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7 IN THE SUPERIOR COURT OF ARIZONA
8 COUNTY OF YAVAPAI

9
10 **JOHN B. CUNDIFF** and **BARBARA C.**)
CUNDIFF, husband and wife; **ELIZABETH**)
11 **NASH**, a married woman dealing with her)
separate property; **KENNETH PAGE** and)
12 **KATHRYN PAGE**, as Trustee of the Kenneth)
Page and Catherine Page Trust,)
13 Plaintiffs,)
vs.)
14)
15 **DONALD COX** and **CATHERINE COX**,)
husband and wife, et al, et aux,)
16 Defendants.)

Case No. P1300CV20030399

PROPERTY OWNER
JAMES VARILEK'S
RESPONSE TO PLAINTIFFS'
PROPOSED SCHEDULE

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18
19 James Verilek, by and through undersigned counsel, hereby complies with the Court's request
20 that a response be filed to Plaintiffs' proposed schedule for purposes of the Court setting a trial date
21 in this matter.

22 RESPECTFULLY SUBMITTED this 11th day of June, 2012.

23 FAVOUR, MOORE & WILHELMSSEN, P.A.

24
25 By 
David K. Wilhelmsen
Marguerite Kirk
Post Office Box 1391
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Attorneys for James Varilek
26

1 **I. Introduction**

2 Although the Court is familiar with the underlying facts and procedural history of this case,
3 which spans almost nine years, Varilek would note for the Court that this matter raises issues
4 regarding joinder which may necessitate further trial or appellate court attention. Thus, any
5 participation by Varilek in the filing of a requested response to Plaintiffs' proposed scheduling order
6 should not be interpreted as a tacit waiver of any arguments regarding the issue of joinder.

7 **II. Response to Plaintiffs' Proposed Pre-Trial Scheduling Order**

8 **1. Additional Disclosures, Discovery and related activities to be undertaken and a**
9 **Schedule Therefor:**

10 Varilek has no objection to the dates for the disclosure of non-expert witnesses and rebuttal
11 non-expert witnesses, depositions and further discovery as set forth in Plaintiffs' proposed schedule.

12 **2. Schedule for Disclosure of Expert Witnesses:**

13 Varilek is of the position that there is no basis or necessity for expert testimony in this case.
14 To the extent that a *pro forma* position is needed, no objection is made to Plaintiffs' proposal.

15 **3. Number of Expert Witnesses:**

16 To the extent expert witness testimony is permitted by this Court, Varilek proposes that only
17 one expert "per side" be permitted to testify on the issue necessitating expert testimony.

18 **4. Disclosure of Non-Expert Witnesses:**

19 Varilek agrees that all discovery in this matter be completed by February 28, 2013.

20 **5. Discovery Disputes:**

21 Varilek not having full discovery/disclosure in this case at this time states only that he is
22 unaware of any current discovery dispute.

23 **6. Non-Meritorious Claims or Defenses:**

24 Varilek is unaware of any non-meritorious claims or defenses at this time.

25 **7. Amendment of Pleadings:**

26 Varilek has no objection to pleadings being amended in accordance with Rule 15, and case

1 law interpreting the amendment of pleadings.

2 **8. Issue of Fact Still at Issue:**

3 Varilek would agree with the principal positions taken by Plaintiffs and Defendants in this
4 case as set forth in Plaintiffs' proposed schedule.

5 **9. Stipulation as to the Foundation of Evidence:**

6 Varilek would agree to stipulate to the foundation for the admissibility of any evidence to be
7 introduced at time of trial in a timely fashion, dependent upon its disclosure.

8 **10. Special Procedures for Management of the Case:**

9 Varilek would agree with Plaintiffs' position that "special procedures for the management of
10 this case are necessary."

11 **11. Alternate Dispute Resolution:**

12 Varilek lacks information and knowledge that would enable him to determine whether ADR
13 would be successful in this case at this time.

14 **12. Modification/Suspension of Discovery Rules:**

15 Varilek does not agree that there is any basis for the suspension or modification of the
16 discovery rules in this case.

17 **13. Rule 21.1:**

18 Varilek has not received disclosures from either party and has no knowledge of whether the
19 rule has been appropriately complied with.

20 **14. Settlement Conference:**

21 Varilek takes no position with regard to a settlement conference at this time.

22 **15. Joint Pretrial Statement:**

23 Varilek is unable, at this time, to take a position regarding the timing and sequence of
24 preparation of a joint pre-trial statement.

25 **16. Trial Date:**

26 Varilek suggests that eight court days be scheduled for trial, and in light of the number of

1 potential parties to the litigation, requests that trial be scheduled at least 14 months from now.

2 **17. Time Limits on Trial Proceedings, Juror Notebooks, Voir Dire, Opening Statements,**
3 **Preliminary Jury Instructions, and Management of Documents and Exhibits:**

4 Varilek has no objection, at this stage of the proceedings, to the proposals made by Plaintiffs.

5 **18. Motions in Limine/Dispositive Motions:**

6 Varilek agrees that, subject to timely disclosure, that any motion in limine be presented within
7 30 days of the date for the commencement of trial. Any disclosure of evidence not timely made shall
8 appropriately extend the time frame for any motion in limine to that reasonably necessary for the
9 court to determine the matter prior to introduction of the evidence during trial.

10 DATED: June 11, 2012

11 FAVOUR, MOORE & WILHELMSSEN, P.A.

12
13 By


David K. Wilhelmsen
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15
16 ORIGINAL of the foregoing
17 filed with the Clerk of the Superior
Court this 11th day of June, 2012

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

19 Honorable Kenton Jones Div. 4
20 Yavapai County Superior Court
Prescott, Arizona 86301

21 A copy of the foregoing mailed
22 this 11th day of June, 2012 to

23 Jeff Adams
24 THE ADAMS LAW FIRM PLLC
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26 Attorney for Defendants listed in Answer
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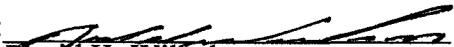
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