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JEANNE HICKS, CLERK ✓

BY: M. Cotton

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5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

8 *Attorneys for Defendants*

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

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

11 JOHN B. CUNDIFF and BARBARA C.
12 CUNDIFF, husband and wife; BECKY
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

MOTION *IN LIMINE*

(Oral Argument Requested)

(Assigned to the Honorable David L. Mackey)

✓ Div 1

22 Defendants, through counsel undersigned, move *in limine* to preclude Plaintiffs from calling
23 their alleged witness identified as a representative of Yavapai County Planning and Zoning for the
24 reason that that person's identify has not yet been disclosed despite the passing of the date for
25 completion of discovery in this case. Defendants likewise move *in limine* to preclude Plaintiffs from
26 introducing into evidence aerial photographs of Coyote Springs Ranch and any file(s) Plaintiffs
27 might eventually receive from Yavapai County Planning and Zoning as they have failed to produce
28 the foregoing items despite the passing of the discovery cutoff date. This Motion *in Limine* is

1 supported by the accompanying Memorandum of Points and Authorities and the record on file
2 herein.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. Legal Argument.**

6 The date for **completion** of discovery in this case was Thursday, June 30, 2005. On June 29,
7 2005, Plaintiffs served their Fourth Supplemental Rule 26.1 Disclosure Statement. See Exhibit "1"
8 attached hereto.¹ In Plaintiffs' Fourth Supplemental Rule 26.1 Disclosure Statement, Plaintiffs
9 disclosed the following: (i) as a witness a representative of Yavapai County Planning and Zoning
10 who would allegedly testify as to prior applications from subdivision owners in Coyote Springs
11 Ranch to obtain a variance in order to operate business, trade, commercial or industrial activities
12 which were denied based on community response; (ii) aerial photographs of Coyote Springs Ranch
13 that Plaintiffs have yet to receive or provide to Defendants; and (iii) a file or files from Yavapai
14 County Planning and Zoning that Plaintiffs have yet to receive or provide to Defendants. Plaintiffs
15 did not identify the name, title or any other information of the representative of Yavapai County
16 Planning and Zoning. In conferring with Mr. Wilhelmsen on July 1, 2005 in accordance with Rule
17 7.2, Ariz. R. Civ. P., regarding Plaintiffs' disclosure, Mr. Wilhelmsen confirmed that he does not
18 yet know the identity of this individual from Yavapai County Planning and Zoning and that he does
19 not yet possess aerial photographs of Coyote Springs Ranch or the file or files from Yavapai County
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27 ¹The copy of Plaintiffs' Fourth Supplemental Disclosure Statement attached to this Motion *in Limine* does not
28 include copies of the documentation attached to that disclosure statement. That documentation was not attached to this
Motion in Limine in the interest of conserving paper and because that documentation is not relevant to this Motion *in*
Limine.

1 Planning and Zoning. Obviously, Defendants could not present rebuttal evidence as the date for
2 completion of discovery has passed. Consequently, Defendants are obliged to file this Motion.

3
4 Based on the foregoing, Plaintiffs should be precluded from using during trial (i) a witness
5 from Yavapai County Planning and Zoning, (ii) aerial photographs of Coyote Springs Ranch or (iii)
6 a file or files from Yavapai County Planning and Zoning. The discovery cut-off date has passed.
7 Plaintiffs have offered no reason why this discovery could not have been completed prior to the
8 June 30, 2005 cutoff date. At the request of Mr. Wilhelmsen, undersigned counsel stipulated on
9 June 24, 2005 that the date for completion of discovery, among other activities, would be extended
10 until June 30, 2005. Plaintiffs have had more than two years to obtain and disclose the information
11 and documents which are the subject of this Motion but have failed to do so. Therefore, Defendants'
12 Motion *in Limine* should be granted.
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15 **II. Conclusion.**

16 Based on the foregoing, Plaintiffs should be precluded from using during trial (i) a witness
17 from Yavapai County Planning and Zoning, (ii) aerial photographs of Coyote Springs Ranch or (iii)
18 a file or files from Yavapai County Planning and Zoning.
19

20 RESPECTFULLY SUBMITTED this 1 day of July, 2005.

21
22 MUSGROVE, DRUTZ & KACK, P.C.

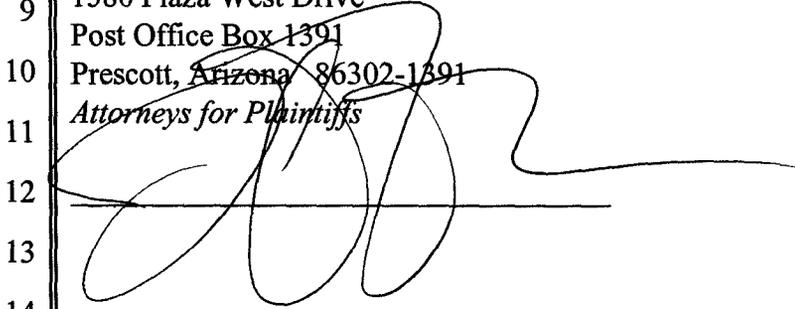
23 By _____

24 Mark W. Drutz
25 Jeffrey R. Adams
26 Sharon Sargent-Flack
27 *Attorneys for Defendants*
28

1 COPY of the foregoing hand-delivered
2 this 1 day of July, 2005, to:

3 Honorable David L. Mackey
4 Yavapai County Superior Court
5 Division 1
6 Yavapai County Courthouse
7 Prescott, Arizona 86301

8 David K. Wilhelmsen, Esq.
9 Marguerite M. Kirk, Esq.
10 Favour, Moore & Wilhelmsen, P.A.
11 1580 Plaza West Drive
12 Post Office Box 1391
13 Prescott, Arizona 86302-1391
14 *Attorneys for Plaintiffs*

A large, stylized handwritten signature in black ink, appearing to be 'D. Wilhelmsen', is written over a horizontal line. The signature is written in a cursive style and extends across the width of the text area.

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4 Attorneys for Plaintiffs

5 **IN THE SUPERIOR COURT OF ARIZONA**
6 **COUNTY OF YAVAPAI**
7

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

Case No. CV 2003-0399

Division 1

**PLAINTIFFS' FOURTH
SUPPLEMENTAL
RULE 26.1
DISCLOSURE STATEMENT**

19 Pursuant to Rule 26.1(b)(2), Ariz.R.Civ.Proc., Plaintiffs, John and Barbara Cundiff, Becky
20 Nash, and Kenneth and Kathryn Page, hereby supplement their Rule 26.1 disclosure statement and
21 make the following additional disclosure.

22 **III. Identity of Witness(es) and Substance of Expected Testimony**

23 (H) Representative of Yavapai County Planning & Zoning
24 500 South Marina Street
25 Prescott, Arizona 86303
26 P: (928) 771-3214

Description of Testimony: A representative of Yavapai County Planning and Zoning will testify
as to prior applications from subdivision owners in Coyote Springs Ranch to obtain a variance in order
to operate business, trade, commercial or industrial activities which were denied based on community
response.

EXHIBIT " 1 "

1 **VIII. Existence, Location, Custodian and Description of Tangible Evidence and Documents**

2 Plaintiffs have identified the following tangible document and evidence that may be introduced
3 at time of trial:

- 4 (I) Aerial photographs of the Coyote Springs Ranch subdivision (copies to be provided
5 upon receipt by undersigned counsel).
- 6 (J) File(s) from Yavapai County Planning & Zoning concerning III(H) above (copies to
7 be provided upon receipt by undersigned counsel).
- 8 (K) Documentation from property owners who are allegedly operating business in Coyote
9 Springs Ranch (attached hereto).

10 Plaintiffs reserve the right to supplement their disclosure statements as discovery progresses.

11 DATED this 29 day of June, 2005.

12 FAVOUR MOORE & WILHELMSSEN, P.A.

13
14
15 By: 
16 David K. Wilhelmsen
Marguerite Kirk

17
18 Original of the foregoing mailed
this 29 day of June, 2005 to:

19 Mark Drutz
20 Jeffrey Adams
21 MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
22 Prescott, Arizona 86305
Attorneys for Defendants Cox

23
24 By: 
25 David K. Wilhelmsen
Marguerite Kirk

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