being denied.

19 So just based upon the attorneys fees
20 that are incurred by the plaintiffs, not including
21 the \$135,500 the Court awarded as fees under Sandy
22 Valley and Liu, and not including the double
23 billing that directly occurred between May 13th,
24 2013 and June 20th, 2013, ensuring that there was
25 no costs associated with Mr. Muije, the sum was

1 \$428,462.675.

2 In comparison, in the motion of which
3 the defendant sought attorneys fees and they
4 requested \$646,000 in attorneys fees, approximately
5 \$220,000 more than what's being requested by the
6 plaintiffs, and they claim that they incurred
7 attorneys fees of \$642,000 in their papers.

8 So by that standard alone, our fees are
9 certainly reasonable and certainly necessarily
10 incurred by virtue.

11 When you go through the Brunzell factors
12 and the affidavit of Mr. Jimmerson and you go
13 through the factors set forth in the professional
14 responsibility and the complexity of the case, the
15 loss of other work associated with other work
16 because of the commitments, you spent more time on
17 this, the efforts that were undertaken, the results
18 that were obtained, the judgment that was entered,
19 prevailing on every claim, and being awarded
20 although not all the dollars we requested. We
21 requested an additional \$130,000 because of the
22 newly discovered evidence during the trial, we
23 certainly were the prevailing party.

24 One of the things that this Court has
25 observed is there has been maybe both sides at

1 fault, and I certainly think the defendants.
2 There's been a scorched earth effort. And
3 regardless of who is responsible for that, the
4 Court will note the amount of effort by both firms
5 on behalf of the respective clients over an
6 extended period of time, and three or four years, a
7 lengthy trial in October and December.

8 You know, there's been seven motions
9 since your order was entered on April 26th, 2016
10 that are all being addressed here. They were seven
11 motions filing your Findings of Fact and
12 Conclusions of Law in June and following the
13 erroneous judgment entered on June 30th, 2015,
14 seven motions.

15 So the case has been thoroughly
16 litigated. The record has been thoroughly
17 exhausted. The testimony has been extensive. The
18 documents are in the hundreds. The testimony of
19 the parties, the length of the trial, efforts were
20 made.

21 All evidence of the reasonableness of
22 this fee particularly when you look at the factors
23 with regard to hours and complexity, the time
24 spent, what was denied, what was not able to be
25 taken, because of that, the right to the fact that

1 both had an obligation under the code of
2 professional responsibility and Brunzell to find I
3 believe that these attorneys fees are reasonable
4 and you certainly will find that so when it's
5 \$220,000 less than the fees that were incurred by
6 the defendant for the same amount of effort and
7 with a better result of the plaintiff than that
8 certainly achieved by the defendant.

9 Now that is therefore request for a
10 judgment in addition to the \$141,500 plus interest
11 that applies to the additional costs of attorneys
12 fees of \$428,462.75.

13 Now, a second basis for the request is
14 because the offer of judgment that was served upon
15 the defendants in April of 2013 was accede by this
16 Court's order as part of its judgment rendered in
17 June of 2014. And I'd hear the argument and see
18 the discussion by opposing counsel, there were
19 conditions that are not applicable.

20 Well, if you look at the Nevada Supreme
21 Court's case Pombo, you will find that what the
22 Court said there in validating that offer of
23 judgment had agreements required that didn't have
24 to do with dollars and cents. The agreements were
25 they had to sign a confidentiality agreement. You

1 had to sign other documents under the Pombo case,
2 that would be but that's not in this case.

3 Let's look at the offer of judgement.
4 That's a straightforward case and something that
5 the Court with respect for the record has read.

6 The offer of judgment served on the
7 defendant April 29, 2013 and expired May 13, 2013
8 and the attorneys fees and costs that were
9 calculated are after May 13th, 2013, not within the
10 ten business day time period.

11 Also to make an aside, I heard opposing
12 counsel make comments about some efforts to resolve
13 this matter and other times. That's not part of
14 the record, but let me indicate that there were
15 very few efforts to resolve this matter and
16 certainly it was not able to resolve it despite the
17 efforts of both opposing counsel and myself.

18 Now, in this offer of judgement, we
19 offer the plaintiffs' to be paid by the defendants
20 \$149,000, which is inclusive of attorneys fees and
21 interest incurred to date and exclusive of costs,
22 which is cited in the Fletcher versus Fletcher
23 decision and the Nevada Supreme Court, which
24 indicated you have to be specific to include or
25 exclude costs.

1 In this case and all our offers of
2 judgement that we've done over the years, we make
3 sure to cite Fletcher and we do not include costs
4 of litigation as part of the judgment.

5 When this was served then, or when it
6 expired I think is a better term. When it expired
7 May 13th, 2013, the offer of judgement, \$141,500
8 with interest far exceeded \$149,000 as of May 13th
9 of 2013 or as April 23rd, of 2013. Either date.

10 When you take interest on \$141,500 and
11 you add it from the date in which the Complaint was
12 served upon the defendant, February of 2011, and
13 you take the interest on that at the current legal
14 rate, which was two over prime with prime being
15 right around three percent, over the years we
16 calculated it. It showed that you had a judgment
17 that far exceeded \$149,000 and they note that.

18 So now they've turned their attempts to
19 defeat the second basis for attorneys fees,
20 separate and apart from the prevailing parties
21 language within the contract, which by itself is
22 more than sufficient to have this order granted.
23 It was the same basis which they sought their
24 attorneys fees upon which had been denied by the
25 Court.

1 But now opposing counsel says to the
2 Court there are conditions and the conditions are
3 found at Page 2 and 3 beginning at Line 5. As part
4 and parcel of this offer of judgment and as a
5 condition to the same, if defendant Pardee excepts
6 this offer of judgment, it also accepts the
7 following conditions. And then these conditions
8 are identical to that set forth in the Commission
9 Agreement. This Court will not find as in Pombo
10 any condition that is new or unusual or not
11 recognized as an obligation of Pardee before it.

12 In other words, the conditions that are
13 set forth in this language are the conditions of
14 the Commission Agreement. It is not a new
15 condition. It is not some new provision. There's
16 not some additional act that is required. There's
17 not any permissible condition at all. There is the
18 obligation, if we accept this judgment to honor the
19 provision of information in the 30 years that
20 remain to be performed under this contract to
21 notify the plaintiff of any information that would
22 bear upon, to use the language, reasonably inform
23 to bear upon the plaintiffs' entitlement to a
24 commission in the future.

25 And the Court can read the language

1 beginning at Line 8, Number 1 as setting forth
2 literally a verbatim statement of the obligation
3 that is set forth within the Commission Agreement
4 and the Option Agreement in favor of the plaintiffs
5 for commission.

6 Number two, the terms of the commission
7 letter agreement shall remain in full force and
8 effect. That's a condition that already existed.
9 That's not something new. Because the term of this
10 contract was 33 more years measured from 2013,
11 being tried roughly nine years after the commission
12 started in 2004. So 31 years remained when we
13 tried this case in December of 2013 for this
14 contract to be honored.

15 And so one of conditions here was the
16 terms of the Commission Letter Agreement be
17 honored. That's not a new condition under the term
18 of Pombo as opposing counsel cites as to why you
19 should validate this offer of judgment. This is a
20 reiteration, a restatement of simply what the
21 defendant had an obligation to do.

22 And the Court found that as part of its
23 May accounting order of 2015, where the Court found
24 that the defendant was obligated to provide the
25 plaintiffs with certain information verified under

1 oath with regard to ongoing relations to CSI with
2 designation of property and construction of
3 residential production homes.

4 So when you look at these two
5 conditions, you'll see that that is nothing more
6 than a statement of what already previously existed
7 information and not a new addition to a new
8 condition.

9 Number 3 at Page 4, with respect to any
10 portion of Option Property purchased by Pardee
11 pursuant to this offer of judgment, Pardee shall
12 pay to plaintiffs one and one-half percent, the
13 amount derived by multiplying the number of acres
14 purchased by Pardee by \$40,000.

15 Jon Lash's testimony which this Court
16 recalls and his explanation for why the Court
17 should not calculate additional dollars to the
18 plaintiffs new Option Property as opposed to the
19 original takedown of property for \$22 million was
20 his statement. The very next purchase of property
21 will entitle the plaintiffs to a commission. And
22 that was how he concluded his testimony.

23 And the Court recalls that. And that's
24 one of the reasons the Court will recall why it
25 ordered the accounting because everyone recognized

1 Mr. Lash's testimony. So this Number 3 condition
2 is simply a part of the Commission Agreement, which
3 is, that is a future purchase and you remember it
4 had to qualify as single-family production real
5 estate homes, that a commission was due and owing
6 under the calculations of one and a half percent
7 times \$40,000, which was the new terms for the
8 Option Property as distinguished from Parcel 1
9 property that had been taken down for the \$82
10 million. So that was negotiated.

11 So I leave it to you as to whether or
12 not you believe these conditions are permissible or
13 not. We believe them to be permissible. We
14 believe them to be a restatement of what previously
15 existed.

16 We do not believe they are Pombo type of
17 new requirements that are not part of a Rule 17.115
18 offer of judgment that is the plaintiffs' second
19 basis for fees irrespective under the prevailing
20 party provision were certainly reasonable award of
21 attorneys fees and costs as you deem appropriate.

22 Thank you, Your Honor.

23 THE COURT: I will tell you I view it as
24 conditional and you can put what you need on the
25 record, but you were very explicit in your pleading

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 02:36 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 86 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

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

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

ORIGINAL

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

Plaintiffs,)

vs.)

PARDEE HOMES OF NEVADA,)

Defendant.)

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE

MONDAY, AUGUST 15, 2016

AT 9:00 A.M.

APPEARANCES:

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

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

REPORTED BY: GINA M. SHRADER, CCR NO. 647, RPR

1 LAS VEGAS, NEVADA; MONDAY, AUGUST 15, 2016

2 9:03 A.M.

3 -oOo-

4
5 THE COURT: Good morning everybody.

6 MR. JIMMERSON: Good morning.

7 THE COURT: All right. I'm set. I did
8 a special setting for you. Thank you for changing
9 it. I'm trying so hard to get the time. Thank you
10 for changing until Monday. I appreciate it.

11 MR, KAY: Thank you, Judge.

12 THE COURT: All right. Do you want me
13 to call the order? I kind of have a list according
14 to the order or whoever wants to go first.

15 MR. JIMMERSON: We would defer to Your
16 Honor.

17 THE COURT: What I was going to start
18 off with I have listed as 1A, but Pardee Homes
19 Nevada's Motion to Amend Judgment. And this is the
20 new judgment that -- the judgment. Not new. The
21 judgment that was entered May 11th, 2016.

22 Correct, Counsel?

23 MR. KAY: Correct, Your Honor.

24 THE COURT: Have you done your
25 appearances for the record? Probably not. I get

1 so in a hurry after criminal law. I need to slow
2 it down.

3 MR. KAY: Good morning, Your Honor.
4 Rory Kay, McDonald Carano Wilson, on behalf of
5 Pardee Homes of Nevada.

6 MS. LUNDVALL: Patricia Lundvall here
7 with Mr. Kay on behalf of Pardee Homes.

8 MR. JIMMERSON: Good morning. Jim
9 Jimmerson and Michael Flaxman of the Jimmerson Law
10 Group.

11 We are here on behalf of the plaintiffs,
12 the Estate of Walter Wilkes, Mr. Wolframs.
13 Mr. Flaxman is to my right and Mr. and Mrs. Wolfram
14 are present in court.

15 THE COURT: Okay. I remember them from
16 trial. All right.

17 I will tell you I have read everything.
18 I read every exhibit. I actually kept everything
19 from the January hearings on this motion and all my
20 notes from then, and I actually reviewed that. I
21 did a little comparison of what, if anything, had
22 changed.

23 So just for the record, I read the
24 pleadings again from the hearing I heard in January
25 on these motions. I've reviewed obviously the new

1 order and my notes and reviewed everything new that
2 was filed. Just so you'll know, for the record.
3 All right. Let's start.

4 Pardee Homes Nevada's Motion to Amend
5 Judgment.

6 MR. KAY: Thank you, Your Honor. If I
7 may.

8 THE COURT: You're fine. Whatever
9 you're comfortable with.

10 MR. KAY: Just to clarify, too. I
11 believe that the plaintiffs' filed a counter motion
12 in their opposition to this motion.

13 THE COURT: They did. That's next.
14 That's plaintiff's counter motion for attorney's
15 fees and costs pursuant to NRS 18.010 and EDCR
16 17.06 (sic).

17 MR. KAY: Do you want to have me address
18 this in conjunction with this motion?

19 THE COURT: Yes. In fact, I have your
20 1(a) and I put in this 2(a). I actually put them
21 together so --

22 MR. KAY: Perfect.

23 THE COURT: I'm will do this next in
24 order.

25 MR. JIMMERSON: Just for the record, Mr.

1 Kay, it's 7.60.

2 THE COURT: You are right. It's a six
3 and not -- and I read it wrong. And I have my
4 notes. It is EDCR 7.60. Got it.

5 MR. KAY: Thank you, Your Honor.

6 THE COURT: I Got it.

7 MR. KAY: You are correct. This motion
8 to amend focuses on the judgement that the Court
9 entered in May of 2016.

10 We're asking the Court to amend that
11 judgment on two points. The first of which is the
12 award of plaintiffs' attorneys fees are certain of
13 plaintiff's attorneys fees as special damages.

14 The second point are the changes that
15 the Court made from the previous judgment that you
16 had entered with respect to Pardee's defense
17 against plaintiff's claims for additional
18 commissions.

19 The meat of the motion really focuses on
20 attorneys fees as special damages issue. I think
21 we're all aware that the Court cannot award
22 attorneys fees without a statute, rule, or some
23 contract at issue.

24 In this particular case, the parties did
25 execute a contract that did call for attorneys fees

1 in the Commission Agreement. You're probably
2 intimately familiar with it at this point in time.

3 THE COURT: I am. I think I've
4 memorized it. I'm sure you have too.

5 MR. KAY: Absolutely. It's a rather
6 straightforward contract with respect to the
7 attorneys fees.

8 And in such situations, then Nevada
9 Supreme Court has recognized that a party can only
10 recover attorneys fees as special damages under
11 three narrow circumstance. This comes from the
12 Sandy Valley case that we cited to you.

13 One exception is where the non-breaching
14 party becomes involved in some sort of third-party
15 legal dispute. The second exception there, any
16 time a party needs to recover real property because
17 of wrongful contact by the defendant. And, then
18 the third exception is when a plaintiff is seeking
19 injunctions or other declaratory relief because of
20 the defendant's bad faith.

21 Now, I guess the bulk of the argument
22 centers around how to interpret the Sandy Valley
23 case.

24 THE COURT: And the cases afterwards,
25 including your interpretation of Liu versus

1 Christopher Homes.

2 MR. KAY: Correct. That's the reason
3 why we brought the motion now. We are certainly
4 are aware that you've cited to Liu in the Findings
5 of Fact and Conclusions of Law.

6 THE COURT: Correct. I read it when it
7 came down. When I heard it, and when I was doing
8 my order, I located that case and did review it.

9 MR. KAY: Correct. And I guess the
10 reason why we brought the motion to amend is the
11 parties haven't had a chance to brief Liu.

12 Certainly, understanding that the
13 Court -- you read it, but you didn't have an
14 opportunity to hear the parties arguments.

15 We believe that awarding the plaintiffs
16 their attorneys fees as special damages violates
17 Liu and that's where we brought the motion. If we
18 look at the cases cited, none of them actually
19 involved what is at issue here in this case, which
20 is just a simple breach of contract case.

21 Certainly, the plaintiffs have alleged
22 two other causes of action that flow from the
23 contract, but really at its core, this is a breach
24 of contract case. And I think if we read Liu --
25 and I have a copy of the opinion.

1 THE COURT: You know what? I have it.

2 MR. KAY: I've highlight some language
3 that I think is important. If I may approach.

4 THE COURT: I'll use yours instead of
5 mine.

6 MR. KAY: I want to draw your attention
7 to the specific highlighted portion that we think
8 is the reason plaintiffs cannot recover their
9 attorneys fees as special damages here.

10 Liu was a case that involved a breach of
11 contract. In this particular case, though, the
12 breach of contract caused the non-breaching party
13 to become involved in third-party litigation.

14 If we look at Page 5 of what I've cited
15 you, it's actually Page 880 of the opinion, you'll
16 see the Nevada Supreme Court sort of outlined the
17 fact that the Liu plaintiff wasn't seeking to
18 recover their attorneys fees as special damages in
19 prosecuting the breach of contract action.

20 It was, in fact, the plaintiff in that
21 case who was looking to recover their attorneys
22 fees as special damages because of third-party
23 litigation that they got involved in.

24 In fact, if we go to Footnote 2 of that
25 opinion, we'll see that the Liu plaintiff actually

1 in asserting the breach of contract cause of action
2 tried to recover their attorneys fees as special
3 damages in prosecuting the breach of contract
4 claim.

5 Really that's no different than what
6 Mr. Wolfram and Mr. Wilkes tried to do in this
7 case. They are seeking their attorneys fees as
8 special damages from prosecuting the claim, much of
9 those that they've incurred in bringing that
10 action.

11 You'll see that the Supreme Court in
12 Footnote 2 said that that is not correct. And
13 you'll see right there. It says that Liu also
14 relies on Sandy Valley for the contention she could
15 recover attorneys fees and costs she incurred when
16 prosecuting her claim against the defendant to
17 recover attorneys fees as special damages.

18 In addition to the attorneys fees that
19 she incurred in defending herself. So the next
20 sentence is the one that's determinative of this
21 motion. Sandy Valley does not support that
22 contention. Sandy Valley does not allow a
23 plaintiff alleging a breach of contract claim to
24 recover their attorneys fees as special damage that
25 they've incurred in prosecuting the claim.

1 This would be a different case in
2 Pardee's purported breach involved Mr. Wolfram and
3 Mr. Wilkes getting involved and defending
4 themselves in third-party litigation. That's not
5 what has occurred here.

6 Essentially, they've incurred fees
7 simply bringing a breach of contract action. I
8 think under Footnote 2, and the entire line of
9 Sandy Valley cases, they cannot do that. And I
10 think that's consistent with what we've cited you
11 to some other jurisdictions as well that
12 essentially have held explicitly that a party
13 alleging a breach of contract cause of action
14 cannot recover their attorneys fees as special
15 damages. Special damages are unusual and that's
16 why they are required to be pled specifically in
17 the Complaint.

18 There's nothing really unusual about
19 Mr. Wolfram and Mr. Wilkes' attorneys fees in this
20 case. They've alleged breach of contract. If any
21 party knows, if they allege a breach contract, the
22 other side might incur attorneys fees in bringing a
23 claim for that breach of contract action. I don't
24 think there's anything here that fits within Sandy
25 Valley, Horgan or Liu and that's why we brought

1 this motion with respect to that.

2 Now, with respect to the other aspect of
3 our motion to amend, we've simply asked the Court
4 to amend the judgment. When you entered the second
5 judgment, Your Honor, you struck the language
6 speaking directly to Pardee's defense of
7 plaintiffs' claims to additional commissions.

8 We would simply ask that the Court amend
9 the judgment to reinsert that language from the
10 first judgment.

11 Other than that, I don't have anything
12 else I need to cover. I guess I'll wait to address
13 the counter motion in my reply.

14 THE COURT: Let's do that. Let me
15 get --

16 MR. KAY: I certainly understand you've
17 briefed everything so I don't want to kill you with
18 oral argument.

19 THE COURT: You know, if I had
20 questions, you'll find out. I will ask. I mean, I
21 know all of the authority. I read everything
22 again. So I certainly understand the position on
23 Sandy Valley.

24 MR. KAY: Sure. Thank you, Your Honor.

25 THE COURT: Thank you. It's a pleasure

1 having you. Mr. Jimmerson, are you going to take
2 the opposition?

3 MR. JIMMERSON: Thank you.

4 THE COURT: You're welcome.

5 MR. JIMMERSON: Thank you. May it
6 please the Court, Your Honor. Good morning, and
7 thank you for your time and attention here, your
8 staffs' time and attention you have given this case
9 over the last year as October and December 2013,
10 with the decision in June of 2014 and continuing to
11 this present time.

12 The modest motion that is made by the
13 defendant Pardee here is made in softer tones than
14 I heard last January because it's been ruled upon
15 by yourself four prior times.

16 You, on your own and through your own
17 good work and your staffs' good work, discovered
18 Liu following the December submission of this case
19 for the Court's determination and prior to its June
20 25, 2014 decision. Liu came out in March of that
21 year.

22 The Court expressly found within its
23 Findings of Facts and Conclusions of Law taken Liu
24 into consideration and finding that the
25 requirements of Sandy Valley and Liu had all been

1 satisfied, each and every one by the plaintiffs in
2 the testimony of Mr. Jimmerson for attorneys fees
3 of \$135,500 as special damages to Mr. Wolfram;
4 \$6,000 for a total of \$141,500.

5 The Court has denied this motion as I
6 mentioned four prior occasions. I just wanted to
7 remind the Court what it already knows. And that
8 is your Findings of Fact Number 21, within your
9 Findings of Facts and Conclusions of Law and
10 judgment filed on June 25 of 2014, that specific
11 document in findings says as follows: Directly
12 responsive and in opposition to the defendant's
13 motion here. Plaintiff had also suffered --
14 reading at Lines 14 through 27.

15 Plaintiffs also suffered damages in the
16 form of attorneys fees and costs incurred as they
17 were unnecessary and reasonably foreseeable to
18 obtain the required information regarding the land
19 designation of land acquired by Pardee from CSI in
20 recovery defendant pursuant to this separate
21 transaction between Pardee and CSI.

22 Plaintiffs specifically requested
23 numerous times from Pardee information to determine
24 the land designations of these additional purchases
25 but to no avail.

1 In fact, Mr. Lash, on behalf of Pardee,
2 instructed a third party that said information
3 should not be provided. CSI was not able to
4 provide the required information due to the
5 confidentiality agreement through Pardee.

6 Plaintiffs had no alternative but to
7 file suit through litigation processes to obtain
8 the required requisite information and request an
9 equitable remedy from this Court to obtain said
10 information in the future.

11 The above-referenced facts allow this
12 Court to award reasonable attorneys fees and costs
13 as special damages. See Liu versus Christopher
14 Homes. See Sandy Valley Associates versus Sky
15 Ranch Estates Owners Association.

16 Then you go on to discuss my testimony
17 with regard to damages in the findings of \$130,500
18 attorneys fees plus an additional \$6,000.

19 This argument that was made I'll state
20 for the fourth time, because when we filed our
21 third amended Complaint, there was a huge motion to
22 dismiss and strike this additional special damages
23 that added attorneys fees as special damages for
24 the misbehavior of the plaintiff and that the Court
25 analyzing the cases that then existed, not

1 including the granting the motion to amend, found
2 that there certainly was a cause of action here for
3 special damages.

4 Of course, this is pretrial, summertime
5 before the October trial. And then we went further
6 and we began our trial in October, concluded in
7 December. You had ruled that there had been the
8 requisite requirements at the time. Then having
9 heard the trial and all the evidence, the Court
10 made its findings as I just read to you on June 25
11 of 2014.

12 So clearly, the plaintiffs have
13 prevailed relative to establishing attorneys fees
14 as special damages under the new vehicle facts of
15 this case and of the fact that this lawsuit was a
16 pursuit for information.

17 Their first, second and third claims for
18 relief are the only causes of action that it
19 actually covers and it was denied during the course
20 of the trial -- and in the course of history, was
21 adduced at the time of trial.

22 I just wanted to point out for this
23 record that following our significant hearings on
24 June 15 of 2016, the Court entered orders from
25 January 15th, 2016, which are file-stamped on April

1 26th of 2016. And the Court entered its judgment
2 file-stamped on May 16th, 2016, in which the Court
3 found the plaintiff -- plaintiffs to be the
4 prevailing party on each of the three causes of
5 action and awarding and confining the damages that
6 the Court had found previous on June 25 of 2014 as
7 part of its extensive Findings of Facts and
8 Conclusions of Law order of May 16th, 2016 that
9 this hearing and our motion has been made.

10 Just to conclude, the plaintiffs have
11 demonstrated that they had no alternative but to
12 file suit to seek this information that the
13 attorneys fees that were incurred were reasonable
14 and necessarily incurred. Both the record supports
15 that and the law supports it as well.

16 While the defendants would look to a
17 footnote to somehow be dispositive of this, the
18 defendant ignored what the Court read, which is at
19 footnote -- at Headnote 5 of the Liu decision,
20 which is on the third page.

21 It begins this type, when revisiting an
22 abrogating Sandy Valley, the Oregon court only
23 overturned the analysis and conclusion in Sandy
24 Valley that concerned recovery of attorneys fees
25 that accumulated in actions to clarify or remove a

1 cloud on title on real property.

2 The Court did not retreat from Sandy
3 Valley its conclusions that a party to a contract
4 may recover as special damages the attorneys fees
5 arising from another party's breach of the contract
6 when the breach causes the former party to incur
7 attorneys fees in a legal dispute brought by a
8 third party.

9 Then it continues. In unity, with the
10 various jurisdictions that have held the same, we
11 maintain specific to the Sandy Valley and Liu. We
12 maintain that a party to a contract may recover
13 from a breaching party the attorneys fees that
14 arise from the breach that caused the former party
15 to incur attorneys fees defending himself or
16 herself against a third-party legal action.

17 Here the Court reviewed the findings of
18 Sandy Valley and in Liu and in Horgan and concluded
19 that under the facts of this case, which are
20 specific, narrow, and very special in terms of
21 their assertion, that the defendant had failed to
22 provide information that the attorneys fees
23 incurred and were reasonable and necessarily
24 required to constitute attorneys fees as special
25 damages. On that basis, the motion should be

1 denied.

2 The second part of the motion the Court
3 has already ruled upon also four times. This case
4 was never about the defendants -- the plaintiffs
5 seeking \$1.8 million in damages for unpaid
6 commissions.

7 There's not one reference to the
8 plaintiffs or defendants' opening or closing
9 statements or anything in their briefs. The Court
10 has answered that question repeatedly and that's
11 why we have the motion filed by the defendants
12 today.

13 Thank you.

14 THE COURT: All right. Let me do this,
15 before you do a counter motion.

16 Once again, I have reviewed Sandy
17 Valley, Horgan and as you know, I'm aware of the
18 Liu versus Christopher Homes. I certainly
19 appreciate the briefing because when I read it I,
20 of course, read it in light of what this Court
21 feels that case is saying in support of, which is
22 why I read it.

23 You would figure that out when I'm doing
24 a ruling on this when I saw Liu versus Christopher
25 Homes. I do realize the attorneys fees as special

1 damages is a unique issue. I understand the
2 application of that case, which is why I did read
3 Liu versus Christopher Homes.

4 I still firmly believe and I know the
5 Supreme Court will be able to, I assume, look at
6 these issues. And I still feel -- and that's why I
7 actually cited to Liu versus Christopher Homes. I
8 read it in support of my previous ruling under
9 Sandy Valley, and Horgan I didn't feel it limited.
10 I think it once again broadened it.

11 So after reviewing it one more time,
12 this Court finds there is no legal or factual basis
13 pursuant to NRCP 52(b) and 59(e) to grant Pardee's
14 motion.

15 Once again, I was aware of Liu versus
16 Christopher Homes, which is 103 Nev. Adv. Op. 17,
17 which is 321 P 3d 875, when the Court entered its
18 Findings of Fact and Conclusions of Law in my order
19 filed June 25th, 2014. You just read it. But if
20 you see Page 14, Lines 23 to 25 wherein I did cite
21 to the Liu case, I felt it supported my previous
22 ruling, which is why I cited to it, therefore
23 Pardee's motion is denied.

24 I do want plaintiff to prepare said
25 order with approval as to form and content by

1 defendant. My same rule holds. If you can't come
2 to an agreement, please provide me separate orders
3 with what area you can't agree to to try to help
4 this court have an easier time deciding how to do
5 this. But based on that, I'm denying it.

6 Now, we are going to do plaintiffs'
7 counter motion for attorneys fees and costs
8 pursuant to NRS 18.010 and EDCR 7.60.

9 MR. JIMMERSON: Thank you, Your Honor.

10 THE COURT: Your motion, Mr. Jimmerson.

11 MR. JIMMERSON: May it please the Court.
12 The Court is familiar with the commission
13 prevailing attorneys fees. The Court is familiar
14 with the Offer of Judgment as a second basis for
15 attorneys fees. This is different.

16 THE COURT: This is different.

17 MR. JIMMERSON: This is different.
18 Under 18.010(2)(b) and NRS 7.60, if the Court finds
19 that there is a lack of good faith in the filing of
20 a motion, the Court can award attorneys fees,
21 reasonable amount of money that is incurred by the
22 party against whom such a motion is filed when the
23 motion is not based upon a reasonable basis based
24 upon the history of the case.

25 And in this case, we believe that this

1 being the fourth time that the issues been
2 addressed by the Court and denied three prior
3 times, specifically as the Court found June 25 of
4 2014 and again as part of its judgment on May 16th,
5 2015, and the orders of April 26th of 2015 from
6 January 15th argument, which is identical here,
7 that a reasonable sum of \$6,170 in attorneys fees
8 should be awarded to the plaintiffs for the
9 necessity of having to respond to this.

10 You may hear from opposing counsel, you
11 may consider this an appeal or we're setting a
12 record for appeal. They've had plenty of time to
13 make for the record on this case throughout. It
14 has been two years since we prevailed in June of
15 2014 and we're still hearing post-trial motions.

16 So defendant certainly has been given
17 every benefit of the doubt by this Court. This is
18 not fair to both parties. When you have this
19 motion, which had already been denied by Court's
20 orders of April 26, 2016 and the Court's judgment
21 of May 16th, 2016, these reasonable fees should be
22 awarded. This is separate and apart from the fees
23 that have been cited in the other motions.

24 Thank you.

25 THE COURT: Thank you, Mr. Jimmerson.

1 MR. KAY: Your Honor, I will be brief in
2 opposition to the counter motion.

3 THE COURT: Please make whatever record
4 you want.

5 MR. KAY: Understood. I think you've
6 already addressed the real issue and you said that
7 the Nevada Supreme Court has issued a number of
8 opinions. They may not necessarily be clear.

9 Mr. Jimmerson said that you've ruled on
10 this four or five times. Obviously, as you just
11 noted from the bench, you hadn't had a chance to
12 have the briefs before you. We have an obligation
13 to our client to brief that case to preserve the
14 issue on appeal.

15 More importantly, we have an obligation
16 to make sure all the Court's orders comply with
17 every Nevada Supreme Court case that's relevant.
18 And certainly, though, you didn't ultimately agree
19 with our opinion on Liu, it was relevant to the
20 case, and I think it is helpful to have a full
21 record to support the Court's order in that regard.

22 The other issue I want to point out here
23 is they brought this as a counter motion in
24 opposition. We cited you the Nevada Power v. Flora
25 (phonetic) case, which holds to the basic

1 proposition you can't expand local rules or
2 district court rules in abrogation of Rule 11.

3 If they want to bring a Rule 11 motion
4 seeking sanctions, they should have done so as a
5 separate motion and not as a counter motion.
6 Therefore, it's inappropriate as a procedural
7 matter, but it's also incorrect substantively in
8 that this was a -- this wasn't a frivolous motion.
9 It wasn't a lack of good faith. Pardee simply
10 brought the Liu opinion before you, wanted to brief
11 it, and we've done so.

12 I think that's entirely within Pardee's
13 right to do so. I would just ask you to deny the
14 counter motion on both procedural and substantive
15 grounds.

16 THE COURT: I looked at this very
17 closely. I'm very cognizant. I think both parties
18 know of doing a record, both parties will be
19 protected on appeal. Assuming both counsel -- I
20 have said that from day one. I understand that
21 completely.

22 I try to find -- it's a unique situation
23 that I happen to find a case right on point because
24 remember, you probably don't remember, but I heard
25 your trial. Then we had to continue it and I had

1 to go try a four and a half month Aktos trial. So
2 I had to revisit it. In fact, I read every bit of
3 testimony, revisited your case. And in that
4 interim, this new case came down.

5 And, I mean, I don't know how often that
6 happens to a district court judge, you know. So I
7 looked at this and I very seriously looked at the
8 obligation of doing a full record on appeal.

9 I certainly read the Liu case. I
10 certainly felt like it was supported. I am
11 cognisant that there was full briefing on it and I
12 will tell you I did read the briefing of Pardee on
13 it and I understood their viewpoint.

14 Once again, these are not easy cases on
15 these Sandy Valley. Maybe this one will be. I
16 don't know. It's -- you know. I don't feel it's
17 as limited as you say, obviously. But I also see
18 the language you pulled and the language you pulled
19 out, both sides.

20 So based on that, I certainly seriously
21 looked at it but I do not find -- I understand
22 procedural. I tried to explain, too. I do agree
23 with that it happens all the time. I went past the
24 procedural matter and did look at this
25 substance-wise based on everything that's happened

1 in this case.

2 I did not find a lack of good faith. I
3 do feel -- I did look at the extensive briefing on
4 the Liu versus Christopher Homes case as the basis
5 for determining that. I did not feel there was a
6 lack of good faith. I'll be honest.

7 When at first blush, when I brought --
8 if I had seen the case, that would have been my
9 first issue. But then I went back and looked under
10 the standard as I should and looked at the briefing
11 and I do not feel there was a lack of good faith.
12 So I am going to deny that motion.

13 MR. JIMMERSON: Thank you, Your Honor.

14 THE COURT: Based substantively and for
15 the reasons I stated.

16 MR. JIMMERSON: Thank you.

17 THE COURT: That was an interesting
18 case. Does it answer all the questions for this
19 Court? No. But maybe we'll get another one. I
20 don't know. It's -- this attorneys fees under
21 Sandy Valley is a very interesting issue but tough
22 issue.

23 MR. KAY: Your Honor, can I interject.
24 Do you want us to prepare that order?

25 THE COURT: Yes. Prepare that order.

1 My same ruling. It's very clear. I'm doing this
2 every time now after this case. Please have it
3 approved as to form and content. I never ever want
4 this Court to experience what happened when I'm
5 given misinformation. And I tell that to every one
6 of my civil. My clerk knows but it's very
7 important to me.

8 The next one I have is Pardee's Motion
9 to Retax Plaintiff's Memorandum of Costs Filed May
10 23rd, 2016. Which one wants to go, you tell me.

11 MR. JIMMERSON: They both need to be
12 addressed, Judge.

13 MR. KAY: Yes.

14 THE COURT: Since I kind of did your
15 first, let's do Pardee's Motion to Retax
16 Plaintiffs' Memo of Costs that was filed May 23rd,
17 2016. Let's do that one, okay.

18 MR. KAY: Thank you, Your Honor. This
19 is our motion to retax costs.

20 Of course, you know the old days are
21 over where co-counsel can file an unverified
22 memorandum of appeal or -- excuse me. A memorandum
23 of costs, you know, just simply indicating for the
24 Court that the costs were reasonable and necessary
25 and actually incurred.

1 THE COURT: The Cadle case definitely
2 says that.

3 MR. KAY: -- new standard under the
4 Cadle case, and that case imposed a substantial
5 hurdle for any party claiming costs. It's not
6 enough to kind of say they were reasonable and
7 necessary. Instead, you not only have to do that
8 but you also have to provide the documentation to
9 prove-up the costs.

10 And when you look at plaintiffs'
11 memorandum of costs, I think they fall
12 substantially short of that hurdle. The first
13 issue that they came up with when we were arguing
14 this, their memorandum of costs, is quite frankly
15 that from the time the Court heard these motions a
16 year ago to now, their costs have risen
17 astronomically; 36 percent since a year ago from
18 50,000 to 69,000.

19 And so that raised a red flag for me.
20 How did the costs, especially the recoverable costs
21 under NRS 18.005 go up so much in a year when
22 nothing really happened at this point in time.

23 The parties filed post-judgment motions
24 and then I started to think to myself, something
25 happened. And that something actually makes up the

1 bulk of that \$19,000. What that is is plaintiffs'
2 attempt to recover on the previous judgment. A
3 judgment they have filed a motion to strike. They
4 filed a motion to amend.

5 Now, I know Your Honor, I believe, was
6 up north at the judicial conference and Senior
7 Judge Bonaventure heard that motion. But if you
8 look at the costs here, over \$12,000 of the new
9 costs are for John Muije's attorneys fees.

10 If we look NRS 18.005, you will not see
11 attorneys fees incurred in collection of a judgment
12 anywhere in those recoverable costs. They also
13 seek \$20,000 for transcripts.

14 Again, NRS 18.005. You look down. You
15 don't see any right to recovery for the costs to
16 get transcripts. You do see certain transcript
17 costs recoverable for depositions and reporters
18 there, but as to the transcripts that the
19 plaintiffs have tried to recover for, almost all of
20 them are court transcripts. Those are not
21 recoverable under NRS 18.005.

22 So again, they have the burden under the
23 Cadle case to prove that they can recover those
24 costs. I would submit the bulk of the costs that I
25 just outlined indicate the entire lot of these

1 costs are quite simply unreliable. It doesn't meet
2 the prove-up requirement, if you will, from Cadle
3 Company.

4 There's another issue that when you
5 look, you look at the line items of certain of
6 these costs. They're so unreliable and vague, the
7 Court can't really tell if they were necessary
8 actually incurred or reasonable.

9 And we cited a few of these in our
10 motion. I will draw your attention to specifically
11 Footnote 2 and references therein. You see certain
12 of the line items that they are trying to recover
13 for.

14 For example, copies of Bates stamping,
15 copies of Bates, copies of copies, copies with the
16 rest of the entry blank, copies of copies trial
17 exhibits. Frankly, I had no clue what those copies
18 are for and neither does the Court, I would submit
19 and that's significant under Cadle Company.

20 They have to prove to you that, again,
21 the costs were necessary and reasonable. How have
22 they proven that when they can't even show you a
23 line item that accurately describes what the cost
24 is for.

25 It's not just those five that I cited.

1 If you go through the exhibit, you see a litany of
2 line items seen where you simply can't do the
3 analysis under Cadle Company. Of course, the other
4 issue is under Chapter 18. Only the prevailing
5 party is entitled to recover their costs. The
6 prevailing party analysis flows through all of
7 these motion.

8 I will save the bulk of that --

9 THE COURT: I'm aware of that.

10 MR. KAY: -- for attorneys fees.

11 THE COURT: I understand you're not
12 conceding that argument here.

13 MR. KAY: Correct. I'm not going to
14 belabor the point but I will respect --

15 THE COURT: I will tell you you're not
16 waiving that argument.

17 MR. KAY: For fees.

18 THE COURT: That's why I kind of asked.
19 I understand that.

20 MR. KAY: So I would say that the bulk
21 of our motion really focuses on the fact that the
22 plaintiffs have not met the Cadle Company standard
23 and NRS 18.005.

24 The line item entries are not available,
25 unreliable and they lack credibility to meet the

1 standard, and for that reason, we ask you deny it.
2 It's just simply too unreliable to meet the
3 Cadle-type position.

4 THE COURT: Okay. Thank you.

5 MR. KAY: Thank you, Your Honor.

6 MR. JIMMERSON: Your Honor, may it
7 please the Court. In response to your judgment of
8 June 25, 2016, a memorandum of costs was filed that
9 was just over \$50,000. At the time, there was a
10 motion objecting to the judgment to the costs at
11 that time that was then denied as moot as part of
12 the June 15th, 2016 ruling. And then with the
13 judgment entered on May 15th -- May 16th, 2016.

14 This was -- the memorandum of costs then
15 was filed again and it was then sought through this
16 for today. It is silly on the part of Pardee to
17 suggest that the plaintiff wouldn't be entitled to
18 the costs of its complaint. But if it's going to
19 be denied entirely, the plaintiff would be entitled
20 to that.

21 When you look at the opposition to
22 the -- not the opposition -- to the motion to
23 retax, you see basically a claim that the increase
24 from 50,000 to \$69,395 should not be permitted.
25 \$12,000 of that money, almost \$13,000 was the cost

1 of John Muije's efforts with obtaining a judgment
2 after the ten days had run after the judgment was
3 final and prior to Judge Bonaventure interceding
4 the Court's order that spans through today.

5 When you look at the costs, the
6 memorandum of costs, it's extremely detailed and
7 verified under 18.010. It has categories. It has
8 cancelled checks. All of these dollars were paid
9 for transcripts: \$19,888.10. They are not
10 contested in their opposition that they were paid
11 for by us. Depositions of the plaintiff and
12 defendant as others.

13 There is photocopies and printing:
14 \$20,000. All of these are bates stamped. All of
15 these are bates stamped. There is then the bates
16 stamping of the costs every month when added
17 together total \$20,350.24.

18 And that included, by the way, the costs
19 associated with obtaining maps from the Clark
20 County department and others that were introduced.
21 Legal research is West Law charges. Again, paid
22 for with cancelled check, \$7,934.83; UPS, \$140.41;
23 filing fees, the costs of filing the Complaint,
24 \$618.53 with the amendments and the service; travel
25 and meals, \$916.13.

1 Again, with the supporting documents,
2 when you look at the billings that the Court
3 introduced at the time of trial and through this
4 motion, you will see that each month, the costs are
5 separated. So when you look at each month, you
6 will see what costs are included for that 30-day
7 time period. In our firm, it's the 20th of one
8 month through the 20th of the next.

9 We do that in order to make sure that
10 the client gets his bills right around the first of
11 each month so that it has a good record. And
12 you'll see the client is advised and of course the
13 defendant is advised of what new costs are incurred
14 each month so that when the memorandum of costs was
15 attached, which includes all of those costs, every
16 single one was itemized, item by item.

17 This is where I don't understand Mr.
18 Kay's argument that it's not specific or that
19 there's confusion, a misunderstanding. Every
20 single expense is itemized one by one by one,
21 hundreds of expenses. \$3; \$5; \$100, all detailed
22 one by one. And we took 15 categories and
23 according to the statute -- it's 18.010 and the
24 like, it comports with the statute and in Cadle.

25 What Cadle talked to you about is if you

1 read the Cadle decision, which is dismissed I
2 believe inadvertently perhaps by the defendant.

3 Cadle was critical of the lawyer and the
4 trial court prior to assessing costs with a crystal
5 eye. Basically said you cannot just rely upon what
6 plaintiffs or prevailing parties estimates. That
7 is what the case stands for.

8 It reads that all had before it were
9 estimates of costs and didn't have detailed costs
10 in the complaining party who lost the judgment, was
11 successful by the Supreme Court in reducing the
12 costs by about 30 percent based upon the my
13 recollection of the Cadle decision that had been
14 asked.

15 Here though, mindful of Cadle, and
16 having clothed the motion of memorandum of costs
17 last June and having read the opposition filed by
18 the defendant last July, we were mindful when they
19 filed these memorandum of costs in May of 2016, to
20 meet those requirements both by verified several
21 page affidavits of myself, together with every
22 single item of expense, itemized one by one by one,
23 hundreds of them.

24 We have also categorized them into 15
25 categories a year by certified accountants, like

1 travel and meals, \$1,765.35; like recording fees of
2 \$13.00 for the judgment; fax transaction charges,
3 \$4.50; hand delivery, \$ 55.00; witness fees to
4 compel to be present, Jon Lash and others, \$434;
5 expert witness fees -- this is provided by -- this
6 expert witness fee is a part of the John Muije

7 THE COURT: \$613.90.

8 MR. JIMMERSON: It should be included as
9 part of the \$12,651 number. The professional
10 services of \$12,651 are for our efforts, our
11 expenses; Clark County Recorder documents, \$107.33;
12 and, service of process, \$4,817.14 which ask
13 criticized but these are actual dollars that have
14 been paid to Legal Wings with the accommodating
15 list that are attached to the memorandum of costs.

16 So you can look at this and you can see
17 there's \$69,000 in costs. If you were to deduct
18 these chares, you would be left with \$56,164.55.

19 What is interesting to note is you're
20 not told by the defendants what its costs were. We
21 do know what their attorneys fees were. They were
22 \$200,000 higher than the plaintiffs.

23 So I would suspect that when you're
24 ordering transcripts, as we have in trial and we
25 shared with the defendant and, of course, the

1 trial. And when you have the kind of vigilant
2 efforts that both sides have evidenced in this case
3 to the point of having this contribute to a high
4 conflict case or highly contested case, not
5 withstanding the Court issued on now three separate
6 occasions you base the same issues.

7 One of the reasons that you can have a
8 civilized conversation today is that you've seeing
9 this before and you know how you're going to rule
10 one way or the other, for the plaintiff or
11 defendant.

12 So these fees are not just reasonable.
13 They are incurred. The \$12,000 incurred from
14 Mr. Muije. Each and every check expense is written
15 and there's nothing here that we see that is barred
16 by the statute or is argued by the other side as
17 quote unreasonable.

18 And I would just simply say that when
19 you look to your own self when the McDonald Carano
20 firm's costs Pardee's incurred this in case, you
21 will find similar numbers, not larger numbers,
22 within the Court's discretion, I believe
23 \$56,164.58, not including Mr. Muije's, should be
24 awarded. And I will indicate that the \$6,000 of
25 costs is because of litigating now for another two

1 years.

2 THE COURT: Did you say 55 cents or 58?

3 MR. JIMMERSON: 56. That is subtracting
4 all of the other charges, which is the \$613 plus
5 the \$12,000 number that Mr. Kay referenced to.

6 THE COURT: You did the \$12,651.81,
7 included the \$6,190. I thought they were separate
8 items when I reviewed it.

9 MR. JIMMERSON: They were separate but I
10 subtracted the total. If you take \$69,395 and you
11 subtract \$12,651.31, you get \$56,673 --

12 THE COURT: But you don't subtract --

13 MR. JIMMERSON: When you subtract the
14 \$631, you come out with \$56,164.56. So I have
15 subtracted both charges, and I thank you for the
16 Court's time.

17 THE COURT: Okay, Counsel. I'm not -- I
18 went to law school because math wasn't my strongest
19 suit.

20 MR. JIMMERSON: It was blood and math.

21 MR. KAY: Your Honor, I just want to
22 start with Mr. Jimmerson's recitation to Pardee's
23 costs about the idea that they were somewhere near
24 \$69,000.

25 THE COURT: That's not even in front of

1 me.

2 MR. JIMMERSON: Correct.

3 MR. KAY: Well, I think it goes to the
4 reasonableness argument of each cost and, in fact,
5 Mr. Jimmerson didn't know where to find it. I can
6 tell you if you look in our motion for attorneys
7 fees and costs --

8 THE COURT: I looked.

9 MR. KAY: -- the number is actually
10 \$19,000, which is \$50,000 less than what
11 plaintiffs' incurred in this case.

12 The natural question is why? And I
13 think if you look at the motion, you'll see the
14 reasons why. I think Mr. Jimmerson has conceded
15 that Mr. Muije's fees were impermissible especially
16 where Judge Bonaventure found that they're
17 premature executions that violated certain notice
18 requirements.

19 Even beyond that, though, I heard
20 Mr. Jimmerson say that if you go through his
21 supporting documentation, it's itemized one by one.
22 You'll see the costs laid out. And frankly, I
23 invite the Court to do exactly that. We can start
24 with Exhibit 4 to their opposition, which is their
25 line item of costs. If you go through these line

1 item of entry --

2 THE COURT: Tell me where you're
3 looking. I spent a lot of time looking at this.

4 MR. KAY: This is Exhibit 4.

5 THE COURT: Can you hold on just one
6 minute?

7 MR. JIMMERSON: It's a 450-page exhibit,
8 Your Honor.

9 THE COURT: Yes.

10 MR. KAY: We're not going to go through
11 all of them one by one.

12 THE COURT: Honestly, I did go through
13 Exhibit 4 one by one. I looked at them in the
14 context of the litigation. Give me your --

15 MR. KAY: If you go through the
16 individual line item entry, if you look on the
17 defendants' side, they are listed by Tcodes.

18 THE COURT: I understand that. Just
19 give me a page reference.

20 MR. KAY: That's the problem. They are
21 not numbered. If you go to the Tcode 22, we can
22 start in September of 2012.

23 THE COURT: If you give me a page.

24 MR. KAY: September 12th of 2012.

25 THE COURT: Okay.

1 MR. KAY: You'll go through this list
2 here and you'll get to -- for example, let's start
3 at September 19th, 2012. There's a line item entry
4 called copies of binder. Right underneath that,
5 copies of docs. Right underneath that, copies of
6 docs. Underneath that, copies of bates stamps.
7 Underneath that, copies of bates stamps. I am not
8 going to go through them. I have no clue what
9 those line items are for.

10 I would suggest that under Cadle
11 Company, you cannot review those line items and
12 come to the conclusion that they were reasonable
13 and necessary.

14 THE COURT: I think they are bates
15 stamped for the different motions and stuff, bates
16 stamped, all extensive.

17 MR. KAY: Like everybody, I have an
18 obligation to Cadle Company to at least associate
19 these copies of those bates stamps with some sort
20 of motion. Beyond that, again --

21 THE COURT: Oh my -- okay.

22 MR. KAY: With the copies of copies.
23 What is that for?

24 THE COURT: Bates stamp color copies.
25 Bates stamp --

1 MR. KAY: I mean, I can't tell what they
2 are for.

3 I would submit that under the Cadle
4 Company case, the Court cannot tell what they are
5 either. If they are going to copy stuff, I think
6 Cadle Company requires that the line item entries
7 line up to explain the description better than just
8 copies of copies.

9 THE COURT: Okay.

10 MR. KAY: I think it's not just Muije's
11 fees. All of these line items are inherently
12 unreliable and beyond that, again, I'll just cite
13 you back to the fact that they're trying to claim
14 substantial costs that simply aren't recoverable
15 under NRS 18.005; transcript fees, costs for
16 travel, all of that stuff.

17 And so I'd ask that you deny their
18 motion in its entirety simply because they haven't
19 got the required standard under Cadle Company, Your
20 Honor.

21 THE COURT: All right. Okay. This
22 Court finds that pursuant to the judgment entered
23 May 16th, 2016, that the plaintiffs are entitled to
24 costs pursuant to NRS 18.020 and NRS 18.110.

25 I very carefully as best one could --

1 not as best one could. I spent a lot of time on
2 Exhibit 4. I needed to under Cadle Company be
3 reassured that they were reasonable and necessary
4 to this litigation. I am very familiar with this
5 litigation since I did a bench trial and numerous
6 motions. I did want to put that on the record.
7 It's obvious after reviewing all of the pleadings
8 and the plaintiffs' memo of costs and
9 disbursements.

10 I feel that I did discount. I felt the
11 professional services that were there for Mr. Muije
12 were not recoverable under 18.005.

13 Now, I had put down when I reviewed it,
14 I thought what they were saying was the \$12,651.81
15 and additional costs, the way the line item went of
16 \$613.90 --

17 MR. JIMMERSON: You were right.

18 THE COURT: Okay. That's how I had read
19 it. I went through it.

20 MR. JIMMERSON: You were right.

21 THE COURT: As best the Court can go
22 through something like that, I am discounting both
23 of those. Those fees to me I find are not
24 recoverable under NRS 18.005.

25 The Court reviewed all the other costs

1 and I felt that they were recoverable under NRS
2 18.005 and, further, my review of the line items
3 and being familiar with the litigation, I felt they
4 were reasonable, necessary and actually incurred,
5 which is the standard under the Cadle Company case,
6 Woods & Erickson LLP, which is 131 Nev. Adv. Op.
7 15, 2015.

8 So based upon the above, this Court
9 awards plaintiffs' costs in the amount of -- if my
10 math is wrong -- but \$56,129.56 when I deducted the
11 \$12,651.81 plus \$613.90. If I'm wrong on the math,
12 please whoever does it, help the Court out.

13 I did it several times. I think I'm
14 write. If I'm wrong on the math -- I want to be
15 clear. The total cost I am deducting \$12,651.81
16 plus the expert fee of \$613.90. I find those are
17 not recoverable under NRS 18.005.

18 MR. JIMMERSON: I'll prepare the order
19 and send it to opposing counsel.

20 MS. LUNDVALL: Your Honor, in that
21 order, can we ask that the plaintiffs' be required
22 to break down what are the component parts that
23 make up the fifty-six some-odd thousand dollars?

24 THE COURT: No. No. In my review, I
25 felt they met the Cadle issues so no. I'm not

1 going to do that. I felt under the Cadle Company,
2 they met their standard based on all the documents
3 I reviewed and that's why I did my finding, okay.

4 So now we're at -- I have next Pardee's
5 motion for attorneys fees and costs. That would be
6 the next one I have 4(a) and (c). Let's do that.

7 MR. KAY: Either of the motions for
8 fees.

9 THE COURT: They are all going to flow.
10 Let's keep an appendix, just for the record. Okay.

11 We're doing Pardee's first. Pardee's
12 motion for attorneys fees and costs. That's our
13 next one, okay.

14 MR. KAY: Thank you, Your Honor. I know
15 we had this discussion a little bit in the context
16 of the motion to amend as to how a party can go
17 about recovering their attorneys fees and costs.

18 In this particular case, as I mentioned,
19 there's a Commission Agreement that expressly
20 provides for the recovery of prevailing party.
21 Obviously, as with any other contractual provisions
22 for attorneys fees and costs, Pardee includes those
23 to incentivize and reduce litigation cost to ensure
24 that everybody comes to the table with good faith
25 claims and defenses.