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✓  
SUPERIOR COURT  
2013 AUG 28 PM 4: 22  
CANDRA K. HALL, JUD. CLERK  
BY: R. ROMERO

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
7 IN AND FOR THE COUNTY OF YAVAPAI

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

14 Plaintiffs,

15 vs.

16 DONALD COX and CATHERINE COX,  
17 husband and wife,

18 Defendants.

CASE NO. P1300CV20030399

**REPLY IN SUPPORT OF  
PLAINTIFFS' RULE 54(g)  
MOTION FOR AWARD OF  
ATTORNEYS' FEES AND NON-  
TAXABLE COSTS**

**(Oral Argument Requested)**

19 Plaintiffs submit this reply responsive to, as counsel for Defendants described,  
20 “[D]efendants Cox, Veres as well as those joined property owners upon whose behalf  
21 undersigned counsel have entered an appearance and filed an Answer to Plaintiffs’ First  
22 Amended Complaint . . .” and in support of Plaintiffs’ Motion for Award of Attorneys’ Fees and  
23 Non-Taxable Costs.

24 **I. FACTUAL AND PROCEDURAL BACKGROUND**

25 Plaintiffs believe that this Court has an ample understanding of the factual and procedural  
background in this case as a result of its preparation for and attendance at various hearings  
leading up to and including oral argument on Plaintiffs’ Motion for Summary Judgment. For

1 ease on the judicial eyes Plaintiffs incorporate by reference into this Reply, as if fully set forth  
2 herein, the Statement of Facts in support of Plaintiffs' Motion for Summary Judgment along with  
3 the factual background in the motion itself.

4 **II. LEGAL ARGUMENTS**

5 **A. Plaintiffs paid fees and agreed to reimburse Alfie Ware the fees he**  
6 **advanced**

7  
8 At the outset of this litigation, Plaintiffs and Alfie Ware discussed how they would be  
9 able to finance this lawsuit. Attorney Wilhelmsen advised Plaintiffs that if Mr. Ware were to  
10 finance the litigation, in order to recover their fees at the end of the case, there would have to be  
11 an agreement by the Plaintiffs to repay him. The Plaintiffs agreed to do so and periodically have  
12 repaid some of those fees to Mr. Ware. After the Cundiffs made some payments to Mr. Ware he  
13 told them to hold off repaying him until the case was over (see affidavit of John Cundiff,  
14 attached hereto as Exhibit #1). As a result, billing statements from the Wilhelmsen firm were  
15 sent to Plaintiffs and Mr. Ware and all billing statements from the undersigned's firm were sent  
16 to Mr. Ware. As Defendants state, there must be an attorney client relationship and an obligation  
17 on the part of the part of the litigant to pay the fees. Plaintiffs have maintained an attorney client  
18 relationship with their attorneys and they are obligated to Mr. Ware to pay the balance of the fees  
19 he has advanced on their behalf. Plaintiffs have satisfied both requirements.

20  
21 With regard to claims that conversations with a non-client were unnecessary or occupied  
22 an inordinate amount of time, all conversations with Mr. Ware concerned issues in the case,  
23 were frequently as a result of one of the Plaintiffs contacting Mr. Ware who then contacted the  
24 undersigned. Mr. Ware is also a resident of Coyote Springs Ranch so he was in frequent contact  
25 with the Cundiffs regarding the status of the case and anticipated expenses. Telephone

1 conversations with Mr. Ware were necessary. They concerned information about the case,  
2 expenses for various required activities and were usually of short duration. Defendants'  
3 objection to Plaintiffs recovering fees as a result of conversations with Mr. Ware is without  
4 merit.

5 **B. Plaintiffs' billings are not "block billing"**

6  
7 Defendants have provided this Court with pages of dates which they contend Plaintiffs  
8 block billed. They did not duplicate the billing entries for the Court as Plaintiffs did; they simply  
9 state that the time on a given date was block billed and therefore should be denied. *In re*  
10 *Guardianship of Sleeth*, 226 Ariz. 171, 244 P.3d 1169 (App 2010) addressed the issue of block  
11 billing and disapproved of the practice in that case in which involved counsel's habitual  
12 recording of one half hour or one hour time entries. It is not block billing per se that is  
13 troublesome, it is block billing that does not contain sufficient detail to allow the court to  
14 determine if the time entered was reasonable. In *Sleeth*, the court remanded the case back to the  
15 trial court on the attorney's fees issue stating: "[B]ecause Mark and Ferris bear the burden to  
16 persuade the court that the requested fees are reasonable, on remand the superior court should  
17 consider whether each entry of block-billing provides sufficient detail to support an award for  
18 that entry."

19  
20 Although Plaintiffs do not consider their billing entries to be block billing entries, as  
21 described by the court in *Sleeth*, if this Court determines that some are, Plaintiffs assert that any  
22 such entries contain sufficient detail to support an award for that entry.

23  
24 **C. Upon Wilhelmssen's departure as Plaintiffs counsel, their new counsel**  
25 **promptly took substantive steps in this case that had not been taken**  
**before**

1 Contrary to Defendants statement that the undersigned spent nearly 17 hours before doing  
2 anything substantive in the case, within three days of the undersigned's initial meeting with Mr.  
3 Ware (5.6 hours billed) the undersigned was working on a new theory (class action) to provide a  
4 more manageable vehicle for continuing the litigation in view of Judge Mackey's joinder ruling.  
5 In any litigation there should be continuous analysis of the strategy for proceeding with the case.  
6 Such analysis requires reading and re-reading the file, the rulings, the discovery and previous  
7 attorney advice. 5.6 hours is hardly an inordinate amount of time to familiarize oneself with a  
8 case having a six year history, including visits to the Court of Appeals. Furthermore, had Mr.  
9 Wilhelmsen selected a new theory upon which he decided to proceed, he would have spent an  
10 equal amount of time trying to redirect the litigation. There was no double billing here. The  
11 undersigned took a new approach to the litigation after a brief analysis of the status of the case  
12 and proceeded to obtain a successful ruling on a motion which disposed of all issues in the case.  
13

14  
15 **D. Repetitive review of the Court of Appeals decision was necessary for**  
16 **correct analysis of the issues in the case, additional research affected by the**  
17 **decision and proper reference to it in the Motion for Summary Judgment and**  
18 **oral argument**

19 Defendants' argument concerning the amount of time spent reviewing the Court of  
20 Appeals decision is tortured. The decision was complex. The analysis was thorough and the  
21 course which the Court of Appeals charted for the parties was formidable. It took every bit of  
22 thirteen hours to integrate that decision into all aspects of the case from April of 2009 to April of  
23 2013. Defendants' criticism of certain entries is misplaced. The entry on July 7, 2009 was as  
24 follows:

25 Re-read Courier article on Assessor Tightening Belt on Agricultural  
Exemptions, compared with Court of Appeals ruling on Business

1 uses and reviewed Yavapai County Agriculture Guidelines to  
2 determine if defendant's status can be challenged

3 This is a perfect example of a new issue arising which required a diligent attorney to examine it,  
4 determine if the Court of Appeals decision referenced the agricultural issue in any significant  
5 way and analyze whether it could have an impact on the case. Even an attorney who had worked  
6 on the case for six years would have to review the decision again. For Defendants to claim that  
7 billing .4 hours on this task is unnecessary time because the undersigned had to look at the Court  
8 of Appeals decision is ridiculous. Equally ridiculous is Defendants' objection to the undersigned  
9 claiming fees incurred on May 10, 2010 for: "[E]mail from John Cundiff to Alfie re: Court of  
10 Appeals statements about Cox operation of a business and compared with Court of Appeals  
11 opinion." This took all of six minutes. Hopefully, Defendants' counsel didn't bill his clients for  
12 arguing this point.  
13

14 Defendants object to the undersigned claiming fees for:

15 Reviewed property list, caption changes, list of parties who are  
16 listed as clients of Adams but who do not reside in Phase One,  
17 reviewed all previous rulings by Judge Mackey and decision of  
18 Court of Appeals in preparation for today's scheduling conference

19 The undersigned billed 1.4 hours for these related tasks and Defendants are asking this  
20 Court to eliminate the time because part of it included a review of the Court of Appeals decision.  
21 The time entries are specific, with allocated time for separate unrelated tasks. They are  
22 reasonable. Defendants arguments are unreasonable.

23 Defendants' objection to the undersigned's time entry on June 27, 2012 is baffling. Once  
24 again, the objection is based on the fact that part of the task involved reviewing the Court of  
25 Appeals decision. It seems to be Defendants' position that once the undersigned initially

1 reviewed that decision in April of 2009, it would be unreasonable to ever do so again. Following  
2 Defendants' logic, if the undersigned chose to file a motion for summary judgment which  
3 contained arguments including a reference to the Court of Appeals decision, any time spent  
4 reviewing the decision to develop an argument would be time unreasonably spent. As it turned  
5 out, the undersigned did review the decision while preparing his Motion for Summary Judgment  
6 (imagine the gall it would take to bill time for reviewing a decision which had a direct bearing on  
7 the outcome of the case instead of just trying to remember what the decision said). This Court  
8 granted the motion which included substantial reference to the decision. Defendants may claim  
9 that this Court's ruling is unreasonable because the Court referred to the Court of Appeals  
10 decision; most would consider such a claim sheer folly.  
11

12 Defendants' last challenge to the undersigned's review of the Court of Appeals decision  
13 demonstrates their complete lack of reason. The entry they challenge is:

14 Reviewed Adams' Motion for Reconsideration of ruling on Conlin  
15 affidavit, Varilek's Response, our Motion for Summary Judgment,  
16 Adams' Motion to Strike and in limine, Judge Jones' ruling, Court  
of Appeals decision re: affidavit and prepared Joinder and Response

17 The undersigned billed 3.3 hours for all of these related tasks and Defendants are asking this  
18 Court to eliminate the time completely because the undersigned, once again, reviewed the  
19 forbidden decision as part of the related tasks. At worst, this argument is absurd; at best, it is  
20 unreasonable.  
21

22 **E. The duplicate billing statements issued from the Wilhelmsen firm  
23 were sent to all the clients**

24 Five clients retained the Wilhelmsen firm. Monthly billing statements were sent to all  
25 clients. The clients were not charged five times and the amount which Plaintiffs are claiming in

1 fees does not include amounts from the duplicate statements. The total of the time claimed in the  
2 fee application was derived from the Wilhelmsen firm's data base, not by the individual  
3 statements. The individual statements were provided to this Court and counsel to demonstrate  
4 the work performed and corresponding fee.

5  
6 **F. Plaintiffs accomplished the result they sought in this litigation so their**  
7 **fees should be awarded for time spent even on unsuccessful legal**  
8 **theories**

9 Defendants do not cite any case law in support of their arguments that this Court should  
10 not award fees for Plaintiffs' efforts to remove Judge Mackey, avoid the joinder of the absent  
11 owners, obtain a class action certification and the work related to a summary judgment which  
12 Judge Mackey denied regarding the issue of waiver. In *Schweiger v. China Doll Restaurant,*  
13 *Inc.*, 138 Ariz. 183, 673 P.2d 927 (App 1983) the Court discussed this issue. At first, the Court  
14 said that courts may deny attorneys' fees on those issues that are distinctly different claims of  
15 relief that are based on different facts and different legal theories, but clarified this by saying:

16 On the other hand, one claim for relief may involve related legal  
17 theories. "Much of counsel's time will be devoted generally to the  
18 litigation as a whole, making it difficult to divide the hours  
19 expended on a claim by claim basis." (citation omitted). Thus,  
20 where a party has accomplished the result sought in litigation, fees  
21 should be awarded for time spent even on unsuccessful legal  
22 theories.

23 *Id.* at 189, 673 P.2d at 933.

24 Plaintiffs' efforts to remove Judge Mackey, avoid joinder and certify the case as a class  
25 action were all strategies to make the case involving all of their claims less complicated to  
accomplish. Although those efforts were unsuccessful, Plaintiffs did accomplish the result they  
sought in this litigation – a determination that the Declaration is a valid and enforceable

1 document and the Defendants had to cease operating their business because it violated the  
2 Declaration. Although Plaintiffs were unsuccessful on the issue of waiver initially, after being  
3 commanded by the Court of Appeals to join all of the property owners they were successful.  
4 This was a related legal theory to the litigation as a whole; it was not a distinctly different claim  
5 for relief and under *Schweiger*, efforts related to the successful result should be rewarded.  
6

7  
8 **G. The time entries identified by Defendants as unrelated to this case are  
related to this case**

9  
10 Defendants challenge one time entry on June 22, 2009 because there is no reference in the  
11 entry to the case. Most attorneys do not inject detailed work product into their billing entries.  
12 On June 22, the undersigned received a voice mail from Alfie Ware regarding a newspaper  
13 article. The article involved an approach the County Assessor was taking toward bogus  
14 agricultural exemptions. The Coxes had an agricultural exemption for what the Court of Appeals  
15 (in its over-referred to decision) had determined was a business and hence a violation of the  
16 Declaration. This is explained by the very next billing entry. Defendants object to the entire  
17 billing statement from March 3, 2009 for the same reason – “absolutely no reference on any kind  
18 to indicate that the work described pertained to this case.” A review of the statement reveals the  
19 relationship of the entries to the case. Horses with Heart was an organization that wanted the  
20 County to issue it a business permit for use in Coyote Springs. Operating such a business would  
21 be a violation of the Declaration. Plaintiffs were contacted by Horses’ attorney to see if they  
22 would object to the application. Knowing that Defendants’ position was that there were  
23 allegedly so many businesses operating in Coyote Springs that it had caused the Declaration to  
24 be abandoned, discussions with their attorney were necessary and attendance at the planning and  
25

1 zoning hearing was necessary. The billing statement is self explanatory and completely related  
2 to the case. A completely unrelated billing entry would be: "traveled to San Diego for  
3 vacation". Defendants are taking the position that multitudes of billing entries are defective  
4 because they do not contain a full explanation of the work that was done. The entries are  
5 sufficiently detailed in view of the nature of the litigation and the knowledge which the litigants,  
6 their attorneys and this Court have about the issues in this case.  
7

8  
9 **H. Plaintiffs' fees related to their efforts to join property owners are litigation  
10 fees which Plaintiffs had no choice but to incur; they were ordered by the  
11 Court to do so or the case would have been dismissed**

12 All of the work related to joinder was ordered by this Court. Plaintiffs were directed by  
13 Judge Mackey to take the steps necessary to join the owners and they did. Defendants may  
14 complain about the way it was done, but it was done.  
15

16 **I. Defendants conclude that it will be an undue hardship for them to have to  
17 pay Plaintiffs' fees but do not say why**

18 Although Defendants assert this argument, they provide no details of the claimed  
19 hardship; they simply assert they are not "deep pockets". The argument should be disregarded.  
20

21 **J. Supplement to defendant Robert D. Veres'  
22 overview/background**

23 Defendant Veres provided this Court with a five (5) page overview and background  
24 which included selected information from various sources in support of his claim that he should  
25 not be assessed with any attorneys' fees or costs. Veres omitted from that overview that he did  
not distinguish himself from the Cox defendants when he objected to Plaintiffs' Motion for

1 Summary Judgment. In fact he joined the Cox defendants and asserted arguments stating  
2 “[C]ontrary to Plaintiffs’ position, the College Book Centers opinion operates in favor of  
3 *Defendants*, not Plaintiffs”; “Defendants, on the other hand, have presented tangible, admissible  
4 evidence . . .”. It seems clear that Defendant Veres felt certain enough about being entitled to  
5 attorneys’ fees when he finished his objection to Plaintiffs’ summary judgment motion by  
6 stating: “[S]ummary judgment in favor of Plaintiffs should be denied. **Further, Defendant**  
7 **Veres requests his reasonable attorneys’ fees pursuant to A.R.S. §§ 12-341.01, 12-1840, and**  
8 **any other applicable rule or law**” (emphasis added).  
9

10 Veres entered this lawsuit on two fronts. James Varilek sued him based on the  
11 underlying CC&Rs because he subdivided his property into smaller than nine acre parcels. He  
12 was then ordered joined as a property owner as a result of Judge Mackey’s order in 2010. The  
13 *Varilek v. Veres* was consolidated with the present case.

14 In paragraph 21 of his Answer to Plaintiffs’ First Amended Complaint, Veres asserted as  
15 an affirmative defense that he was entitled to attorneys’ fees and costs pursuant to “Contract,  
16 A.R.S. §§12-341, 12-341.01, 12-1103, Ariz. R. Civ. P. 65, and /or any other applicable rule or  
17 law”. In paragraph 20 of his Answer, Veres asserted as an affirmative defense that “the  
18 Declaration as a whole are [sic] no longer enforceable because of abandonment”. In paragraph  
19 21 of his Answer, Veres asserted as an affirmative defense that “any and all portions of the  
20 Declaration at issue in this case are no longer enforceable because of abandonment”. At the  
21 conclusion of his Answer, Veres requested an award of his attorneys’ fees and costs incurred in  
22 the defense of Plaintiffs’ First Amended Complaint.  
23

24 From the time of his Answer to the present, Veres has joined in every significant  
25 document and more filed by Defendants Cox:

- 1 • Joinder in Defendants Cox Response and Objection to Request for Reassignment
- 2 (April 26, 2011)
- 3 • Joinder in Defendants Cox, et al.'s Pretrial Conference Memorandum (December
- 4 28, 2011)
- 5 • Joinder in all of the Cox Disclosure Statements (June 8, 2012)
- 6 • Joinder in Cox Notice of Filing Witness List (August 17, 2012)
- 7 • Joinder in Cox Motion in Limine re: Robert Conlin (December 24, 2012)
- 8 • Joinder in Cox Motion in Limine re: Robert Conlin (December 24, 2012)
- 9 • Joinder in Cox Statement of Facts in Support of Response to Plaintiffs' Motion for
- 10 Summary Judgment (February 1, 2013)
- 11 • Joinder in Cox Response to Plaintiffs' Motion for Summary Judgment (February
- 12 1, 2013).

13 **K. Arguments of law related to Veres separate objection**

14 **1. Plaintiffs are the successful parties; Defendants are not**

15 Although Veres claims that the Court can readily conclude that attorneys' fees cannot be  
16 imputed to Veres because he has not violated the Declaration, he has. He subdivided his lot on  
17 the theory that the restrictions had been abandoned. He asserted abandonment as an affirmative  
18 defense in his Answer and in his opposition to Plaintiffs' Motion for Summary Judgment. Far  
19 from the "innocent bystander" he claims to be as a result of being joined in this lawsuit, he  
20 joined with the Cox Defendants on every significant document filed with this Court and asserted  
21 that he was entitled to an award of his attorneys' fees should he be successful in this case. He  
22 was not successful on the abandonment defense and cannot claim any entitlement to fees. Yet he  
23 can somehow assert that Plaintiffs who are the successful parties are not entitled to fees? Odd.  
24

25 Plaintiffs are the successful parties because they have obtained a ruling in their favor

1 based on a Motion for Summary Judgment filed after years of litigation and appeals which  
2 started with the allegations in their First Amended Complaint.

3  
4 **2. Plaintiffs agree with Defendants that an award of fees under A.R.S.  
5 §12- 341.01 is discretionary**

6 There was no provision in the Declaration for the award of attorneys' fees to a successful  
7 litigant. Absent such a provision, Plaintiffs agree with Veres that this Court has discretion under  
8 A.R.S. §12-341.01 to award fees. The first Arizona case to provide some guidance for superior  
9 court judges regarding whether or not to award attorneys' fees was in *Associated Indemnity*  
10 *Corporation v. Warner*, 143 Ariz. 585, 694 P.2d 1199 (App. 1983). In that case, the plaintiff  
11 successfully prosecuted a declaratory judgment action in the trial court and applied for an award  
12 of its attorney's fees. Without explaining why, the trial court denied the request.

13  
14 On appeal, *Associated* noted to the court that there did not appear to be a uniform practice  
15 among superior court judges concerning the granting of attorneys' fees; it asked the Court of  
16 Appeals to establish some appropriate guidelines, which the Court did. *Id.* at 588, 694 P.2d at  
17 1202. First however, the Court of Appeals stated that "the clear intent of the statute is that under  
18 ordinary circumstances the successful party in an action which falls under the statute is entitled to  
19 recover his reasonable attorney's fees." Having concluded that there was some sort of  
20 presumption that attorney's fees should be granted to the successful party, the Court then set  
21 forth the issues it thought the trial court should consider in order to rebut that presumption,  
22 stating, "[A]mong the circumstances which might be considered by the trial judge in exercising  
23 his discretion to **reduce or deny** attorneys' fees are the following:

- 24  
25 1. The merits of the claim or defense presented by the unsuccessful party.

- 1           2. The litigation could have been avoided or settled and the successful party's efforts
- 2           were completely superfluous in achieving the result.
- 3           3. Assessing fees against the unsuccessful party would cause an extreme hardship.
- 4           4. The successful party did not prevail with respect to all of the relief sought.

5  
6           *Id.* at 589, 694 P.2d at 1203. The Court of Appeals could find nothing in the trial court  
7 record which would support a complete denial of fees so it reversed and remanded the case to the  
8 trial court for the purpose of considering Associated's application for fees and suggested that the  
9 trial court grant those fees unless it decided, in view of the factors provided, to reduce or deny  
10 them.  
11

12           The Warners petitioned to the Arizona Supreme Court for a review of the Court of  
13 Appeals decision. The Supreme Court addressed the attorney's fees issue in a subtle but  
14 significantly different perspective. Rather than agreeing with the Court of Appeals that the four  
15 considerations were useful to determine whether to reduce or deny a fee request, the Supreme  
16 Court stated "the Court of Appeals listed several factors which we agree are useful to assist the  
17 trial judge **in determining whether attorney's fees should be granted under the statute.**"  
18 *Associated Indemnity Corporation v. Warner*, 143 Ariz. 567,570, 694 P.2d 1184 (1985). The  
19 Supreme Court then stated: "[I]n addition to these factors, we would include: the novelty of the  
20 legal question presented, and whether such claim or defense had previously been adjudicated in  
21 this jurisdiction. We also believe that the trial court should consider whether the award in any  
22 particular case would discourage other parties with tenable claims or defenses from litigating or  
23 defending legitimate contract issues for fear of incurring liability for substantial amounts of  
24 attorney's fees." *Id.*  
25

1           Instead of presuming the entitlement to fees and figuring out a way to reduce or deny  
2 them, the Supreme Court rejected the presumption and added to the list of factors to consider  
3 when granting the fee requests. Cases subsequent to *Warner* have applied those six factors and  
4 directed the Court of Appeals to apply the same factors at the appellate level as well.

5           In *Wagenseller v. Scottsdale Memorial Hosp.*, 147 Ariz. 370, 710 P.2d 1025 (1985)  
6 months after the *Warner* decision, the Supreme Court reiterated the six factors identified in  
7 *Warner* to assist the trial court in determining whether attorney's fees should be granted under  
8 the statute and applied the same reasoning to the appellate courts.  
9

10           We believe appellate courts should weigh the same factors in  
11 deciding to award fees. *Wagenseller's* claim presented this court  
12 with a novel legal issue. Resolution could not have been achieved  
13 without *Wagenseller's* pursuing the matter through the appeal  
14 process. Her legal position was meritorious and her efforts resulted  
15 in a change of the law that enables her to pursue her rights either  
16 by adjudication or settlement. An award of attorney's fees under  
the circumstances will encourage parties to seek to have their rights  
interpreted under the proper law. To deny fees to the successful  
appellant under these circumstances could well undermine the  
statute by discouraging meritorious litigants from establishing their  
"just claim."

17 *Id.* at 394, 710 P.2d at 1049.

18           Likewise in the present case, although a breach of contract case is not novel in itself, this  
19 case became quite novel as a result of the issues raised before the Court initially granted the  
20 Defendants' Motion for Summary Judgment, in particular, the issues of abandonment and  
21 waiver along with the issues of indispensable parties and joinder. These issues became the  
22 issues common to all defendants, not just the Cox defendants. This Court initially decided that  
23 the Defendants' tree farm was not a business and therefore not in violation of the Declaration.  
24 The Court of Appeals disagreed with that decision and determined that the tree farm was a  
25 business and did violate the Declaration. It did not remand the case for a factual determination

1 of such a violation. As in *Wagenseller*, resolution in the present case could not have been  
2 achieved without Plaintiffs pursuing the matter through the appeal process.

3 As in *Wagenseller*, Plaintiffs' position was meritorious and their efforts resulted in all of  
4 the owners in Coyote Springs being able to retain the enforceability of the Declaration upon  
5 which all of their property rights depended. Contrary to Veres' position that Plaintiffs did not  
6 prevail on any claims against him, he asserted the linchpin affirmative defense in this case -  
7 abandonment. Plaintiffs prevailed against Veres and all other Defendants who joined in as  
8 defendants or who asserted the abandonment defense. As in *Wagenseller*, an award of  
9 attorneys' fees under these circumstances will encourage parties to seek to have their rights  
10 interpreted under the proper law. As in *Wagenseller*, to deny fees to the Plaintiffs who were the  
11 successful party on appeal and in this Court could well undermine the statute by discouraging  
12 meritorious litigants from establish their just claim.

14 **3. Plaintiffs agreed to repay Alfie Ware if he assisted them by financing the  
15 litigation**

16 See argument above at II. A.

17 **4. Plaintiffs are the successful parties and entitled to their taxable costs**

18 Veres asserted the affirmative defenses of abandonment and waiver, joined in the  
19 Defendants' disclosure statements (including all of the legal bases for any claims and defenses),  
20 filed objections to Plaintiffs' Motion for Summary Judgment and requested an award of his fees  
21 and costs. Plaintiffs obtained a ruling against all Defendants which disposed of the entire case  
22 and is entitled to taxable costs from the unsuccessful parties.

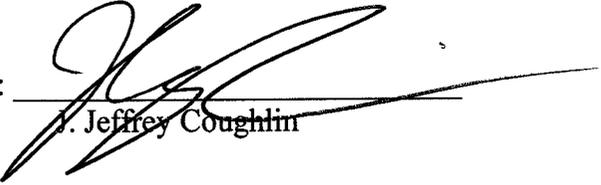
24 **III. CONCLUSION**

25 Plaintiffs are entitled to an award of some or all of their reasonable attorney's fees  
incurred in this case. They have paid or agreed to pay undersigned counsels attorney's fees

1 for all of the attorneys who helped achieve the final result in this case. Undersigned counsel  
2 and staff has expended 538.90 hours of work for a total of \$93,944.50 in fees, and the firm  
3 of Favour and Wilhelmsen PLLC has expended 1,512.50 hours of work for a total of  
4 \$258,986.52 in fees for that firm's initial representation of the Plaintiffs in this case.

5  
6 DATED this 28<sup>th</sup> day of August, 2013.

7 **J. JEFFREY COUGHLIN PLLC**

8  
9 By:   
10 J. Jeffrey Coughlin

11 COPY of the foregoing  
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13 August, 2013 to:

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20 First Amended Complaint by Joined Property Owner Defendants  
21 Dated September 22, 2010

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25 9650 E. Spurr Lane  
Prescott Valley, AZ 86315

1 William and Shaunla Heckethorn  
9715 E. Far Away Place  
2 Prescott Valley, AZ 86315

3 Leo and Marilyn Murphy  
9366 E. Turtlerock Road  
4 Prescott Valley, AZ 86315

5 James and Leslie Richie  
6 9800 E. Plum Creek Way  
Prescott Valley, AZ 86315

7 Rhonda Folsom  
8 9305 N. Coyote Strpings Rd.  
9 Prescott Valley, Arizona 86315

10 Kenneth Paloutzian  
8200 Long Mesa Drive  
11 Prescott Valley, AZ 86315

12 Bonnie Rosson  
8950 E. Plum Creek Way  
13 Prescott Valley, AZ 86315

14 Robert Lee and Patti Ann Stack/Robert Lee and Patti Ann Stack Trust  
10375 Lawrence Lane  
15 Prescott Valley, AZ 86315

16 John and Dusti Audsley  
10500 N. Orion Way  
17 Prescott Valley, AZ 86315

18 Dana E. and Sherrilyn G. Tapp  
19 8595 E. Easy Street  
Prescott Valley, AZ 86315

20 Richard and Beverly Strissel  
21 9350 E. Slash Arrow Drive  
22 Prescott Valley, AZ 86314

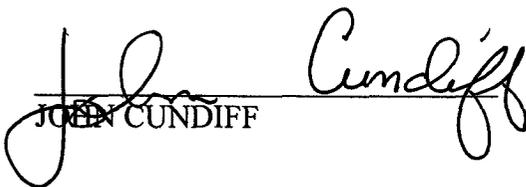
23  
24 By: C. Padilla  
25

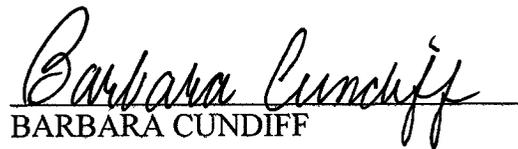
Affidavit of  
John Cundiff and Barbara Cundiff

STATE OF ARIZONA        )  
  )ss.  
County of YAVAPAI        )

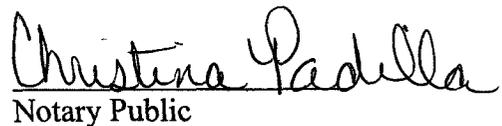
John Cundiff and Barbara Cundiff, being first sworn, state as follows:

1. We are over the age of eighteen and believe in the obligation of an oath.
2. We are property owners in Coyote Springs Ranch, Phase I.
3. In approximately May of 2003, we, along with the other Plaintiffs in the Cundiff v. Cox litigation, agreed to repay Alfie Ware for all of the attorney's fees and costs that he would pay for the litigation.
4. In fact, we have repaid Mr. Ware some of what he paid and were planning to make further payments when he told us not to pay him any more until the case was over.

  
JOHN CUNDIFF

  
BARBARA CUNDIFF

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of August, 2013, by  
John Cundiff and Barbara Cundiff

  
Notary Public

My Commission Expires:

