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18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF YAVAPAI**

20 JOHN B. CUNDIFF and BARBARA C.
21 CUNDIFF, husband and wife; ELIZABETH
22 NASH, a married woman dealing with her
23 separate property; KENNETH PAGE and
24 KATHRYN PAGE, as Trustee of the Kenneth
25 Page and Catherine Page Trust,

26 Plaintiffs,

27 v.

28 DONALD COX and CATHERINE COX,
husband and wife, et al., et ux.,

Defendants.

P1300
Case No. CV 2003-0399

Division No. 6

**RESPONSE AND OBJECTION TO
PLAINTIFFS' REQUESTS FOR AWARD
OF ATTORNEYS' FEES**

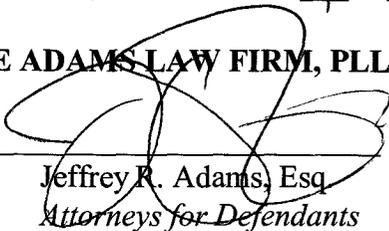
(Assigned to the Hon. Kenton Jones)

(Oral argument requested)

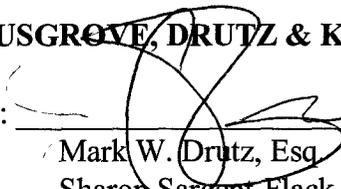
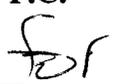
1 Defendants Cox, Veres as well as those joined property owners upon whose behalf
2 undersigned counsel have entered an appearance and filed an Answer to Plaintiffs' First Amended
3 Complaint (collectively herein, "**Defendants**"), do hereby Respond and Object to Plaintiffs' Motion
4 and Application for an Award of Attorneys' Fees. Defendants' opposition to Plaintiffs' fee request
5 is multi-faceted and is premised upon the fact that it is improper given the circumstances of this case
6 and is patently unreasonable. Defendants likewise object to Plaintiffs' request for Non-Taxable
7 Costs. This Response and Objection is supported by the accompanying Memorandum of Points and
8 Authorities and the Record on file, which shall be incorporated by reference.
9

10 Respectfully submitted this 9 day of August, 2013.

11
12 **THE ADAMS LAW FIRM, PLLC**

13
14 By: 
15 Jeffrey R. Adams, Esq.
16 *Attorneys for Defendants*

MUSGROVE, DRUTZ & KACK, P.C.

17 By:  
18 Mark W. Drutz, Esq.
19 Sharon Sargent-Flack
20 *Attorneys for Defendants*

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. Introduction.**

23 As an initial comment, it should be noted that preparing this Response and Objection was
24 a monumental undertaking for two primary reasons. First, because this case has been litigated
25 extensively over the span of more than a decade, evaluating the propriety and reasonableness of
26 Plaintiffs' fee request required Defendants to revisit virtually every event that occurred in the case
27 over that time period and to review each and every motion, disclosure statement, discovery request
28 and response, minute entry and ruling. Second, Plaintiffs' fee request does not "demonstrate a
thoughtful and deliberate review of client billings to expunge excessive or duplicative time and to

1 eliminate work related to issues or claims on which they did not prevail” as is required. *See* State
2 Bar of Arizona, Arizona Attorneys’ Fees Manual at 1-7, § 1.6.4 (5th ed. 2010). Rather, Plaintiffs’
3 fee request “consist[s] of a rehash of client billings ...of all expended time....” *Id.* Accordingly,
4 Defendants and their counsel were tasked with doing Plaintiffs’ job to parse out all of those fees that
5 clearly should not be awarded for myriad reasons and which are rather extensively detailed herein.
6 Candidly, because Plaintiffs failed in meeting the most basic of requirements in seeking a fee award,
7
8 we believe that the Court would be justified in denying Plaintiffs’ request in its entirety.
9

10 **II. Procedural History of This Case.**

11 As discussed above, due to (i) the extensive litigation of this case over the span of more than
12 a decade, (ii) the sheer volume of activity in this case during that period of time and (iii) the Court’s
13 rulings and decisions in this case as they pertained to myriad factual and legal issues that affected
14 all of the parties, a summary of the procedural history of this case is critical to the analysis of the
15 propriety and reasonableness of Plaintiffs’ fee request. That history is presented below.
16
17

18 Plaintiffs, through attorney Robert J. Launders, filed their Complaint for Injunctive Relief
19 (“**Original Complaint**”) on May 16, 2003. Plaintiffs’ Original Complaint asserted that Defendants
20 were in breach of paragraphs 2, 7(e) and 15 of the Declaration of Restrictions recorded on June 13,
21 2004 at Book 916, Page 680 (“**Declaration**” or “**CC&Rs**”). *See* Original Complaint. Paragraphs
22 2, 7(e) and 15 of the CC&Rs provide as follows:
23

- 24 2. No trade, business, profession or any other type of commercial or industrial activity
25 shall be initiated or maintained within said property or any portion thereof.
- 26 7(e). No structure whatsoever other than one single family dwelling or mobile home, as
27 herein provided, together with a private garage for not more than three (3) cars, a
28 guest house, service quarters and necessary out building shall be erected, placed or
permitted to remain on any portion of said property.

1 15. No outside toilet or other sanitary conveniences or facilities shall be erected or
2 maintained on the premises.

3 *See* Declaration of Restrictions attached hereto as Exhibit "1".

4 On March 18, 2004, Plaintiffs filed their First Amended Complaint ("**Amended**
5 **Complaint**"). The Amended Complaint requested the same relief sought in the Original Complaint
6 and added two additional Counts – one seeking a declaration that the CC&Rs are valid and
7 enforceable and one seeking a declaration of the parties "rights, obligations and liabilities" with
8 respect to the CC&Rs. On May 21, 2004, Defendants denied Plaintiffs' claims and asserted various
9 affirmative defenses including abandonment and waiver in their Answer.
10

11

12 On July 28, 2004, Plaintiffs filed their Motion for Summary Judgment Re: Waiver of
13 Restrictive Covenant Prohibiting Business and Commercial Enterprises, which pertained only to
14 Plaintiffs' first Breach of Contract claim pertaining to paragraph 2 of the CC&Rs. Therein, Plaintiffs
15 argued that the anti-waiver provision of the CC&Rs, which is set forth in paragraph 19 therein,
16 established that Defendants were prohibited from arguing that the failure of property owners to
17 object to violations of the CC&Rs constituted a waiver of the right to seek enforcement. Defendants
18 responded to Plaintiffs' Motion on September 29, 2009. Therein, Defendants argued that the
19 CC&Rs had been abandoned rendering them, in their entirety and including the anti-waiver provision
20 unenforceable. Defendants supported their Response with a statement of facts that included a
21 substantial evidence including over a hundred photographs depicting Declaration violations, business
22 advertisements from property owners operating businesses within the subdivisions and several
23 affidavits detailing a multitude of Declaration violations proliferating throughout the subdivision.
24

25

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28

1 After considering the foregoing, on April 4, 2005, the Court rendered its Under Advisement Ruling
2 denying Plaintiffs' Motion. In doing so, the Court stated:

3
4 The Court finds that there is a material factual issue regarding whether the
5 restrictions in this case have so thoroughly disregarded as to result in a change of the
6 area that destroys the effectiveness of the restrictions, defeats the purposes for which
7 they were imposed and amounts to an abandonment of the entire Declaration of
8 Restrictions. The Plaintiffs are not entitled to summary judgment regarding the
9 enforcement of the non-waiver clause.

10
11 Therefore, it is Ordered Plaintiffs' Motion for Summary Judgment Re:
12 Waiver of Restrictive Covenant Prohibiting Business and Commercial Enterprises
13 is DENIED.

14
15 On December 1, 2004, Plaintiffs filed their Motion for Summary Judgment Re: Defendants'
16 Violations of Restrictive Covenants; Affirmative Defenses of Estoppel, Laches and Unclean Hands.
17 Defendants filed their Response to the foregoing Motion on January 11, 2005 in which Defendants
18 produced an abundance of evidence indicating that (i) their defenses of estoppel, laches and unclean
19 hands were viable, and (ii) material factual disputes existed regarding the viability of those defenses.
20 This Response was supported by a statement of facts that included the same evidence as that used
21 to oppose Plaintiffs' Motion for Summary Judgment on the issue of waiver. On April 4, 2005, the
22 Court, in the same Under Advisement Ruling in which it denied Plaintiffs' Motion for Summary
23 Judgment on the issue of waiver, ruled on the Motion for Summary Judgment on the defenses of
24 estoppel, laches and unclean, stating:

25
26 Next, the Plaintiffs seek summary judgment regarding the Defendants'
27 affirmative defenses of estoppel, laches and unclean hands. This motion seeks a legal
28 determination that the Declaration of Restrictions contains an unambiguous and
enforceable provision prohibiting trade, business, industrial or commercial use. For
the reasons set forth above, there is a material factual dispute regarding the
enforceability of the terms in the Declaration of Restrictions. The issue of
abandonment will have to be litigated before the Court will be in position to decide
the enforceability of any term of the restrictive covenants. The Plaintiffs are not

1 entitled to such a summary determination. However, the facts upon which the
2 Defendants rely to support their affirmative defenses do not rise to estoppel, laches
3 and unclean hands as a matter of law. There are no material factual issues that
4 preclude summary judgment in favor of the Plaintiffs on the affirmative defenses of
estoppel, laches and unclean hands.

5 **THEREFORE, IT IS ORDERED** Plaintiffs' Motion for Summary
6 Judgment Re: Defendants' Violations of Restrictive Covenants: Affirmative
7 Defenses of Estoppel, Laches and Unclean Hands is **GRANTED**, in part. However,
8 to the extent the Motion seeks a summary declaration as to the enforceability of the
9 Declaration of Restrictions, the Motion is **DENIED**.

10 Between Plaintiffs' filing of the two Motions for Summary Judgment discussed above,
11 Plaintiffs also filed a Motion *in Limine* seeking to preclude Defendants from presenting lay witness
12 testimony from (i) a multitude of Coyote Springs Ranch property owners and (ii) Defendants' private
13 investigator, Sheila Cahill of Palmer's Investigative Services. That Motion was filed on September
14 9, 2004, and essentially argued that those property owners had nothing of substance to offer that
15 would aid the Court or Jury in reaching a decision in this case. Defendants filed their Response on
16 September 23, 2004, and argued therein that the testimony of the property owner witnesses identified
17 and disclosed by Defendants and that of Sheila Cahill comported with the Arizona Rules of Evidence
18 and should be allowed. On April 4, 2005, in the same Under Advisement Ruling in which the Court
19 addressed the Plaintiffs' two Motions for Summary Judgment, the Court denied the Plaintiffs'
20 Motion in Limine, stating:
21

22 [T]he Court will allow lay witnesses to testify regarding their personal
23 observations and upon appropriate foundation opinions or inferences pursuant to
24 Rule 701, Ariz. R. Evid. There is no showing that the lay witnesses Defendants have
25 disclosed cannot meet those foundational requirements at this time.

26 The Plaintiffs also object to the use of investigator Sheila Cahill. However,
27 even a paid investigator can testify as to the personal observations and upon
28 appropriate foundation, offer opinions or inferences pursuant to Rule 701, Ariz. R.
Evid.

1 **THEREFORE, IT IS ORDERED**, the Plaintiffs' Motion in Limine to
2 preclude Defendants introduction of lay witness opinion testimony is **DENIED**.

3 On June 24, 2005, Defendants filed two Motions. The first was Defendants' Motion to Join
4 Indispensable Parties Pursuant to Rule 19(a), Ariz. R. Civ. P., or, in the Alternative, Motion to
5 Dismiss Pursuant to Rule 12(b)(7), Ariz. R. Civ. P., for Failure to Join Indispensable Parties
6 ("Motion to Join"). In the Motion to Join, Defendants argued that (i) no just and fair adjudication
7 of this case could have been made in the absence of all people who own property in the portion of
8 Coyote Springs governed by the Declaration (individually, "**Affected Owner**"; collectively,
9 "**Affected Owners**"), and (ii) absent joinder of the Affected Owners, there would have been a
10 substantial risk that the existing parties in this lawsuit would be subjected to inconsistent obligations
11 regardless of the outcome of the case. Defendants further argued that the doctrines of *res judicata*
12 and collateral estoppel could operate to preclude any of the Affected Owners from (i) asserting
13 similar claims against other Affected Owners, or (ii) asserting defenses against actions brought by
14 other Affected Owners. As a result, Defendants asserted that the Affected Owners' legal rights could
15 be substantially affected by the outcome of this case without them having the opportunity to
16 participate, which would be an unjust outcome.

17 On July 18, 2005, the Court denied the Motion to Dismiss without oral argument and without
18 requiring that Plaintiffs file a responsive motion. In this regard, the Court ruled as follows:

19 The Court has considered Defendants' Motion To Join Indispensable Parties. The
20 Court finds that such a motion is not well founded and is untimely in a case that was
21 filed on May 16, 2003 and Answered on May 21, 2003.¹ The motion also requests

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27 ¹ It is noteworthy that the dates referenced by the Court are incorrect. As noted
28 above, the Amended Complaint was filed on March 18, 2004, and the Defendants filed their
Answer on May 21, 2004.

1 dismissal in the alternative, the Court finds that such a request is not supported by the
2 law cited.

3 The Court rendered the foregoing ruling despite the fact that the Motion to Dismiss was filed **before**
4 the cut-off for filing dispositive motions set by the Court and agreed upon by the parties.

5
6 The second Motion Defendants filed on June 24, 2005, was Defendants' Motion for
7 Summary Judgment Re: Agricultural Activities ("**Defendants' MSJ**").² The Defendants' MSJ was
8 premised upon the fact that the CC&Rs do not expressly or impliedly prohibit agricultural uses and
9 activities on the properties within Coyote Springs, which is the type of activity engaged in by
10 Defendants on their property. On July 18, 2005, Plaintiffs submitted their Response to Defendants'
11 MSJ ("**Plaintiffs' Response MSJ**").³ In responding to Defendants' MSJ, Plaintiffs argued that
12 Defendants' agricultural use of their property was a business and commercial activity prohibited by
13 the CC&Rs. On July 26, 2005, the Court heard oral arguments on Defendants' MSJ and ruled as
14 follows:
15
16

17 The Court FINDS no factual issue which precludes this Court from making a legal
18 determination whether the conduct of Defendant on the property violates paragraph
19 2 of the Declaration of Restrictions.

20 The Court FURTHER FINDS as a matter of law that the conduct of Defendant does
21 not violate paragraph 2 of the Declaration of Restrictions as it is not a trade, business
22 or commercial profession initiated on the property. The Court also FINDS as a
23 matter of law that Plaintiff is not entitled to relief on count I of the First Amended
24 Complaint. Therefore, the Court GRANTS the Motion for Summary Judgment as
25 to agricultural activity.

25 ² Defendants filed their Separate Statement of Facts in Support of Motion for
26 Summary Judgment Re: Agricultural Activities contemporaneous with Defendants' MSJ.

27 ³ Plaintiffs filed their Controverting Statement of Facts in Support of Plaintiffs'
28 Response to Motion for Summary Judgment Re: Agricultural Activities contemporaneous
with their Response motion.

1 On August 15, 2005, Defendants filed their Motion for Attorneys' Fees and Statement of
2 Costs and thereafter, on August 24, 2005, their Notice of Lodging Partial Final Judgment and form
3 of Judgment premised upon the Court's July 26, 2005, ruling cited above.
4

5 On August 29, 2005, Plaintiffs filed their Objection to Defendants' Motion for Attorneys'
6 Fees and their Objection to Defendants' Form of Partial Final Judgment. Therein, Plaintiffs objected
7 to Defendants' fee request for multiple reasons not the least of which were unreasonableness in light
8 of the work performed, the amount of time spent and results achieved, block billing, the number of
9 attorneys who worked on the case, the amount of time spent on discreet tasks or issues, what they
10 perceived to be vagueness and ambiguity in Defendants' time records, and time spent by multiple
11 lawyers either in conference between them or attending hearings which they characterize as double-
12 billing. Plaintiffs also argued that awarding Defendants' their fees would have been a hardship and
13 in which they cried poverty while describing Defendants as "deep pockets". (Plaintiffs' Objection
14 is attached hereto as Exhibit "2" for the Court's convenience.)
15
16
17

18 On September 6, 2005, Defendants filed their Reply to Plaintiffs' Objection to Defendants'
19 Motion for Award of Attorneys' Fees in which Defendants addressed the Plaintiffs' challenges to
20 the attorneys' fees requested. On September 7, 2005, Defendants filed their Response to Plaintiffs'
21 Objection to Defendants' Form of Partial Final Judgment. On November 23, 2005, the Court heard
22 oral argument on Defendants' Motion for Award of Attorneys' Fees. During that same hearing, the
23 Court ordered Defendants to lodge a form of Partial Final Judgment consistent with the Court's
24 comments during said hearing.
25

26 On January 10, 2006, the Court ruled on Defendants' Motion for Award of Attorneys' Fees
27 in which Defendants sought fees totaling \$88,107.25. In the Court's January 10, 2006, Under
28

1 Advisement Ruling, the Court awarded Defendants attorneys' fees although in the reduced amount
2 of \$60,560.75 and costs totaling \$4,235.74. On January 19, 2006, Defendants lodged the revised
3
4 Partial Final Judgment, which the Court signed on February 14, 2006. Therein, the Court entered
5 judgment in favor of Defendants as follows:

6 1. There is no factual issue which precludes the Court from making a
7 determination as a matter of law whether the conduct of the Defendants on the real
8 property described on Exhibit "1" attached hereto ("**Subject Property**") violates
9 paragraph 2 of the Declaration of Restrictions which was recorded on June 13, 1974
10 in Official Records of Yavapai County, Arizona at Book 916, Page 680
11 ("**Declaration**"), a copy of which is attached hereto as Exhibit "2".

12 2. The Court finds as a matter of law that the conduct of Defendants does
13 not violate paragraph 2 of the Declaration as it is not a trade, business or commercial
14 profession or any other type of commercial or industrial activity initiated or
15 maintained on the Subject Property or any portion thereof.

16 3. The Court finds as a matter of law that Plaintiffs are not entitled to any
17 relief on Count I of the First Amended Complaint.

18 4. The Court finds as a matter of law that Plaintiffs are not entitled to any
19 relief under Counts IV and V of the First Amended Complaint based upon a violation
20 of Paragraph 2 of the Declaration.

21 5. Pursuant to Rule 54(b), Ariz. R. Civ. P., there is no just reason for
22 delay in entering partial final judgment in this matter and the Clerk of the Court is
23 directed to enter judgment in this matter as follows:

24 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
25 DECREED as follows:

26 1. Defendants' Motion for Summary Judgment Re: Agricultural
27 Activities is granted and Count I of Plaintiffs' First Amended Complaint is hereby
28 dismissed with prejudice as are the claims in Count IV and V of the First Amended
Complaint seeking declaratory and injunctive relief based upon a violation of
Paragraph 2 of the Declaration.

2. Defendants are awarded their reasonable attorneys' fees in the amount
of \$60,560.75 with interest thereon at the statutory rate.

1 3. Defendants are awarded taxable costs in the amount of \$3,135.00 with
2 interest thereon at the statutory rate.

3 Thereafter, on February 17, 2006, Plaintiffs filed their Notice of Appeal and on March 8,
4 2006, Defendants filed their Notice of Cross-Appeal and their Notice of Posting Cash Bond for Costs
5 on Cross-Appeal. On March 30, 2006, Plaintiffs filed their Notice of Posting Cash Bond for Costs
6 on Appeal.
7

8 On appeal, Division One reversed the grant of Plaintiff's MSJ on Count I of the Amended
9 Complaint and also reversed the denial of Plaintiff's Motion to Join. *See* Memorandum Decision
10 filed May 24, 2007, 1 CA-CV 06-0165 ("**Memorandum Decision**"). On the issue of joinder,
11 Division One held that (i) the Defendants' Motion to Join was well founded and supported by Rule
12 19(a), (ii) that the CC&Rs at issue constitute property rights which run with title to the land owned
13 by the Absent Owners (a/k/a Affected Owners), (iii) that a ruling in this case in Defendants' favor
14 on the issue of abandonment would affect the real property rights of the Absent Owners and (iv) that
15 the Absent Owners were also necessary parties to this case as long as (a) they are subject to service
16 of process and (b) their joinder will not deprive the trial court of jurisdiction. *Id.* at ¶¶ 29, 32, 35
17 and 36. As a result, Division One ordered Judge Mackey to determine on remand whether the Absent
18 Owners were also indispensable under Rule 19(b). *Id.* at ¶ 36. Plaintiffs elected not to file Petition
19 for Review, to petition for review of the foregoing decisions, forfeiting their right to seek timely
20 review of the appellate court's decision.
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24

25 Following issuance of the Memorandum Decision, Plaintiffs were ordered to address the
26 Absent Owners' indispensability. *See* March 24, 2007, Memorandum Decision. Further, contrary
27 to Plaintiffs' contention otherwise, the Court of Appeals determined that "[a] ruling in this case
28

1 that the restrictions have been abandoned and are no longer enforceable against the Coxes'
2 property would affect the property rights of all other owners subject to the Declaration." *Id.* at
3 ¶32. In other words, the Court of Appeals held that if the trial court granted judgment in favor
4 of Defendants Cox on Plaintiffs' declaratory judgment claim resulting in a judicial determination
5 that the Declaration of Restrictions were not valid and enforceable, that decision would affect all
6 of the Absent Owners by leaving a "patchwork" of restrictions. *Id.* at ¶ 35.
7

8
9 Following the Court's March 10, 2008, Oral Argument on the parties' competing
10 memorandums pertaining to the issues of feasibility and indispensibility, the Court determined that
11 the Absent Owners were necessary and indispensable and entered the following Orders:

- 12
- 13 (i) Plaintiffs *shall* join all landowners subject to the Declaration of Restrictions dated
14 June 12, 1974.
 - 15 (ii) [W]ithin 60 days of [March 10, 2008,] the Plaintiffs shall file a notice with this Court
16 that includes a map of the properties subject to the Declaration of Restrictions as well
17 as a list designating the parcel numbers as well as names and address of *each*
18 property owner."
 - 19 (iii) [U]pon filing that notice [referenced in (ii) above], the Plaintiff shall also file a plan
20 for joinder of all the property owners subject to the Declaration of Restrictions.

21 *See* March 10, 2008, Nature of Proceedings (emphasis added). By virtue of the foregoing, the
22 Court imposed upon the Plaintiffs the obligation of following the proper procedural mechanisms
23 that would be necessary to properly and lawfully join all of the Absent Owners. And at no time
24 was it necessary or required by Defendants to educate Plaintiffs or their counsel as to those
25 procedural mechanisms that would be necessary to properly and lawfully join the Absent Owners.

26 On August 25, 2008, the Court again addressed Plaintiffs' failure up to that point in time
27 to join the Absent Owners finding that Plaintiffs had failed to comply with Orders set forth above,
28

1 ordered that the cost of joinder would be borne solely by Plaintiffs, and advised that Plaintiffs
2 would be afforded one last opportunity to join the Absent Owners to avoid dismissal. See August
3 25, 2008, Ruling. In this regard, the Court stated:
4

5 While the Court believes that [a finding that Plaintiffs had failed to
6 properly join the Absent Owners] should resolve the matter and lead
7 to the dismissal of the action due to Plaintiffs' refusal to even
8 attempt to join necessary parties over a year after being directed to
9 do so by this Court, the Court of appeals directed this Court to
consider whether property owners are indispensable pursuant to
Rule 19(b), Ariz. R. Civ. P. so this Court will do so.

10 *Id.* at p. 2.

11 * * *

12 The Court finds based upon the factors set forth above that "in
13 equity and good conscience the action ... should be dismissed"
14 since all property owners subject to the Declaration of Conditions
are necessary and indispensable parties. The Plaintiffs have
15 delayed this matter long enough. However, the Court will give the
16 Plaintiffs one final chance to comply with the Court's orders for
Joinder.

17 *Id.* (emphasis added).

18 * * *

19 IT IS ORDERED that in the event Plaintiffs do not take substantial
20 steps to join all necessary and indispensable parties within the next
ninety (90) days, this matter will be dismissed.

21 *Id.* at p. 4. Thus, Plaintiffs had until November 23, 2008, to "take substantial steps" to join the
22 Absent Owners.
23

24 However, rather than "take substantial steps" to join the Absent Owners, Plaintiffs shifted
25 their attention to an effort to remove Judge Mackey and sought to further contest this Court's
26 Order regarding the joinder of the Absent Owners and returned to the Court of Appeals and,
27 ultimately, the Arizona Supreme Court on both issues. During this time, there was a change in
28

1 counsel for Plaintiffs, who sought to certify the case as a class action. However, Defendants
2 successfully opposed Plaintiffs' efforts to remove Judge Mackey, to challenge the joinder issue,
3 and to defeat class certification. As a result, while it is rather obvious from a review of Plaintiffs'
4 Attorneys' affidavits that they spent an inordinate amount of time on the foregoing efforts and
5 issues, they were wholly unsuccessful save for further delaying final resolution of this case and
6 increasing the cost of this case for all of the parties.
7

8
9 On May 6, 2010, Plaintiffs were Ordered to serve the Absent Owners within 120 days so
10 as to complete their joinder. See May 6, 2010, Under Advisement Ruling (filed May 7, 2010).
11 However, the Court subsequently extended Plaintiffs' deadline to complete joinder due to the
12 delay in receiving the Notice to be enclosed with the alias Summonses and First Amended
13 Complaint and Ordered Plaintiffs to complete service within 120 days of July 14, 2010, which was
14 October 12, 2010.
15

16 Plaintiffs failed to comply with the Court's Order to join all Absent Owners by October,
17 12, 2010. Further, on December 7, 2010, Plaintiffs requested yet more time to complete joinder
18 in their Motion for Permission to Serve Remaining Property Owners by Publication to which
19 Defendants Cox objected on December 14, 2010, and in which objection Absent Owner Robert
20 Veres joined on December 21, 2010.
21

22
23 On January 26, 2011, the Court granted Plaintiffs an additional 90 days to complete
24 joinder of and service upon all of the Absent Owners, and to file proof of the same with the
25 Court. Thus, Plaintiffs had until April 26, 2011, to complete their joinder of the Absent Owners
26 and to provide the Court with proof of the same. See January 26, 2011, Ruling (filed with the
27 Clerk on February 1, 2011). On April 13, 2011, Plaintiffs filed their Affidavit of Publication
28

1 reflecting their publication of a Summons in The Camp Verde Journal reflecting publication dates
2 of March 16, 23 and 30, 2011, and April 6, 2011. And on May 29, 2012, the Court held a status
3 conference to address multiple matters including a trial schedule. During that status conference,
4 the issue of service and joinder was addressed again during which undersigned raised the issue
5 of Plaintiffs' filing and recording a Notice of *Lis Pendens*, suggesting that this should have been
6 done and was appropriate to provide constructive notice of the pendency of litigation in the event
7 of ownership transfers. See ARS § 33-411. Undersigned counsel (Adams) requested that the
8 Court enter such an Order. However, as reflected in the May 29, 2012, Nature of Proceedings,
9 no such Order was entered. On June 18, 2012, the Court held a Scheduling Conference, setting
10 this case for trial beginning on April 16, 2013, as well as applicable deadlines pertaining to
11 discovery, disclosures, witnesses, dispositive motions, motions *in limine*, and pre-trial matters.
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15 Then, on December 28, 2012, which was virtually the last day on which dispositive
16 motions could be filed, after over nine years of litigation and just a few months prior to trial,
17 Plaintiffs filed their Motion for Summary Judgment on the issue of abandonment that was
18 supported solely by an invalid affidavit and previously-undisclosed amateur video-recordings
19 which depicted nothing of relevance. Notwithstanding the fact that Defendants in their view had
20 provided the Court with an abundance of evidence establishing, at minimum, a question of fact
21 existed concerning abandonment of the Declaration, as had been found by Judge Mackey in 2005
22 when he ruled that "there is a **material factual issue** regarding whether the restrictions in this
23 case have been so thoroughly disregarded as to result in a change in the area . . . and amounts to
24 abandonment of the entire Declaration *** The **issue of abandonment will have to be**
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1 litigated before the Court will be in a position to decide the enforceability of any term of the
2 restrictive covenants.”

3
4 In considering the foregoing, it should be noted that Defendants’ April 25, 2013, Motion
5 to Dismiss premised upon Rule 19 remains pending, and was filed after receiving Plaintiff
6 Varilek’s Motion to Require Defendants Cox to Serve the Indispensable Parties with Documents
7 that Comport with Due Process in which Mr. Varilek and Mr. Wilhelmsen take the position that
8 all of the Absent Owners still have yet to be properly joined. Until the Court determines that all
9 of the indispensable parties have properly been joined, the Court was proscribed from ruling on
10 Plaintiffs’ Motion for Summary Judgment and request for attorneys’ fees. Stated another way,
11 once the Court ordered on remand from the appellate court the joinder of all of the Absent Owners
12 as indispensable parties, the Court was affirmatively obligated to ensure that joinder was
13 completed prior to rendering dispositive summary rulings. That is the case because, as recognized
14 by the Court of Appeals, a ruling on the issue of abandonment will affect each of the Absent
15 Owners in Coyote Springs Ranch.

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19 **III. Legal Standard for Awards of Attorneys’ Fees.**

20 Awards of attorneys’ fees in disputes that arise out of contract are governed by ARS § 12-
21 341.01. In this case, ARS § 12-341.01 is the only basis for an award of fees. That is the case
22 because the subject contract – namely the Declaration – has no attorneys’ fees provision. Further,
23 the fact that ARS § 12-341.01 provides a basis upon which Plaintiffs’ may request fees, that fact
24 does not require the Court to award fees. Rather, fees awarded pursuant to ARS § 12-341.01 are
25 discretionary.
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28

1 "At least two requirements are necessary for the recovery of attorney's fees: an attorney client
2 relationship between the party and counsel, and 'a genuine financial obligation on the part of the
3 litigant[] to pay such fees.'" *Moedt v. General Motors Corp.*, 204 Ariz. 100, 103, 60 P.3d 240, 243
4 (App. 2003) citing *Lisa v. Strom*, 183 Ariz. 415, 419, 904 P.2d 1239, 1243 (App. 1995). In
5 *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985), the Arizona
6 Supreme Court listed those factors that should be considered by the Court in deciding whether to
7 make a fee award. Those factors include:
8

- 9 1. The merits of the claim or defense presented by the unsuccessful party.
- 10 2. [Whether] [t]he litigation could have been avoided or settled and the successful
11 party's efforts were completely superfluous in achieving the results.
- 12 3. [Whether] [a]ssessing fees against the unsuccessful party would cause an extreme
13 hardship.
- 14 4. [Whether] [t]he successful party did not prevail with respect to all the relief sought.

15 *Associated Indem.*, 143 Ariz. at 589, 694 P.2d at 1203 (emphasis added).
16

17 Finally, regarding the calculation and reasonableness of the fees to be awarded to a party in
18 litigation, the seminal Arizona case governing awards of attorneys' fees – namely, *Schweiger v.*
19 *China Doll Restaurant, Inc.*, 673 P.2d 927 (Ariz.Ct.App. 1983) – provides that the "payment of an
20 attorney's fee **must be reasonable** and bear a direct relation to the amount involved, and the quality,
21 kind and extent of the service rendered." *Id.* at 931 quoting *Leggett v. Wardenburg*, 85 P.2d 989, 990
22 (Ariz. 1939). "Lawyers are entitled to a **fair and reasonable** compensation for their services..."
23 *China Doll*, quoting *Blaine v. Blaine*, 63 Ariz. 100, 108, 159 P.2d 786, 789 (1945). In setting a fee
24 award, the Court must give consideration to the "efforts of counsel in [the] cause, the time involved,
25 the evidence as to the value of the services, and the character of the case" *Id.*
26
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28

1 In Arizona, the elements to be considered in determining a reasonable attorneys' fee were
2 enumerated by the supreme court in *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144 (1959). The
3 court identified the factors to be considered in determining a reasonable fee as follows:
4

- 5 1. the qualities of the advocate: his ability, his training, education, experience,
6 professional standing and skill;
- 7 2. the character of the work to be done: its difficulty, its intricacy, its importance, time
8 and skill required, the responsibility imposed and the prominence and character of
9 the parties where they affect the importance of the litigation;
- 10 3. the work actually performed by the lawyer: the skill, time and attention given to the
11 work; and
- 12 4. the result: whether the attorney was successful and what benefits were derived.

13 *Id.* at 336 P.2d at 146. Courts routinely deny fees requests when an application reflects block billing
14 and duplication of tasks resulting from multiple attorneys working on the same tasks, issues, claims
15 or matters. In fact, as noted above, *infra*, Plaintiffs have already acknowledged in this case that fees
16 requested that involve a fee application that demonstrate the existence or presence of the foregoing.
17 On the issue of block billing, Plaintiffs acknowledged in their August 29, 2005, Response and
18 Objection to Defendants' Motion and Application for Award of Attorneys' Fees ("**Plaintiffs' Fee**
19 **Objection**") that such a procedure is prohibited, stating:
20

21 As a preliminary matter, it is important to note that with limited exception,
22 Defendants' counsel's billing statements are replete with block billing entries.
23 "Block billing" refers to the lump-sum time assessed for multiple unrelated tasks in
24 on billing entry. Compare *e.g.*, *Defendant's counsel billing entry for Adams, June*
25 *22, 2005 ("blocked billing"), with billing statement for Kack billing entry, July 22,*
26 *2005 (delineating time spent on various tasks). Block billing prevents a court from*
27 *adequately determining whether the fee claimed (based upon the time spent) for a*
28 *particular matter is reasonable. Gratz v. Bollinger, 353 F. Supp.2d 929, 939*
(D.Ct.S.D.Mich. 2005) ("as a result of such 'block billing,' the Court is not able to
determine the number of hours expended on each discrete task. Thus the Court
cannot determine whether the number of hours billed are reasonable.'").

1 See Plaintiffs' Fee Objection at 3-4. Plaintiffs also have acknowledged that vague billing entries
2 should be denied when requested. In this regard, Plaintiff will have to admit that in instances
3 involving vague billing entries, an across the board percentage fee reduction is appropriate. Id. at
4 15 citing *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991) (reducing hours billed by 10%
5 because of vague billing entries).
6

7 On the issue of the improper use of multiple attorneys, Plaintiffs also set the bar, stating in
8 Plaintiffs' Fee Objection as follows:
9

10 Furthermore, the sheer number of attorneys employed by Defendants
11 mandates a fee reduction. "It is well recognized that when more lawyers than are
12 necessary are assigned to a case, the level of duplication of efforts increases."
13 *General Electric Co.*, 1997 U.S. Dist. Lexis 19969, 1997 WL 397627 at *4. In this
14 case, opposing counsel's billing records demonstrate that during the course of their
15 representation of Defendants, no less than 5 attorneys at their firm worked on the
16 case (namely Adams, Drutz, McGregor, Sargent-Flack and Kack). "It is well
17 recognized that when more lawyers than are necessary are assigned to a case, the
18 level of duplication of effort increases....." *Gatti v. Community Action Agency of
19 Greene County, Inc.*, 263 F. Supp. 2d 496, 518 (N.D.N.Y. 2003). This is precisely the
20 result in the present case, as demonstrated by the astronomical fees opposing counsel
21 charged for preparing, for instance, simple disclosure statements, and short
22 memorandum. "While parties to a litigation may fashion it according to their purse
and indulge themselves and their attorneys...they may not foist their extravagances
upon their unsuccessful adversaries." *Farmer v. Arabian American Oil Co.*, 31
F.R.D. 1919, 193 (S.D.N.Y. 1963). In this fee application, as discussed in greater
detail below, Defendants are attempting to foist onto Plaintiff their indulgence and
fancy in having multiple attorneys represent them when the complexity of the case
clearly does not justify such an extravagance.

23 See Plaintiffs' Fee Objection at 4. The consideration of the issue of multiple attorneys and
24 evaluation of Plaintiffs' fee request is of utmost important herein. As this Court is aware, Plaintiffs
25 were originally represented by Mr. Wilhelmsen and his associate, Marguerite Kirk. However, during
26 the Court's efforts to ensure the proper joinder of the Absent Owners, Plaintiffs terminated the
27 services of Mr. Wilhelmsen's office and hired their present counsel, Mr. Coughlin although Mr.
28

1 Wilhelmsen's departure from this case was somewhat short lived, which is an issue that will be
2 addressed in great detail below, *infra*. As a result, considering Plaintiffs' fee request involves
3 evaluating whether there was duplication not only between attorneys within the same firm but
4 between attorneys' with different firms, as well as the propriety and reasonableness of the attorneys'
5 fees sought for substitute counsel to come up to speed in this case. In considering the multiple
6 attorneys issue, we again can look to Plaintiffs' Fee Objection, which cited the following authorities:
7

- 8
- 9 * "Obviously, more lawyers leads to more 'conference' time...." See Plaintiffs' Fee
10 Request at 16 citing *Gillberg v. Shea*, 1996 U.S. Dist. Lexis 21847, 1996 WL 39762
11 (S.D.N.Y. 1996) at *5.
 - 12 * The U.S. Supreme Court has held that multiple attorneys leads to case "overstaffing"
13 in turn leading to unwarranted attorney's fees. See Plaintiffs' Fee Request at 16 citing
14 *Hensley v. Eckerhart*, 461 U.S. 424, 434, 104 S.Ct. 1933, 76 L.Ed.2d 40 (1983).
 - 15 * "[A] significant number of billing entries show multiple attorneys charging for the
16 same tasks *or for tasks only made necessary because of the large number of*
17 *attorneys involved in the litigation*. For example, many entries relate to telephone
18 conferences and meeting between attorneys and to preparation of notes, e-mails, and
19 memoranda for the sole purpose of keeping [the] other attorneys apprised of the
20 progress in the case." See Plaintiffs' Fee Request at 16 citing *Gratz v. Bollinger*, 353
21 *F. Supp. 2d* 929, 942, (D.Ct.S.D. Mich. 2005).
 - 22 * "When attorneys hold a telephone or personal conference, good "billing judgment"
23 mandates that only one attorney should bill that conference to the client, not both
24 attorneys. The same good "billing judgment" requires attorneys not to bill for more
25 than two attorneys to review pleadings or to attend oral argument." See Plaintiffs'
26 Fee Request at 17 citing *National Warranty Ins. Co., RRG v. Barnett*, 1998 U.S. Dist.
27 Lexis 20659 (D.Or. 1998).
 - 28 * *In re Rite Way Reproductions*, 1998 Bankr.Lexis 1080 ("the court will not
compensate professionals for attendance at meetings or court hearings by multiple
members of the same firm when one or more of those professionals does not take an
active part, and there has been no showing of the necessity for the second member
to participate in a given meeting or hearing." see also, *Brake v. Murphy*, 736 So 2d
745 (Fla. Dist. Ct. App. 1999) (citing to Tenth Circuit for proposition that "If the
same task is performed by more than one lawyer, multiple compensation should be
denied...."). See Plaintiffs' Fee Request at 17-18.

1 The seminal principle to be taken from the foregoing is reasonableness. As stated above, to
2 ensure that a fee request is reasonable, the request must be made based upon the exercise of billing
3 judgment. And to ensure that sound billing judgment, “[t]he fee claimant should bring to the Court’s
4 attention deleted categories of time, tasks, services, or other adjustments that have been made in the
5 exercise of ‘billing judgment.’” See State Bar of Arizona, Arizona Attorneys’ Fees Manual at 1-7,
6 § 1.6.4 (5th ed. 2010). To avoid the receipt of an unjustified award of fees where multiple attorneys
7 or firms are used, Courts have required that “the fee applicant affirmatively bring to the Court’s
8 attention how the litigation was organized, how the work was divided, and how the tasks were
9 performed.” See State Bar of Arizona, Arizona Attorneys’ Fees Manual at 1-7, § 1.6.4 (5th ed. 2010)
10 citing *Ponderosa Plaza v. Siplast*, 181 Ariz. 128, 133, 888 P.2d 1315, 1320 (Ct. App. 1993).

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13
14 As the Court will understand after reading Defendants’ Objections set forth below, when
15 applying the legal standards set forth below to Plaintiffs’ fee request, it is clear that Plaintiffs should
16 be denied their fee request in its entirety. At a minimum, their request should be significantly
17 reduced.

18
19 **IV. Objections To Fees Sought.**

20 **A. Plaintiffs’ Fee Request Should Be Denied Because They Have Paid No**
21 **Fees; Nor Are They Obligated To Pay Any.**

22 As set forth above, “[a]t least two requirements are necessary for the recovery of attorney’s
23 fees: an attorney client relationship between the party and counsel, and ‘a genuine financial
24 obligation on the part of the litigant[] to pay such fees.’” *Moedt v. General Motors Corp.*, 204 Ariz.
25 100, 103, 60 P.3d 240, 243 (App. 2003) (citing *Lisa v. Strom*, 183 Ariz. 415, 419, 904 P.2d 1239,
26 1243 (App. 1995)). In the case at bar, the Cundiff plaintiffs are unable to establish any “genuine”
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28

1 financial obligation to pay attorneys' fees, which is being underwritten by Mr. Alfie Ware, a
2 non-party to the lawsuit, who is not subject to the Coyote Springs Ranch Declaration in dispute.
3
4 Alfie Ware lacks standing to recover attorneys' fees. Alfie Ware is not an aggrieved party pursuant
5 to Ariz. R. Civ. P. 1. Moreover, the *Lisa* court's rationale for denying attorneys' fees to a
6 self-represented attorney-litigant is equally persuasive in the case at bar. That is, "the general rule
7 against awarding fees to attorney-litigants is based upon a perception that such awards are windfalls
8 to persons who have spent no money and incurred no debt for legal representation. *** The judicial
9 system would be unfair if an attorney-litigant could qualify for a fee award without incurring the
10 potential out-of-pocket obligation that the opposing non-lawyer party must bear in order to qualify
11 for a similar award." *Lisa*, 183 Ariz. at 419, 904 P.2d at 1243.
12
13

14 The foregoing principle applies with at least equal force here, where the Cundiff plaintiffs
15 have not spent a dime of their own monies in prosecuting the case. Common sense as well as the
16 law dictates that the Cundiff plaintiffs are not entitled to a windfall. See *Lisa*, 183 Ariz. at 420, 904
17 P.2d at 1244 (attorney's fees are meant to make a party whole for costs incurred for an attorney's
18 services. The Lisas candidly admitted that Mrs. *Lisa* nor the community would reimburse Mr. *Lisa*
19 or his law firm for any time expended, absent an award of fees by the court); ARS § 12-341.01(B)
20 ("The award of reasonable attorneys' fees awarded pursuant to subsection A should be made to
21 mitigate the burden of the expense of litigation to establish a just claim or defense"); *Catalina*
22 *Foothills Assoc., Inc. v. White*, 132 Ariz. 427, 646 P.2d 312 (App. 1982) (citing ARS Section
23 12-341.01(B)).
24
25
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27 A court has discretion to award attorneys fees in circumstances involving the insurance
28 company's contractual obligation to pay attorneys fees to defend its insured. *Catalina Foothills*

1 *Assoc., Inc. v. White*, 132 Ariz. 427, 646 P.2d 312 (App. 1982); *Wilcox, D.D.S. v. Waldman*, 154
2 Ariz. 532, 744 P.2d 444 (App. 1987); *Orlfaly v. Tucson Symphony Society*, 209 Ariz. 260, 99 P.3d
3 1030 (App. 2005). However, the case at bar is readily distinguished from *Catalina Foothills* and its
4 progeny. This case does not involve a situation in which the Cundiff plaintiffs have procured a
5 contract with Ware to be indemnified for a triggering event. In other words, Mr. Ware is neither an
6 insurer nor an indemnitor. Even disregarding this factual distinction, the appellate court in *Catalina*
7 *Foothills* has held that the trial court in its discretion may always consider the fact that someone else
8 may be obligated to bear the expense. *Catalina Foothills*, 132 Ariz. at 428, 646 P.2d 313. While
9 we will never know why it is that Mr. Ware has seen fit to finance Plaintiffs' pursuit of the Cox
10 Defendants and their use of their property, there is no dispute that the actual Plaintiffs in this case
11 have suffered absolutely no economic detriment to achieve their means. Accordingly, the Court
12 should deny Plaintiffs' request.

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16 **B. Plaintiffs' Fees Requested For Block Billing Entries Should Be Denied.**

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18 As detailed above, in their opposition to Defendants' fee request following their success on
19 their Motion for Summary Judgment, Plaintiffs made a rather significant issue over what they
20 perceived to be "block billing". As reflected on the tables attached hereto as Exhibit "3", which
21 details the dates on which block billing was employed and the total amounts of fees charged as
22 reflected on Plaintiffs' attorneys' invoices attached to their affidavits, Plaintiffs' attorneys routinely
23 employed the tactic of block billing. As a result of that tactic, Plaintiffs' block billing fees requested
24 and incurred on behalf of the Plaintiffs total \$104,154.75. The additional problem with the block
25 billed time entries is that they demonstrate, when taken together with the affidavits of counsel and
26 the fee request, that Plaintiffs undertook absolutely no effort to segregate the time on the multitude
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1 of tasks detailed with each of the block billed entries to allow Defendants or the Court the
2 opportunity to assess or evaluate whether the amount of time spent on each discrete task was
3 appropriate under the circumstances. The foregoing represents a perfect example of why it is
4 necessary for the party requesting fees to undertake to “demonstrate a thoughtful and deliberate
5 review of client billings to expunge excessive or duplicative time and to eliminate work related to
6 issues or claims on which they did not prevail....” See State Bar of Arizona, Arizona Attorneys’
7 Fees Manual at 1-7, § 1.6.4 (5th ed. 2010). As mentioned earlier, Plaintiffs’ counsel have exerted
8 minimal effort, merely attaching their ‘raw’ invoices to a summary affidavit, and demanding “pay
9 me.” However, Courts should and do require more. Because the block billing employed is
10 impermissible and because it is clear that Plaintiffs failed to provide the Court and undersigned any
11 additional way to truly evaluate the propriety of the block billed entries and the reasonableness of
12 the time spent and fees requested, all of the fees detailed on Exhibit “3” should be denied.

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17 **C. Time Spent During, And Fees Sought For, Counsel’s Discussions With Alfie Ware, Should Be Denied.**

18 We recognize that in a case such as this that the attorneys involved may be required to speak
19 to the parties and witnesses. However, during the course of this case, Plaintiffs’ counsel spent an
20 inordinate amount of time consulting and speaking with Alfie Ware. As stated above, Mr. Ware is
21 not a party. Nor does he own property that is subject to the Declaration of Restrictions at issue.
22 Rather, his sole involvement in this case is the third-party who funded Plaintiffs’ lawsuit and which,
23 as established above, Plaintiffs have no obligation to repay. Accordingly, it is difficult to imagine
24 why it was necessary for Plaintiffs’ attorneys to spend more than 16.5 hours and incurred more than
25 \$4,388.00 in fees speaking to Mr. Ware. See Exhibit “4” attached hereto. On this point, it is
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27
28

1 noteworthy that invoices attached to Plaintiffs' counsels' affidavits reflecting communications,
2 meetings and conferences with Mr. Ware provide little, if any, indication of the purpose for which
3 Plaintiffs were being billed for their attorneys' time and how that time was spent and those fees
4 incurred were for the benefit of Plaintiffs' representation. The fact that Plaintiffs included the time
5 and fees they incurred in interacting with Mr. Ware highlights the fact that prior to submitting their
6 fee request Plaintiffs and their counsel undertook absolutely no effort to exercise billing judgment
7 to ensure they were only seeking fees in accordance with the mandates of *Assoc. Indem., China Doll*
8 and *Schwartz, supra*. As such, Plaintiffs should be denied recovery of those fees related to Alfie
9 Ware as detailed on Exhibit "4".

12
13 **D. Time Spent And Fees Incurred For Jeff Coughlin To Come Up To Speed**
14 **On This Case Amounts To Double Billing And Should Not Be Awarded.**

15 As reflected in the procedural history section of this Response and Objection, shortly after
16 Plaintiffs efforts to secure a change of judge and to appeal the Court's determination that the Absent
17 Owners were indispensable parties and their joinder was required, Plaintiffs terminated the services
18 of Mr. Wilhelmson and brought Mr. Coughlin on board. While it is Plaintiffs' right to switch legal
19 counsel, they likewise assumed the risk that fees would be incurred in connection with Mr. Coughlin
20 to become familiar with this case that served no purpose other than providing him with the
21 knowledge necessary for him to represent them moving forward.

23 Our review of Mr. Coughlin's billing statements reflected that he spent nearly 17 hours on
24 this case reviewing pleadings, minute entries, the Memorandum Decision, discovery responses and
25 discussing the case with the Plaintiffs and Mr. Ware before he did anything substantive in the case.

26 *See* Exhibit "5" attached hereto and Affidavit of J. Jeffrey Coughlin. Mr. Coughlin charged
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1 \$2,805.00 for that time. Obviously, had Plaintiffs not terminated Mr. Wilhelmsen's firm, none of
2 those 17 hours would have been spent; nor would the nearly \$3,000.00 have been incurred. That
3 is the case because Mr. Wilhelmsen and those working on this case within his firm were already
4 familiar with this case and would not have had to spend that time. By any measurable standard, this
5 is an example of either double billing, duplicate billing or both but neither of which should be
6 permitted. Also, by including Mr. Coughlin's fees incurred in connection with becoming familiar
7 with this case in their fee request, Plaintiffs make it abundantly clear that they simply skipped the
8 "exercise of billing judgment" and review requirements that must be undertaken prior to requesting
9 fees to ensure that the fees requested are justified and reasonable. For this reason, the fees requested
10 by Plaintiffs related to Mr. Coughlin becoming familiar with this case should be denied.

14 **E. Time Spent And Fees Incurred For Jeff Coughlin To Review The Court**
15 **Of Appeals May 24, 2007, Memorandum Decision Amounts To**
16 **Duplicative And Unnecessary Time Spent, And Should Be Denied.**

17 The basis for denying Mr. Coughlin's time spent and fees incurred in reviewing the
18 Memorandum Decision (13.1 hours and \$3,275.00 in fees, *see Exhibit "6"* attached hereto) are
19 similar to the reasons discussed above entitled "Time Spent And Fees Incurred For Jeff Coughlin
20 To Come Up To Speed On This Case Amounts To Double Billing And Should Not Be Awarded"
21 That is, shortly after Plaintiffs' efforts were torpedoed to (i) secure a change of judge and (ii) appeal
22 the Court's determination that the Absent Owners were indispensable parties necessitating joinder,
23 Mr. Coughlin took over Plaintiffs' representation. While Plaintiffs' were not prohibited from
24 switching counsel 'mid-stream,' Plaintiffs bear the responsibility for Mr. Coughlin's efforts to
25 familiarize himself with the case. It is clear that Plaintiffs have failed to exercise billing judgment
26 in their request for attorneys' fees. *At best* from *Plaintiffs'* perspective, a reasonable fee for
27
28

1 reviewing the Memorandum Decision is Mr. Coughlin's initial time entry on April 10, 2009, wherein
2 2.8 hours was spent reviewing the 11-page Memorandum Decision.

3
4 **F. Duplicate and Erroneous Billing Statements of the Wilhemsen Law Firm.**

5 Included among the Billing Statements attached as Exhibit "1" to Affidavit of David K.
6 Wilhemsen in Support of Application for Award of Attorneys' Fees and Costs ("DKW Affidavit")
7 are Billing Statements marked "DUPLICATE". These Duplicate Billing Statements are attached
8 hereto as Exhibit "7" and represent \$80,787.00 in attorney/paralegal fees.⁴ These Duplicate Billing
9 Statements are dated as follows: 10/15/08 (Stmnt No. 1, File No. 10641-004I); 10/15/08 (Stmnt. No.
10 1, File No. 10641-005M); 11/14/08 (Stmnt. No. 210641-004I); 11/14/08 (Stmnt. No. 2, File No.
11 10641-005M); 12/05/08 (Stmnt. No. 3, File No. 10641-004I); 12/05/08 (Stmnt. No. 3, File No.
12 10641-005M); 01/06/09 (Stmnt. No. 4, File No. 10641-004I); 01/06/09 (Stmnt. No. 4, File No.
13 10641-005M); 02/03/09 (Stmnt. No. 5, File No. 10641-004I); 03/04/09 (Stmnt. No. 6, File No.
14 10641-005M); 04/09/09 (Stmnt. No. 7, File No. 10641-004I); 04/09/09 (Stmnt. No. 8, File No.
15 10641-005M).
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19 Additionally, included among Exhibit "1" to the DKW Affidavit billing statement (not
20 marked as duplicate) is a billing statement dated April 9, 2009, in the amount of \$2,620.00. The task
21 descriptions, time entries, and amount of fees billed in said April 9, 2009 billing statement is
22 precisely the same as a statement dated five years earlier, March 4, 2004. 04/09/09 (Stmnt. No. 59,
23 File NO. 10641-001I). Thus, the total amount of duplicative fees is \$83,407.00. Apparently,
24 Plaintiffs have adopted the 'Here, you figure it out' attitude that our courts frown upon. *City of*
25
26

27
28 ⁴ Costs are not included in the calculations discussed herein, just the fees for "professional services rendered".

1 *Prescott v. Town of Chino Valley*, 163 Ariz. 608, 623, 790 P.2d 263, 278 (App. 1989), *aff'd in part*,
 2 *vacated in part*, 166 Ariz. 480, 803 P.2d 891 (1990). "Arizona law requires a party seeking
 3 attorneys' fees to do more than dump a mound of paperwork on the court with a 'here, you figure
 4 it out' attitude." *Id.* The DKW Affidavit and attached Billing Statements are beyond confusing.
 5 They are erroneous.

7 It is claimed in the DKW Affidavit that the unidentified "Client"⁵ has incurred legal fees for
 8 services rendered by my firm in the amount of \$287,697." DKW Aff., ¶ 9. Even *disregarding* the
 9 duplicate billing statements discussed above and attached hereto as Exhibit "7", the total amount of
 10 the DKW billing statements is actually \$14,784 less, or \$272,913.00, as follows:

Billing Statements Total	\$356,320.00
Less DUPLICATE Billing Statements	(\$80,787.00)
Less Duplicate Billing Statement dated 04-09-09	(\$2,620.00)
Total Fees	\$272,913.00
Fees claimed to have been incurred in the DKW Affidavit	\$287,697.00 ⁶
Difference	\$14,784.00

21 The erroneous billing statement calculations and duplicate billing statements buried within the
 22 "mound of paperwork" identified as Exhibit "1" to the DKW Affidavit has forced Defendants'
 23 counsel to expend unnecessary fees to undertake review. *See City of Prescott*, 163 Ariz. at 623, 790

25 _____
 26 ⁵ The DKW Affidavit avoids identifying the Client by name, perhaps because Alfie Ware was the
 27 actual client who paid the legal fees.

28 ⁶The DKW Affidavit states that the DKW firm agreed to write off a total of \$28,714.48 in fees. If
 that is the case, then the *starting* point for such write off should be \$272,913.00.

1 P.2d at 278. The DKW Affidavit and Exhibit "1" attached thereto calls into question the very
2 foundation of each of the entries found in the DKW billing statements. In short, the Court should
3 not countenance Plaintiffs' cavalier, 'Here, you figure it out' attitude. *Id.* The Court should factor
4 Plaintiffs' cavalier attitude in exercising its discretion as to whether an award of fees is appropriate
5 in the case at bar.
6

7
8 **G. To Award Plaintiffs' Fees For (I) Their Efforts To Remove Judge**
9 **Mackey (II) To Avoid The Joinder Of The Absent Owners And (III) To**
10 **Certify This Case As A Class Action Would Be Wholly Unreasonable.**

11 More than eight years ago, Defendants recognized that a decision in this case would affect
12 each and every one of the Absent Owners as a result of Plaintiffs' pursuit of a declaration from the
13 Court that the Declaration of Restrictions was fully enforceable and Defendants' assertion that the
14 Declaration of Restrictions was abandoned. We accordingly filed our Rule 19 Motion to Dismiss
15 in 2005. While Judge Mackey originally denied that Motion, the Arizona Court of Appeals reversed
16 Judge Mackey's decision. The Court of Appeals later affirmed its own decision when it denied
17 Plaintiff's Petition for Special Action on the issue of indispensibility. Thereafter, the Arizona
18 Supreme Court agreed with Defendants when it denied review of Plaintiffs' Petition for Review with
19 that Court.
20

21 However, Plaintiffs did not quit. Undeterred by the rulings and decisions of the Court of
22 Appeals, Arizona Supreme Court and ultimately Judge Mackey's Orders requiring that Plaintiffs join
23 the Absent owners both on remand the first time the case returned from the Court of Appeals and
24 after the case returned from the Court of Appeals following denial of Plaintiffs' Special Action,
25 Plaintiffs continued to opposed joinder in two distinct ways. First, they sought to certify this case
26 as a class action. However, Judge Mackey recognized that class certification would not ensure that
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28

1 all Absent Owners would be bound by a final judgment entered in this case and accordingly denied
2 class certification. *See* May 7, 2010, Under Advisement Ruling.

3
4 The second way Plaintiffs continued their opposition to joinder of all of the Absent Owners
5 were their delays in actually complying with the Court's Order that they do so. Notwithstanding the
6 fact that Judge Mackey Ordered Plaintiffs to timely join all of the Absent Owners as far back as
7 March 10, 2008, *see* March 10, 2008, Nature of Proceedings, all of the Absent Owners still have yet
8 to be joined which is a span of more than five years. The result of the foregoing is that while they
9 may have secured judgment as a matter of law on the issue of abandonment, that judgment legally
10 cannot bind those Absent Owners who have still to be joined. Regardless, because it is rather clear
11 that all of the Absent Owners should always have been parties to this case, Plaintiffs' rather
12 extensive efforts to oppose joinder was and continues to be wholly unreasonable and those fees
13 requested that pertained to those efforts, which are reflected on Exhibit "8" attached hereto and Mr.
14 Wilhelmsen's and Mr. Coughlin's affidavits, should be denied. Those amounts total \$157,918.00.
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18 **H. Plaintiffs' Efforts in 2005 to Obtain Summary Judgment on the Issue of**
19 **Waiver Were Unsuccessful; Fees Related to this Dispositive Motion**
20 **Practice Should be Denied.**

21 As discussed in Section I above, Procedural History, Defendants defeated Plaintiffs' Motion
22 for Summary Judgment Re: Waiver of Restrictive Covenant Prohibiting Business and Commercial
23 Enterprises. The Court rejected Plaintiffs' position that the 'anti-waiver' provision of paragraph 19
24 would preclude Defendants' abandonment defense, as follows:

25 The Court finds that there is a material factual issue regarding whether the
26 restrictions in this case have been so thoroughly disregarded as to result in a change
27 in the area that destroys the effectiveness of the restrictions, defeats the purpose for
28 which they were imposed and amounts to an abandonment of the entire Declarations

.....

1 **THEREFORE, IT IS ORDERED**, Plaintiffs' Motion for Summary
2 Judgment Re: Waiver of Restrictive Covenant Prohibiting Business and Commercial
3 Enterprises is **DENIED**.

4 In the ensuing post-Appeal years, Plaintiffs focused hundreds of attorney-hours on opposing joinder
5 of indispensable parties and other issues unrelated to the abandonment defense. Thus, Defendants
6 have not lost, and Plaintiffs have not prevailed on the anti-waiver argument. Attorneys' fees on the
7 subject Motion for Summary Judgment Re: Waiver should be denied. See Exhibit "9" attached
8 hereto. Those amounts total \$9,432.00
9

10 **I. Time Entries And Fees That Reflect Absolutely No Reference To This**
11 **Case Should Be Denied.**

12 During our review of Mr. Coughlin's and Mr. Wilhelmsen's affidavits and billing statements,
13 we found a significant number of time entries and fees that made absolutely no reference of any kind
14 to indicate that the work described pertained to this case. As a result, we and the Court have no
15 ability to discern whether the work performed or the fees requested are appropriate or reasonable.
16 Those time entries and fees are detailed on Exhibit "10" attached hereto. Because the
17 reasonableness of those fees cannot be evaluated in any way, shape or form, they should be denied.
18
19 Those fees total \$2,748.00.
20

21 **J. All of Plaintiffs' Fees Incurred In Connection With Their Efforts To**
22 **Join The Absent Owners Should Be Denied, Especially Those Related To**
23 **Preparing Property Owner And Parcel Identification Spreadsheets.**

24 Once the Court Ordered Plaintiffs to join all of the Absent Owners, joinder should have been
25 a relatively simple task. In our view, Plaintiffs procedurally were required to do several things to
26 properly join the Absent Owners. First, they should have obtained a litigation guarantee identifying
27 all of the Absent Owners and their properties. Second, they should have moved to amend the First
28

1 Amended Complaint to properly name each of the Absent Owners as parties in this case who would
2 be subject to the Court's determination on Plaintiffs' claim for declaratory judgment and Defendants
3 defenses of abandonment and waiver. Third, assuming the Court would grant such a motion,
4 Plaintiffs should have actually filed an amended Complaint that (i) named each of the Absent
5 Owners as joined parties to this case, (ii) established the jurisdictional basis for each Absent Owners'
6 inclusion as parties to this case on the basis of their ownership property governed by the and (iii)
7 articulated the relief sought as it pertained to each of the Absent Owners. Fourth, Plaintiffs should
8 have had the Clerk issue Summonses directed to each of Absent Owner. Fifth, Plaintiffs should have
9 served each of the Absent Owners with the Summonses and amended Complaint. Sixth,
10 simultaneous with the filing of the amended Complaint, Plaintiffs should have filed and recorded
11 a Notice of Pendency of Action pursuant to ARS §12-1191(A) (which would have eliminated the
12 dilemma of transfers of property following Plaintiffs' service efforts). Finally, Plaintiffs should
13 have hired a process server to serve, be it personal or alternative service as allowed by the Court.
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18 Rather than proceed as outlined above, Plaintiffs tried to do things on their own and in their
19 own way. In doing so, they utilized a facially defective Summons for the Absent Owners that failed
20 to identify each owner or their respective property(ies); they were forced to continually update their
21 property listings because during their efforts transfers of ownership occurred or their prior listings
22 proved to be inaccurate; because of transfers of ownership, owners were misidentified and because
23 no Notice of Pendency of Action was recorded, the new owners would not be bound by the Orders
24 of this Court; and finally, despite the foregoing, Plaintiffs never achieved complete joinder. We
25 suspect that Plaintiffs did not employ the procedures outlined above by Defendants that we believe
26 should have been followed thinking that doing so would be too expensive and at that point they were
27
28

1 in a cost-saving mode. However, that was a risk Plaintiffs assumed. And by not doing so Plaintiffs
2 and this Court now find themselves in the unenviable position of Absent Owners still not having
3 been properly joined despite the monumental fees incurred by Plaintiffs to accomplish successful
4 joinder.
5

6 As set forth in *Associated Indem.*, two of the factors the Court is required to consider in
7 awarding fees are whether the successful party's efforts were completely superfluous in achieving
8 the results and whether assessing fees against the unsuccessful party would cause an extreme
9 hardship. *Associated Indem.*, 143 Ariz. at 589, 694 P.2d at 1203. Similarly, *Schwartz v. Schwerin*,
10 85 Ariz. 242, 336 P.2d 144 (1959), requires consideration of the result obtained whether the result
11 of compliance with a Court Order or in the case as a whole.
12

13
14 In applying the foregoing standards to the time spent and fees requested by Plaintiffs for work
15 related to the joinder of the Absent Owners, it is clear that those fees related to the Plaintiffs' joinder
16 efforts should be denied. Plaintiffs' efforts were superfluous in that they never actually achieved the
17 complete joinder of all of the Absent Owners notwithstanding having had more than five years to
18 do so. Further, requiring Defendants to suffer the burden of paying for Plaintiffs unsuccessful efforts
19 to comply with the Court's Order regarding joinder would be wholly inequitable and, more
20 importantly, an extremely undue burden and financial hardship. Accordingly, those time entries and
21 related fees detailed on Exhibit "11", total \$8,645.50 and should be denied.
22
23

24 **K. Plaintiffs' Fees Incurred In Pursuing Their Motion *In Limine* Related To**
25 **Law Witness Testimony Of Coyote Springs Ranch Property Owners**
26 **And Sheila Cahill Should Be Denied.**

27 On this subject we will be brief. Plaintiffs sought to preclude Defendants from calling
28 several Coyote Springs Ranch property owners as well as Sheila Cahill as witnesses. However, as

1 found by Judge Mackey, the Arizona Rules of Evidence clearly establish the basis upon which they
2 should have been allowed to testify in the event of a trial. Candidly, this makes logical sense.
3
4 People who own property in the very subdivision that is the subject of litigation should be allowed
5 to testify as to their properties and those of their neighbors as they will have personal knowledge and
6 information simply by virtue of their ownership, occupation and possession of their own properties.
7
8 This makes sense with respect to Sheila Cahill because she actually observed those properties. The
9 foregoing were facts of which Plaintiffs were clearly aware based upon Defendants' disclosures.
10 However, armed with the knowledge that those property owners and Ms. Cahill had a justifiable
11 basis upon which to participate in a trial as testimonial witnesses, Plaintiffs nonetheless filed their
12 Motion. Considering the foregoing, the Motion could very well be viewed as frivolous. Seeing the
13 foregoing, Judge Mackey properly denied the Motion. As a result, we believe that Plaintiffs' request
14 for fees totaling \$3,420.50 related to the Motion *in Limine*, as detailed on Exhibit "12" attached
15 hereto, should be denied.
16

17
18 **L. Wilhemsen's Fee Request Pertaining to the Representation of Mr.**
19 **Varilek Should Be Denied; Varilek Took the Position He Was Not a**
20 **Properly Joined Party; And Asserted No Claims Against Coxes And,**
21 **Therefore, Varilek Is Not A Successful Party Pursuant to ARS § 12-**
22 **341.01.**

23 Because the Declaration does not provide for an award of attorneys' fees, the only arguable
24 basis for an award of fees is statutory. In considering whether to award fees under ARS § 12-341.01,
25 "first the trial court must determine which party was successful and then whether attorney fees
26 should be awarded. *** However, there is no presumption that a successful party should be awarded
27 fees under § 12-341.01." *Motzer v. Escalante*, 228 Ariz. 295, 296, 265 P.3d 1094 (App. 2011).
28

1 As to Mr. Varilek, the threshold inquiry -- who was the successful party -- readily leads to
2 the conclusion that Varilek's fees may not be imputed to the Coxes. Varilek did not file any claims
3 against the Coxes. Moreover, throughout this litigation, Varilek consistently took the position that
4 he was not properly joined as a party to the litigation, thus bolstering support for the conclusion that
5 he is not a 'successful' party. Because he has not succeeded in any claims against the Defendants,
6 Varilek is not a successful party. As such, the Attorneys' Fees submitted with the Affidavit of David
7 K. Wilhemsen in Support of Award of Attorneys' Fees dated July 1, 2013, (pertaining to Varilek in
8 the amount of \$90,490), should be denied in their entirety.

11 Defendants also incorporate by reference all of the arguments set forth above concerning
12 billing judgment, as to the Varilek-related fees. As an example of Mr. Wilhemsen's excessive time
13 entries, Mr. Wilhemsen (DKW) billed .8 on 3/18/11 for reviewing and sending the client copies of
14 the Notice of Reconciliation of Differences; DKW billed .3 on 3/28/11 for reviewing and sending
15 the client a copy of the Affidavit of Mailing; DKW billed .8 on 4/14/11 for research and review of
16 the status of judicial re-assignment; Paralegal JSE billed a .3 on 05/02/11, for receipt and review
17 Drutz's joinder in objection to request for judicial re-assignment. These are just a few select
18 examples of Varilek's counsel's aggressive billing, in which the Court should exercise its discretion
19 to employ 'rough justice'. "The courts have upheld or authorized percentage cuts as a practical
20 means of trimming excess from a fee application." State Bar of Arizona, Arizona Attorneys' Fees
21 Manual at 1-17, § 1.8 (5th ed. 2010) (discussing Rough Justice) (*citing New York State Ass'n for*
22 *Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1146 (2nd Cir. 1983); *Copeland v. Marshall*, 641
23 F.2d 880, 903 (D.C. Cir. 1980))
24
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1 M. **An Award Of Fees To Plaintiffs And Against Plaintiffs Would Be An**
2 **Undue Hardship On The Defendants; Further, The Fact The Plaintiffs**
3 **And Defendants Cox Had Limited Settlement Discussions Should Not**
4 **Entitle Plaintiffs To Recover Their Fees.**

5 As reflected above, one of the factors to be considering in evaluating a fee aware is whether
6 awarding fees would pose an undue hardship upon the non-prevailing parties. *Associated Indem.*,
7 143 Ariz. at 589, 694 P.2d at 1203. While in the past Plaintiffs have characterized Defendants Cox
8 as “deep pockets” that is absolutely not true. Furthermore, the other Defendants and joined Absent
9 Owners who filed Answers in this case are rather simple people who, until they were joined and filed
10 a responsive pleading, simply rode Defendants Coxes coattails for the primary reason that they could
11 not afford to hire counsel of their own or contribute to the defense of this case. By way of example,
12 while a number of joined Absent Owners agreed to pay defense fees once they were joined, many
13 of them did so only until an Answer was filed after which they promptly elected to proceed without
14 representation. Further, an award of fees against Defendants Cox only would force them to bear all
15 of the Coyote Springs property owners financial burden of challenging Plaintiffs’ efforts to seek a
16 declaration that the Declaration of Restrictions is fully enforceable notwithstanding the virtual
17 wholesale non-compliance since that document was recorded and parcels began to be sold.

18 Furthermore, as discussed above, summary judgment was granted in this case after ten years
19 of litigation. Importantly, up until this Court’s grant of summary judgment on Plaintiffs’ December
20 28, 2012, Motion for Summary Judgment, the sheer majority of decisions in this case were in favor
21 of Defendants. Had Plaintiffs filed their December 28, 2012, Motion for Summary Judgment much
22 earlier in this case and long before the passing of ten years the fees incurred on behalf of Plaintiffs
23 and paid by Alfie Ware would not have been incurred. By waiting until the last minute to file their
24 and paid by Alfie Ware would not have been incurred. By waiting until the last minute to file their
25 and paid by Alfie Ware would not have been incurred. By waiting until the last minute to file their
26 and paid by Alfie Ware would not have been incurred. By waiting until the last minute to file their
27 and paid by Alfie Ware would not have been incurred. By waiting until the last minute to file their
28 and paid by Alfie Ware would not have been incurred. By waiting until the last minute to file their

1 December 28, 2012, Motion for Summary Judgment and after ten solid years of litigation, Plaintiffs
2 unduly delayed the final resolution of this case and are, in our view, responsible for the monumental
3 fees incurred on their behalf. To require Defendants, be they Mr. and Mrs. Cox or any of the other
4 answering Absent Owners, under the circumstances on this case would be a severe injustice and,
5 more importantly, undue financial hardship.
6

7
8 Furthermore, while Plaintiffs allude to an opportunity to settle this case following its remand
9 from the Court of Appeals, they failed to tell the entire story. It is true that Plaintiffs approached
10 Defendants Cox with a settlement proposal. That proposal was for the parties to stipulate to
11 dismissal with the parties to bear their own attorneys' fees and costs. Had Defendants accepted that
12 proposal, Defendants would be in no better position then they would have been in today. That is the
13 case because notwithstanding the dismissal, they would have continued to be under the threat of
14 future litigation from other Coyote Springs property owners because those property owners would
15 not be bound by the dismissal be under the doctrine of res judicata or collateral estoppel. Hence, the
16 mandate that all of the Absent Owners be joined. Accordingly, aside from being relieved of the
17 instant lawsuit, Defendants had little to gain by settling.
18

19
20 Finally, awarding attorneys' fees in this case will result in complete chaos. That is the case
21 because it will be virtually impossible for either the Court, Plaintiffs, Defendants Cox or the joined
22 property owners to apportion or allocate an award of fees by, between and among all of the
23 Defendants and joined property owners who filed Answers or other responsive pleadings or those
24 that aligned themselves with Defendants in this case. It is no secret that this case involved a few
25 hundred properties and property owners. Quite frankly, an award of fees against some or all
26 Defendants and joined Absent Owners will likely result in litigation in-and-of-itself.
27
28

1 Based upon the foregoing, we believe that in balancing the financial hardships involved, that
2 balance falls in favor of Defendants. Accordingly, we believe that the Court should, in exercising
3 its discretion, deny Plaintiffs' fee request in its entirety given the circumstances discussed above.
4

5 **N. Plaintiffs Did Not Succeed On All Of The Relief Sought.**

6 Plaintiffs argument on this point highlights one very important fact – namely, that the claims
7 for breach of contract that relate to paragraphs 7e and 15 of the Declaration have never been litigated.
8 To the contrary, virtually the entire ten years in this case has been spent on paragraph 2 of the
9 Declaration and Defendants' abandonment and waiver defenses. This fact is no more evident from
10 the fact that Mr. Wilhelmson sought a stay of the litigation in this case after Judge Mackey granted
11 Defendants' Motion for Summary Judgment to allow him to appeal that decision to the Court of
12 Appeals. And Defendants Cox adamantly deny that they have violated paragraphs 7e and 15 of the
13 Declaration and Plaintiffs have, to this day, produced any evidence to support their allegations. In
14 fact, with respect to the claimed violation of paragraph 7e, one need only go to Defendants Coxes
15 property to inspect their second outbuilding of which Plaintiffs complain and it will be revealed that
16 that structure is a well pump-house, not a residential structure. Accordingly, this case is not yet
17 finished and Plaintiffs have not prevailed on all of the relief sought. Thus, a fee award at this
18 juncture would be premature in our view and the request should be denied.
19
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23 **O. Plaintiffs Argument That The Issues In This Case Were Not Novel Is**
24 **Absolutely Incorrect.**

25 Plaintiffs argue, without any support other than making the blanket statement, that the issues
26 in this case were not novel and had been previously litigated in this jurisdiction. However, that is
27 absolutely false.
28

1 While it may be true that the issues of enforcement of restrictive covenants is not new to the
2 Arizona courts, it is also true that the law governing those issues changed during the pendency of this
3 case when the *College Book Centers* decision was rendered by the Court of Appeals thereby
4 changing the law in the midstream of this case. Also, the issue of joinder was extremely complicated
5 as evidenced by the fact that the issue was hotly contested before Judge Mackey who made one
6 decision, the Court of Appeals which addressed the issue and overruled Judge Mackey, who later
7 agreed with Defendants' position only to have Plaintiffs return that issue to the Court of Appeals and
8 ultimately the Arizona Supreme Court. Finally, even the issue of a request for a change of judge
9 involved litigation that took this case all the way to the Arizona Supreme Court. Therefore, we find
10 it difficult to understand how Plaintiffs can assert, with a straight face, that this case was anything
11 but complex and complicated. Accordingly, considering this factor China Doll factor, it is rather we
12 believe that Plaintiffs' fee request should be denied.

13
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15
16 **P. A Fee Award In This Case Would Absolutely Discourage Litigants In A**
17 **Subdivision With A Viable Abandonment Claim To Avoid Pursuing**
18 **Such A Claim.**

19 Defendants recognize that the law governing the abandonment of restrictive covenants sets
20 the bar relatively high in order to succeed. As a result, the cases that have made to the Arizona
21 appellate courts are few and far between. To impose a fee award on Defendants in this particular
22 case would, in our view, have a complete chilling effect on the likelihood that anybody else would
23 challenge the enforceability of restrictive covenants. That is the case because unlike College Book
24 Centers and its progeny, this case involved a subdivision in which over 90 percent of the parcels in
25 the subdivision had some sort of violation associated with it or another. When you couple an award
26 of fees with the grant of summary judgment on the issue of abandonment in this case, why would
27
28

1 anybody, regardless of wholesale covenant violations pursue litigation even when factually and
2 legally they would be justified in doing so. The reason this is one of the factors the Court must
3 consider in evaluating a fee request is to ensure that the prospect of an adverse award of attorneys'
4 fees does not drive an individual's decision-making process. If this Court were to award fees, given
5 the nature, scope and extent of litigation herein as well as the duration of this case, people justified
6 in pursuing a similar claim even if they legitimately had a viable claim that could otherwise have a
7 dramatic impact on their real property rights and obligations. Accordingly, on this basis we believe
8 that the Court would be justified in denying Plaintiffs' fee request.
9
10

11 **Q. Varilek's Fee And Cost Request Should Be Denied Because He**
12 **Stipulated To Dismissal With Defendant Veres With Each Party To Bear**
13 **Their Own Attorneys' Fees And Costs.**

14 After the *Varilek v. Veres* case was consolidated with this case, they stipulated to dismissal
15 with each party to bear their own attorneys' fees, costs expenses. In doing so, we believe that
16 Varilek essentially agreed to take a back-seat position in this case to allow the Court to render a final
17 decision and with both to be subject to that decision. However, that is not what occurred. Rather,
18 Mr. Wilhelmsen undertook to take a very active role in this case on behalf of Varilek
19 notwithstanding the fact that throughout this case he took the position that his client was not a party,
20 which is discussed in more detail above, *infra*. Given the agreement reached with Mr. Veres, we
21 believe that all of the fees incurred by Mr. Wilhelmsen following his re-entry into the case upon his
22 retention by Mr. Varilek, Defendants should not be required to pay those fees incurred by Mr. Veres.
23
24
25
26 Candidly, Mr. Varilek could have simply stood by and awaited a final determination in this case just
27
28

1 like all of the other Absent Owners who by sheer majority have ridden the coat-tails of the Plaintiffs
2 and Defendants Cox.

3
4 **V. Objection to Taxable Costs.**

5 While ARS § 12-340 authorizes an award of “taxable” costs to a prevailing party, as set forth
6 in their Motion, Plaintiffs seek recovery of “non-taxable” costs. Accordingly, that request should
7 be denied. However, we suspect that in drafting their Motion, Plaintiffs’ counsel may have a typo
8 and will address the substantive nature of the costs request. The taxable costs allowed are
9 enumerated in ARS § 12-332 and Defendants objects to any costs that are not allowed by statute.
10 See ARS § 12-332; *Ahwatukee Custom Estates Management Ass’n v. Bach*, 193 Ariz. 401, 402-
11 03, 973-P.2d 106, 107-08 (1999). As stated by Veres in his objection to Varilek’s cost request,
12 costs cannot be expanded from the precise items allowed in ARS § 12-332. *Id.* Plaintiffs’
13 Statement of Taxable Costs (Coughlin) fails to include any supporting or vouching evidence, to
14 determine whether Plaintiffs have included costs that are proscribed or duplicative, such as
15 deposition transcripts in multiple formats (e.g., ASCII, e-trans, four-in-one). Any duplication
16 amounts to a copy charge, which is not a recoverable cost. *Id.* 193 Ariz. At 402-03, 973 P.2d
17 at 107-08.
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22 Defendants herein join in Veres’ objection to Plaintiffs’ Statement of Taxable Costs
23 (FMW) at pp. 2, lines 8-9 (9/2/2004 - \$30); line 15 (7/13/2005 - \$34); line 16 (7/14/2005 - \$6);
24 and line 25 (7/26/2005 - \$12). We also agree that the Court of Appeals filing fees also are
25 duplicative. *Id.* at p. 3, lines 5-7 (\$140 and \$280) and that the Court of Appeals held that “in
26 light of our disposition of the issues, we determine that the parties will bear their own costs on
27
28

1 appeal.” Memo. Dec., filed 05/24/07, ¶37. Plaintiffs should not be permitted to lump appellate
2 filing fees in with their Statement of Taxable Costs.

3
4 **VI. Objection to Non-Taxable costs.**

5 Non-taxable costs are not recoverable as part of an attorneys’ fees award under ARS § 12-
6 341.01. See *Ahwatukee Custom Estates Mgt. Ass’n v. Bach*, 193 Ariz. 401, 973 P.2d 106 (1999).

7 Allowing a party to recover non-taxable costs under the guise of attorneys’ fees would undermine
8 the legislative intent express in ARS § 12-332. *Id.* at 402, --. Thus, non-taxable costs such as
9 delivery and messenger services charges, copying expenses, telecopier and fax charges, postage,
10 and long distance telephone charges are not recoverable. *Id.* at 402, --.

11 Moreover, there is no provision in the Declaration which permits an award of ‘expenses’.
12
13 Plaintiffs seek non-taxable costs in the amount of \$5,685.21. However, as with Plaintiffs’ non-
14 taxable costs, Plaintiffs have failed to provide any supporting or vouching evidence, to determine
15 whether Plaintiffs have included costs that are proscribed or duplicative. Thus, such non-taxable
16 costs should be denied.
17

18
19 **VII. Conclusion.**

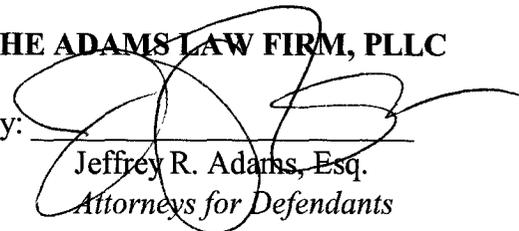
20 As thoroughly discussed herein, the mere act of submitting an affidavit with a fee request does
21 not entitle a party to an award of attorneys’ fees under ARS § 12-341.01. Rather, the party
22 requesting fees must demonstrate a reason why the Court, in exercising its discretion, should award
23 fees based upon the legal principles and authorities discussed above. As a review of Plaintiffs’ fee
24 request and related affidavits of Mr. Wilhelmsen and Mr. Coughlin reveal, there was a wholesale
25 failure to exercise billing judgment and they each violated the fundamental principle of billing,
26 especially those with respect to requesting an award of fees. The resources expended by both
27
28

1 Plaintiffs and Defendants as a result of the duration of this case highlights the need for Plaintiffs'
2 counsel to have carefully scrutinized their billing statements and fee application to ensure that the
3 fees requested were appropriate and reasonable. But they did not. For that reason alone, the Court
4 would be justified in denying Plaintiffs' fee request in its entirety.
5

6 In the event the Court does not deny Plaintiffs' fee request in its entirety, the Court would
7 be justified in reducing Plaintiffs' fee request substantially for those amounts objected to above. By
8 our calculations, the fee reduction should be substantial. In considering the foregoing, if the Court
9 were to add all of the amounts of problematic fees detailed in Plaintiffs' counsel's three affidavits,
10 the total exceeds the amount of fees requested. That is a result of the overlap between the various
11 objection categories detailed above that involved multiple problems with the various time entries and
12 associated fees incurred. That dilemma highlights the fact that Plaintiffs and their counsel failed to
13 conduct a careful and critical analysis and scrutiny of the amounts being sought prior to attaching
14 their billing statements to their fee affidavits. Given the fact that a multitude of the extensiveness
15 of problematic and improper time and fee entries in Plaintiffs' counsels' fee affidavits, this Court
16 should seriously consider awarding minimal, if any, fees to Plaintiffs.
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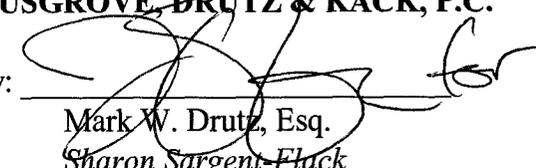
20 Respectfully submitted this 9 day of August, 2013.

21 **THE ADAMS LAW FIRM, PLLC**

22 By: 

23 Jeffrey R. Adams, Esq.
24 Attorneys for Defendants

25 **MUSGROVE, DRUTZ & KACK, P.C.**

26 By: 

27 Mark W. Drutz, Esq.
28 Sharon Sargent-Flack
Attorneys for Defendants

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COPY of the foregoing mailed
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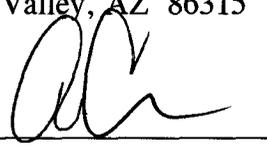
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2233 North 7th Street

17 161

STATE OF ARIZONA County of Yavapai

17 161

I do hereby certify that the within instrument was filed and recorded at the request of

- Tom Lynch ...
p. M. Book 916. Official Records

June 13

A.D. 1974 of

1.33

of

Official Records

Page 680-681-682 Records of Yavapai County, Arizona

WITNESS my hand and official seal the day and year first above written

PAUL C. JENNEY, County Recorder

by *Lillian E. Hampton* Deputy

LUYUTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.

6. All residential buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction.

EX

7. (a) All single family residences other than mobile homes shall require 1,000 square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not to exceed three (3) weeks in any one season, or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

16. All garbage or trash containers, oil tanks, bottled gas tanks and other such facilities must be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

18. Invalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions of this document.

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.

Robert D. Conlin
Robert D. Conlin

Margaret Dell Conlin
Margaret Dell Conlin

David A. Conlin, Jr.
David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Dell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 7/6/77

[Signature]
Notary Public

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 7/6/77

[Signature]
Notary Public

1 FAVOUR MOORE & WILHELMSSEN, P.A.
2 Post Office Box 1391
3 Prescott, AZ 86302-1391
4 Ph: (928)445-2444
5 David K. Wilhelmsen, #007112
6 Marguerite Kirk, #018054

7 Attorneys for Plaintiffs

8 **IN THE SUPERIOR COURT OF ARIZONA**
9 **COUNTY OF YAVAPAI**

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

16 Plaintiffs,

17 vs.

18 **DONALD COX and CATHERINE COX,)**
19 **husband and wife,)**

20 Defendants.)

Case No. CV 2003-0399

Division 1

PLAINTIFFS' OBJECTION
TO DEFENDANTS'
MOTION FOR ATTORNEYS' FEES

(Oral Argument Requested)

21 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Katheryn Page, by and
22 through undersigned counsel, hereby object to Defendants Cox's motion for attorneys' fees. This
23 objection is supported by the following memorandum of points and authorities, attached exhibits, as
24 well as the entire record in this proceeding.

25 RESPECTFULLY SUBMITTED this 29th day of August, 2005.

26 FAVOUR MOORE & WILHELMSSEN, P.A.

By: _____

David K. Wilhelmsen
Marguerite Kirk

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Any Award of Attorney Fees Must be Reasonable**
3 **and Defendants' Application for Attorney Fees is Patently Unreasonable**

4 Even assuming for purposes of argument that Defendants are entitled to an award of attorney's
5 fees, the amount claimed is patently unreasonable. Once the threshold determination has been made
6 that a party is a "successful party" for purposes of an attorney's fee award, the factors a court is to take
7 into consideration in rendering the amount of the award were outlined by the Arizona Supreme Court:

8 (1) whether the unsuccessful party's claim or defense was meritorious;

9 (2) whether the litigation could have been avoided or settled and the successful party's
10 efforts were completely superfluous in achieving the result;

11 (3) whether assessing fees against the unsuccessful party would cause an extreme
12 hardship;

13 (4) whether the successful party prevailed with respect to all of the relief sought;

14 (5) whether the legal question presented was novel and whether such claim or defense
15 have previously been adjudicated in this jurisdiction; and

16 (6) whether the award would discourage other parties with tenable claims or defenses
17 from litigating or defending legitimate contract issues for fear of incurring liability for
18 substantial amounts of attorney's fees.

19 *Wagenseller, supra*, 147 Ariz. at 394, 710 P.2d at 1049 citing *Associated Indemnity Corp. v. Warner*,
20 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985).¹ The first two factors are necessarily intertwined.

21 The over-arching principles in a determination of an award of attorney's fees is that the fee is
22 reasonable, both as to hourly rate and to number of hours devoted to the case. *Schweiger v. China Doll*
23 *Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927, 931 (App.1983). Identifying the factors a court was
24 to consider in determining the reasonableness of the fee, the *Schweiger* court adopted that portion of
25 the Arizona Supreme Court's decision in *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, (1959):

26 ¹ Although the *Wagenseller* decision was in the context of an award of attorney's fees under A.R.S.
§12-341.01(A) on appeal, the factors enumerated by the Arizona Supreme Court in this decision have
since been extended to litigation at the trial court level.

1 (1) the qualities of the advocate: his ability, his training, education, experience,
2 professional standing and skill;

3 (2) the character of the work to be done: its difficulty, its intricacy, its importance,
4 time and skill required, the responsibility imposed and the prominence and character
5 of the parties where they affect the importance of the litigation;

6 (3) the work actually performed by the lawyer: the skill, time and attention given to
7 the work;

8 (4) the result: whether the attorney was successful and what benefits were derived.

9 *Id.* at 245-46, 336 P.2d at 146.

10 Application of the Arizona Supreme Court's and appellate court's decisions in *Schwartz*,
11 *Schweiger* and *Wagenseller*, to Defendants' application for attorney's fees compels the conclusion that
12 the attorney's fees requested defy reasonableness because of the enormous unreasonable amount of
13 time opposing counsel billed for unproductive work that did not or was not connected with the merits
14 of the case. Defendants' attorney fee application is replete with billing entries that are unjustified,
15 unreasonable, and groundless in light of the fact that this litigation was not complex, and perhaps most
16 importantly, spanned an unnecessary length of time as a direct result of Defendants' counsel's
17 unwarranted delay in filing summary judgment on the principle issue in dispute until the eve of trial.
18 Furthermore, opposing counsel's billing statements are replete with vague entries that fail to provide
19 adequate detail as to how the work was relevant and advanced Defendants' case. *Chase Bank of*
Arizona v. Acosta, 179 Ariz. 563, 574, 880 P 2d 1109, 1120 (App. 1994).

20 **The Hours Expended by Opposing Counsel in this Matter are Clearly Unreasonable**

21 As a preliminary matter, it is important to note that with limited exception, Defendants'
22 counsel's billing statements are replete with block billing entries. "Block billing" refers to the a lump-
23 sum time assessed for multiple unrelated tasks in one billing entry. *Compare e.g., Defendants'*
counsel's billing entry for Adams, June 22, 2005 ("block billing"), with billing statement for Kack
billing entry, July 22, 2005 (delineating time spent on various tasks). Block billing prevents a court
24 from adequately determining whether the fee claimed (based upon the time spent) for a particular
25 matter is reasonable. *Gratz v. Bollinger*, 353 F.Supp.2d 929, 939 (D.Ct. S.D. Mich. 2005) ("As a result
26

1 of such 'block billing,' the Court is not able to determine the number of hours expended on each
2 discrete task. Thus the Court cannot determine whether the number of hours billed are reasonable.").
3 The use of block billing has justified federal courts in utilizing an across-the-board percentage
4 reduction in the requested fees. *Id.* (holding "block billing" practice justified 10% reduction in
5 attorney fee request in addition to further reductions on other grounds).

6 Furthermore, the sheer number of attorneys employed by Defendants mandates a fee reduction.
7 "It is well recognized that when more lawyers than are necessary are assigned to a case, the level of
8 duplication of efforts increases." *General Electric Co.*, 1997 U.S. Dist. Lexis 19969, 1997 WL 397627
9 at *4. In this case, opposing counsel's billing records demonstrate that during the course of their
10 representation of Defendants, no less than 5 attorneys at their firm worked on the case (namely,
11 Adams, Drutz, McGregor, Sargent-Flack and Kack). "It is well recognized that when more lawyers
12 than are necessary are assigned to a case, the level of duplication of effort increases...." *Gatti v.*
13 *Community Action Agency of Greene County, Inc.*, 263 F.Supp.2d 496, 518 (N.D.N.Y. 2003). This
14 is precisely the result in the present case, as demonstrated by the astronomical fees opposing counsel
15 charged for preparing, for instance, simple disclosure statements, and short memorandum. "While
16 parties to a litigation may fashion it according to their purse and indulge themselves and their
17 attorneys...they may not foist their extravagances upon their unsuccessful adversaries." *Farmer v.*
18 *Arabian American Oil Co.*, 31 F.R.D 191, 193 (S.D.N.Y. 1963). In this fee application, as discussed
19 in greater detail below, Defendants are attempting to foist onto Plaintiffs their indulgence and fancy
20 in having multiple attorneys represent them when the complexity of the case clearly does not justify
21 such an extravagance.

22 1. ANSWER, RESPONSE TO APPLICATION FOR PRELIMINARY INJUNCTION
23 AND WORK ON MOTIONS NEVER FILED BY DEFENDANTS

24 From the time current counsel represented Defendants, opposing counsel's billing statements
25 reveal incredible charges for work that exceeds what is reasonable for the task, or otherwise was
26 performed for matters that were never filed. For instance, opposing counsel charged 6.1 hours for

1 preparing the answer: Adams (identified as JRA on the billing statements) charged 4.6 hours for
2 preparing the answer in this complaint, as well as for a third-party complaint that was never filed in
3 this case, and his assistant "LJT" charged 1.5 hours for preparing the answer. *See, Defendants'*
4 *counsel's billing statements for February 26, 2004 (3.0 hours billed by JRA for preparing answer);*
5 *April 8, 2004 (1.0 hours); April 26, 2004 (0.6 hours); and, May 7, 2004 (1.5 hours charged by LJT).*
6 Incredibly, Adams billed his clients 0.75 hours for preparing the verification, presumably for the
7 answer that was filed. *See, Defendant's counsel's billing statement for May 17, 2004.*

8 Adams also charged 1.5 hours on April 28, 2004 for preparing a notice of non-parties at fault.
9 This is an extraordinary charge for a simple notice, made all the more extraordinary by the fact that
10 Defendant never filed such a notice. *See, Defendants' counsel's billing statement, April 28, 2004 (1.5*
11 *hours charged by JRA).*

12 Defendants further claim as reasonable attorney's fees an astonishing 2.3 hours of attorney and
13 legal assistant time to prepare three perfunctory notices consisting of a *one sentence* demand for jury
14 trial, a simple controverting certificate to motion to set that comprised one-half page, and, a one-page
15 form notice of change of judge. *See, Defendants' counsel's billing statement for April 30, 2004 (1.5*
16 *hours by JRA for preparing these notice); May 4, 2004 (0.6 hours by legal assistant LJT to do the*
17 *same work again); and, May 4, 2004 (0.2 hours devoted to discussion between Adams and Drutz*
18 *"regarding filing Notice of Change of Judge.")*. These time entries further reveal a duplication of
19 work between Adams and his legal assistant – both charging for preparing the same three notices,
20 which combined amount to little more than one page of text, for a total of 2.1 hours.

21 Equally unreasonable, if not outright incredible, is Adams charge of 9.2 hours for preparing
22 a response to Plaintiffs' application for a preliminary injunction. *See, Defendants' counsel's billing*
23 *statements at May 5, 2004 (2.0 hours billed by "JRA"); May 6, 2004 (2.7 hours); May 12, 2004 (1.0*
24 *hour); and, May 18, 2004 (3.5 hours).* Defendants never filed a response to the application for
25 preliminary injunction, instead proposing and ultimately securing a stipulation to vacate the hearing
26 set on the issue. *See, Stipulation vacating hearing on Plaintiffs' OSC re verified application for*

1 preliminary injunction, prepared by Defendants' counsel, June 4, 2004. For the preparation of that
2 stipulation, opposing counsel charged 0.8 hours. See, Defendants' counsel's billing statement for June
3 1, 2004 (0.2 hours by LJT to draft stipulation and letter, and double the time by JRA, 0.4 hours, to
4 "Work on Stipulation. ").

5 Opposing counsel Adams' affidavit in support of the motion for attorney's fees is intended to
6 attest to the reasonableness of the work performed. However, Adams' own billing statements
7 demonstrate that such is not the case. On March 2 and 15, 2004, Adams billed 2.5 and 2.75 hours
8 respectively for work regarding a potential action against an attorney, apparently for malpractice. See,
9 Defendants' counsel's billing statements for March 2, 2004 (2.5 hours billed by JRA for "legal
10 research regarding action against Attorney"), and March 15, 2004 (2.75 hours billed by JRA for
11 "Legal research legal liability [sic] of Attorney/Malpractice issues..."). Whatever problems
12 Defendants may have had with some other or prior counsel, that involved a dispute that was not at
13 issue in this case and for which any charge is inherently unreasonable.

14 Again, on June 25, 2004, Adams billed 1.40 hours for "work on a motion to compel discovery"
15 that was never filed. See, Defendants' counsel's billing statement for June 25, 2004 (1.40 hours billed
16 by JRA). Defendant bears the burden of establishing the reasonableness of the work. Defendant has
17 not done so. It is an impossible task for either this Court or undersigned counsel to determine the
18 reasonableness of any fee when the motion was never filed. Defendants' counsel McGregor also
19 charged a total of 0.75 hours for research on July 19, 2004 on the topic of "equity and abatement and
20 revival." Neither of these issues was ever presented or at issue in this litigation. See, Defendants'
21 counsel's billing statement for July 19, 2004 (0.75 hours charged by GKM). Defendants' motion fails
22 to provide any explanation as to the reasonableness of this charge.

23 Defendants' counsel's practice of charging for motions that were never filed continued through
24 July, 2004. In their billing statements, opposing counsel have charged a total of 2.90 hours of attorney
25 time for a motion to dismiss; another motion that was never filed. See, Defendants' counsel's billing
26 statement for July 22, 2004 (0.50 hours by MWD for conference with JRA on motion to dismiss); and

1 (2.4 hours charged by JRA for "work on motion to dismiss."). Yet again, on July 29, 2004, opposing
2 counsel Adams charged 1.20 hours for "work on motion regarding depositions of Sanders and
3 Ware...." See, *Defendants' counsel's billing statement for July 29, 2004*. Adams again charged on
4 August 13, 2004 1.25 hours for "work on motion to compel depositions regarding A. Ware and D.
5 Sanders." See, *Defendants' counsel's billing statement for August 13, 2004*. Defendants' counsel
6 never filed a motion to compel concerning "depositions of Sanders and Ware."

7 The reasonableness of Defendants' claimed attorney's fees is confirmed by Adams suspect
8 billing entry of July 27, 2004 where he charged 1.4 hours for "legal research regarding waiver
9 argument." See, *Defendants' counsel's billing statement for July 27, 2004*. This work was done the
10 day prior to Plaintiffs filing and service on opposing counsel of their motion for summary judgment
11 re: waiver. See, *Defendants' counsel's billing statement for July 28, 2004 (1.50 hours charged by JRA*
12 *for, inter alia, "review motion for summary judgment and statement of facts....")*.

13 2. DEFENDANTS' COUNSEL'S TIME SPENT ON DISCOVERY

14 IS UNREASONABLE

15 Defendants' counsel claims *18 hours* for preparing their initial Rule 26.1 disclosure statement
16 and responses to request for production of documents (the latter merely referencing the former). See,
17 *Defendants' counsel's billing statements for August 17, 20, 25, 26, 27 and 30, 2005*. A cursory review
18 of Defendants' initial disclosure statement (*a copy attached hereto as Exhibit "1"*) demonstrates the
19 unreasonableness of counsel's claim of 18 hours to prepare the document. There is only a cursory
20 rendition of the facts underlying the case, and no discussion or citation to any case in support of
21 Defendants' affirmative defenses. To the contrary, Defendants merely disclosed the title for the
22 affirmative defense (e.g. "Waiver") and then merely stated that "upon request," Defendants would
23 divulge their legal support to Plaintiffs, (*see, Exhibit 1, Defendants' Initial Rule 26.1 Disclosure*
24 *Statement, August 30, 2004 at pp.3-4*), even though opposing counsel Adams had already billed 1.4
25 hours for legal research on waiver on July 27, 2004. Defendants' disclosure as to the subject matter
26 of various witness testimony was a generalized statement for each witness, repeated for the

1 subsequently named witness. *See, Exhibit 1, Defendants' Initial Rule 26.1 Disclosure Statement at*
2 *pp. 4-9.* While Defendants' listed a large number of documents (which also formed their responses
3 to a request for production), there is no discussion of the relevance of any of these documents that
4 would justify any portion of 18 hours of work. *See, Exhibit 1, Defendants' Initial Rule 26.1 Disclosure*
5 *Statement at pp. 9-11.* Indeed, it is doubtful that anyone at opposing counsel's office even reviewed
6 the disclosed documents that were forwarded to undersigned counsel, as documents listed under tab
7 (11) were produced with a post-it note stating "Do Not disclose."

8 Adams also billed 2.50 hours for the preparation of a supplemental disclosure on November
9 24, 2004. *See, Defendants' counsel's billing statement for November 24, 2004.* That disclosure
10 statement consisted of the disclosure of one lay witness, the identification of 5 other documents (with
11 no discussion as to their relevance), and a one-sentence quotation from a treatise in support of their
12 defense of unclean hands. *See, Defendants' second supplemental disclosure statement, November 24,*
13 *2004 (a copy attached hereto as Exhibit "2").* It defies credibility to suggest that 2.50 hours of an
14 attorney's time was necessary to prepare such a scanty supplemental disclosure statement.²

15 The time billed by opposing counsel – 1.65 hours – for their 5th supplemental disclosure
16

17 ² Noticeably absent from opposing counsel's billing statements is *any* charge for time spent
18 on preparing a supplemental disclosure statement dated November 11, 2004. As the Court may recall,
19 undersigned counsel filed a motion *in limine* regarding Defendants' calling several lay witnesses at
20 the time of trial for failure of opposing counsel to disclose those witnesses prior to the Court imposed
21 discovery cut-off date. *See, Plaintiffs' motion in limine, July 19, 2005.* Defendants' counsel stated to
22 the Court that these witnesses had been disclosed, pointing to a disclosure statement dated November
23 11, 2004. *See, Defendants' response to motion in limine, July 22, 2005 at p.2.*

22 **However, in reviewing opposing counsel's billing statements, there is no record for any**
23 **work pertaining to a supplemental disclosure statement dated November 11, 2004.** On October 5,
24 2004, Adams billed 1.0 hours for "work on supplemental disclosure statement...." That supplemental
25 disclosure statement was forwarded to undersigned counsel on October 6, 2004. No other entry
26 appears for work by any attorney or legal assistant at opposing counsel's office pertaining to another
supplemental disclosure statement after October 5, 2004 until November 24, 2004 when Adams billed
2.50 hours for work on a supplemental disclosure statement. That disclosure statement was forwarded
to undersigned counsel on that date.

1 statement is, quite frankly, outrageous. *See, Defendants' counsel's billing statements for June 30, 2005*
2 *(0.4 hours charged by Drutz and 1.25 hours charged by Adams)*. That disclosure statement consists
3 of one sentence. *See, Defendants' Fifth Supplemental Disclosure Statement, June 30, 2004 (a copy*
4 *attached hereto at Exhibit "3")*.

5 3. OPPOSING COUNSEL CHARGED AN UNREASONABLE
6 AMOUNT OF TIME FOR RESPONDING TO PLAINTIFFS'
7 SUMMARY JUDGMENT MOTIONS

8 In addition to the 3.0 hours charged by Adams on July 29 and August 5 to research the
9 affirmative defense of waiver, opposing counsel also devoted 19.2 hours to preparing and revising
10 their response and controverting statement of facts to Plaintiffs' motion for summary judgment re:
11 waiver. *See, Defendants' counsel's billing statements for September 24, 27, 28, and 29, 2004*. This
12 totals 22.2 hours charged by Defendants' counsel for responding to Plaintiffs' summary judgment
13 motion on waiver. Substantively, Defendants' counsel's response to the summary judgment consisted
14 of 5 pages; an almost equal number of pages were devoted to a re-print of their witness, Sheila
15 Cahill's, report regarding alleged violations of the recorded restrictive covenants. *Compare,*
16 *Defendants' response to summary judgment re waiver at pp.6-8, with Cahill Affidavit attached as*
17 *Exhibit 8 to Defendants' controverting statement of facts*. Moreover, opposing counsel's
18 controverting statement of facts is almost a duplication of the substantive text contained in the
19 response. Most glaring – particularly in light of Adams previous billing for 3.0 hours of research on
20 the issue of waiver – is the complete absence of any case law relevant or pertinent to the issue then
21 before the Court, *other than* a quotation from the controlling case on which Plaintiffs' based their
22 motion for summary judgment.

23 Defendants' counsel also impermissibly double-billed for both Drutz and Adams time in
24 preparing for oral argument on Plaintiffs' motion for summary judgment re waiver. Drutz billed 2.50
25 hours for preparation and attendance at oral argument, while Adams billed 3.75 hours for the identical
26 work. *See, Defendants' counsel's billing statements at January 31, 2005* But only Drutz argued his

1 clients' objection to the motion before the Court.

2 Opposing counsel charged an outlandish 37.0 hours for two attorneys to review Plaintiffs'
3 motion for summary judgment regarding the affirmative defenses of estoppel, laches, and unclean
4 hands, research, draft and revise a response. *See, Defendants' billing statements for December 28, 29*
5 *and 30, 2004; and, January 3, 5, 6, 7, 8, 9, 10 and 11, 2005.* Opposing counsel's research included
6 time spent on the defense of abandonment – which Plaintiffs' never moved for summary judgment –
7 as well as “research ‘good for the goose, good for the gander’...” *See, Defendants' counsel's billing*
8 *statements for January 2, 3 and 9, 2005 (research by attorney “SSF”).* “Good for the goose, good
9 for the gander” is not a recognized legal argument. More importantly, Plaintiffs' prevailed on their
10 motion for summary judgment on these affirmative defenses. *See, Minute Entry, April 4, 2005.*
11 Reasonableness dictates that Defendants cannot recover their attorney's fees for raising futile, if not
12 legally specious, defenses and arguments.

13 4. OTHER INSTANCES OF OPPOSING COUNSEL'S

14 CHARGE OF UNREASONABLE HOURS FOR MOTION PRACTICE

15 Opposing counsel seeks reimbursement for 5.05 hours of time to prepare a 3-page response
16 to a motion *in limine* regarding the introduction of lay witness opinion testimony. *See, Defendants'*
17 *response to motion in limine, September 23, 2005.* Adams charged 3.60 hours to work on the
18 response, and for legal research. *See, Defendants' counsel's billing statements for September 22, 2004.*
19 What was glaringly absent from Defendants' response was the citation and argument of any legal
20 authority for their position. Opposing counsel's charge of more than 5 hours to prepare essentially
21 a 3-page response is unreasonable.

22 Defendants' counsel also charged 6.65 hours of time for their work on a response to Plaintiffs'
23 motion to compel tax returns and a motion for protective order on the same matter. *See, Defendants'*
24 *billing statements for September 20, 2004, October 6 and 12, 2004.* The response and motion filed
25 by opposing counsel again comprised a mere 3 pages, while no legal authority was offered other than
26 a cursory cite to C.J.S. *See, Defendants' response to motion to compel and motion for protective*

1 order, October 12, 2004. Clearly, 6.65 hours of time to compose and file a 3-page rendition of facts
2 surrounding the discovery dispute is inherently unreasonable. Furthermore, Defendants failed to
3 prevail on the discovery dispute, the Court ordering the disclosure of their tax returns to Plaintiffs. *See,*
4 *Minute Entry, January 31, 2005 at p.2.*

5 Two other entirely unsuccessful motion opposing counsel claims fees for was the motion to
6 join indispensable parties under Rule 19 filed on June 24, 2005, and motion for summary judgment
7 re declaration vagueness and ambiguity. Opposing counsel filed their motion just days before the
8 Court ordered dispositive motion cut-off date, even though their billing records reflect that they had
9 begun working on the indispensable party issue almost a year before, in July, 2004. *See, Defendants'*
10 *counsel's billing statements for July 21 and 22, 2004 (billing by Adams for research on indispensable*
11 *parties and work on "motion to dismiss").* In keeping with the established pattern of billing
12 unreasonable hours for work on the case, opposing counsel claims a total of 49.85 hours to produce
13 a 10-page motion on joining indispensable parties and a 3-page motion for summary judgment arguing
14 that the restrictive covenants were vague and ambiguous. The latter motion characteristically
15 contained no substantive legal argument based on existing case law; only cursory citation to 3 cases.
16 Both motions were summarily denied by the Court on July 18, 2005. *See, Minute Entry, July 18, 2005*
17 *at p.1 (denying Defendants' motion to join indispensable parties); see also, Defendants' counsel's*
18 *billing statements for July 21 and 22, 2004; January 18, 19, 21, 26 and 31, 2005; February 28, 2005;*
19 *and June 8, 16, 17, 20, 21, 22, 23 and 24, 2005 (work performed by attorneys Adams, Sargent-Flack*
20 *and Drutz for research, "work on," and revisions to motion to dismiss pursuant to Rule 19 and*
21 *vagueness/ambiguity summary judgment motion).* Not only are the hours devoted to these specious
22 arguments beyond any semblance of reasonableness given the motions filed, but the fact that the Court
23 summarily dismissed both motions mandates that Plaintiffs not be charged for opposing counsel's
24 misguided motion practice based on ill-founded arguments.³ Opposing counsel also demands as

25 ³ In another block billing, dated July 20, 2005, Adams also charged for a motion for
26 reconsideration of the Court's denial of their motion to join indispensable parties. This motion for

1 “reasonable attorney’s fees” the time each of the 3 attorneys spent reviewing the Court’s July 18, 2005
2 minute entry denying their motion to join indispensable parties and motion for summary judgment re
3 ambiguity and vagueness of the recorded declaration of restrictions. *See, Defendants’ counsel’s billing*
4 *statements for July 18, 2005 (0.25 hours billed by Adams to review Court’s minute entry; 0.10 hours*
5 *billed by attorney Sargent-Flack to review the same minute entry; and, time billed by attorney Drutz*
6 *in a block billing segment to review the minute entry denying those motions).*

7 Undaunted by defeat, opposing counsel charged their clients and now seek reimbursement
8 from Plaintiffs for 16.8 hours in connection with motions for reconsideration of the Court’s denial of
9 their motion to join indispensable parties, and the Court’s prior dismissal of the affirmative defenses
10 of laches, estoppel and unclean hands. *See, Defendants’ counsel’s billing statement for July 25, 2005*
11 *(work performed by Adams, Kack and Sargent-Flack).* Opposing counsel never filed motions for
12 reconsideration of the Court’s prior rulings on these issues. The time devoted by 3 attorneys on two
13 motions for reconsideration is outrageous; that opposing counsel would even suggest that this Court
14 impose attorney’s fees against Plaintiffs for more motions that were never filed by Defendants
15 stretches the bounds of credibility.

16 Defendants’ counsel demands 3.15 hours for Adams’ and Drutz’s work on their motion to
17 continue trial, filed July 14, 2005. The motion was a summary of communications between counsel
18 concerning Defendants’ counsel’s basis for a request for a continuance. The motion was only 4 pages
19 in length. The Court denied Defendant’s motion for trial continuance. *See, Minute Entry, July 18,*
20 *2005.* It would be wholly unreasonable to charge Plaintiffs’ with the cost of yet another of
21 Defendants’ failed motions.

22 Another glaring instance of opposing counsel’s improper demand for attorney’s fees is 2.95
23 hours charged for work on a special action. *See, Defendants’ counsel’s billing statement for July 26,*
24 *2005 (special action work performed by Sargent-Flack).* Defendants’ never filed a petition for special
25
26 _____
reconsideration was never filed.

1 action, and they have failed to meet their burden of proof by demonstrating the reasonableness for this
2 charge.

3 5. OPPOSING COUNSEL'S REQUEST FOR ATTORNEY'S FEES
4 FOR PRE-TRIAL WORK IS INHERENTLY UNREASONABLE

5 Defendants' counsel seek attorney's fees for 72.65 hours for 4 attorneys work to prepare jury
6 instructions, opening argument, a pre-trial statement, proposed voir dire, amending their witness list
7 (their first witness list stricken by the Court pursuant to Rule 11), proposed jury verdict forms,
8 speaking with witnesses, and for unspecified trial preparation. *See, Defendants' counsel's billing*
9 *statements for June 29, 2005; July 12, 14, 15, 18, 19, 20, 21, 22, 23, 24, and 26 2005 (work by Adams,*
10 *Kack, Drutz and Sargent-Flack on jury instructions, "prepare for trial," amended witness list,*
11 *opening argument, jury verdict forms and voir dire questions).* The most mysterious billing entries
12 amount to 7.25 hours on July 23 and 24, 2005, where Adams simply "prepare[d] for trial." These
13 documents were never filed or served on undersigned counsel, and opposing counsel has failed to
14 provide copies of these documents with their motion for attorney's fees to support the reasonableness
15 of their request. Therefore, this Court may reject all of the claimed attorney's fees for this work.
16 Alternatively, 70.20 hours is inherently unreasonable. Opposing counsel has also failed to
17 demonstrate why none of this work could have been performed by a paralegal. The fact that 4
18 attorneys were necessary to perform this work also defies credibility.

19 Even if the Court were inclined to provide any attorney's fee award for this work, it is
20 imperative to note that opposing counsel bears responsibility for incurring these attorney's fees in the
21 first instance. The basis for this Court vacating trial in this matter was Defendants' motion for
22 summary judgment re agricultural activities. Opposing counsel filed this motion for summary
23 judgment on June 24, 2005 – *less than a week* before the Court ordered cut-off date for filing
24 dispositive motions; *a month* from the due date for filing jury instructions, voir dire and the like as set
25 forth in the Court's April 4, 2005 minute entry; and, little more than *a month* before trial was
26 scheduled to commence. Yet, opposing counsel had actual knowledge of their "legal" claim alleging

1 that the restrictive covenants prohibition against business and commercial activities did not preclude
2 agricultural activities when their own client raised the argument during his deposition on June 22,
3 2004 – a year before opposing counsel filed the motion for summary judgment. See, Defendant
4 Donald Cox Deposition, June 22, 2004 at p.39, lines 8-13 (a copy attached hereto as Exhibit “4”).
5 Opposing counsel has failed to provide any rational basis why they delayed more than a year, instead
6 waiting until the eve of trial, to file a dispositive their dispositive motion on this issue. As a result,
7 opposing counsel’s own dilatory conduct precludes them from recovering attorney’s fees for 72.65
8 hours expended on pretrial work.

9 6. DEFENDANTS’ DEMAND FOR ATTORNEY’S FEES
10 ON POST-JUDGMENT WORK IS UNREASONABLE

11 Defendants’ counsel claims 5.75 hours to prepare the motion for attorney’s fees and costs. See,
12 Defendants’ counsel’s billing statements for July 29 and August 8, 2005 (5.75 hours billed by Adams).
13 Defendants’ motion is a typical *pro forma* application demanding re-imbusement of attorney’s fees,
14 supported by a billing statement print-out. The time spent by opposing counsel in preparing the
15 motion is clearly not justified by the end product.

16 Opposing counsel’s motion also includes time totaling 6.1 hours (again, by 3 attorneys) for
17 work on issuing a subpoena *duces tecum* to non-party Alfie Ware, serving a request for production of
18 documents on undersigned counsel to obtain information on Plaintiffs’ attorney’s fees, and work on
19 reviewing Plaintiffs’ motion for a protective order arising from opposing counsel’s discovery requests.
20 See, Defendants’ counsel’s billing statements for August 1, 2, 3, 4, 6, 10 and 12, 2005 (charges by
21 Adams, Drutz and Sargent-Flack). As this issue is currently pending before the Court, and
22 Defendants’ have not prevailed on this matter, opposing counsel has no basis in law to run an end-
23 game around this Court by requesting their attorney’s fees on a collateral discovery issue in the instant
24 motion.

25 ///

26 ///

1 7. DEFENDANTS ARE NOT ENTITLED TO ATTORNEY'S FEES

2 FOR WORK THAT IS SUPPORTED ONLY BY VAGUE BILLING ENTRIES

3 Similar to the problem posed by block billing, vague billing entries, "such as "telephone
4 conference," "office conference," "research" [and the like]," *Gratz, supra, 353 F.Supp.2d at 939*,
5 preclude a court from determining whether the work was reasonably related to the litigation, and
6 whether the time spent on the task was also reasonable. *Id. citing In re Pierce (Abrams Fee*
7 *Application), 338 U.S. App. D.C. 97, 190 F.3d 586, 593-94 (D.C. Cir. 1999)* ("To establish that he
8 *is entitled to reimbursement for particular items of attorneys' fees...the fee petitioner must provide*
9 *the court with the attorneys' billing records that describe the work performed in sufficient detail to*
10 *establish that the work is reasonably related [to the litigation]."). The Schweiger Court also held*
11 *that: "It is insufficient to provide the court with broad summaries of the work done and time incurred."*
12 *Schweiger, supra, 138 Ariz. at 188, 673 P.2d at 932.* The Eighth Circuit Court of Appeals has
13 justified an across-the-board percentage fee reduction based upon a fee applicant's submission of
14 vague billing entries in support of the claimed attorney's fees. *H.J. Inc. v. Flygt Corp., 925 F.2d 257,*
15 *260 (8th Cir. 1991) (reducing hours billed by 20% because of vague billing entries).*

16 Defendants' counsel's motion for attorney's fees is rife with vague billing entries that opposing
17 counsel has not demonstrated to be relevant or necessary to the litigation of this case. For instance,
18 Defendants' counsel charges 13.55 hours related to "telephone conference with client"; "letter to
19 client"; "fax from client"; and 2 site visits to Defendants' property totaling 5.0 hours. *See, Defendants'*
20 *counsel's billing statements for May 20, June 15, 16, 19, July 28, August 24, September 9 and 13,*
21 *October 4, 7, 19, November 9, 2004; January 10, February 15, April 12 and 20, June 9, 14 and 21,*
22 *and July 6, 2005.* Defendants provide no description of the topic of the conversation or letter, and thus
23 this Court cannot intelligently decipher whether the work was necessary. Consequently, opposing
24 counsel's fee request must be reduced for these unsupported hours.

25 Former counsel for Defendants, Michael Bourke's billing statements are a catalog of vague
26 time entries that fail in any way to demonstrate how the work done was reasonably related to the

1 litigation. *See, Exhibit 2 to Defendants' motion for attorney fees.* Therefore, it is appropriate for this
2 Court to disallow all attorney's fees claimed by Defendants' former counsel.

3 Worse, opposing counsel claims 23.9 hours for conferences with each other. *See, Defendants'*
4 *billing statements for February 26, May 4 and 7, June 23, 24, 25 and 30, July 22, September 13, 20,*
5 *21 and 28, October 6, December 8, 15 and 27, 2004; January 5, 9 and 31, February 2 and 28, April*
6 *7 and 25, May 9 and 20, June 1, 13, 16 and 29, July 1, 5, 11, 13, 15, 18, 19, 20, 21, 22, 25, 27 and 29,*
7 *August 2 and 10, 2005 (due to opposing counsel's persistence in utilizing block billing, undersigned*
8 *counsel assumed 0.2 hours for block billing entries dated September 28, 2004, January 31, June 16,*
9 *July 1, 15, 19, 21 and 29, and, August 2, 2005; and, 0.4 hours for block billing entries dated July 22*
10 *and 25, 2005 by Adams). "Obviously, more lawyers leads to more 'conference' time...." Gillberg v.*
11 *Shea, 1996 U.S. Dist. Lexis 21847, 1996 WL 39762 (S.D.N.Y. 1996) at *5.* The U.S. Supreme Court
12 has held that multiple attorneys leads to case "overstaffing," in turn leading to unwarranted attorney's
13 fees. *Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983).*

14 Defendants' counsel's 23.9 hours for "conferences" is an incredible number of hours for
15 Defendants' counsel to be speaking amongst themselves regarding the case, and it is wholly
16 unreasonable that simply because Defendants' chose to be actively represented by 4 attorneys at
17 opposing counsel's firm (Adams, Drutz, Kack and Sargent-Flack) who are responsible for all these
18 inter-office conferences, that this charge be shifted to Plaintiffs. In *Gratz v. Bollinger, supra*, the
19 federal court stated, on an application for an award of attorney's fees, that counsel bears the burden
20 of showing his own contribution when two or more attorneys work on a matter. *353 F.Supp.2d at 942*
21 *(internal citation omitted).* The *Gratz* court significantly reduced the attorney fee request because of
22 fees charged by multiple attorneys. The federal district court stated:

23 [A] significant number of billing entries show multiple attorneys charging for the same
24 tasks ***or for tasks only made necessary because of the large number of attorneys***
25 ***involved in the litigation.*** For example, many entries relate to telephone conferences
26 and meetings between the attorneys and to preparation of notes, e-mails, and
memoranda for the sole purpose of keeping [the] other attorneys apprised of progress
in the case.

1 *Ibid. (emphasis added).* The same rationale applies in this case. As discussed throughout this
2 objection, and particularly in regard to opposing counsel's constant conferencing among themselves,
3 Defendants' multiple attorney representation has led to an unnecessary increased cost in their
4 attorney's fees, without counsel demonstrating their "specific contribution." Absent such a showing,
5 there is no basis to shift Defendants' option to engage multiple attorneys (and increased cost
6 associated with that representation) to Plaintiffs.

7 Opposing counsel's conferencing among themselves also impermissibly includes double-
8 billing for the same conference by each participating attorney. *See, Defendants' counsel's billing*
9 *statements for December 15, 2004 (Adams and Sargent-Flack each apparently billing for the same*
10 *conference); June 29, 2005 (conference between Drutz and Adams billed for by each); July 18, 2005*
11 *(conference between Adams and Drutz); and July 21, 2005 (again, conference between Adams and*
12 *Drutz that each billed).* Double-billing violates the "good billing judgment" rule. As the federal
13 district court has explained: "When attorneys hold a telephone or personal conference, good 'billing
14 judgment' mandates that only one attorney should bill that conference to the client, not both attorneys.
15 The same good 'billing judgment' requires attorneys not to bill for more than two attorneys to review
16 pleadings or to attend oral argument." *National Warranty Ins. Co., RRG v. Barnett, 1998 U.S. Dist.*
17 *Lexis 20659 (D.Or. 1998).*

18 Defendants' counsel Adams and Drutz also double-billed for their preparation and attendance
19 at oral argument on July 26, 2005 on their motion for summary judgment re agricultural activities.
20 As noted when both prepared for and attended oral argument on Plaintiffs' motion for summary
21 judgment on January 31, 2005, Adams did not participate in the oral argument on July 26, 2005, thus
22 making his charge for preparation for the argument unnecessary and unwarranted. Opposing counsel
23 double-billed 2.50 hours for preparation, attendance and conference with clients at oral argument on
24 July 26, 2005. *See, Defendants' billing statements for July 26, 2005 (Adams preparation for other*
25 *motions that were not argued that day mandate that the attorney fee request be reduced by 2 75 hours*
26 *representing Adams charges for that day).* *In re Rite Way Reproductions, 1998 Bankr. Lexis 1080*

1 (“The court will not compensate professionals for attendance at meetings or court hearings by
2 multiple members of the same firm when one or more of those professionals does not take an active
3 part, and there has been no showing of the necessity for the second member to participate in a given
4 meeting or hearing.”); see also, *Brake v. Murphy*, 736 So.2d 745 (Fla. Dist. Ct. App. 1999) (citing
5 to Tenth Circuit for proposition that “If the same task is performed by more than one lawyer, multiple
6 compensation should be denied....”).

7 **II. Imposition of An Award of Defendants’ Attorney’s Fees**
8 **Against Plaintiffs Constitutes a Hardship**
9 **and Would “Chill” Other Homeowners in the Subdivision from**
10 **Suing for Violations of the Recorded Covenants**

11 Defendants erroneously assert that the imposition of an award of attorney’s fees would not
12 impose a hardship to Plaintiffs. Defendants argue that a third party is incurring the cost of this
13 litigation. Defendants are incorrect. Plaintiffs’ borrowing the money to pay undersigned counsel’s
14 attorney’s fees does not mean that they do not remain ultimately liable for re-payment of those fees
15 to the third party. The fact that Plaintiffs are forced to seek the financial assistance of a third party
16 only demonstrates the hardship that payment of their own attorney’s fees places on them, much less
17 the onerous burden of paying Defendants’ cadre of attorneys that have worked on the case. Opposing
18 counsel’s own billing statements underscore that their client is the proverbial deep-pocket, willing to
19 pay any sum for any work on this litigation, whether or not the work or the amount billed is
20 reasonable. To shift Defendants’ inflated attorney’s fees to Plaintiffs, when Plaintiffs have to borrow
21 the funds to pay their own attorney, imposes a clear and obvious hardship on Plaintiffs. *Wagenseller*,
22 *supra*, 147 Ariz. at 394, 710 P.2d at 1049 citing *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567,
23 570, 694 P.2d 1181, 1184 (1985).

24 Additionally, as this Court is aware, there is no organized homeowner’s association in Coyote
25 Springs Ranch that can bring suit for violations of the recorded covenants. This Court’s imposition
26 of attorney’s fees against Plaintiffs’ would serve to chill any litigation by other homeowners that

1 would seek to enforce the Declaration of Restrictions against other violators. *Wagenseller, supra.*

2 **III. Conclusion**

3 Defendants' counsel's attorney fee application is riddled with block billing, double-billing,
4 vague billing entries, and unreasonable charges for work performed and for work on motions and
5 pleadings never filed. Defendants' counsel's preference for block billing justifies this Court in
6 reducing any fee award by an across-the-board percentage, a practice utilized in federal courts to
7 ensure the fee applicant does not receive a windfall. To the extent the Court is able to decipher
8 opposing counsel's billing statements, the overwhelming unreasonableness in amount of fees
9 requested for work product that was either not filed or exceeded the amount of time a reasonable and
10 prudent attorney would spend, for instance, on a one-sentence supplemental disclosure statement or
11 a 3-page motion, warrants that this Court drastically reduce Defendants' attorney fee request.
12 Furthermore, the vast majority of attorney's fees (for trial preparation) were generated as a result of
13 opposing counsel's own dilatory conduct in filing the dispositive motion for summary judgment which
14 effectively dispensed with the litigation. Opposing counsel knew more than a year before filing for
15 summary judgment of the potential argument that ultimately prevailed in this Court. Yet, Defendants'
16 counsel inexplicable delay in pursuing the issue until only weeks before trial precipitated their
17 generation of incredible numbers of hours devoted to trial preparation. In further support of a
18 reduction of the fee request, Defendants' indulgence in several attorneys working on their case, an
19 "extravagance" they obviously could afford, does not warrant shifting to Plaintiffs those additional
20 fees attributable to the multiple attorneys working on the case and conferencing with each other on
21 the status of each motion, pleading or letter exchanged by counsel.

22 At a maximum, the only attorney's fees Defendants may seek reimbursement for is on their
23 summary judgment motion re agricultural activities, and discovery related to that summary judgment,
24 because Defendants only prevailed on that dispositive motion. A review of opposing counsel's time
25 records for this work reveals that opposing counsel billed an inordinate and unreasonable amount of
26 time for work on this narrow, limited issue.

1 Finally, and most importantly, the imposition of Defendants' attorneys fees to Plaintiffs
2 imposes an undue hardship on Plaintiffs. Unlike Defendants, Plaintiffs have limited financial means,
3 as evidenced by the fact that they could not afford their own attorneys without recourse to borrowing
4 the money. Burdening Plaintiffs with Defendants' attorney's fees would also operate to chill any other
5 homeowner in the subdivision from pursuing a legitimate claim for breach of the recorded covenants,
6 a fact that weighs heavily against the imposition of fees in this case because there is no homeowner's
7 association that can enforce the restrictive covenants.

8 DATED this 29th day of August, 2005.

9 FAVOUR MOORE & WILHELMSSEN, P.A.

10
11 By: 

12 David K. Wilhelmsen
13 Marguerite Kirk
14 Post Office Box 1391
15 Prescott, Arizona 86302-1391
16 Attorneys for Plaintiffs

17 Original of the foregoing
18 filed this 29th day of August, 2005
19 with:

20 Clerk, Superior Court of Arizona
21 Yavapai County
22 Prescott, Arizona

23 A copy hand-delivered this 29th day
24 of August, 2005 to:

25 Honorable David L. Mackey
26 Division One
Superior Court of Arizona
Yavapai County
Prescott, Arizona 86302

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///

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1 and, a copy hand-delivered this
29th day of August, 2005 to:

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

8 By: 
9 David K. Wilhelmsen

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1 Mark W. Drutz, #006772
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5 Prescott, Arizona 86305
6 (928) 445-5935

7 Attorneys for Defendants

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

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

17 Plaintiffs,

18 v.

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

21 Defendants.

CASE NO. CV 2003-0399

DIVISION 3

**DEFENDANTS' INITIAL RULE
26.1 DISCLOSURE STATEMENT**

22 Defendants, Donald Cox and Catherine Cox, ("Defendants") by and through undersigned
23 counsel, disclose the following information pursuant to Rule 26.1 of the Arizona Rules of Civil
24 Procedure.

25 **I. FACTUAL BASIS FOR DEFENSES.**

26 Defendants are the owners of property located in Coyote Springs Ranch at 7325 N. Coyote
27 Springs Road, Prescott Valley, Arizona ("Subject Property") that was purchased in April, 1998.
28 Beginning in the year 2000, Defendants began making improvements to the Subject Property for
purposes of using it as a tree farm on which trees and shrubs were to be grown and which were to be
relocated at various times to Defendants retail and wholesale business locations on Highway 69 and
Viewpoint Drive. Since the year 2000, Defendants constructed improvements to the Subject Property
that have included constructing a driveway, drilling a well, establishing electricity and placing the

1 a mobile home, which has since been replaced by a manufactured home, establishing and installing
2 irrigation lines and tree lines, support posts and cables along the tree lines, planting boundary trees,
3 construction of a pump-house and meter for the well, construction of boundary fencing, construction
4 of a tack room and corrals and substantial grading of the Subject Property. The majority of
5 improvements to the Subject Property were completed in 2002, which coincided with Defendants' first
6 use of the Subject Property as a tree farm. Not including the inventory of trees for the tree farm, the
7 Defendants' cost of the Subject Property, improvements constructed thereon and equipment purchased
8 for use at the Subject Property have cost Defendants approximately Five Hundred Fifteen Thousand
9 Six Hundred Six Dollars and Seventy-Two Cents (\$515,606.72).

10 Prior to purchasing the Subject Property Defendants drove around the Coyote Springs Ranch
11 area and saw evidence of many types of business and commercial activities that were not residential
12 in nature including a church, Christmas tree farm, llama farms, alpaca farms, horse breeding, boarding
13 and training facilities, a hay sales facility, a general contractor's warehouse, a shipping company and
14 numerous commercial vehicles. Defendants do not recall ever seeing the Declaration of Restrictions
15 that is subject of this lawsuit prior to their purchase of the Subject Property. Based upon their
16 observations of Coyote Springs Ranch and the uses being made of properties in the area by other
17 property owners, they had no reason to believe that their anticipated use of the Subject Property as a
18 tree farm was not permitted. In January, 2001, Defendants filed their application with Yavapai
19 County for an agricultural exemption for the Subject Property. The exemption was granted (and is
20 still valid and effective today) and further led Defendants to believe that their use of the Property as
21 a tree farm was allowed. In the spring of 2001, visited attorney, Bob Launders, who resided in the
22 Coyote Springs Ranch area regarding their proposed use of the Subject Property. During their
23 meeting, Mr. Launders advised them that while he would not want a tree farm next to his property,
24 he stated that Defendants should have no problems with their use of the Subject Property as long as
25 their neighbors had no objection. Thereafter, Defendants discussed their anticipated use of the
26 Subject Property with their neighbors who owned property in the portion of Coyote Springs Ranch
27 where the Subject Property is located. Each of those people consented to, and registered approval of,
28

1 Defendants expected use of the Subject Property, which again led Defendants to believe that they
2 could use the Subject Property as a tree farm.

3 Prior to filing their lawsuit on May 16, 2003, Plaintiffs made no effort to enforce the
4 Declaration of Restrictions against Defendants. In fact, prior to filing this lawsuit, Plaintiffs never
5 even had a personal or telephonic conversation with Defendants advising them that they believed the
6 use of the Subject Property violated any restrictive covenant. This is the case despite the fact that
7 every time they drove on Coyote Springs Road between 2000 and May, 2003, Plaintiffs observed
8 Defendants' improvement and use of the Subject Property. Further, while Plaintiffs have claimed
9 during their depositions that their reason for not objecting to Defendants' use of the Subject Property
10 prior to filing their lawsuit was a lack of funds, that argument fails because their action against
11 Defendants is not costing them any money. Rather, the lawsuit filed against Defendants is being
12 funded in its entirety by an individual, namely Alfie Ware, who lacks any legal standing to bring the
13 lawsuit. As such, the poverty claim lacks merit. Therefore, Plaintiffs have no viable answer to
14 Defendants' laches and waiver defenses.

15 Furthermore, an investigation of the Coyote Springs Ranch subdivision has revealed that less
16 than ten percent (10%) of the property owners have complied with the Declaration of Restriction. The
17 violations of the Declaration of Restrictions is broad based and includes violations of virtually every
18 restrictive covenant set forth in the Declaration of Restrictions including numerous violations of the
19 provision dealing with business and commercial activities that have existed, in many cases, for
20 decades. Plaintiffs are included amongst those in violation of the Declaration of Restrictions. Based
21 on the sheer volume of violations of the Declaration of Restrictions, especially those numerous
22 violations of the prohibition of business and commercial activities, it is rather obvious that the
23 Declaration of Restrictions was long ago abandoned by the owners of properties in Coyote Springs
24 Ranch.

25 **II. LEGAL THEORIES UPON WHICH CLAIMS AND DEFENSES ARE BASED**

- 26 1. The Declaration of Restrictions that are at issue have been abandoned.
- 27 2. Estoppel.
- 28 3. Waiver.

- 1 4. Laches.
- 2 5. Unclean Hands.
- 3 6. Defendants/Counterclaimant further assert as defenses against Plaintiff's claims those
- 4 defenses set forth in their Answer to Plaintiffs' First Amended Complaint. Upon request, counsel for
- 5 Defendants will provide Plaintiffs with applicable legal authority supporting the Defendants' defenses
- 6 and will supplement this disclosure as applicable in the event additional defenses are identified
- 7 through the course of discovery.

8 **III. 26.1(a)(3) WITNESSES WHOM DEFENDANTS EXPECT TO CALL AT TRIAL**

9 **Catherine Cox**
10 **c/o Jeffrey R. Adams**
11 **MUSGROVE, DRUTZ & KACK, P.C.**
 Post Office Box 2720
 Prescott, Arizona 86302-2720

12 Catherine will testify as to her knowledge of the Subject Property and the Declaration of

13 Restrictions affecting the Subject Property at the time of Defendants purchase of Subject Property as

14 well as Defendants' use of the Subject Property. Catherine will also testify as to her knowledge

15 regarding other properties in the Coyote Springs Ranch area and the use of those properties and her

16 observations regarding the use of those properties.

17 **Donald Cox**
18 **c/o Jeffrey R. Adams**
19 **MUSGROVE, DRUTZ & KACK, P.C.**
 Post Office Box 2720
 Prescott, Arizona 86302

20 Donald will testify as to his knowledge of the Subject Property and the Declaration of

21 Restrictions affecting the Subject Property at the time of Defendants purchase of same as well as

22 Defendants' use of the Subject Property. Donald will also testify as to his knowledge regarding other

23 properties in the Coyote Springs Ranch area and the use of those properties and her observations

24 regarding the use of those properties.

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1 **James Cox**
2 **c/o Jeffrey R. Adams**
3 **MUSGROVE, DRUTZ & KACK, P.C.**
4 **Post Office Box 2720**
5 **Prescott, Arizona 86302**

6 Donald will testify as to his knowledge of the Subject Property and any Declaration of
7 Restrictions affecting the Subject Property at the time of Defendants purchase of same as well as
8 Defendants' use of the Subject Property. James will also testify as to his knowledge regarding other
9 properties in the Coyote Springs Ranch area and the use of those properties and her observations
10 regarding the use of those properties.

11 **John B. Cundiff and Barbara C. Cundiff**
12 **Kenneth Page and Katheryn Page, as Trustee of the Kenneth Page and**
13 **Catherine Page Trust**
14 **Elizabeth Nash**
15 **c/o David K. Wilhelmsen**
16 **FAVOUR, MOORE & WILHELMSSEN, P.A.**
17 **Post Office Box 1391**
18 **Prescott, Arizona 86302**

19 They will testify as to their knowledge of the Declaration of Restrictions affecting the Subject
20 Property as well as their knowledge of the Defendants and their use of the Subject Property prior to
21 their filing of this lawsuit. They will also testify as to other properties in Coyote Springs Ranch which
22 may be affected by enforcement of the Declaration of Restrictions, the use of those properties and
23 their knowledge regarding other violations of the Declaration of Restrictions including their own.

24 **Robert J. Launders**
25 **LAUNDERS - LAW OFFICES OF ROBERT J. LAUNDERS**
26 **8186 East Florentine Road, Suite B**
27 **Prescott Valley, Arizona 86314**
28 **(928) 775-5409**

29 Robert Launders will testify as to his knowledge of Coyote Springs Ranch and the Declaration
30 of Restrictions. Robert will also testify regarding (i) his meeting with Defendants during which me
31 provided Defendants with legal advice authorizing them to utilize the Subject Property in the manner
32 currently employed, (ii) his conduct during a meeting at the Church located in Coyote Springs Ranch
33 involving Coyote Springs Ranch homeowners, and (iii) his knowledge regarding violations of the
34 Declaration of Restrictions including his own.

1 **Alfie Ware and Jane Doe Ware**
2 **Dan Sanders and Jane Doe Sanders**
3 **Address to be provided upon receipt**

4 They will testify as to their knowledge of the events leading up to the filing of the above-
5 referenced matter, his motive for, and arrangements with the Plaintiffs for, the Wares' payment of
6 Plaintiffs' attorneys' fees, costs and expenses, their knowledge of the Declaration of Restrictions and
7 violations thereof, their participation in meetings conducted at the Wares' home concerning this
8 lawsuit, their contacts and communications with owners of property governed by the Declaration of
9 Restrictions governing the Subject Property.

10 **Karrie Decker**
11 **10800 Coyote Springs Road**
12 **Prescott Valley, Arizona 86314**
13 **(928) 775-0946**

14 Karrie Decker will testify as to her knowledge of the Coyote Springs Ranch subdivision and
15 any violations of the Declaration of Restrictions affecting said properties.

16 **Frank Lamberson and Laura Lamberson**
17 **8920 Easy Street**
18 **Prescott Valley, Arizona 86314**

19 Frank and Laura Lamberson will testify as to her knowledge of the Coyote Springs Ranch
20 subdivision and any violations of the Declaration of Restrictions affecting said properties including
21 the business use of their property.

22 **Mike Wargo and Karen Wargo**
23 **9200 E. Spurr Lane**
24 **Prescott Valley, Arizona 86314**
25 **(928) 772-5915**

26 Mike and Karen Wargo will testify as to her knowledge of the Coyote Springs Ranch
27 subdivision and any violations of the Declaration of Restrictions affecting said properties including
28 the business use of their property.

1 **Christin L. Bowra**
2 **9000 E. Turtle Rock Road**
3 **Prescott Valley, Arizona 86314**

4 Christin Bowra will testify as to her knowledge of the Coyote Springs Ranch subdivision and
5 any violations of the Declaration of Restrictions affecting said properties including the business use
6 of those properties.

6 **Jeff Westra and Mychel Westra**
7 **9000 E. Turtle Rock Road**
8 **Prescott Valley, Arizona 86314**

9 Jeff and Mychel Westra will testify as to their knowledge of the Coyote Springs Ranch
10 subdivision and any violations of the Declaration of Restrictions affecting said properties including
11 the business use of those properties.

11 **R T Contracting Specialists, LLC**
12 **10555 N. Orion Way**
13 **Prescott Valley, Arizona 86314**

14 R T Contracting Specialists, LLC will testify as to her knowledge of the Coyote Springs Ranch
15 subdivision and any violations of the Declaration of Restrictions affecting said properties including
16 the business use of those properties including its own property.

16 **Wendy Ditterman**
17 **Address to be provided when obtained and confirmed.**
18 **(928) 848-0267**

19 She will testify as to her knowledge of the Coyote Springs Ranch subdivision and any
20 violations of the Declaration of Restrictions affecting said properties including the business use of
21 those properties. She will further testify as to her knowledge of meetings in the Coyote Springs Ranch
22 area regarding the use of the Subject Property and articles she has written about this subject in the
23 Lonesome Valley News.

23 **Bill Jensen**
24 **Address to be provided when obtained and confirmed.**
25 **(928) 779-7631**

26 He will testify as to his knowledge of the Coyote Springs Ranch subdivision and any violations
27 of the Declaration of Restrictions affecting said properties including the business use of those
28 properties.

1 **Kevin Eickleberry**
2 **Address to be provided when obtained and confirmed.**

3 He will testify as to his knowledge of the Coyote Springs Ranch subdivision and any violations
4 of the Declaration of Restrictions affecting said properties including the business use of those
5 properties.

6 **Charles A. Hildebrant**
7 **8420 Pronghorn Lane**
8 **Prescott Valley, Arizona 86314**
9 **(928) 772-4599**

10 Charles will testify as to his knowledge of the Coyote Springs Ranch subdivision and any
11 violations of the Declaration of Restrictions affecting said properties including the business use of
12 those properties.

13 **Sheila Cahill**
14 **Palmer Investigative Services**
15 **P.O. Box 10760**
16 **Prescott, Arizona 86304**
17 **(928) 778-2951**

18 She will be called to testify regarding (i) her investigation of violations of the Declaration of
19 Restrictions in the portion of Coyote Springs Ranch where the Subject Property is located including
20 (ii) her findings showing that more than 90 percent of the properties located in the portion of Coyote
21 Springs Ranch governed by the subject Declaration of Restrictions, including those owned by
22 Plaintiffs, that are currently in violation of the Declaration of Restrictions and (iii) her findings
23 regarding the number of properties presently violating Paragraph 2 of said Declaration of Restrictions.

24 **Robert D. Conlin**
25 **Margaret Dell Conlin**
26 **David A. Conlin**
27 **Address to be provided when obtained and verified.**

28 They will be called to testify regarding their knowledge surrounding the creation of the
Declaration of Restrictions and that they did not intend the Declaration of Restrictions to prohibit the
type of use of the Subject Property currently employed by Defendants.

Defendants intend to call as witnesses all parties identified during Plaintiffs' depositions as
persons or entities conducting business and/or commercial activities on their properties located in
Coyote Springs Ranch whose contact information was already provided to Plaintiffs during their

1 depositions. Upon request, Defendants will supplement this disclosure regarding such persons or
2 entities as additional information becomes available.

3
4 **IV. 26.1(a)(4) NAMES OF PERSONS WHO MAY HAVE RELEVANT KNOWLEDGE OR INFORMATION**

5 See Response to 26.1(a)(3) above.

6 **V. 26.1(a)(5) NAMES OF PERSONS WHO HAVE GIVEN RECORDED OR WRITTEN STATEMENTS**

7
8 Defendants are unaware of any statements, either written or recorded. Defendants reserve
9 their right to supplement this disclosure statement as necessary. Defendants specifically assert that
10 any written communications of a confidential nature between them and their undersigned attorneys
11 are protected from discovery by the attorney/client privilege, and that the written work product
12 prepared by their undersigned attorneys is protected from discovery by the work product doctrine.

13 **VI. 26.1(a)(6) NAMES OF EXPERT WITNESSES**

14 Defendants have not yet chosen any expert witness(es). Defendants will supplement this
15 disclosure and disclose the findings, opinions and conclusions of any experts witness(es) once they
16 are identified and he/she completes his/her investigation and renders his/her opinions.

17 **VII. 26.1(a)(7) COMPUTATION AND MEASURE OF DAMAGES**

18 Defendants have been forced to place a hold on their expansion of the use of the Subject
19 Property during the pendency of this lawsuit and will ask for reimbursement for damages related to
20 their loss of use of the Subject Property. Defendants likewise ask for reimbursement of attorneys' fees
21 and costs pursuant to A.R.S. §§ 12-341.01 and 12-349 together with interest thereon at the highest
22 legal rate. Further, Defendants seek an order from the Court declaring the Declaration of Restrictions
23 abandoned and an order allowing them the right to continue the use of the Subject Property as they
24 have used it since the year 2000.

25 **VIII. 26.1(a)(8) TANGIBLE EVIDENCE/RELEVANT DOCUMENTS AND/OR INSURANCE AGREEMENTS WHICH PLAINTIFFS PLAN TO USE AT TRIAL**

26 1. Photographs of Coyote Springs Ranch property with indications of violations of the
27 Declaration of Restrictions;

28 2. Articles regarding Coyote Springs Ranch from the August, 2003 through August, 2004
editions of the Lonesome Valley Newsletter;

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3. Yavapai County Property Information Sheets for Coyote Springs Ranch properties;
4. Capital Title Agency Title Policy No. FTY 422356.
5. Prescott Valley Growers Prescott Valley Business License;
6. Prescott Valley Nursery Prescott Valley Business License;
7. Agricultural Land Use Application;
8. Inventory records for the Subject Property;
9. Documents pertaining to any and all improvements, structures, or developments made on the Subject Property from 1998 to present;
10. Documents pertaining to all machinery, equipment, fixtures, supplies, tools maintained or used in any fashion on the Subject Property from 2000 to present;
11. Documentation received by Defendants prior to and at close of escrow of the Subject Property;
12. Defendants "Schedule B" documents from Owner's Policy;
13. Employee Records for year 2000;
14. Employee Records for year 2001;
15. Employee Records for year 2002;
16. Employee Records for year 2003;
17. Employee Records for year 2004;
18. Correspondence from various residences of Coyote Springs Ranch;
19. Any depositions taken in this case of Plaintiffs, together with exhibits attached thereto;
20. Any depositions taken in this case of Defendants, together with exhibits attached thereto;
21. Any depositions taken in this case of witnesses, together with exhibits attached thereto;
22. Any or all tangible evidence or relevant documents identified by Plaintiffs or Defendant in this action;
23. Any written/recorded written statements of Plaintiff, Defendant or any witnesses;
24. Any additional documents identified during discovery subsequent to this date;
25. Any and all exhibits listed by Plaintiffs;
26. Enlargements of and/or excerpts from other documents or exhibits (the identities of which have not yet been determined);

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- 27. All pleadings, memoranda, orders or other documents entered in this matter;
- 28. All depositions of any parties in this action;
- 29. All responses to interrogatories, requests for production of documents and requests for admissions;
- 30. Any disclosure statements submitted by Plaintiffs and supplements, thereto;
- 31. All disclosure statements submitted by Defendants or supplements, thereto; and
- 32. Plaintiffs will seasonably supplement this portion of its disclosure statement as necessary;

IX. 26.1(a)(9) DOCUMENTS KNOWN TO EXIST

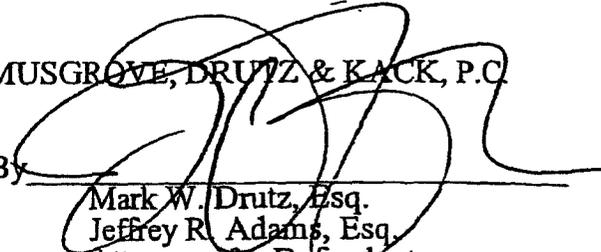
See response to 26.1(a)(8) above. Other than the copies of documents attached hereto or presently being procured by Defendants, it is believed that all parties have either been provided with copies of the above-described documents or are in possession of the documents. However, upon request, Defendants will furnish copies of any documents referred to herein which are not protected from discovery by the attorney-client privilege and/or work product doctrine.

Discovery in this matter is ongoing and Defendants make this disclosure as fully as is now possible. Defendants reserve the right to supplement this disclosure in a timely fashion as other facts and evidence become known or available.

Respectfully submitted this 20 day of August, 2004.

MUSGROVE, DRUTZ & KACK, P.C.

By



Mark W. Drutz, Esq.
Jeffrey R. Adams, Esq.
Attorneys for Defendants

The original and one copy of the foregoing was mailed this 20 day of August, 2004 to:

David K. Wilhelmsen
Marguerite M. Kirk
FAVOUR, MOORE & WILHELMSSEN, P.A.
Post Office Box 1391
Prescott, Arizona 86302-1391
Attorneys for Plaintiffs



1 Mark W. Drutz, #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;
9 ELIZABETH NASH, a married woman
dealing with her separate property;
10 KENNETH PAGE and KATHRYN
PAGE, as Trustee of the Kenneth Page
and Catherine Page Trust,

11 }
12 Plaintiffs,

13 v.

14 DONALD COX and CATHERINE
COX, husband and wife,

15 }
16 Defendants.
17

CASE NO. CV 2003-0399

DIVISION 3

**DEFENDANTS' SECOND
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT**

18 Defendants, Donald Cox and Catherine Cox, ("**Defendants**") by and through undersigned
19 counsel, disclose the following information pursuant to Rule 26.1 of the Arizona Rules of Civil
20 Procedure.

21 **II. LEGAL THEORIES UPON WHICH CLAIMS AND DEFENSES ARE BASED**

22 1. Unclean hands. "Ordinarily, an owner of a lot in a tract who has violated the building
23 restrictions cannot enforce them against others." 20 AmJur2d Covenants, § 276 at 695 (citations
24 omitted); see also, 20 AmJur2d Covenants, § 284 at 704 (citations omitted), Restatement of Property
25 §§ 550 and 560, Atwood v. Walter, 714 N.E.2d 165 (Mass. 1999), 42 Am.Jur. Proof of Facts 3rd at
26 463, Circumstances Establishing Equitable Defense to Breach of Restrictive Covenant.

27 / / /
28 / / /

1 **III. 26.1(a)(3) WITNESSES WHOM DEFENDANTS EXPECT TO CALL AT TRIAL**

2 **Noreen Vaughan**
3 **9235 N. Caoyote Springs Road**
4 **Prescott Valley, Arizona 86314**

5 Ms. Vaughan is expected to testify as to her use and intended use at the time of her purchase
6 of property in the Coyote Springs Ranch subdivision in 1993, as well as her knowledge of businesses
7 located in the Coyote Springs Ranch subdivision, and her knowledge and belief that the Declaration
8 of Restrictions at issue has been abandoned.

9 **VIII. 26.1(a)(8) TANGIBLE EVIDENCE/RELEVANT DOCUMENTS AND/OR**
10 **INSURANCE AGREEMENTS WHICH PLAINTIFFS PLAN TO USE AT TRIAL**

11 33. Correspondence from Noreen Vaughan;

12 34. Articles of Incorporation of Coyote Springs Ranch, Inc.;

13 35. 2003 Annual Report for The Glenarm Land Company, Inc.;

14 36. Correspondence from Kathleen Wickman;

15 37. Telephone directory for Johnson Landscape & Property Maintenance business being
16 operated at 8700 Morrow Way, Prescott Valley, Arizona.

17 Respectfully submitted this 24 day of November, 2004.

18 **MUSGROVE, DRUTZ & KACK, P.C.**

19 By 

20 **Mark W. Drutz, Esq.**
21 **Jeffrey R. Adams, Esq.**
22 **Attorneys for Defendants**

23 The original and one copy
24 of the foregoing was mailed this
25 24 day of November, 2004 to:

26 **David K. Wilhelmsen**
27 **Marguerite M. Kirk**
28 **FAVOUR, MOORE & WILHELMSSEN, P.A.**
Post Office Box 1391
Prescott, Arizona 86302-1391
Attorneys for Plaintiffs



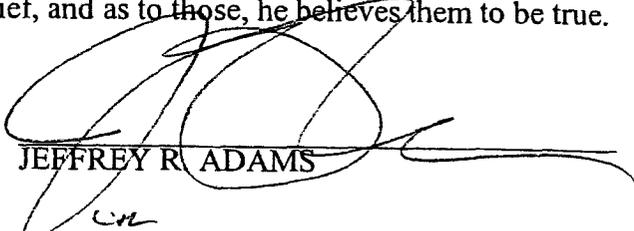
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VERIFICATION

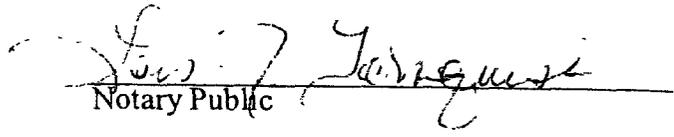
STATE OF ARIZONA)
COUNTY OF YAVAPAI) ss.

JEFFREY R. ADAMS, being first duly sworn upon his oath, deposes and says:

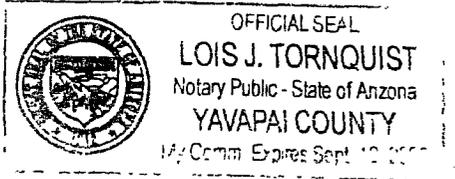
That he is one of the attorneys for Plaintiffs in the above-captioned matter and as such is duly authorized to make this verification; that he has read the foregoing Second Supplemental Rule 26.1 Disclosure Statement and that the contents contained therein are true in substance and in fact, except as to those matters stated upon information and belief, and as to those, he believes them to be true.


JEFFREY R. ADAMS

SUBSCRIBED AND SWORN to before me this 24 day of NOVember, 2004, by JEFFREY R. ADAMS.


Notary Public

My Commission Expires:
9/19/05



1 Mark W. Drutz, #006772
2 Jeffrey R. Adams, #018959
3 Sharon Sargent-Flack, #021590
4 MUSGROVE, DRUTZ & KACK, P.C.
5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

8 Attorneys for Defendants

9 **IN THE SUPERIOR COURT OF 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 v.

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

21 Defendants.

Case No. CV 2003-0399

Division No. 1

**DEFENDANTS' FIFTH
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT**

22 Defendants Donald Cox and Catherine Cox ("**Defendants**"), by and through undersigned
23 counsel, disclose the following information pursuant to Rule 26.1 of the Arizona Rules of Civil
24 Procedure.
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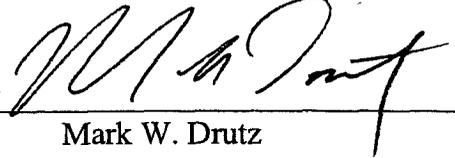
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I. 26.1(a)(8) TANGIBLE EVIDENCE/RELEVANT DOCUMENTS AND/OR INSURANCE AGREEMENTS WHICH PLAINTIFFS PLAN TO USE AT TRIAL.

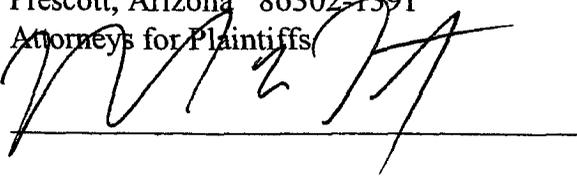
1. Deposition of Robert J. Launder taken on March 20, 2001, together with all exhibits attached thereto, in Rodney G. Smith and Jill L. Smith v. Al F. McRoberts and Joann McRoberts, et al., Yavapai County Superior Court Case No. CV 2000-0472. See Exhibit "1".

DATED this 30th day of June, 2005.

MUSGROVE, DRUTZ & KACK, P.C.

By 
Mark W. Drutz
Jeffrey R. Adams
Sharon Sargent-Flack
Attorneys for Defendants

ORIGINAL of the foregoing was hand-delivered this 30th day of June, 2005 to:

David K. Wilhelmsen, Esq.
Marguerite M. Kirk, Esq.
Favour, Moore & Wilhelmsen, P.A.
P.O. Box 1391
Prescott, Arizona 86302-1391
Attorneys for Plaintiffs


SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

DONALD 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 Catherine Page)
Trust,)

Plaintiffs,)

vs.)

Case No. CV 2003-0399)

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

COPY

PURSUANT TO NOTICE, the deposition of DONALD 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 2:43 p.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

1 everybody out there is wrong. If we are a part of that,
2 I guess we are a part of that. As we see the CC&R's,
3 they are hardly applicable because of the situation out
4 there.

5 Q. So is --

6 A. They seem to be abandoned because they are not
7 enforced and haven't been.

8 Q. So it is your position then that you are not in
9 violation of the CC&R's, not because of the way they are
10 written?

11 A. We really feel that we are agricultural and there
12 is no place in the CC&R's that prohibits agricultural
13 projects.

14 Q. Okay.

15 A. It is not mentioned and that is coming from ranch
16 land to begin with. It seems very apparent that those
17 people didn't want to exclude agricultural projects or
18 endeavors. They seemed to not want to exclude them or
19 they surely would have included those in prohibiting
20 this and prohibiting that and so forth. So it seems to
21 stand to reason.

22 Q. What do you mean when you say agricultural
23 endeavor or project?

24 A. Raising trees, just like what you read from the
25 Yavapai County Guidelines, raising trees, shrubs. That

WILHELMSSEN- BLOCK BILLING

DATE/ BILLING PERSON	HOURS BILLED	AMOUNT
6-23-03 RMH	.6	\$69.00
7-3-03 DKW	.2	49.00
8-5-03 DKW	1	245.00
8-5-03 JSE	1	95.00
8-15-03 JSE	.4	38.00
8-19-03 JSE	1	95.00
8-20-03 DKW	.6	147.00
8-22-03 DKW	.8	196.00
8-25-03 DKW	1	245.00
9-5-03 JSE	.4	38.00
9-8-03 DKW	1	245.00
9-9-03 JSE	4.20	399.00
9-10-03 JSE	5.20	494.00
9-11-03 JSE	4.30	408.50
2-11-04 DKW	.7	171.50
4-19-04 DKW	.4	98.00
4-19-04 DKW	.8	196.00
4-26-04 DKW	1	245.00
4-29-04 DKW	2	490.00
4-30-04 DKW	.6	147.00
5-7-04 DKW	.4	98.00
5-7-04 DKW	1.60	392.00
6-22-04 MAK	8.20	1845.00
6-22-04 DKW	1	245.00
6-22-04 KL	.6	30.00

6-23-04 DKW	1	245.00
6-23-04 KL	.6	30.00
6-24-04 MAK	1.2	222.00
6-24-04 DKW	1	245.00
7-1-04 DKW	2.2	539.00
7-20-04 DKW	2	490.00
7-27-04 MAK	.8	148.00
7-30-04 MAK	.2	37.00
7-30-04 KL	.3	15.00
8-18-04 MAK	.4	74.00
8-18-04 DKW	1	245.00
9-10-04 MAK	2.8	518.00
9-21-04 KL	.3	15.00
11-22-04 KL	.2	10.00
12-06-04 JSE	.6	57.00
12-07-04 DKW	.6	147.00
12-7-04 JSE	1	95.00
1-11-05 DKW	.5	122.50
1-21-05 DKW	2.5	612.50
1-31-05 DKW	6.5	1592.50
2-2-05 DKW	.4	98.00
2-3-05 DKW	.4	98.00
2-10-05 DKW	1	245.00
3-8-05 MAK	.7	129.50
4-6-05 MAK	.3	55.50
4-19-05 CB	1.4	147.00
4-29-05 DKW	1.7	416.50
6-15-05 DKW	.9	220.50

6-28-05 CB	1	105.00
6-29-05 CB	.6	63.00
7-8-05 DKW	2	490.00
7-11-05 CB	.7	73.50
7-11-05 MAK	1.5	277.50
7-12-05 CB	1.5	157.50
7-12-05 MAK	.5	92.50
7-13-05 CB	1.2	126.00
7-14-05 CB	1.5	157.50
7-18-05 DKW	1.7	416.50
7-18-05 CB	1	105.00
7-19-05 CB	1.4	147.00
7-20-05 CB	.4	42.00
7-20-05 MAK	.4	74.00
7-20-05 DKW	4	980.00
7-21-05 CB	1	105.00
7-21-05 DKW	5.5	1347.50
7-22-05 CB	.8	84.00
7-22-05 KL	1	10.00
7-22-05 DKW	7.6	1862.00
7-25-05 DKW	4.2	1029.00
7-26-05 CB	4	420.00
7-26-05 KL	1.6	80.00
7-26-05 DKW	7.7	1886.50
7-27-05 DKW	2	490.00
8-3-05 MAK	.4	74.00
10-28-05 DKW	1	245.00
1-26-06 CB	.6	63.00

2-1-06 CB	.4	42.00
2-7-06 CB	1	105.00
2-8-06 CB	.6	63.00
2-16-06 MAK	.5	92.50
2-16-06 CB	.4	42.00
2-17-06 DKW	2.5	612.50
2-21-06 DKW	1.2	294.00
2-28-06 CB	1	105.00
3-7-08 DKW	.6	147.00
3-30-06 CB	.6	63.00
4-20-06 CB	1	105.00
4-28-06 CB	.6	63.00
5-1-06 CB	.6	63.00
5-5-06 CB	.6	63.00
5-10-06 CB	.4	42.00
6-1-06 CB	.4	42.00
6-1-06 DKW	1	245.00
6-13-06 CB	.5	52.50
8-6-07 CB	1.2	126.00
8-14-07 CB	.8	84.00
8-15-07 CB	.4	42.00
8-22-06 CB	.7	73.50
8-23-06 CB	.5	52.50
8-27-07 CB	1.2	126.00
8-28-07 CB	.7	73.50
8-30-07 CB	1	105.00
9-13-06 CB	1	115.00
9-18-07 CB	.8	92.00

10-11-07 CB	5.7	655.50
10-12-07 CB	2.2	253.00
10-29-07 CB	.5	57.50
10-30-06 DKW	1.5	367.50
10-31-06 CB	2.6	273.00
3-6-07 CB	.8	84.00
3-14-07 CB	.3	31.50
4-20-07 DKW	4.4	1078.00
4-23-07 MAK	1.8	333.00
4-27-07 DKW	2.5	612.50
5-30-07 DKW	1.2	294.00
5-30-07 DKW	.6	147.00
5-30-07 CB	1.8	189.00
6-4-07 DKW	1.8	441.00
6-12-07 DKW	.5	122.50
7-9-07 CB	.8	84.00
7-10-07 CB	.4	42.00
11-19-07 RH	.6	63.00
1-2-08 CB	1.7	195.50
3-10-08 CB	.5	57.50
3-19-08 CB	1.8	207.00
5-7-08 MAK	3.6	666.00
5-7-08 DKW	2.5	612.50
5-7-08 DKW	1	245.00
5-7-08 CB	2.7	310.50
5-8-08 CB	3.1	365.50
5-12-08 CB	2.7	310.50
5-12-08 MAK	5.6	1036.00

5-29-08 DKW	1.5	367.50
6-24-08 MAK	2.4	444.00
7-9-08 DKW	1	295.00
7-23-08 DKW	1	295.00
8-26-08 DKW	1	295.00
8-26-08 JSE	.6	57.00
8-27-08 JSE	1.5	142.50
9-4-08 DKW	2.5	737.50
9-17-08 DKW	4.2	1239.00
9-17-08 MAK	2.8	686.00
9-22-08 JSE	1.3	123.50
9-25-08 JSE	5.8	551.00
9-25-08 JSE	7.3	693.50
10-2-08 MAK	1.8	441.00
10-3-08 DKW	1.8	531.00
10-3-08 JSE	6.8	782.00
10-6-08 JSE	2.2	209.00
10-7-08 JSE	1	115.00
10-7-08 DKW	1	295.00
10-8-08 JSE	1.6	184.00
10-9-08 JSE	2.7	310.50
10-10-08 JSE	2.9	333.50
10-20-08 JSE	1.5	172.50
10-21-08 JSE	1.20	138.00
10-24-08 MAK	1.4	343.00
10-27-08 JSE	8	760.00
10-27-08 DKW	2.2	649.00
10-28-08 JSE	8	760.00

10-29-08 JSE	.6	57.00
10-29-08 JSE	7	665.00
10-31-08 JSE	1.5	142.50
11-12-08 JSE	2.1	241.50
11-14-08 JSE	2.6	299.00
11-17-08 DKW	.4	118.00
11-17-08 JSE	4.8	552.00
11-18-08 JSE	4.1	471.50
11-26-08 JSE	4.3	494.50
12-2-08 JSE	.6	69.00
12-4-08 MAK	4	980.00
12-4-08 JSE	3.8	437.00
12-5-08 JSE	2.6	299.00
12-8-08 DKW	1.2	354.00
12-15-08 JSE	3.2	368.00
12-15-08 DKW	.4	118.00
12-15-08 MAK	4.1	1004.50
12-16-08 JSE	1.2	138.00
12-22-08 DKW	1.5	442.50
1-6-09 MAK	.8	196.00
1-21-09 JSE	3.8	437.00
3-16-09 JSE	.4	46.00
3-17-09 JSE	.5	57.50
4-7-09 MAK	.8	196.00
4-9-09 DKW	.7	206.50
4-10-09 DKW	1	295.00
4-10-09 MAK	.8	196.00
4-10-09 MAK	1	245.00

4-14-09 MAK	2.4	588.00
4-15-09 DKW	1	295.00
4-24-09 DKW	2.5	737.50
4-24-09 MAK	1	245.00
4-24-09 MAK	.4	98.00
4-24-09 JSE	1.4	161.00
9-8-10 MAK	3.8	931.00*****
9-28-10 JSE	1.1	126.50
10-27-10 DKW	1	295.00
2-3-11 DKW	1.2	354.00
2-15-11 DKW	1.4	413.00
3-23-11 RM	.5	57.50
10-11-11 MAK	.4	98.00
12-5-11 DKW	1	295.00
12-6-11 MAK	6.1	1494.50
12-7-11 MAK	6.7	1641.50
12-8-11 MAK	6.8	1666.00
12-13-11 MAK	3.4	833.00
5-29-12 MAK	.8	196.00
6-11-12 DKW	1.2	354.00
6-11-12 MAK	1.1	269.50
8-27-12 DKW	1	245.00
9-13-12 MAK	1.5	367.50
10-23-12 DKW	1.5	367.50
11-16-12 DKW	1.5	367.50
12-9-12 LBP	3.1	759.50
12-10-12 DKW	1	245.00
12-11-12 DKW	.5	122.50

1-4-13 LP	2.3	563.50
1-4-13 LP	4.2	1029.00
1-5-13 LP	.7	171.50
1-7-13 DW	.8	196.00
1-23-13 LP	.2	49.00
2-17-13 LP	2.7	661.50
2-18-13 LP	1.3	318.50
2-18-13 LP	2.1	514.50
2-19-13 LP	4.5	1102.50
2-20-13 LP	4.6	1127.00
2-25-13 DW	1.5	367.50
3-14-13 DW	1.2	294.00
3-27-13 LP	2.3	563.50
3-27-13 LP	1.3	318.50
4-1-13 LP	3.9	955.50
4-1-13 LP	2.2	539.00
4-2-13 LP	5.8	1421.00
4-4-13 LP	1.2	294.00
4-4-13 LP	.4	98.00
4-4-13 DW	1.5	367.50
4-10-13 MW	.2	23.00
4-15-13 P	2.9	710.50
5-14-13 DW	.6	147.00
6-18-13 DW	1.8	441.00
4-29-13 LP	5.2	1274.00
TOTALS		\$93,308.00

COUGHLIN BLOCK BILLING

DATE	TIME	AMOUNT
4-7-09	1.5	\$375.00
4-9-09	1.1	275.00
4-27-09 CP	1.2	114.00
4-29-09 CP	.5	47.50
5-14-09 CP	2.2	209.00
5-20-09 CP	1.4	133.00
6-22-09	.3	75.00
7-17-09 CP	.3	28.50
8-6-09 CP	.7	66.50
8-6-09 CP	.7	66.50
8-6-09 CP	.6	57.00
8-19-09 CP	1.8	171.00
8-25-09 CP	2.1	199.50
9-1-09	3.1	775.00
9-2-09 CP	.7	66.50
2-4-10	.5	125.00
2-8-10 CP	.9	85.50
2-9-10 CP	.8	76.00
5-17-10 CP	.8	76.00
5-17-10 CP	.2	19.00
5-20-10 CP	.6	57.00
6-8-10 CP	2.4	228.00
7-15-10 CP	2.8	266.00
7-15-10 AJ	2.8	266.
7-16-10 AJ	2	190.00
7-19-10	.9	25.00

7-19-10 CP	6.4	608.00
7-20-10 CP	1.8	171.00
7-21-10 CP	2.6	247.00
7-27-10 CP	.8	76.00
7-28-10 AJ	.75	71.25
8-18-10 CP	1.3	123.50
9-10-10 AJ	2.5	237.50
9-15-10 CP	2.6	247.00
10-26-10 CP	4.2	399.00
10-27-10 CP	.7	66.50
10-28-10 CP	.6	57.00
11-2-10 CP	.6	57.00
11-3-10 CP	.3	28.50
11-9-010 CP	.7	66.50
11-9-10 CP	1.8	171.00
11-10-10 CP	1.2	114.00
11-12-10 AJ	.5	47.50
11-29-10 CP	1.2	114.00
12-03-10 CP	2.1	199.50
12-7-10 CP	3.4	323.00
2-3-11 CP	2.8	266.00
2-3-11 AJ	1.1	104.50
2-7-11 AJ	3.0	285.00
2-7-11 CP	2.4	228.00
2-8-11 CP	1.2	114.00
2-9-11 CP	2.8	266.00
2-15-11 CP	1.8	171.00
2-24-11 AJ	2.0	190.00

CONVERSATIONS WITH WARE

DATE/BILLING PERSON	HOURS BILLED	AMOUNT
07-11-03 DKW	.4	98.00
08-13-03 DKW	.3	73.50
09-08-03 DKW	1	245.00 *
09-18-03 DKW	.3	73.50
01-05-04 DKW	.3	73.50
05-04-04 DKW	.2	49.00
05-17-04 DKW	.3	49.00
05-18-04 DKW	.3	73.50
06-03-04 DKW	.2	49.00
06-07-04 DKW	.2	49.00
06-17-04 DKW	.2	49.00
07-07-04 DKW	.3	73.50
11-10-04 DKW	.2	49.00
02-14-05 DKW	.3	73.50
02-22-05 DKW	.2	49.00 email
09-26-05 DKW	2.5	612.50 *
01-13-06 DKW	.2	49.00
03-27-07 DKW	.5	122.50
05-09-08 DKW	.2	49.00
08-26-08 DKW	1	295.00 *
04-01-09 DKW	.2	59.00
04-06-09 DKW	.2	59.00
04-07-09 DKW	.8	236.00 *
04-09-09 DKW	.7	206.50
04-10-09 DKW	1	295.00 *
04-10-09 MAK	1	245.00 *

04-15-09 DKW	1	295.00 *
04-24-09 DKW	2.5	737.50 *
TOTALS	16.5	4,388.00

* Symbol indicated part of blocked billing

COUGHLIN FAMILIARIZING CASE

DATE	HOURS BILLED	AMOUNT
04-07-09	1.5	375.00
04-09-09	.2	50.00
04-09-09	1.10	275.00
04-10-09	3.3	825.00
4-15-09	.4	100.00
04-23-09	.4	100.00
04-24-09	.3	75.00
04-29-09	.6	150.00
05-05-09	4.4	418.00
05-06-09	2.5	237.50
08-25-09	2.1	199.50
TOTAL	16.80	2805.00

Time Spent Reviewing Court of Appeals Opinion		
Date	Time	Amount
04-10-09	2.8	700.00†
07-07-09	.4	100.00
05-18-10	.10	25.00
12-05-11	1.4	350.00†
06-27-12	.8	200.00†
12-19-12	4.3	1075.00†
04-22-13	3.30	825.00
TOTAL	13.1	3275.00

The Symbol † denotes that this entry was part of a block-billing entry.

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Page 1
10/15/2008
FILE NO: 10641-0041
STATEMENT NO: 1

Special Action
v. Don & Katherine Cox

DUPLICATE

			Rate	HOURS
08/27/2008	JSE	Receive and review message from MAK and reply (.2); O/C w/MAK re ordering transcript of hearing (.2); T/t Judge Mackey's court to talk to court reporter (.2); Leave detailed message on answering machine for Draper, court reporter (.2); e-mail to Marguerite re order (.2). R/tf Draper re transcript order; Memo. to MAK with response and reply.	95.00	1.50
	MAK	Research (cont.) federal law re: necessity of joinder of all property owners for special action petition.	225.00	6.40
08/28/2008	MAK	Research (cont) re: property owners as indispensable to enforcement of restrictive covenants.	225.00	1.80
08/29/2008	MAK	Research re: special action jurisdiction; review cases from other jurisdictions regarding necessary and indispensable parties in property restriction enforcement cases.	245.00	5.60
09/02/2008	MAK	Analyze prior appellate briefs, Court of Appeals memorandum decision and relevant subsequent minute entries from superior court re: special action petition.	245.00	6.30
09/05/2008	MAK	Work on and review case law re: special action petition.	245.00	6.20
09/08/2008	MAK	Work on and review (cont) case law from other jurisdictions regarding indispensable parties re: preparation of special action petition.	245.00	4.30
09/09/2008	DKW	Analyze and review the basis for the special action petition.	295.00	1.50
	DKW	Analyze and review the arguments to be raised in the petition for special action.	295.00	1.40
09/10/2008	DKW	Analyze and review the rule 19(b) arguments.	295.00	1.50

Special Action
 v. Don & Katherine Cox

			Rate	HOURS
09/12/2008	DKW	Work on developing the issues in the petition for special action.	295.00	1.40
	MAK	Work on special action petition; research and discuss framing issues in petition with DKW.	245.00	6.30
09/15/2008	DKW	Analyze and review the file and position on special action.	295.00	2.00
	MAK	Work on (cont) special action petition; presentation of statement of facts, procedural history and jurisdictional statement.	245.00	4.50
09/16/2008	MAK	Prepare (cont) special action petition; review transcript of oral argument before Judge Mackey, 3/10/08 re: joinder.	245.00	2.30
	DKW	Review selected portions of the file and authorities pertaining to the effect of amending restrictive covenants.	295.00	2.00
09/17/2008	MAK	Conference with DKW re: special action issues.	245.00	0.40
	DKW	Work on issues relating to the Petition for Special Action; Review the court's minute orders and the transcript on the 3/11/08 hearing; Analyze and strategize the filing of the petition and a notice of change of judge. Telephone conference with Kathy Page.	295.00	4.20
09/18/2008	MAK	Work on petition for special action; review Supreme Court decision and cases referenced therein.	245.00	6.50
	DKW	Analyze and review Rule 19(b) and the possible legal arguments to be raised in light of the court's interpretation and decision.	295.00	1.80
09/19/2008	MAK	Work on (cont) petition for special action review re: joinder of all property owners.	245.00	6.20
09/22/2008	MAK	Work on (cont) petition for special action review re: joinder of indispensable parties; discuss (comprehensive) Arizona case law with DKW.	245.00	6.30
	DKW	Work on issues relating to the Petition for Special Action..	295.00	1.50
09/23/2008	JSE	Draft motion for stay pending special action; revise and finalize; prepare for filing and service	95.00	0.80
09/24/2008	DKW	Review authorities re: joinder.	295.00	0.60
09/25/2008	MAK	Prepare appellate brief re: special action petition for review of trial court's decision on joinder of all		

Special Action
v. Don & Katherine Cox

		Rate	HOURS	
	property owners.	245.00	5.10	
09/26/2008	MAK Prepare appellate brief re: special action petition concerning joinder issue.	245.00	4.80	
	PROFESSIONAL SERVICES RENDERED		93.20	<u>23,220.00</u>
09/17/2008	Telephone expense			2.00
09/18/2008	Photocopy costs			1.60
09/23/2008	Postage			1.68
09/23/2008	Postage			0.42
09/23/2008	Photocopy costs			1.80
	TOTAL EXPENSES			<u>7.50</u>
09/15/2008	Court reporting fee - Holly Draper			101.50
	TOTAL ADVANCES			<u>101.50</u>
	TOTAL CURRENT WORK			23,329.00
	BALANCE DUE			<u>\$23,329.00</u>

PAYMENT IS DUE UPON RECEIPT OF STATEMENT
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10/15/2008
FILE NO: 10641-005M
STATEMENT NO: 1

Special Action- Change of Judge
v. Donald and Katherine Cox

DUPLICATE

			Rate	HOURS
09/17/2008	MAK	Discuss with DKW change of judge (peremptory and for cause); review Rule 42(f) and pertinent case law; prepare notice.	245.00	2.80
09/19/2008	DKW	Analyze and review Mackey's decision and possible review issues.	295.00	1.20
09/22/2008	JSE	Office conferences with MK re special action; draft motion to stay pending reassignment on change of judge; assist MK with petition	95.00	1.30
09/23/2008	MAK	Prepare appellate brief re: special action petition on peremptory right to change judge.	245.00	4.80
	DKW	Analyze and review issues re: Notice of Change of Judge; Review and execute the Motion for Stay of Proceedings; Review Rule 19 authorities.	295.00	1.50
09/24/2008	DKW	Analyze and review issues relating to change of judge.	295.00	0.60
	MAK	Prepare appellate brief re: special action petition on issue of change of judge.	245.00	5.60
09/25/2008	MAK	Work on corrections to petition for special action re: change of judge; instructions to JE re: preparation of petition table of contents, compliance certificates, etc.; dictate request for stay; instructions re: preparation of request for oral argument.	245.00	1.20
	DKW	Work on issues relating to the special action petition re change of judge.	295.00	0.60
	JSE	Work on petition for special action re change of judge with MK; numerous office conferences and review of documents	95.00	5.80
	JSE	Prepare Appendix cover; mark and generate tables of contents and authorities; prepare request for oral argument and motion to court of appeals for stay of		

Special Action- Change of Judge
v. Donald and Katherine Cox

		Rate	HOURS	
	trial-court proceedings pending special-action review	95.00	7.30	
	JSE Work on finalizing draft of petition for special action; finalize tables of contents and authorities	95.00	6.10	
09/26/2008	DKW Final review of the petition, appendix, motion for stay and request for oral argument.	295.00	2.50	
	DKW Receive, review and send the client a copy of the court's 9/26/08 minute order.	295.00	0.20	
	PROFESSIONAL SERVICES RENDERED		41.50	<u>7,422.50</u>
09/26/2008	Postage			4.80
	TOTAL EXPENSES			<u>4.80</u>
09/26/2008	Miscellaneous advances - Towne Scribe			315.67
09/26/2008	Miscellaneous advances - Towne Scribe			7.58
	TOTAL ADVANCES			<u>323.25</u>
	TOTAL CURRENT WORK			7,750.55
	BALANCE DUE			<u>\$7,750.55</u>

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Page 1
11/14/2008
FILE NO: 10641-0041
STATEMENT NO: 2

Special Action
v. Don & Katherine Cox

DUPLICATE

PREVIOUS BALANCE

\$23,329.00

			Rate	HOURS
09/03/2008	MAK	Analyze additional federal case law re: determination of "indispensable" party and discuss (brief) with DKW re: formulation of issues for special action review.	245.00	3.60
09/29/2008	DKW	Analyze and review arguments and issues.	295.00	0.80
	MAK	Prepare (cont) appellate brief re: special action petition on issue of indispensability of other property owners.	245.00	4.00
09/30/2008	MAK	Prepare (cont) appellate brief re: special action petition for review of indispensability of other landowners to action.	245.00	2.80
	DKW	Work on the petition for special action.	295.00	1.50
	JSE	Receive message from trial court re order of stay; prepare order of stay pending special action	115.00	1.00
10/01/2008	MAK	Prepare (cont) appellate brief re: special action review of issue that nonparty property owners are indispensable to the action.	245.00	2.20
	MAK	Prepare (cont) appellate brief re: special action on issue of joinder.	245.00	4.00
	DKW	Work on issues in the special action.	295.00	1.50
	JSE	Work on special action with MK	115.00	4.00
10/02/2008	MAK	Prepare (cont) appellate brief re: special action on issue of joinder; work on appendix and citations to record in petition.	245.00	1.80
	DKW	Analyze and review the draft of the petition.	295.00	2.00
	JSE	Continued work on special-action petition: make revisions to brief, begin marking text for tables	115.00	4.20

Special Action
 v. Don & Katherine Cox

			Rate	HOURS
10/03/2008	MAK	Revisions per DKW to petition for special action.	245.00	1.00
	DKW	Review the draft of the petition; Work on issues in the special action.	295.00	1.80
	MAK	Telephone call to Judge Portley's office re: court's procedure on scheduling oral argument.	245.00	0.30
	JSE	Continued work on special-action petition: prepare cover, prepare and define pages for tables of contents and authorities, complete marking text through brief, Westlaw research re complete case citations, numerous messages and conferences with MK	115.00	6.80
10/06/2008	JSE	Office conference with MK	115.00	0.30
	JSE	Prepare cover and table of contents for Appendix; covers (2) and Appendix table to Sonia with instructions for preparation; prepare certificates of compliance and service; generate tables of contents and authorities; revise tables for conformity; print finished brief and deliver to MK; prepare request to exceed word limit and request for oral argument	95.00	2.20
	JSE	Numerous conferences with Sonia re processing of petition for special action	115.00	0.80
	DKW	Work on the special action.	295.00	1.00
10/07/2008	DKW	Work on issues relating to the filing of the brief.	295.00	1.00
	JSE	Numerous conferences with Sonia re processing of special action re joinder; receive and review misprinted special action; redo appendix cover and table of contents; instructions to Sonia re taking back for reprint and rebind and staying to see it is done correctly; telephone call from Sonia re incorrect covers and table of contents	115.00	1.00
	JSE	Receive and review all bound originals and copies; office conferences with DKW and with ES re unacceptable appendices and redating to rerun entire job; do page-by-page proof of original and all copies of petition only	115.00	2.20
10/08/2008	JSE	Office conferences with MK re redating all special-action documents and preparing for reprinting; office conferences with Cheryl re insertion of new pages and instructions for binding; revise correspondence to court to accompany filing, including fee agreement check; final proof of petition, appendix and request for Oral argument and for		

Special Action
 v. Don & Katherine Cox

		Rate	HOURS
	word-limit extension	115.00	1.60
10/09/2008	DKW Work on completing and filing the Petition for Special Action.	295.00	1.00
	JSE Receive and review petition, etc., from printer; proof all copies; office conferences with staff re preparations for filing and service; office conference with ES re shipping FedEx Ground and packaging; box originals plus seven of petition and appendix and originals plus four each of requests for oral argument and word-limit extension with letter of transmittal and fee agreement check for delivery to FedEx; prepare service sets for Judge Mackey and attorney Adams	115.00	2.70
10/10/2008	DKW Review the final brief; Organize and review portions of the file.	295.00	1.50
	JSE Receive and review telephone message from Sherry, attorney Adams' office; telephone call from Sherry re new copy of Request for Extension of Word Limit; prepare new requests for extension and oral argument; correspondence to court of appeals re replacement requests; file and serve requests for extension and oral argument	115.00	2.90
10/16/2008	JSE Prepare Proof of Service of Order setting schedules; copy, file and serve	115.00	0.90
10/17/2008	MAK Telephone calls (2) from Clerk, Court of Appeals re: filing of notice of service of scheduling order on opposing counsel and respondent judge.	245.00	0.40
	MAK Review and final revisions to reply in support of special action re: change of judge.	245.00	0.40
	DKW Work on issues relating to the special action petition; Final review of the petition.	295.00	1.50
10/20/2008	DKW Receive and review the response to request for word extension.	295.00	0.20
	JSE Prepare Request for Postponement of afternoon for oral argument/consideration; office conference with MK; finalize request and have copied, filed and served	115.00	1.50
10/21/2008	DKW Receive a message from Adams; Review portions of the file and provide instructions to my assistant.	295.00	0.70
	JSE Telephone call from opposing counsel Adams re service of order setting schedule; office conference with MK re call from Adams; correspondence to Adams with second copy of Proof of Service and		

Special Action
 v. Don & Katherine Cox

		Rate	HOURS	
	Order; office conference with DKW re same	115.00	1.20	
10/22/2008	DKW Analyze and review the timing of the possible oral argument and reply.	295.00	0.50	
10/23/2008	DKW Prepare strategy of the case.	295.00	0.50	
	JSE Numerous office conferences with MK re upcoming reply brief	115.00	2.40	
10/24/2008	MAK Review response to petition for special action.	245.00	1.40	
	MAK Office conference with DKW and JSE re: preparation of reply memorandum in support of special action petition.	245.00	0.30	
	MAK Review additional cases set forth in response to petition for special action.	245.00	2.30	
	DKW Analyze and review the response memorandum; Provide instructions to my assistant.	295.00	2.00	
	JSE Conferences with MK re theories of special action and important arguments for reply coming due; office conference with MK and DKW re necessary elements for reply	115.00	1.40	
	PROFESSIONAL SERVICES RENDERED		<u>79.10</u>	<u>15,387.50</u>
09/29/2008	Postage			0.84
10/06/2008	Photocopy costs			26.00
10/17/2008	Photocopy costs			30.00
10/17/2008	Postage			7.31
10/20/2008	Postage			2.10
10/21/2008	FAX			10.00
10/27/2008	FAX			3.00
	TOTAL EXPENSES			<u>79.25</u>
09/26/2008	Filing fee - Clerk of Court of Appeals			140.00
09/26/2008	Messenger/delivery service - Federal Express			6.80
10/06/2008	Filing fee - Clerk of Superior Court - Court of Appeals			280.00
10/07/2008	Professional services - Towne Scribe			489.85
10/10/2008	Messenger/delivery service - Federal Express			15.14
10/10/2008	Messenger/delivery service - Federal Express			9.36
	TOTAL ADVANCES			<u>941.15</u>
	TOTAL CURRENT WORK			16,407.90

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Special Action
v. Don & Katherine Cox

BALANCE DUE

\$39,736.90

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Special Action- Change of Judge
v. Donald and Katherine Cox

DUPLICATE

PREVIOUS BALANCE

\$7,750.55

		Rate	HOURS
09/29/2008	DKW Receive a telephone call from the Court of Appeals;	295.00	0.20
10/02/2008	DKW Receive, review and send the client a copy of the appellate court's 9/30/08 order.	295.00	0.20
	JSE Receive and review Order setting briefing schedule on special action; office conferences with DKW, prepare Proof of Service and serve copies of Order on all parties	115.00	1.80
10/10/2008	DKW Review the Response to Petition for Review.	295.00	1.20
10/14/2008	DKW Analyze and review the response memorandum; Work on formulating arguments on reply.	295.00	1.00
	MAK Review response to petition for special action and discuss with DKW re: preparation of reply.	245.00	0.50
	MAK Prepare reply brief re: change of judge; additional research re: evidence.	245.00	2.50
10/15/2008	MAK Prepare appellate brief re: reply in support of petition for special action review on issue of change of judge.	245.00	4.80
	DKW Analyze and review arguments and issues.	295.00	1.00
10/16/2008	DKW Receive, review and send the client a copy of the court's 10/15/08 Order.	295.00	0.20
	DKW Work on issues surrounding the petition and response.	295.00	1.00
	JSE Work on completing reply formatting; begin marking for tables	115.00	4.50
10/17/2008	JSE Complete marking and preparation of tables of contents and authorities; file and serve reply	115.00	2.30

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Special Action
 v. Don & Katherine Cox

DUPLICATE

PREVIOUS BALANCE

\$34,383.69

		Rate	HOURS	
12/29/2008	DKW Analyze and strategize the future of the case.	295.00	1.50	
01/06/2009	MAK Receive and review motion for extension of time to file response to petition for review; prepare response to motion for additional time; revise accordingly.	245.00	0.80	
	JSE Review file re extension; proof and format response to motion for extension; instructions re filing and service.	115.00	0.90	
01/07/2009	DKW Research and review additional authorities.	295.00	1.20	
01/20/2009	MAK Receive and review response to petition for review; research N.C. Rule 19 against statement made by opposing counsel.	245.00	1.00	
01/21/2009	DKW Receive and review the Response to Petition; Conference re: Notice of Errata; Review North Carolina authorities.	295.00	1.50	
	JSE Telephone call to Reuben, court of appeals; memo. to MAK; proof and format Notice of Errata with supplemental authority; office conference with Becky with detailed explanations of process and history for filing notice.	115.00	3.80	
01/26/2009	DKW Work on and review authorities in opposing counsel's response memorandum.	295.00	1.00	
	PROFESSIONAL SERVICES RENDERED		<u>11.70</u>	<u>2,515.50</u>
01/21/2009	Photocopy costs			5.60
01/22/2009	Postage			1.34
	TOTAL EXPENSES			<u>6.94</u>

Special Action
v. Don & Katherine Cox

01/21/2009	Messenger/delivery service - Federal Express	13.49
	TOTAL ADVANCES	<u>13.49</u>
	TOTAL CURRENT WORK	2,535.93
	BALANCE DUE	<u>\$36,919.62</u>

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Special Action- Change of Judge
v. Donald and Katherine Cox

DUPLICATE

PREVIOUS BALANCE

\$25,879.52

		Rate	HOURS	
03/02/2009	JSE			
				Office conference with MAK re status of review by Supreme Court; telephone call to deputy clerk of Supreme Court; memo to MAK.
		115.00	<u>1.00</u>	
			1.00	PROFESSIONAL SERVICES RENDERED
				<u>115.00</u>
				TOTAL CURRENT WORK
				115.00
				BALANCE DUE
				<u>\$25,994.52</u>

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Special Action
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DUPLICATE

		Rate	HOURS	
	PREVIOUS BALANCE			\$36,919.62
01/28/2009	DKW Review the status of the case before the Supreme Court.	295.00	0.50	
03/16/2009	JSE Office conference with MAK re Petitions for Review being considered; telephone call to Arizona Supreme Court re time can call for result; memo to MAK.	115.00	0.40	
03/17/2009	JSE Three calls to Arizona Supreme Court re results of petitions; receive and review message from MAK re decision.	115.00	0.50	
	PROFESSIONAL SERVICES RENDERED		1.40	251.00
03/26/2009	Postage			1.85
03/26/2009	Photocopy costs			7.20
	TOTAL EXPENSES			9.05
	TOTAL CURRENT WORK			260.05
	BALANCE DUE			<u>\$37,179.67</u>

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Special Action
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DUPLICATE

	PREVIOUS BALANCE		
		Rate	HOURS
11/03/2008	JSE Review case facts and outline points for Petition for Review	115.00	5.20
11/10/2008	JSE Begin organization and outline of petition for review re joinder	115.00	4.00
11/11/2008	DKW Telephone call from Jeff Adams; Work on the Petition for Review.	295.00	1.50
	JSE Read and note special-action facts; incorporate DKW and MK points into outline re joinder arguments	115.00	3.20
11/12/2008	JSE Conference with MK re petition for review re joinder; research additional case law	115.00	2.80
	JSE Receive and review fees and costs accounting from ES; office conferences with ES and with MMM re status of judgment and application for fees; review documents in drafts	115.00	2.10
11/20/2008	JSE Work on assimilating facts from special action into new petition for review	115.00	2.70
11/21/2008	DKW Work on arguments in the Petition for Review.	295.00	1.50
11/24/2008	DKW Analyze and review issues to be framed to the Supreme Court; Provide instructions to my assistant.	295.00	1.20
	JSE Begin drafting issues and facts for petition for review; continued study of special-action petition to determine how to summarize for page purposes without losing content	115.00	6.30
11/26/2008	JSE Revise and reconstruct petition draft for brevity; work on legal argument; telephone conferences with MK re page concerns; prepare draft for MK's review; telephone MK re request for stay	115.00	4.30

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v. Don & Katherine Cox

	Rate	HOURS	
PROFESSIONAL SERVICES RENDERED		34.80	4,758.00
TOTAL CURRENT WORK			4,758.00
BALANCE DUE			<u>\$44,494.90</u>

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Special Action- Change of Judge
v. Donald and Katherine Cox

DUPLICATE

PREVIOUS BALANCE

\$12,157.57

		Rate	HOURS
10/27/2008	DKW Work on issues in the reply brief.	295.00	2.00
	JSE Receive and review FAX from Court of Appeals with Order setting reply; reread our petition; read opposing counsel's response; research case law cited in response; conferences with MK and with DKW re reply; begin drafting reply brief	95.00	8.00
	DKW Analyze and review arguments and authorities in the response to petition; Conference with and provide instructions to my assistant.	295.00	2.20
10/28/2008	JSE Work on draft of reply brief; telephone calls to MK at hospital; complete draft less conclusion	95.00	8.00
10/29/2008	JSE Telephone call to court of appeals re decision re change of judge; telephone call to MK (LM); return call from MK re appellate decision	95.00	0.60
	JSE Travel to hospital with Reply draft for MK; multiple telephone conferences with MK; return to hospital for revisions; draft conclusion; generate tables of contents and authorities; revise and finalize reply; prepare dated signature pages and assemble for copying; preliminary instructions to staff re covers, binding, copying of reply	95.00	7.00
10/30/2008	JSE Review (final) of completed Reply; additional instructions to staff re filing and service	95.00	1.20
10/31/2008	JSE Review rules re petition for review to supreme court; receive and review appellate court decision re special action; telephone call to MK to MK's home with decision	95.00	1.50
	JSE Prepare motion for stay and order to trial court; telephone conference with MK; memorandum to MMM; to MK's home for signature; instructions for		

Special Action- Change of Judge
v. Donald and Katherine Cox

		Rate	HOURS
	filing and service	95.00	1.90
11/04/2008	JSE Continued review of appendix documents and prior briefs; work on petition for review	115.00	4.80
11/05/2008	JSE Draft Petition for Review; travel to hospital to meet with MK twice; receive and review changes to petition draft; office conference with DKW; continued work on petition	115.00	6.10
11/06/2008	JSE Legal research case law and additional citations; work on draft of petition for review; revise legal argument completely per input from DKW and MK	115.00	5.90
11/07/2008	DKW Receive and review the appellate court's 10/28/08 Order.	295.00	0.20
	JSE Additional legal research re case-law arguments in petition for review; two telephone conferences with MK; receive and review memorandum from DKW re fees on special action; review court order and reply to DKW; work on draft revisions	115.00	5.50
	DKW Receive and review the appellate court's 10/27/08 order.	295.00	0.20
11/10/2008	JSE Work on petition for review	115.00	4.10
	DKW Receive and review the appellate court's order denying jurisdiction.	295.00	0.20
	DKW Work on the petition for review.	295.00	1.40
11/11/2008	JSE Work on revisions and additional argument points on petition for review	115.00	2.30
11/12/2008	DKW Work on arguments and issues in the Petition for Review.	295.00	1.20
	JSE Conference with MK re petition for review	115.00	0.50
11/13/2008	DKW Review draft of and work on the Petition for Review.	295.00	2.00
11/14/2008	DKW Review and work on the second draft of the Petition for Review.	295.00	1.00
	JSE Receive and review memorandum from DKW re argument that Cox should join new parties; travel to MK's with drafts; prepare appendix covers; instructions to staff re preparation of appendices	115.00	2.60
11/17/2008	DKW Conference with my assistant; Review the amendments of the Petition for Review.	295.00	0.40

Special Action- Change of Judge
 v. Donald and Katherine Cox

		Rate	HOURS	
	JSE Three telephone conferences with MK; two office conferences with DKW; complete revisions to petition and supplement to conclusion; telephone call from MK's home; draft request for stay	115.00	4.80	
11/18/2008	DKW Review the final draft of the petition; Conference with my assistant; Review portions of the file.	295.00	1.50	
	JSE Receive and review memorandum from DKW re status; reply memorandum to DKW; receive and review 2nd memorandum from DKW and reply; make final revisions to petition for review and request for stay; instructions to staff re covers, binding, packaging and shipping petition, appendix and request for stay; correspondence to court of appeals with package	115.00	4.10	
11/19/2008	DKW Revise and complete the petition for special action; Provide instructions to my assistant.	295.00	0.80	
	JSE Receive and review memorandum from DKW; office conference with DKW; final page-by-page proof of appendices, petition and request for stay and oversee packaging and shipment to court of appeals	115.00	2.80	
11/20/2008	DKW Telephone call from Rubin at the Court of Appeals; Review filing rules.	295.00	1.00	
11/24/2008	DKW Receive, review and send the client a copy of the appellate court's 11/21/08 notification.	295.00	0.20	
11/25/2008	DKW Telephone conference with Alfie.	295.00	0.20	
	DKW Work on issues in the Petition for Review.	295.00	1.00	
11/26/2008	DKW Receive and review the Supreme Court's 11/25/08 Order denying stay-relief.	295.00	0.20	
	PROFESSIONAL SERVICES RENDERED		<u>87.40</u>	<u>12,313.00</u>
10/30/2008	Photocopy costs			57.60
10/30/2008	Postage			3.02
10/31/2008	Postage			1.18
11/19/2008	Photocopy costs			64.00
11/19/2008	Postage			7.33
	TOTAL EXPENSES			<u>133.13</u>
10/09/2008	Professional services - Towne Scribe			112.68
10/30/2008	Messenger/delivery service - Federal Express			17.49
11/13/2008	Filing fee - Clerk of Court of Appeals			280.00

Special Action- Change of Judge
v. Donald and Katherine Cox

11/19/2008	Messenger/delivery service - Federal Express	36.37
	TOTAL ADVANCES	446.54
	TOTAL CURRENT WORK	12,892.67
	BALANCE DUE	<u>\$25,050.24</u>

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Special Action
v. Don & Katherine Cox

DUPLICATE

PREVIOUS BALANCE

\$44,494.90

			Rate	HOURS
12/01/2008	DKW	Review the draft of the petition for review.	295.00	1.00
	MAK	Review, discuss with DKW and prepare petition for review to supreme court.	245.00	3.00
12/02/2008	DKW	Analyze and review the arguments and authorities in support of the petition.	295.00	1.50
	MAK	Prepare (cont) petition for review to supreme court; discuss with DKW issue regarding request for stay.	245.00	3.90
	JSE	Prepare motion to stay to superior court; office conference with DKW; revise and finalize motion; file and serve	115.00	0.60
12/03/2008	MAK	Prepare (cont) petition for review to supreme court.	245.00	3.80
12/04/2008	DKW	Work on the petition for special action.	295.00	1.50
	MAK	Prepare (cont) petition for review; discuss with DKW; revisions on public policy arguments.	245.00	4.00
	JSE	Proof, correct and make additional suggestions and changes to petition for review; office conferences with DKW and with MAK	115.00	3.80
12/05/2008	MAK	Final revisions and preparation of appendix.	245.00	0.50
	DKW	Work on the final draft of the petition.	295.00	0.50
	JSE	Office conference with MAK re final preparation and filing of petition for review; prepare Table of Contents for appendix; work with staff to prepare covers for brief and appendix; instructions for handling of petition, etc., for filing	115.00	2.60
12/08/2008	DKW	Receive a message from Cheryl at Mackey's office; Review and dispatch the request for stay; Provide		

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		Rate	HOURS
	instructions to my assistant; Review selected procedural rules.	295.00	1.20
	JSE Complete petition for review and appendix; correspondence to court of appeals; correspondence to Supreme Court; prepare request for stay pending decisions to Supreme Court; receive and review message from Cheryl; return call to Cheryl; office conferences with DKW and with MAK; proof finalized petition and appendix; prepare stay order for Judge Mackey; instructions and work with staff to complete filing and service	115.00	5.90
12/11/2008	MAK Review response to petition for review to Supreme Court re: denial of special action review on issue of joinder.	245.00	0.30
12/15/2008	JSE Receive and review court of appeals transmittal of petition for review re joinder; office conferences with DKW and with MAK; telephone call to Reuben, court of appeals (LM); thorough review and notes of all special-action and appellate rules re time computation; lengthy telephone conference with Reuben, court of appeals; office conferences with MAK re court of appeals interpretation of "briefs" and motion for filing with Supreme Court.	115.00	3.20
	DKW Receive and review the notice from the Supreme Court; Conference with my assistant.	295.00	0.40
	MAK Review transmittal letter from Court of Appeals to Clerk, Supreme Court re: untimeliness of petition for review; discuss with DKW and JE; review appeal and special action rules; telephone conversation with Clerk, Supreme Court of Arizona re: calculation of time petition was due; telephone conversation with appellate attorney in Phoenix re: same; prepare motion for extension of time to file petition for review; receive and review Cox's response to petition for review re: dismissal for failure to timely file.	245.00	4.10
12/16/2008	JSE Office conferences with MAK re motion for extension and response to motion to dismiss; proof and format motion and response; office conference with MAK re covers; instructions to staff re copying, filing and service.	115.00	1.20
12/17/2008	JSE Work on file reorganization and sorting and marking filing for staff.	115.00	1.20
12/22/2008	DKW Research and review the procedural rules; Review the time-frame and contents of the response to petition.	295.00	1.50

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 v. Donald and Katherine Cox

DUPLICATE

	PREVIOUS BALANCE			\$25,050.24
		Rate	HOURS	
12/02/2008	JSE Prepare motion for stay to superior court; office conference with DKW; revise and finalize motion; file and serve	115.00	0.60	
12/03/2008	DKW Telephone call from a witness in the case; Review portions of the file and provide instructions to my assistant.	295.00	0.60	
12/11/2008	DKW Analyze and review the arguments in Cox's Response to Petition for Review to the Supreme Court and the Appendix.	295.00	1.00	
12/17/2008	JSE Work on file reorganization and sorting and marking filing for staff.	115.00	1.20	
	PROFESSIONAL SERVICES RENDERED		3.40	679.00
12/01/2008	Postage			1.26
12/02/2008	Postage			0.84
12/08/2008	Photocopy costs			113.60
12/08/2008	Postage			9.60
12/16/2008	Photocopy costs			23.80
12/16/2008	Postage			1.18
	TOTAL EXPENSES			150.28
	TOTAL CURRENT WORK			829.28
	BALANCE DUE			<u>\$25,879.52</u>

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Special Action- Change of Judge
v. Donald and Katherine Cox

DUPLICATE

			Rate	HOURS	
	PREVIOUS BALANCE				\$25,994.52
03/05/2009	JSE	Office conference with MAK re Supreme Court review scheduled March 17th.	115.00	0.30	
03/16/2009	JSE	Office conference with MAK re Petitions for Review being considered; telephone call to Arizona Supreme Court re time can call for result; memo to MAK.	115.00	0.40	
03/17/2009	JSE	Three calls to Arizona Supreme Court re results of petitions; receive and review message from MAK re decision.	115.00	0.50	
	PROFESSIONAL SERVICES RENDERED			1.20	138.00
03/26/2009		Postage			1.85
	TOTAL EXPENSES				1.85
	TOTAL CURRENT WORK				139.85
	BALANCE DUE				<u>\$26,134.37</u>

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**DUPLICATE OF
 STATEMENT DATED
 01-16-2004
 (STATEMENT NO. 4)**

Mr. and Mrs. John Cundiff
 7460 N. Coyote Springs Rd.
 Prescott Valley AZ 86314
 USA

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Mr. and Mrs. John Cundiff

DUPLICATE

v. Donald and Katherine Cox
 Deed Restriction Enforcement

PREVIOUS BALANCE			\$3,984.92
		Rate	HOURS
02/09/2004	DKW Prepare for the mediation conference.	245.00	2.20
02/10/2004	DKW Prepare for and attend the mediation conference.	245.00	5.00
02/11/2004	DKW Prepare a memorandum of issues and provide information to Marguerite.	245.00	0.70
	MAK Research re waiver/abandonment of deed restriction; and, expansion of non-conforming use.	185.00	1.70
02/12/2004	MAK Research (cont) re expansion of non-conforming deed restriction use of property.	185.00	2.00
	PROFESSIONAL SERVICES RENDERED		<u>11.60</u>
			<u>2,620.00</u>
02/11/2004	Professional services - Hancock Arbitration and Mediation		<u>300.00</u>
	TOTAL ADVANCES		<u>300.00</u>
	TOTAL CURRENT WORK		2,920.00
02/05/2004	Payment received - Thank you CK# 1709		-6,904.92
	BALANCE DUE		<u>\$0.00</u>

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Time Spent by Wilhelmsen on Efforts to Remove Judge Mackey		
Date	Time	Amount
09-17-08 MAK	2.8	686.00
09-19-08 DKW	1.2	354.00
09-22-08 JSE	1.3	123.50
09-23-08 MAK	4.8	1176.00
09-23-08 DKW	1.5	442.50 [†]
09-24-08 DKW	.6	177.00
09-24-08 MAK	5.6	1372.00
09-25-08 MAK	1.2	294.00
09-25-08 DKW	.6	177.00
09-25-08 JSE	5.8	551.00
09-25-08 JSE	7.3	693.50
09-25-08 JSE	6.1	579.50
09-26-08 DKW	2.5	737.50
09-26-08 DKW	.2	59.00
09-17-08 DKW	4.2	1239.00
09-29-08 DKW	.2	59.00
10-08-08 DKW	.2	59.00
10-02-08 JSE	1.8	207.00
10-10-08 DKW	1.2	354.00
10-14-08 DKW	1.	295.00
10-14-08 MAK	.5	122.50
10-14-08 MAK	2.5	612.50
10-15-08 MAK	4.8	1176.00
10-15-08 DKW	1.	295.00
10-16-08 DKW	.2	59.00

The Symbol † denotes that this entry was part of a block-billing entry.

Time Spent by Wilhelmsen on Efforts to Remove Judge Mackey		
Date	Time	Amount
10-16-08 DKW	1.	295.00
10-16-08 JSE	4.5	517.50
10-17-08 JSE	2.3	264.50
10-20-08 JSE	.5	57.50
TOTAL	67.4	13,035.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
05-30-06 MAK	3.8	703.00
06-13-06 CB	.5	52.50
07-03-06 MAK	.6	111.00
08-02-06 MAK	2.4	444.00
08-11-06 DKW	1.5	367.50
10-18-06 DKW	1.	245.00
10-25-06 MAK	4.5	832.50
10-26-06 MAK	5.7	1054.50
10-30-06 MAK	1.5	277.50
10-30-06 CB	4.40	462.00
10-31-06 DKW	1.	245.00
10-31-06 CB	2.6	273.00
12-05-06 DKW	2.	490.00
12-06-06 CB	.9	94.50
12-08-06 DKW	1.	245.00
06-27-07 DKW	.6	147.00
07-02-07 DKW	1.	245.00
07-19-07 DKW	1.50	367.50
08-30-07 CB	1.	105.00
10-01-07 DKW	2.	490.00
10-05-07 DKW	1.	245.00
10-11-07 CB	5.7	655.50 [†]
10-12-07 DKW	1.5	367.50
11-06-07 DKW	.6	147.00
11-13-07 CB	1.4	161.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
11-14-07 DKW	2.	490.00
11-14-07 DKW	1.5	367.50
11-14-07 DKW	1	245.00
11-19-07 DKW	2.	490.00
01-02-08 DKW	1.	245.00
01-02-08 CB	1.7	195.50
01-03-08 DKW	1.	245.00
01-25-08 DKW	1.	245.00
03-10-08 DKW	5.	1225.00
03-10-08 CB	.5	57.50
03-21-08 DKW	1.5	367.50
03-24-08 DKW	1.2	294.00
03-25-08 CB	.3	34.50
03-26-08 CB	.6	69.00
03-26-08 DKW	.8	196.00
03-26-08 MAK	.5	92.50
03-31-08 DKW	1.8	441.00
04-02-08 DKW	.8	196.00
04-28-08 DKW	1.3	318.50
04-30-08 DKW	1.	245.00
05-01-08 DKW	1.3	318.50
05-07-08 MAK	3.6	666.00
05-07-08 DKW	2.5	612.50 [†]
05-07-08 CB	2.7	310.50 [†]
05-08-08 CB	3.1	356.50

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
05-09-08 DKW	1.	245.00
05-12-08 DKW	.5	122.50
05-12-08 MAK	5.6	1036.00
05-13-13 MAK	3.8	703.00
05-13-08 MAK	.4	74.00
05-13-08 DKW	1.5	367.50
05-13-08 MAK	.2	37.00
05-13-08 CB	1.6	184.00
05-13-08 MAK	1.5	277.50
05-14-08 CB	2.3	264.50
05-29-08 CB	.9	103.50
05-29-08 DKW	1.5	517.50
06-02-08 MAK	.5	92.50
06-02-08 CB	.4	46.00
06-09-08 CB	.2	23.00
06-12-08 DKW	1	245.00
06-20-08 DKW	1.6	392.00
06-24-08 MAK	2.4	444.00
06-25-08 MAK	2.3	425.50
06-25-08 CB	.7	80.50
07/03/08 DKW	.8	196.00
08-26-08 MAK	.4	90.00
08-26-08 MAK	3.1	697.50
09-03-08 DKW	1.	295.00
08-27-08 MAK	6.4	1440.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
08-28-08 MAK	1.8	405.00
08-29-08 MAK	5.6	1372.00
09-02-08 MAK	6.3	1543.50
09-05-08 MAK	6.2	1519.00
09-08-08 MAK	4.3	1053.50
09-09-08 DKW	1.5	442.50
09-09-08 DKW	1.4	413.00
09-10-08 DKW	1.5	442.50
09-12-08 DKW	1.4	413.00
09-12-08 MAK	6.3	1543.50
09-15-08 MAK	4.5	1102.50
09-16-08 MAK	2.3	563.50
09-16-08 DKW	2.	590.00
09-17-08 MAK	.4	98.00
09-18-08 MAK	6.5	1592.50
09-18-08 DKW	1.8	531.00
09-19-08 MAK	6.2	1519.00
09-22-08 MAK	6.3	1543.50
09-22-08 DKW	1.5	367.50
09-23-08 JSE	.8	76.00
09-24-08 DKW	.6	177.00
09-25-08 MAK	5.1	1249.50
09-26-08 MAK	4.8	1176.00
09-03-08 MAK	3.6	882.00
09-29-08 DKW	.8	236.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
09-29-08 DKW	4.	980.00
09-30-08 MAK	2.8	686.00
09-30-08 DKW	1.5	442.50
09-30-08 JSE	1.	115.00
10-01-08 MAK	2.2	539.00
10-01-08 MAK	4.	980.00
10-01-08 DKW	1.5	442.50
10-01-08 JSE	4.	460.00
10-02-08 MAK	1.8	441.00
10-02-08 DKW	2.	590.00
10-02-08 JSE	4.2	483.00
10-03-08 MAK	1.	245.00
10-03-08 DKW	1.8	531.00
10-03-08 MAK	.3	73.50
10-03-08 JSE	6.8	782.00
10-06-08 JSE	.3	34.50
10-06-08 JSE	2.2	209.00
10-06-08 JSE	.8	92.00
10-06-08 DKW	1.	295.00
10-07-08 DKW	1.	295.00
10-07-08 JSE	1.	115.00
10-07-08 JSE	2.2	253.00
10-08-08 JSE	1.6	184.00
10-09-08 DKW	1.	295.00
10-09-08 JSE	2.7	310.50

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
10-10-08 DKW	1.5	442.50
10-10-08 JSE	2.9	333.50
10-16-08 JSE	.9	103.50
10-17-08 MAK	.4	98.00
10-17-08 DKW	1.5	442.50
10-20-08 DKW	.2	59.00
10-20-08 JSE	1.5	172.50
10-21-08 DKW	.7	206.50
10-21-08 JSE	1.2	138.00
10-22-08 DKW	.5	147.50
10-23-08 DKW	.5	147.50
10-23-08 JSE	2.4	276.00
10-24-08 MAK	1.4	343.00
10-24-08 MAK	.3	73.50
10-24-08 MAK	2.3	563.50
10-24-08 DKW	2.	590.00
10-24-08 JSE	1.4	161.00
11-03-08 JSE	5.2	598.00
11-10-08 KSE	4.	460.00
11-11-08 DKW	1.5	442.50
11-11-08 JSE	3.2	368.00
11-12-08 JSE	2.8	322.00
11-12-08 JSE	2.1	241.50
11-20-08 JSE	2.7	310.50
11-21-08 DKW	1.5	442.50

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
11-24-08 DKW	1.2	354.00
11-24-08 JSE	6.3	724.50
11-26-08 JSE	4.3	494.50
10-27-08 DKW	2.	590.00
10-27-08 JSE	8.	760.00
10-27-08 DKW	2.2	649.00
10-28-08 JSE	8.	760.00
10-29-08 JSE	.6	57.00
10-29-08 JSE	7.	665.00
10-30-08 JSE	1.2	114.00
10-31-08 JSE	1.5	142.50
10-31-08 JSE	1.9	180.50
11-04-08 JSE	4.8	552.00
11-05-08 JSE	6.1	701.50
11-06-08 JSE	5.9	678.50
11-07-08 DKW	.2	59.00
11-07-08 JSE	5.5	632.50
11-07-08 DKW	.2	59.00
11-10-08 SJE	4.1	471.50
11-02-08 DKW	.2	59.00
11-10-08 DKW	1.4	413.00
11-11-08 JSE	2.3	264.50
11-12-08 DKW	1.2	354.00
11-12-08 JSE	.5	57.50
11-13-08 DKW	2.	590.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
11-14-08 DKW	1.	295.00
11-14-08 JSE	2.6	299.00
11-17-08 DKW	.4	118.00
11-17-08 JSE	4.8	552.00
11-18-08 DKW	1.5	442.50
11-18-08 JSE	4.1	471.50
11-19-08 DKW	.8	236.00
11-19-08 JSE	2.8	322.00
11-20-08 DKW	1.	295.00
11-24-08 DKW	.2	590.00
11-25-08 DKW	1.	295.00
11-26-08 DKW	.2	590.00
12-01-08 DKW	1.	295.00
12-01-08 MAK	3.	735.00
12-02-08 DKW	1.5	442.50
12-02-08 MAK	3.9	955.50
12-02-08 JSE	.6	69.00
12-03-08 MAK	3.8	931.00
12-04-08 DKW	1.5	442.50
12-04-08 MAK	4.	980.00
12-04-08 JSE	3.8	437.00
12-05-08 MAK	.5	122.50
12-05-08 DKW	.5	147.50
12-05-08 JSE	2.6	299.00
12-08-08 DKW	1.2	354.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
12-08-08 JSE	5.9	678.50
12-11-08 MAK	.3	73.50
12-15-08 JSE	3.2	368.00
12-15-08 DKW	.4	118.00
12-15-08 MAK	4.1	1004.50
12-16-08 JSE	1.2	138.00
12-17-08 JSE	1.2	138.00
12-22-08 DKW	1.5	442.50
12-24-08 DKW	1.5	442.50
12-02-08 JSE	.6	69.00
12-03-08 DKW	.6	177.00
12-11-08 DKW	1.	295.00
12-17-08 JSE	1.2	138.00
12-29-08 DKW	1.5	442.50
01-06-09 MAK	.8	196.00
01-06-09 JSE	.9	103.50
01-07-09 DKW	1.2	354.00
01-20-09 MAK	1.	245.00
01-21-09 DKW	1.5	442.50
01-21-09 JSE	3.8	437.00
01-26-09 DKW	1.	295.00
03-08-09 JSE	1.	115.00
03-05-09 JSE	.3	34.50
03-16-09 JSE	.4	46.00
03-17-09 JSE	.5	57.50

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
01-28-09 DKW	.5	147.50
03-16-09 JSE	.4	46.00
03-17-09 JSE	.5	57.50
03-25-09 DKW	.6	177.00
04-01-09 JSE	.2	23.00
12-12-11 DKW	1.0	295.00
12-13-11 DKW	2.0	590.00
12-13-11 MAK	3.40	833.00
12-14-11	1.20	354.00
12-15-11 MAK	5.40	1323.00
12-15-11 MAK	4.6	1127.00
06-19-11 MAK	7.2	1764.00
06-20-12 MAK	5.2	1274.00
06-21-21 MAK	4.3	1053.50
06-22-12 MAK	4.6	1127.00
06-28-12 MAK	5.2	1274.00
06-29-12 MAK	5.3	1298.50
07-03-12	1.5	442.50
07-05-12 MAK	4.2	1029.00
07-12-12 MAK	2.0	490.00
07-13-12	1.2	294.00
07-16-12	1.0	245.00
07-28-12 MAK	1.0	245.00
08-29-12 MAK	3.6	882.00
09-04-12 MAK	3.6	882.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
09-11-12	1.20	294.00 [†]
10-03-12 MAK	1.0	245.00
10-04-12 MAK	2.20	539.00
10-09-12 MAK (note: "Research (duplicate due to loss of e-mails with research results) re: due process to parties later joined to an action (no charge)" [entry was charged and is sought in the fee application]	1.2	294.00
11-27-12	1.10	269.50
02-14-13	1.0	245.00
02-19-13	1.0	245.00
03-14-13 DW	1.2	294.00 [†]
03-25-12	1.8	441.00
03-26-13	1.0	245.00
03-27-13 LP	2.3	563.00
03-27-13 LP	1.3	318.00
03-27-13 LP	.3	34.50
03-28-13 LP	1.0	245.00
03-28-13 LP	1.3	318.50
04-01-13 LP	3.9	955.00
04-01-13 LP	2.2	539.00
04-01-13 LP	1.0	245.00
04-02-13	5.8	1421.00
04-03-13	1.2	294.00

The Symbol † denotes that this entry was part of a block-billing entry.

All Time Spent by Wilhelmsen Opposing Joinder/Time Spent on Joinder Issues		
Date	Time	Amount
04-04-13 LP	.4	98.00
04-04-13 LP	.5	122.50
04-04-13 DW	1.5	367.50
04-08-13	.8	196.00
04-09-13 MW	.2	23.00
04-10-13 MW	.2	23.00
04-10-13 MW	1.8	207.00
04-18-13 DW	.8	196.00
04-18-13 DW	.4	98.00
04-21-13 DW	.2	49.00
04-26-13	1.0	245.00
04-29-13 DW	.8	196.00
04-29-13 LP	5.2	1274.00
04-30-13 DW	1.2	294.00
04-30-13 JB	.3	25.50
05-07-13	1.0	245.00
05-10-13	.8	196.00
05-14-13	.6	147.00
05-15-13	.6	147.00
05-16-13	1.5	172.50
05-17-13	5.0	575.00
05-21-13	1.5	367.50
05-30-13	.8	196.00
TOTAL	605.1	122487

The Symbol † denotes that this entry was part of a block-billing entry.

Time Spent By Coughlin Opposing Joinder		
Date	Time	Amount
04-10-09	2.3	575.00 [†]
04-13-09	5.3	1325.00
04-29-09 JC	.2	190.00
04-30-09	.6	57.00
05-07-09 CP	.4	38.00
05-08-09 JC	4.3	1075.00
05-11-09 JC	1.9	475.00
05-11-09 CP	3.4	323.00
05-14-09	2.2	209.00
05-19-09 JC	2.4	600.00
05-19-09 CP	1.2	114.00
05-20-09 JC	1.9	475.00
05-20-09 CP	1.4	133.00
05-21-09 CP	.2	19.00
05-21-09 JC	.2	50.00
06-09-09 CP	.3	28.50
06-10-09 JC	2.2	550.00
06-11-09	3.6	900.00
06-12-09	2.1	525.00
07-17-09	.3	28.50
07-22-09 CP	1.4	133.00
07-22-09 JC	.5	125.00
09-29-09	3.7	925.00
10-01-09	4.6	1150.00
03-12-10	2.7	675.00

The Symbol † denotes that this entry was part of a block-billing entry.

Time Spent By Coughlin Opposing Joinder		
Date	Time	Amount
03-15-10	2.8	700.00
05-11-10 JC	.3	75.00
05-11-10 CP	.4	38.00
05-13-10 JC	.2	50.00
05-13-10 CP	.5	47.50
05-13-10 CP	.3	28.50
TOTAL	53.8	11637.00

The Symbol † denotes that this entry was part of a block-billing entry.

COUGHLIN CLASS ACTION & MOTION TO AMEND

DATE/ BILLING PERSON	HOURS BILLED	AMOUNT
04-29-09 CP	2.0	190.00
04-30-09 CP	.6	57.00
05-07-09 CP	.4	38.00
05-08-09 JC	4.2	1050.00
05-11-09 JC	1.90	475.00
05-11-09 CP	3.4	323.00
05-14-09 CP	2.2	209.00
05-19-09 JC	2.4	600.00
05-19-09 CP	1.2	114.00
05-20-09 JC	1.90	475.00
05-20-09 CP	1.4	133.00
05-21-09 CP	.2	19.00
06-09-09 CP	.3	28.50
06-10-09 JC	2.2	550.00
06-11-09 JC	3.6	900.00
06-12-09 JC	2.10	525.00
07-17-09 CP	.3	28.50
07-22-09 CP	1.4	133.00
07-22-09 JC	.5	125.00
08-06-09 JC	1.3	325.00
08-12-09 JC	.2	50.00
09-22-09 CP	1.8	171.00
09-29-09 JC	3.7	925.00
10-01-09 JC	4.6	1150.00
03-10-10 CP	.8	76.00
03-12-10 JC	2.7	675.00

03-15-10 JC	2.8	700.00
05-11-10 JC	.3	75.00
05-11-10 CP	.4	38.00
05-13-10 JC	.2	50.00
05-13-10 CP	.5	47.50
05-13-10 CP	.3	28.50
05-14-10 JC	1.8	450.00
05-18-10 JC	.1	25.00
TOTALS	53.70	10,759.00

Wilhelmsen Time Spent on Motion for Summary Judgment		
Date	Time	Amount
02-11-04 MAK	1.7	314.50
02-11-04 MAK	2.	370.00
03-02-04 MAK	2.3	425.50
03-03-04 MAK	1.	185.00
03-08-04 MAK	2.1	388.50
03-09-04 DKW	2.3	563.50
05-17-04 DKW	1.	245.00
05-19-04 DKW	1.	245.00
07-22-04 DKW	1.5	367.50
07-23-04 MAK	2.	370.00
07-26-04 MAK	.5	92.50
07-26-04 DKW	2.	490.00
07-27-04 MAK	.8	148.00
08-06-04 DKW	1.	245.00
08-11-04 DKW	1.7	416.50
09-07-04 MAK	1.	185.00
09-29-04 DKW	1.3	318.50
10-01-04 MAK	.5	92.50
10-01-04 MAK	2.7	499.50
10-01-04 DKW	1.7	416.50
11-08-04 DKW	2.	490.00
01-31-05 MAK	.9	166.50
01-31-05 DKW	6.5	1592.50†
02-03-05 MAK	.5	92.50†
02-14-05 DKW	.3	73.50

The Symbol † denotes that this entry was part of a block-billing entry.

Wilhelmsen Time Spent on Motion for Summary Judgment		
Date	Time	Amount
02-15-05 MAK	.2	37.00
04-22-05 MAK	1.	185.00
04-29-05 DKW	1.7	416.50 [†]
TOTAL	43.2	9432.00

The Symbol † denotes that this entry was part of a block-billing entry.

Time Entries with No Apparent Relation to this Case		
Date	Time	Amount
06-22-09	.3	75.00
02-01-10	.3	75.00
02-02-10	1.8	450.00
02-03-10	2.5	625.00
02-04-10	.5	125.00
02-08-10	.4	100.00
02-08-10 CP	.9	85.50
02-09-10	.8	76.00
02-10-10	.7	175.00
02-11-10	.1	25.00
08-16-10	.2	50.00
09-08-10	.6	150.00 [†]
09-28-10 JC	.5	125.00 [†]
10-12-10	.4	100.00
10-20-10	.2	50.00
10-29-10	.3	75.00
11-03-10	.3	28.50
05-26-11 CP	.6	57.00
05-26-11 CP	.6	57.00
05-26-11 JC	1.	250.00
05-26-11 CP	.4	38.00
05-31-11 CP	.2	19.00
04-16-12	.2	50.00
TOTAL	35.4	\$2,748.00

The Symbol † denotes that this entry was part of a block-billing entry.

Everything That Pertains to JC, CP, & AJ Working on Spreadsheet for Property Owners and Parcel ID's		
Date	Time	Amount
05-17-10	.8	76.00
05-19-10	.2	19.00
05-20-10 CP	.6	57.00
06-08-10 JC	1.5	375.00
06-08-10 CP	2.4	228.00
06-09-10 JC	1.8	450.00
06-09-10 CP	4.	380.00
06-10-10 JC	2.9	725.00
06-10-10 CP	3.8	361.00
06-10-10 AJ	1.25	118.75
06-11-10 JC	.8	200.00
06-11-10 AJ	1.5	142.50
06-14-10 AJ	3.75	356.25
06-15-10	.5	47.50
07-15-10 CP	2.8	266.00
07-15-10 AJ	2.8	266.00
07-16-10 AJ	2.	190.00
07-19-10 JC	.9	225.00 [†]
07-19-10 CP	6.4	608.00
08-09-10 CP	.6	57.00
08-18-10 CP	.6	57.00
09-14-10 CP	1.2	114.00
9-24-10 JC	1.1	275.00

The Symbol † denotes that this entry was part of a block-billing entry.

Everything That Pertains to JC, CP, & AJ Working on Spreadsheet for Property
Owners and Parcel ID's

Date	Time	Amount
09-24-10 AJ	.5	332.50
09-28-10 AJ	4.5	427.50
09-29-10 CP	.8	76.00
10-07-10 CP	2.2	209.00
11-02-10	.6	57.00
11-09-10	.7	66.50
02-04-11 JC	1.4	350
02-07-11 JC	1.6	400.00
02-07-11 AJ	2.4	228.00
02-09-11 CP	2.8	266.00
02-10-11	.8	76.00
02-24-11	.6	150.00 [†]
02-28-11	.4	38.00
03-03-11 JC	.7	175.00 [†]
03-07-11 CP	.8	200.00
TOTAL	65	8645.5

The Symbol † denotes that this entry was part of a block-billing entry.

Sheila Cahill Motion In Limine

06-22-05 MAK	.3	55.50
06-24-05 MAK	.3	55.50
07-25-05 MAK	.2	37.00
07-26-05 DKW	7.7	1,886.50 *
07-08-05 DKW	2	490.00 *
07-14-05 MAC	1.10	203.50
07-18-05 DKW	1.2	294.00
07-19-05 DKW	1.00	245.00
07-19-05 MAK	1.10	203.50
TOTALS	14.2	\$3,420.50 *

* Indicates part of block billing