

2004 SEP 29 PM 3:29 ✓

JEANNE HICKS, CLERK

BY: Marguerite Kirk

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3 Prescott, AZ 86302
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6 DAVID K. WILHELMSSEN #007112
7 MARGUERITE KIRK #018054
8 Attorneys for Plaintiffs

9 **IN THE SUPERIOR COURT OF ARIZONA**

10 **COUNTY OF YAVAPAI**

11 **JOHN B. CUNDIFF and BARBARA C. CUNDIFF**, husband and wife; **BECKY NASH**, a married woman dealing with her separate property; **KENNETH PAGE and KATHRYN PAGE**, as Trustee of the Kenneth Page and Kathryn Page Trust,

12 Plaintiffs,

13 vs.

14 **DONALD COX and CATHERINE COX**,
15 husband and wife,

16 Defendants.

No. CV 2003-0399 ✓

Division 3 ↓

17 **NOTICE OF ERRATA**
18 **RE: PLAINTIFFS' MOTION TO COMPEL**

19 Notice is hereby given to the Court and the parties in the above-entitled action that
20 Exhibits 1, 2, 3, 4, 5, 6, 7 and 8 shall be attached to the Plaintiffs' Motion to Compel filed with
21 the Court on September 28, 2004. The attached exhibits were inadvertently omitted from the
22 Plaintiffs' Motion to Compel.

23 DATED this 29th day of September, 2004.

24 FAVOUR MOORE & WILHELMSSEN, P.A.

25 By Marguerite Kirk
26 DAVID K. WILHELMSSEN
MARGUERITE KIRK
P.O. Box 1391
Prescott, AZ 86302-1391
Attorneys for Plaintiffs

DIV. 1
OCT -1 2004
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1 Original of the foregoing with exhibits
filed this 29th day of September, 2004 with:

2 Clerk, Superior Court of Arizona
3 Yavapai County
4 Prescott, Arizona

5 A copy of the forgoing Notice hand-
6 delivered this 29th day of September, 2004,
to:

7 Honorable David L. Mackey
8 Division One
9 Superior Court of Arizona
10 Yavapai County
Prescott, Arizona

11 and, a copy of the foregoing with exhibits
12 hand-delivered this 29th day of September,
2004, to:

13 Mark Drutz
14 Jeffrey Adams
15 MUSGROVE, DRUTZ & KACK, P.C.
16 1135 Iron Springs Road
Prescott, Arizona 86305
Attorneys for Defendants

17 By: Marquerite Kirk
18 Marquerite Kirk

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20
21
22
23
24
25
26

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

CATHERINE COX

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

Plaintiffs,)

vs.)

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

Case No. CV 2003-0399

PURSUANT TO NOTICE, the deposition of CATHERINE COX, called for examination by Counsel for the Plaintiffs, was taken at the offices of FAVOUR, MOORE & WILHELMSSEN, 1580 Plaza West Drive, Prescott, Arizona, beginning at the approximate hour of 9:58 a.m., on Tuesday, June 22, 2004, before Ashlee Mangum, Certified Court Reporter #50612, a Registered Professional Reporter, within and for the State of Arizona.

LOTT REPORTING, INC.

316 North Alarcon Street

Prescott, Arizona 86301

928.776.1169

1 Q. How many are at the Viewpoint Drive location?

2 A. About nineteen.

3 Q. And the rest are at the Coyote Springs location?

4 A. Yes.

5 Q. How long has that retail location on Highway 69
6 been in operation?

7 A. Since 1993.

8 Q. Are all three of those locations operated under
9 the name Prescott Valley Growers?

10 A. No.

11 Q. Okay. The retail location on Highway 69, what is
12 the name of that business?

13 A. Prescott Valley Nursery.

14 Q. On Viewpoint Drive?

15 A. Prescott Valley Growers.

16 Q. And Coyote Springs?

17 A. I don't know that we have called that property by
18 any name.

19 Q. Do you have a sign on the Coyote Springs
20 property?

21 A. No. We do not.

22 Q. The Coyote Springs property is used as a nursery;
23 correct?

24 A. No. It is not.

25 Q. What is it used for, ma'am?

1 A. It is a growing yard for our excess inventory.

2 Q. The partnership that you have with your husband
3 and your two sons, what does that relate to? Is it all
4 three of those business locations?

5 MR. ADAMS: Object to the form of the
6 question.

7 Q. (Continued by MS. KIRK:) You can go ahead and
8 answer.

9 A. Would you mind repeating the question?

10 Q. Sure. You testify that you have a partnership;
11 you, your husband and your two sons? Correct?

12 A. Yes.

13 Q. And that partnership is a forty-five, forty-five,
14 ten split; correct?

15 A. Yes.

16 Q. Now the partnership concerns what business?

17 A. It concerns all of the properties.

18 Q. Okay. And when you say all of the properties,
19 what specifically are you referring to?

20 A. The three properties that we discussed.

21 Q. Okay. So the Coyote Springs property; correct?

22 A. Yes, but the business is not on that property.

23 Q. Okay. I'm just trying to clarify.

24 A. Okay.

25 Q. The three properties you say are part of the

1 assets of the partnership are the Coyote Springs
2 property; correct?

3 A. Yes.

4 Q. The property on Highway 69; correct?

5 A. Yes.

6 Q. And the property on Viewpoint Drive?

7 A. Yes.

8 Q. It doesn't cover the property in Apache Junction?

9 A. No. It does not.

10 Q. Does the partnership assets also include the
11 business on Viewpoint Drive?

12 A. Yes, it does.

13 Q. Does it also include the business, the retail
14 business on Highway 69?

15 A. Yes, it does.

16 Q. Does it also include any business on the Coyote
17 Springs property?

18 MR. ADAMS: Object to the form of the
19 question.

20 Q. (Continued by MS. KIRK:) Is there a business in
21 operation on the Coyote Springs property?

22 A. There is not.

23 Q. Okay. You've testified that the Coyote Springs
24 property was used as a growing yard for excess
25 inventory; correct?

1 A. Yes, I did.

2 Q. By excess inventory, what are you referring to?

3 A. Excess meaning property that we don't have room
4 for on the other two properties.

5 Q. And what does that inventory consist of, if you
6 can break it down for me?

7 A. At the present time, it is fifteen-gallon-size
8 trees and twenty-four inch box trees and thirty-six inch
9 box trees.

10 Q. Anything else?

11 A. No.

12 Q. And you said that is presently what is on the
13 property?

14 A. Yes.

15 Q. In prior years, what else has been on the
16 property?

17 A. The same thing.

18 Q. Okay. So essentially the property in Coyote
19 Springs has been the home for excess trees of various
20 sizes; is that correct?

21 MR. ADAMS: Object to the form of the
22 question. You can answer.

23 THE WITNESS: Yes.

24 Q. (Continued by MS. KIRK:) Any shrubs on the
25 Coyote Springs property?

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

CATHERINE COX

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

Plaintiffs,)

vs.)

Case No. CV 2003-0399

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

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316 North Alarcon Street

Prescott, Arizona 86301

928.776.1169

1 A. It is a growing yard for our excess inventory.

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3 and your two sons, what does that relate to? Is it all
4 three of those business locations?

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19 what specifically are you referring to?

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1 assets of the partnership are the Coyote Springs
2 property; correct?

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SUPERIOR COURT
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DEPOSITION OF:

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Prescott, Arizona 86301

928.776.1169

1 Q. On the property that you own there?

2 A. Yes.

3 Q. What type of business entity is Prescott Valley
4 Growers?

5 A. It is a partnership.

6 Q. Okay. Is there a written partnership agreement?

7 A. No. There is not.

8 Q. Just a verbal agreement between you, your husband
9 and your two sons?

10 A. It is an undocumented agreement.

11 Q. Meaning it is oral?

12 A. Yes.

13 Q. Okay. What is -- What are the terms of that
14 agreement? Let me break it down for you. How much do
15 you own in the business?

16 A. Myself?

17 Q. Yes.

18 A. Forty-five percent.

19 Q. How much does your husband own?

20 A. Forty-five percent.

21 Q. How much does your son Alan own?

22 A. Five percent.

23 Q. And Jimmy, the other five?

24 A. Yes.

25 Q. Do you share in the profits and losses on that

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

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ELIZABETH NASH, a married woman)
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LOTT REPORTING, INC.

316 North Alarcon Street

Prescott, Arizona 86301

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1 basis, that percentage split?

2 A. Yes, we do.

3 Q. Is there a manager, a managing partner?

4 A. No.

5 Q. Who makes the day-to-day decisions concerning the
6 operation of Prescott Valley Growers?

7 A. We all do.

8 Q. Okay. Anybody or any one of you or your partners
9 in charge of hiring or firing of employees?

10 A. No.

11 Q. Okay. How many employees do you have?

12 A. About thirty.

13 Q. Is that at both locations?

14 A. That is at three different locations.

15 Q. Those three, just so we are clear, those three
16 locations are the property in Coyote Springs; correct?

17 A. Yes.

18 Q. The property on North Viewpoint Drive?

19 A. Yes.

20 Q. And the third property is?

21 A. It is our retail nursery at 6195 East Highway 69,
22 in Prescott Valley.

23 Q. Of the approximate thirty employees that you
24 have, how many are at the retail location?

25 A. About eight.

1 Q. How many are at the Viewpoint Drive location?

2 A. About nineteen.

3 Q. And the rest are at the Coyote Springs location?

4 A. Yes.

5 Q. How long has that retail location on Highway 69
6 been in operation?

7 A. Since 1993.

8 Q. Are all three of those locations operated under
9 the name Prescott Valley Growers?

10 A. No.

11 Q. Okay. The retail location on Highway 69, what is
12 the name of that business?

13 A. Prescott Valley Nursery.

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15 A. Prescott Valley Growers.

16 Q. And Coyote Springs?

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18 any name.

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20 property?

21 A. No. We do not.

22 Q. The Coyote Springs property is used as a nursery;
23 correct?

24 A. No. It is not.

25 Q. What is it used for, ma'am?

1 FAVOUR, MOORE & WILHELMSSEN, P.A.
Post Office Box 1391
2 Prescott, AZ 86302-1391
928/445-2444
3 Fax: 928/7710450
David K. Wilhelmsen, 007112
4 Marguerite A. Kirk, 018054

5 Attorneys for Plaintiffs

6 **IN THE SUPERIOR COURT OF ARIZONA**

7 **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,**)

11 Plaintiffs,

12 vs.

13 **DONALD COX** and **CATHERINE COX,**)
14 **husband and wife,**)

15 Defendants.)

No. CV 2003-0399

Division 3

**PLAINTIFFS' REQUEST FOR
PRODUCTION OF DOCUMENTS
AND THINGS**

16
17 **TO: Defendants Donald Cox and Catherine Cox, and their attorney:**

18 Jeffrey Adams
19 MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
20 Prescott, Arizona 86302

21 Pursuant to Ariz.R.Civ.P. 34(a) you are requested to furnish for inspection and copying within
22 forty (40) days of the date hereof, in the offices of FAVOUR, MOORE & WILHELMSSEN, P.A., 1580
23 Plaza West Drive, Prescott, Arizona, the following described documents.

24
25
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1 **INSTRUCTIONS AND DEFINITIONS**

- 2 A. In providing the documents described below, you are requested to furnish all
3 documents known or available to you, regardless of whether these documents are
4 possessed by you or by your attorneys, agents, investigators or other representatives.
- 5 B. If any of these documents cannot be produced in full, produce to the extent possible,
6 specifying and stating your reasons for your inability to produce the remainder and
7 stating whatever information, knowledge or belief you have concerning the substance
8 of the contents of such unproduced documents.
- 9 C. This request is intended to be continuing, requiring you to produce whatever
10 documents responsive to this request you become aware of or subsequently obtain.
- 11 D. As used herein, the term "document" means every writing and record of every type and
12 description in the possession, custody or control of the plaintiff, including, but not
13 limited to, correspondence, memoranda, handwritten notes, computer printouts, tapes
14 and records of all types, minutes of Director's meetings, studies, books, pamphlets,
15 schedules, pictures and voice recordings and every other device or medium on which
16 or through which information of any type is transmitted, recorded or preserved. The
17 term "document" also means a copy where the original is not in the possession or
18 control of the defendants and every copy of a document where such copy is not an
19 identical duplicate of the original.
- 20 E. "You" or "your" as used herein refer to the Defendants or any agents or representatives
21 thereof.

22 **DOCUMENTS TO BE PRODUCED**

- 23 1. A copy of the title insurance policy issued to you for the property located at 7325 North
24 Coyote Springs Road, Prescott Valley, Arizona (hereinafter referred to as the "Subject
25 Property").
- 26 2. Copies of all estimates, bills, receipts for payment, construction applications, construction
permits issued, approvals requested and/or received by any local, state or federal government
agency (including but not limited to Yavapai County Planning and Zoning Commission) and
the like, pertaining to any and all improvements, structures, or developments, of any kind or
type whatsoever, made by you on the Subject Property from 1998 to present.

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- 3. Copies of Defendants' income tax returns, including all schedules, from 1998 to present.
- 4. Copies of all employee records that evidence the employee's job title, job position, hours of work, and location of work, of any type or nature and however maintained, for your businesses Prescott Valley Growers and Prescott Valley Nursery, and for the Subject Property, from 2000 to present.
- 5. Copies of any and all applications for, and/or business licenses issued by, any local, state or federal government agency for your businesses located at:
 - (A) 6195 E. Highway 69, Prescott Valley, Arizona
 - (B) 6750 North Robert Road, Prescott Valley, Arizona;as well as for,
 - (C) 7325 N. Coyote Springs Road, Prescott Valley, Arizona
- 6. Copies of all documents evidencing all inventory maintained for all plants, shrubs, flowers, trees, or any other inventory of any nature or type, however kept or maintained, for the Subject Property from 2000 to present.
- 7. Copies of all documents pertaining to all machinery, equipment, fixtures, supplies, tools, and the like, maintained or used in any fashion on the Subject Property from 2000 to present.
- 8. Copies of all applications, correspondence, notes, memorandum of meetings, permits, and documents sent to, or received from, any local, state or federal government agency (including, but not limited to, Yavapai County Development Services Land Use Unit) regarding your use of, or conduct occurring on, the Subject Property.

DATED this 1st day of July, 2004.

FAVOUR, MOORE & WILHELMSSEN, P.A.

By Marguerite Kirk
David K. Wilhelmsen
Marguerite Kirk
Attorney for Plaintiffs

///

///

1 Original and a copy hand-delivered
2 this 1st day of July, 2004 to:

3 Jeffrey Adams
4 MUSGROVE, DRUTZ & KACK, P.C.
5 1135 Iron Springs Road
6 Prescott, Arizona 86302
7 Attorneys for Defendants

8 By Marguerite Kirk
9 Marguerite Kirk

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1 Mark W. Drutz, Esq., # 006772
Jeffrey R. Adams, #018959
2 **MUSGROVE, DRUTZ & KACK, P.C.**
1135 Iron Springs Road
3 Prescott, Arizona 86305
(928) 445-5935

4 Attorneys for Defendants
5

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.)
CUNDIFF, husband and wife; ELIZABETH)
9 NASH, a married woman dealing with her)
separate property; KENNETH PAGE and)
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14 husband and wife,

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16

CASE NO. CV 2003-0399

DIVISION 1

**PLAINTIFFS' REQUEST FOR
PRODUCTION OF DOCUMENTS AND
THINGS**

And Responses Thereto

17 **TO: Defendants Donald Cox and Catherine Cox, and their attorney:**

18 Jeffrey Adams
19 MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
20 Prescott, Arizona 86302

21 Pursuant to Ariz.R.Civ.P.34(a) you are requested to furnish for inspection and copying within
22 forty (40) days of the date hereof, in the offices of FAVOUR, MOORE & WILHELMSSEN, P.A., 1580
23 Plaza West Drive, Prescott, Arizona, the following described documents.

24 **INSTRUCTIONS AND DEFINITIONS**

- 25 A. In providing the documents described below, you are requested to furnish all documents
26 known or available to you, regardless of whether these documents are possessed by you or by
your attorneys, agents, investigators or other representatives.
- 27 B. If any of these documents cannot be produced in full, produce to the extent possible,
28 specifying and stating your reasons for your inability to produce the remainder and stating

1 whatever information, knowledge or belief you have concerning the substance of the contents
2 of such unproduced documents.

3 C. This request is intended to be continuing, requiring you to produce whatever documents
4 responsive to this request you become aware of or subsequently obtain.

5 D. As used herein, the term "document" means every writing and record of every type and
6 description in the possession, custody or control of the plaintiff, including, but not limited to,
7 correspondence, memoranda, handwritten notes, computer printouts, tapes and records of all
8 types, minutes of Director's meetings, studies, books, pamphlets, schedules, pictures and voice
9 recordings and every other device or medium on which or through which information of any
10 type is transmitted, recorded or preserved. The term "document" also means a copy where
11 the original is not in the possession or control of the defendants and every copy of a document
12 where such copy is not an identical duplicate of the original.

13 E. "You" or "your" as used herein refer to the Defendants or any agents or representatives
14 thereof.

15 DOCUMENTS TO BE PRODUCED

16 1. **A copy of the title insurance policy issued to you for the property located at 7325 North
17 Coyote Springs Road, Prescott Valley, Arizona (hereinafter referred to as the "Subject
18 Property").**

19 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit 4.

20 2. **Copies of all estimates, bills, receipts for payment, construction applications,
21 construction permits issued, approvals requested and/or received by any local, state or
22 federal government agency (including but not limited to Yavapai County Planning and
23 Zoning Commission) and the like, pertaining to any and all improvements, structures,
24 or developments, of any kind or type whatsoever, made by you on the Subject Property
25 from 1998 to present.**

26 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit 9.

27 3. **Copies of Defendants' income tax returns, including all schedules, from 1998 to present.**

28 Defendants object to this request finding it to be overly broad, vague, ambiguous and
overburdening. Plaintiffs' fail to indicate if they want Defendants' individual tax returns or
partnership tax returns. Furthermore, the request is overly broad as it would result in the production
of documentation that has no relevance to the issues in this lawsuit and is not likely to lead to the
discovery of admissible evidence as required by Rule 26 (b)(1), Ariz. R. Civ. P. Further, "[p]ersonal
financial records and income tax returns are not discoverable unless the party seeking discovery can
demonstrate that the information is indispensable to his or her case and cannot be obtained
elsewhere." 27 C.J.S. Discovery § 86 (1999) (citations omitted). Because Plaintiffs have failed to

1 justify its right or need for the requested tax returns, in the absence of obtaining information from
2 other sources or that it is indispensable, they will not be provided.

3
4 **4. Copies of all employee records that evidence the employee's job title, job position, hours
5 of work, and location of work, of any type or nature and however maintained, for your
6 businesses Prescott Valley Growers and Prescott Valley Nursery, and for the Subject
7 Property, from 2000 to present.**

8 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit numbers 13 through 17.

9 **5. Copies of any and all applications for, and/or business licenses issued by, any local, state
10 or federal government agency for your businesses located at:**

11 **A. 6195 E. Highway 69, Prescott Valley, Arizona;**

12 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit number 6.

13 **B. 6750 North Robert Road, Prescott Valley, Arizona; as well
14 as for,**

15 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit number 5.

16 **C. 7325 N. Coyote Springs Road, Prescott Valley, Arizona**

17 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit number 7.

18 **6. Copies of all documents evidencing all inventory maintained for all plants, shrubs,
19 flowers, trees, or any other inventory of any nature or type, however kept or maintained,
20 for the Subject Property from 2000 to present.**

21 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit number 8.

22 **7. Copies of all documents pertaining to all machinery, equipment, fixtures, supplies, tools,
23 and the like, maintained or used in any fashion on the Subject Property from 2000 to
24 present.**

25 See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit number 10.

26 **8. Copies of all applications, correspondence, notes, memorandum of meetings, permits,
27 and documents sent to, or received from, any local, state or federal government agency
28 (including, but not limited to, Yavapai County Development Services Land Use Unit)
regarding your use of, or conduct occurring on, the Subject Property.**

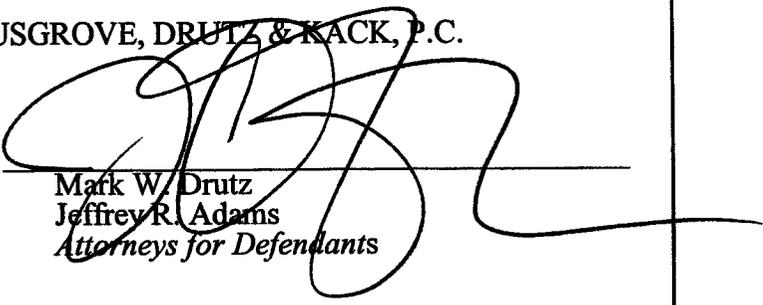
See Defendants' Initial Rule 26.1 Disclosure Statement, Exhibit 7.

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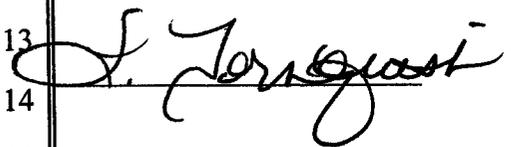
DATED this 30 day of August, 2004.

MUSGROVE, DRUTZ & KACK, P.C.

By 
Mark W. Drutz
Jeffrey R. Adams
Attorneys for Defendants

Original and one copy of the foregoing was hand-delivered this 30th day of August, 2004 to:

David K. Wilhelmsen
Marguerite M. Kirk
FAVOUR, MOORE & WILHELMSSEN, P.A.
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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

CATHERINE COX

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

Plaintiffs,)

vs.)

Case No. CV 2003-0399

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

PURSUANT TO NOTICE, the deposition of CATHERINE COX, called for examination by Counsel for the Plaintiffs, was taken at the offices of FAVOUR, MOORE & WILHELMSSEN, 1580 Plaza West Drive, Prescott, Arizona, beginning at the approximate hour of 9:58 a.m., on Tuesday, June 22, 2004, before Ashlee Mangum, Certified Court Reporter #50612, a Registered Professional Reporter, within and for the State of Arizona.

LOTT REPORTING, INC.

316 North Alarcon Street

Prescott, Arizona 86301

928.776.1169

1 bucket with a tree in it has to have at least one inch
2 in caliber before it can be sold. Those are rules that
3 are -- Those are rules of the Arizona Nursery
4 Association. Certain size containers have to have
5 certain size product in them.

6 Q. Do you operate under the rules of the Arizona
7 Nursery Association?

8 A. We are members of the Arizona Nursery Association
9 and we have to abide by the rules of the Department of
10 Agriculture.

11 Q. Do your income tax returns reflect the
12 partnership that you have with your husband and your
13 sons?

14 A. Yes, they do.

15 Q. Do you have copies of those income tax returns
16 for the last five years?

17 A. I probably do.

18 Q. If you didn't, would your accountant, if you had
19 an accountant?

20 A. I have an accountant.

21 Q. Would that individual have those records?

22 A. If I don't have them, he does.

23 Q. And who is your accountant, ma'am?

24 A. His name is Steven Stein.

25 Q. Is he local?

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