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7

8 IN THE SUPERIOR COURT OF ARIZONA  
9 COUNTY OF YAVAPAI  
10

11 **JOHN B. CUNDIFF and BARBARA C. )**  
**CUNDIFF, husband and wife; ELIZABETH )**  
12 **NASH, a married woman dealing with her )**  
separate property; **KENNETH PAGE and )**  
13 **KATHRYN PAGE, as Trustee of the Kenneth )**  
Page and Catherine Page Trust,  
14 Plaintiffs, )

15 vs. )

16 **DONALD COX and CATHERINE COX, )**  
husband and wife, et al, et aux, )  
17 Defendants. )  
18

Case No. P1300CV20030399

Division 4

**RESPONSE TO DEFENDANTS' COX  
MOTION FOR A SITE INSPECTION**

19  
20 Property Owner, James Varilek, by and through undersigned counsel hereby responds to  
21 Defendants' request for an on-site inspection of the premises. The request fails to specify the necessity  
22 for the inspection; why the Court would conduct the inspection considering that this is a jury trial<sup>1</sup>; and  
23 most importantly, the parameters under which the inspection would proceed (whether the  
24 parties and counsel would attend, whether each lot would be viewed, whether comment(s) would be  
25

26 <sup>1</sup> As demanded by Defendants Cox on May 4, 2004. The inexplicable delay in the request, particularly as a request was never made at any time prior to the first scheduled trial in this case, merits Court scrutiny.

1 entertained by the Court) and similar matters.

2 Absent some indication as to why an on-site inspection is necessary, particularly considering  
3 Defendants' position that an expert witness is necessary to determine a factual issue (the existence of  
4 a business on the property), the Court of Appeals ruling that the Defendants are in violation of the  
5 restrictive covenant against business enterprises, and that the matter is to be tried before a jury, the  
6 request should be denied.<sup>2</sup> To the extent the Court would entertain the request, any order should be  
7 strictly prescribed as to the circumstances under which the on-site inspection would occur.

8 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of June, 2012.

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FAVOUR, MOORE & WILHELMSSEN, P.A.

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By 

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<sup>2</sup> Raising any justification in a reply memorandum would be impermissible as depriving other parties an opportunity to respond.

1 ORIGINAL of the foregoing  
2 filed with the Clerk of the Superior  
3 Court this 19th day of June, 2012

4 and a copy hand-delivered this same date to:

5 Honorable Kenton Jones Div. 4  
6 Yavapai County Superior Court  
7 Prescott, Arizona 86301

8 A copy of the foregoing mailed  
9 this 19th day of June, 2012 to

10 Jeff Adams  
11 THE ADAMS LAW FIRM PLLC  
12 125 Grove Avenue  
13 P.O. box 2522  
14 Prescott, AZ 86302  
15 Attorney for Defendants listed in Answer  
16 to First Amended Complaint by Joined  
17 Property Owner Defendants  
18 Dated October 5, 2010

19 Mark W. Drutz  
20 Sharon-Sargent-Flack  
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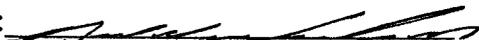
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