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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  
MOTION FOR PERMISSION TO  
SERVE REMAINING  
PROPERTY OWNERS BY  
PUBLICATION**

19 Plaintiffs filed their Motion for Permission to Serve Remaining Property Owners by  
20 Publication as allowed for in this Court's Under Advisement Ruling filed May 7, 2010. In that  
21 ruling, this Court stated:

**IT IS ORDERED** the Plaintiffs may accomplish service in the following manner:

- 22 1. The Plaintiffs first may attempt to obtain an Acceptance of Service from all property owners.
- 23 2. For those property owners who will not sign an Acceptance of Service, the Court authorizes alternative service by mail as provided in Rule 4.2(c), *Ariz.R.Civ.P.* whether the property owner(s) are located within Arizona or outside the State.
- 24 3. For those property owners who will not sign a return receipt, the Plaintiffs shall make reasonable attempts to obtain personal service.
- 25 4. For those property owners who are not served in the ways set forth above, the Court will consider Plaintiffs' request for other forms of alternative service.

1 Plaintiffs have completed the first three steps as outlined by this Court. As provided in  
2 the fourth step, Plaintiffs are requesting permission to serve the remaining seventeen (17)  
3 property owners by an alternative method of service (publication). The process of serving Two  
4 Hundred Sixty-nine property owners has been tedious and complicated. Even after proceeding to  
5 step two regarding service by certified mail, Plaintiffs received acceptances under the first  
6 method. Some owners were informed that they should refuse to accept service, thus delaying the  
7 process and forcing Plaintiffs to incur more expense and time to effect service. Other properties  
8 have sold and the new owners had to be served.

9 Defendants claim that Plaintiffs' methods of service have been ineffective. To the  
10 contrary, all but seventeen owners have been served. Service has been attempted on many of  
11 these, but was unable to be accomplished for reasons such as the property being gated or the  
12 owners being impossible to locate. Although Defendants state that the Plaintiffs were provided  
13 120 days to serve the property owners, this misstates this Court's order. In its Under Advisement  
14 Ruling filed May 7, 2010, this Court stated:

15 **IT IS ORDERED that in the event the Plaintiffs do not take substantial steps to join**  
16 **all necessary and indispensable parties within the next one hundred and twenty (120) days,**  
17 **this matter will be dismissed.**

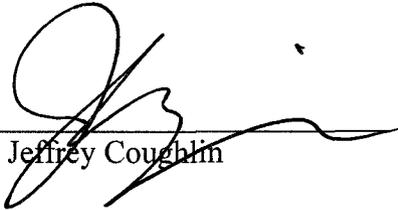
18 The Order requires Plaintiffs to “**take substantial steps to join**”, not serve the owners.  
19 Although Plaintiffs have previously requested that this Court determine they have taken such  
20 substantial steps by filing over eighty (80) Acceptances of Service, this Court declined to make  
21 such a finding and in its August 27, 2010 Ruling Re: Requests, instructed Plaintiffs to continue  
22 trying to serve the owners by alternative means. Since that ruling, Plaintiffs have accomplished  
23 service on an additional One Hundred Seventy Two (172) owners by certified mail and by  
24 process server.  
25

1 Plaintiffs have devoted considerable time and expense to accomplish this Court's  
2 directive and will initiate service by publication immediately as provided in ARCP, Rules 4.1 (n)  
3 and 4.2 (f), if authorized by this Court.

4 For all of the above reasons, Plaintiffs request permission to serve the remaining owners  
5 by publication.

6  
7 DATED this 17<sup>th</sup> day of December, 2010

8 **J. JEFFREY COUGHLIN PLLC**

9  
10 By:   
11 J. Jeffrey Coughlin

12 COPY of the foregoing  
13 mailed this 17 day of  
14 December 2010 to:

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