

SUPERIOR COURT
COUNTY OF ARIZONA
2010 SEP -8 PM 3:38
JEANNE HICKS, CLERK
BY: B. Chamberlain

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9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
10 IN AND FOR THE COUNTY OF YAVAPAI

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

17 Plaintiffs,

18 vs.

19 DONALD COX and CATHERINE COX,
20 husband and wife,

21 Defendants.

CASE NO. P1300CV20030399
**PLAINTIFFS' OBJECTION TO
WILLIAM H. JENSEN'S
REQUEST FOR SUMMARY
JUDGMENT AGAINST
PLAINTIFFS**

22 Plaintiffs, by and through their attorney undersigned, hereby respond to a portion of
23 William H. Jensen's **Answer of Unnamed and Undetermined Party: William H. Jensen and**
24 **Request for Summary Judgment Request for Summary Judgment Against Plaintiffs** as set
25 forth in the accompanying Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Although Mr. Jensen admits, denies and alleges various items in his pleading, in his
prayer for relief (paragraph H) he states: "Jensen hereby requests summary judgement with
prejudice against Plaintiffs as to APN 103-01-083D because, as to Jensen and APN 103-01-

1 083D, the Plaintiffs have failed to state a cause of action, that is, make any specific allegations
2 against said parcel or person to which it would be possible to respond or defend against”.

3 Mr. Jensen has not complied with the requirements of Rule 56(c) of the Arizona Rules of
4 Civil Procedure because he has not set forth a memorandum of law and he has not set forth
5 separately from a memorandum of law, the specific facts relied upon in support of the motion.
6 By proceeding in this manner, Mr. Jensen has deprived Plaintiffs of the ability to specify those
7 paragraphs in Mr. Jensen’s statement of facts which are disputed so as to set forth those facts
8 which establish a genuine issue of material fact or otherwise preclude summary judgment in
9 favor of the moving party. Mr. Jensen’s request appears in his prayer for relief and Plaintiffs
10 urge this Court to only consider it as such.

11 Mr. Jensen’s request for summary judgment must also fail because even he identifies
12 himself as an “Unnamed and undetermined – as a plaintiff or defendant – party”. If he is
13 determined to be a plaintiff in this case, he could not request summary judgment against
14 Plaintiffs. One of his averments claims that the Declaration of Restrictions is vague and
15 ambiguous while he claims that other restrictions are moot because “there are other laws and
16 remedies in effect that cover” them. At the very least, Mr. Jensen’s request for summary
17 judgment is unclear and incapable of being summarily adjudicated by this Court

18 This Court ordered Plaintiffs to join all property owners in Coyote Springs Ranch in this
19 lawsuit. If this Court grants Mr. Jensen’s request for summary judgment, it will be defeating the
20 purpose of joining the owners to determine whether or not the Declaration of Restrictions have
21 been abandoned. If this Court grants Mr. Jensen’s request and later determines that the
22 Declaration of Restrictions have been abandoned, Mr. Jensen, a non-party at the time of such a
23 determination, would be entitled to file a lawsuit to enforce the restrictions. The doctrine of *res*
24 *judicata* would not prevent him from doing so. This also would defeat the purpose of joining the
25 property owners.

1 For the above reasons, Plaintiffs request that the Court consider Mr. Jensen's Request for
2 Summary Judgment only as a prayer for relief and either deny it or refuse to consider it for
3 summary adjudication purposes.

4
5 DATED this 8th day of September, 2010

6 **J. JEFFREY COUGHLIN PLLC**

7
8 By: 

9 J. Jeffrey Coughlin

10 COPY of the foregoing
11 mailed this 8th day of
12 September, 2010 to:

13 William "Bill" Jensen
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16 Defendant Pro Per

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By: 