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JEANNE HICKS, CLERK
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BY: _____

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6 Attorneys for Property Owner James Varilek

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

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

Case No. P1300CV20030399

Division 1

REQUEST FOR CLARIFICATION
RE: COURT'S NOTICE
FILED JUNE 17, 2010

18 Property Owner, James Varilek, having received by mail addressed to undersigned counsel,
19 Plaintiffs' counsel's letter concerning acceptance of service in the above-captioned case, and the
20 Court's Notice, filed June 17, 2010, regarding Property Owners' potential interests in this litigation,
21 request is made to this Court for clarification, on the issue of potential attorney's fees as the Notice
22 is silent on the matter. It is noted that this action arises in contract, and the prevailing party will be
23 statutorily entitled to an award of reasonable attorney's fees.

24 In this action, property owners may (a) allow for entry of default against them; (b) be aligned
25 with plaintiffs Cundiff, *et al.*; or, (c) be aligned with defendants Cox. If a property owner were to
26 elect to proceed with default being taken against him/her/them/it, the issue arises whether that

1 defaulting property owner would be subject to an adverse award of attorney's fees. Similarly, if the
2 property owner were to be aligned with either plaintiffs or defendants, the issue also arises whether
3 that property owner would be subject to an award of attorney's fees as the prevailing party, or be
4 made subject to an award of attorney's fees if aligned with the unsuccessful party. Finally, a related
5 issue concerns the accrual of attorney's fees. If the property owner, under any of the three scenarios
6 set forth above, were to be subject to an award of attorney's fees, when would the attorney's fees
7 begin to accrue?

8 Absent direction from this Court on the issue of attorney's fees, Property Owner Varilek (as
9 with many property owners now subject to this litigation) cannot adequately assess how they might
10 wish to proceed.

11 Therefore, Property Owner Varilek respectfully requests that this Court provide direction on
12 the nature and extent of attorney's fees that can be recouped by a Property Owner, or for which the
13 Property Owner may be liable for in this litigation.

14 RESPECTFULLY SUBMITTED this 19th day of August, 2010.

15 FAVOUR MOORE & WILHELMSSEN, P.A.

16
17 By: 
18 David K. Wilhelmsen
19 Marguerite Kirk
20 Post Office Box 1391
Prescott, AZ 86302
Attorneys for Property Owner Varilek

21 Original of the foregoing filed
22 this 19th day of August, 2010, with:
23 Clerk, Superior Court of Arizona
24 Yavapai County
120 S. Cortez Street
Prescott, Arizona 86302

1 ///

2 A copy of the foregoing hand-delivered
3 this 19th day of August, 2010, to:

4 Honorable David L. Mackey
5 Judge, Superior Court of Arizona
6 Yavapai County, Division 1
7 120 S. Cortez Street
8 Prescott, Arizona 86302

9 And, a courtesy copy of the foregoing mailed
10 to lead counsel in this case
11 this 19th day of Augsut, 2010, to:

12 J. Jeffrey Coughlin
13 114 S. Pleasant Street
14 Prescott, Arizona 86303
15 Attorney for Plaintiffs Cundiff

16 Jeffrey Adams
17 ADAMS & MULL, PLLC
18 211 E. Sheldon St.
19 Prescott, Arizona 86301

20 By 
21 David K. Wilhelmsen
22 Marguerite Kirk

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25
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