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JEANNE HICKS, CLERK

BY: **I. Martinez**

1 FAVOUR MOORE & WILHELMSSEN, P.A.
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3 Prescott, AZ 86302-1391
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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' OPPOSITION
TO DEFENDANTS
AMENDED WITNESS LIST
AND,
MOTION *IN LIMINE***

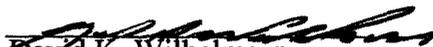
21 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Kathryn Page, by and
22 through undersigned counsel, hereby opposes Defendants introduction of four (4) witnesses whose
23 identity *has never been disclosed* by Defendants, as well as Defendants intended introduction of
24 twenty-four (24) witnesses whose testimony is cumulative and redundant. This Court previously struck
25 Defendants' witness list setting forth 402 witnesses finding that "the listing of 402 witnesses is not
26 in good faith and is intended to harass or cause unnecessary delay." *Minute Entry, CV 2003-0399, July*
11, 2005. Defendants' second bite at the apple yields no better result.

This motion is supported by the following memorandum of points and authorities, as well as
the entire record in this proceeding.

///

1 RESPECTFULLY SUBMITTED this 19th day of July, 2005.

2 FAVOUR MOORE & WILHELMSSEN, P.A.

3
4 By: 
5 David K. Wilhelmssen
Marguerite Kirk

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. Defendants are Precluded from Calling Witnesses that**
8 **Have Never Been Disclosed**

9 Defendants' amended witness list includes four (4) individuals who have never been disclosed
10 during the course of discovery. Defendants' list names Dennis Booth, Edward Carlin, Patricia
11 Norbury and Eugene Morton as witnesses they intend on calling at time of trial. *Defendants' Amended*
12 *Witness List, July 18, 2005 at ¶¶4, 41-43.* None of these individuals was ever disclosed to
13 undersigned counsel. The time for discovery having passed, Defendants are now precluded from
14 calling these non-disclosed witnesses at time of trial.

15 **II. Defendants Intention to Call 32 Witnesses Who Will Testify**
16 **as to the Nature of the Sub-division and Any Violations**
17 **is Cumulative, Redundant and Interposed for an Improper Purpose**

18 Defendants' amended witness list sets forth twenty-four individuals¹ whom Defendants
19 disclosed just days prior to the discovery cut-off date. Defendants have disclosed that each of these
20 32 witnesses will provide testimony "as to [his/her] knowledge and observations of the Coyote Springs
21 Ranch properties and any violations of the Declaration of Restrictions affecting said properties."
22

23 ¹ The 24 witnesses at issue are: Wendy Dittbrenner, Charles Hildebrant, Joe Pearson, Dr.
24 Nichols, John Hough, Noreen Vaughn, Kenneth Yarbrough, William Furbee, Patricia Hocken, Edward
25 Woodworth, Jefferson Van Der Meersche, Mark Williams, John Hatfield, Wiley L. Williams, Bill
26 Jensen, Grant Griffiths, Kevin Eikleberry, Beverly Strissel, Larry Kirby, Al McRoberts, Robert Taylor,
Karrie Decker, Brent Boling, and Sue Stoks. *Defendants' Amended Witness List, July 18, 2005 at*
¶¶13-15, 17-22, 24-28, 31-40.

1 These witnesses are in addition to the following:

- 2 • Sheila Cahill, whom Defendants have disclosed will testify as to her
3 investigation of every parcel of property in the sub-division and every alleged
4 violation of each parcel;
- 5 • Laura Lamberson, Mike Wargo, Christin Bowra, Mychel Westra, Frank
6 Lamberson, Curtis Kincheloe, Karen Wargo, and Jeff Westra (8 witnesses)
7 whom Defendants have disclosed will testify not only to the nature of the use
8 of property in the sub-division and other alleged violations by property owners
9 (which is identical to the 24 listed witnesses), but also their own alleged
10 violation of the covenant precluding business operations.
- 11 • Jim Savioni, who is *not* a property owner in the sub-division, but whom
12 Defendants state will testify as to doing business with property owners in
13 Coyote Springs Ranch.

14 Defendants introduction of 24 additional witnesses who will testify as to their knowledge and
15 observations of the Coyote Springs Ranch properties and alleged violations of the recorded
16 Declaration of Restrictions *in addition to* Defendants own testimony on this subject, as well as
17 Cahill's investigation, plus an additional 8 witnesses who will also testify on precisely the same topic,
18 is cumulative, redundant and an obvious ploy intended to delay, harass or unnecessarily increase the
19 cost of trial. Rule 403, Ariz.R.Evid., applies to Defendants' amended witness list:

20 Although relevant, evidence may be excluded if its probative value is substantially
21 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading
22 the jury, or *by considerations of undue delay, waste of time, or needless presentation*
23 *of cumulative evidence.*

24 *Id. (emphasis added).* Defendants can have no reason other than delay or harassment in seeking to call
25 a total of 32 witnesses who are all expected to testify as to their knowledge of the sub-division and
26 "any violation" of the recorded restrictions. *See, Defendants' Fourth Supplemental Rule 26.1*

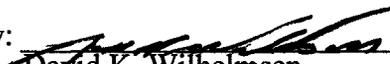
1 *Disclosure Statement, June 24, 2005 (a copy attached hereto as Exhibit "1").*

2 **III. Conclusion**

3 Defendants' amended witness list setting forth four (4) witnesses who were never disclosed
4 to undersigned counsel during discovery as well as 32 witnesses whom Defendants intend to call
5 solely to testify as to their knowledge of the sub-division and any alleged violation of the recorded
6 covenants is simply bad faith by Defendants. Defendants amended witness list is a poorly conceived
7 and ill-contrived attempt to delay proceedings, or encumber the trial to such a point with needless,
8 cumulative and redundant testimony that the matter cannot be effectively heard within the time
9 allotted by the Court. Defendants' amended witness list reveals on-going bad-faith by Defendants in
10 the effective judicial determination of this case, interposed for purposes of harassment and increase
11 in the cost of litigation.

12 DATED this 19th day of July, 2005.

13 FAVOUR MOORE & WILHELMSSEN, P.A.

14 By: 

15 David K. Wilhelmsen
16 Marguerite Kirk
17 Post Office Box 1391
18 Prescott, Arizona 86302-1391
19 Attorneys for Plaintiffs

20 Original of the foregoing
21 filed this 19th day of July,
22 2005, with:

23 Clerk, Superior Court of Arizona
24 Yavapai County
25 120 S. Cortez St.
26 Prescott, Arizona 86302

A copy faxed and hand-delivered
this 19th day of July, 2005, to:

Honorable David L. Mackey
Division One
Superior Court of Arizona
120 S. Cortez St.
Prescott, Arizona 86302

1 and, a copy faxed and hand-delivered
2 this 19th day of July, 2005, to:

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

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By:


David K. Wilhelmsen
Marguerite Kirk

EXHIBIT 1

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,
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18 Plaintiffs,
19
20 v.
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22 DONALD COX and CATHERINE COX,
23 husband and wife,
24
25 Defendants.

Case No. CV 2003-0399

Division No. 1

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

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

I. 26.1(a)(3) WITNESSES WHOM DEFENDANTS EXPECT TO CALL AT TRIAL.

1. Beau Boisvert, Yavapai County Assessors' Office, 1015 Fair Street, Prescott, Arizona
86305. Mr. Boisvert will testify as to his knowledge of the agricultural exemption granted to
Defendants related to their use of their property in Coyote Springs Ranch.

1 2. • Wendy Dittbrenner, 7375 N. Coyote Springs Road, Prescott Valley, Arizona 86314.
2 Ms. Dittbrenner will testify as to her operation of a business in Coyote Springs Ranch and her
3 knowledge and observations of the Coyote Springs Ranch properties and any violations of the
4 Declaration of Restrictions affecting said properties. She will further testify as to her knowledge of
5 meetings in the Coyote Springs Ranch area regarding the use of the Subject Property and articles she
6 has written about this subject in the Lonesome Valley News.
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9 3. • Joe Pearson and Rhonda Folsom, 9305 N. Coyote Springs Road, Prescott Valley,
10 Arizona 86314. Mr. Pearson and Ms. Folsom will testify as to their knowledge and observations
11 of the Coyote Springs Ranch properties and any violations of the Declaration of Restrictions
12 affecting said properties.
13

14 4. • Dr. Nichols, P.O. Box 1431, Prescott, Arizona 86302. Dr. Nichols will testify as to
15 his knowledge and observations of the Coyote Springs Ranch properties and any violations of the
16 Declaration of Restrictions affecting said properties.
17

18 5. • John Hough, 8590 E. Windmill Acres Road, Prescott Valley, Arizona 86314. Mr.
19 Hough will testify as to his knowledge and observations of the Coyote Springs Ranch properties and
20 any violations of the Declaration of Restrictions affecting said properties.
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22 6. • Noreen Vaughn, 9235 N. Coyote Springs Road, Prescott Valley, Arizona 86314.
23 Ms. Vaughn will testify as to her knowledge and observations of the Coyote Springs Ranch
24 properties and any violations of the Declaration of Restrictions affecting said properties.
25

26 7. • Kenneth Yarbrough, 505 W. Red Mountain Place, Oro Valley, Arizona 85737. Mr.
27 Yarbrough will testify as to his knowledge and observations of the Coyote Springs Ranch properties
28 and any violations of the Declaration of Restrictions affecting said properties.

1 8. • William and Linda Furbee, 8400 Easy Street, Prescott Valley, Arizona 86314. Mr.
2 and Mrs. Furbee will testify as to their knowledge and observations of the Coyote Springs Ranch
3 properties and any violations of the Declaration of Restrictions affecting said properties. They will
4 also testify as to the content of their May 18, 2005 letter.
5

6 9. • Patricia Hocken, P.O. Box 26558, Prescott Valley, Arizona 86314. Ms. Hocken will
7 testify as to her knowledge and observations of the Coyote Springs Ranch properties and any
8 violations of the Declaration of Restrictions affecting said properties.
9

10 10. • Curtis D. Kincheloe, Coyote Kurt's Auto Repair, 8950 E. Mummy View, Prescott
11 Valley, Arizona 86314. Mr. Kincheloe will testify as to his knowledge of the Coyote Springs Ranch
12 subdivision and any violations of the Declaration of Restrictions affecting said properties including
13 the business use of those properties. Mr. Kincheloe is also expected to testify as to the operation of
14 his business in the Coyote Springs Ranch subdivision and those Coyote Springs Ranch residents
15 and/or property owners who have patronized his business over the past seven years, his knowledge
16 of other businesses located in the Coyote Springs Ranch subdivision, and his knowledge and belief
17 that the Declaration of Restrictions at issue has been abandoned.
18

19 11. • Jim Savoini, Savoini's, 1117 E. Iron Springs Road, Prescott, Arizona 86305, (928)
20 445-5713. Mr. Savoini is expected to testify as to his transaction of business with businesses being
21 owned and operated in Coyote Springs Ranch.
22

23 12. • Edward C. Woodworth, 8915 E. Saddle Horn Trail, Prescott Valley, Arizona 86314.
24 Mr. Woodworth will testify as to his knowledge and observations of the Coyote Springs Ranch
25 properties and any violations of the Declaration of Restrictions affecting said properties. He will
26 also testify as to the content of his May 28, 2005 letter.
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1 13. • Jeff Van Der Meersche, 9250 E. Far Away Place, Prescott Valley, Arizona 86314.

2 Mr. Van Der Meersche will testify as to his knowledge and observations of the Coyote Springs
3 Ranch properties and any violations of the Declaration of Restrictions affecting said properties.
4

5 14. • Mark Williams, P.O. Box 28056, Prescott Valley, Arizona 86312. Mr. Williams will
6 testify as to his knowledge and observations of the Coyote Springs Ranch properties and any
7 violations of the Declaration of Restrictions affecting said properties.
8

9 15. • John Hatfield, 11550 N. Orion Way, Prescott Valley, Arizona 86314. Mr. Hatfield
10 will testify as to his knowledge and observations of the Coyote Springs Ranch properties and any
11 violations of the Declaration of Restrictions affecting said properties.
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13 16. • Wiley L. Williams, 9575 E. Turtle Rock, Prescott Valley, Arizona 86314. Mr.
14 Williams will testify as to his knowledge and observations of the Coyote Springs Ranch properties
15 and any violations of the Declaration of Restrictions affecting said properties.
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17 17. • Bill Jensen, 10501 N. Coyote Springs Road, Prescott Valley, Arizona 86314. Mr.
18 Jensen will testify as to his knowledge and observations of the Coyote Springs Ranch properties and
19 any violations of the Declaration of Restrictions affecting said properties.
20

21 18. • Grant Griffiths, 8815 Spurr Lane, Prescott Valley, Arizona 86314. Mr. Griffiths will
22 testify as to his knowledge and observations of the Coyote Springs Ranch properties and any
23 violations of the Declaration of Restrictions affecting said properties.
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25 19. • Kevin S. and Pamela K. Eikleberry, 5416 E. Seven Palm Drive, Cave Creek, Arizona
26 85331. Mr. and Mrs. Eikleberry will testify as to their knowledge and observations of the Coyote
27 Springs Ranch properties and any violations of the Declaration of Restrictions affecting said
28 properties.

1 20. Richard and Beverly Strissel, 9350 E. Slash Arrow Drive, Prescott Valley, Arizona
2 86314. Mr. and Mrs. Strissel will testify as to their knowledge and observations of the Coyote
3 Springs Ranch properties and any violations of the Declaration of Restrictions affecting said
4 properties.
5

6 21. • Larry Kirby, 8801 Lonesome Valley Road, Prescott Valley, Arizona 86314. Mr.
7 Kirby will testify as to his knowledge and observations of the Coyote Springs Ranch properties and
8 any violations of the Declaration of Restrictions affecting said properties.
9

10 22. • Al McRoberts, 35415 N. Central Avenue, Phoenix, Arizona 85086. Mr. McRoberts
11 will testify as to his knowledge and observations of the Coyote Springs Ranch properties and any
12 violations of the Declaration of Restrictions affecting said properties.
13

14 23. • Robert Taylor, 10555 N. Orion Way, Prescott Valley, Arizona 86314. Mr. Taylor
15 will testify as to his knowledge and observations of the Coyote Springs Ranch properties and any
16 violations of the Declaration of Restrictions affecting said properties.
17

18 24. • Brent Boling, 8740 N. Lawrence Lane, Prescott Valley, Arizona 86314. Mr. Boling
19 will testify as to his knowledge and observations of the Coyote Springs Ranch properties and any
20 violations of the Declaration of Restrictions affecting said properties.
21

22 25. • Sue Stoks, 9450 E. Spurr Lane, Prescott Valley, Arizona 86314. Ms. Stoks will
23 testify as to her knowledge and observations of the Coyote Springs Ranch properties and any
24 violations of the Declaration of Restrictions affecting said properties. She will also testify as to the
25 content of their June 10, 2005 letter.
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1 26. Jim and Leslie Richie, address unknown. Mr. and Mrs. Richie will testify as to their
2 knowledge and observations of the Coyote Springs Ranch properties and any violations of the
3 Declaration of Restrictions affecting said properties.
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5 27. Heidi McCarthy, 9085 N. Coyote Springs Road, Prescott Valley, Arizona 86314.
6 Ms. McCarthy will testify as to her knowledge and observations of the Coyote Springs Ranch
7 properties and any violations of the Declaration of Restrictions affecting said properties. She will
8 further testify regarding her business, International Business English and Software Training, Inc.,
9 owned and operated by her at Coyote Springs Ranch.
10

11 28. All of the owners of the Coyote Springs Ranch properties listed on Exhibit "11"
12 attached hereto and whose names and addresses are attached hereto as Exhibit "12". Those Coyote
13 Springs Ranch property owners are expected to testify as to the condition of their own properties and
14 whether they maintain the use their properties in accordance with the Declaration of Restrictions
15 affecting their properties. The also are expected to testify regarding their knowledge of the
16 historical enforcement of the Declaration of Restrictions against them or any other Coyote Springs
17 Ranch property owner.
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20 **II. 26.1(a)(8) TANGIBLE EVIDENCE/RELEVANT DOCUMENTS AND/OR**
21 **INSURANCE AGREEMENTS WHICH PLAINTIFFS PLAN TO USE AT TRIAL.**

- 22 1. Photos dated January 18, 2005 of Richie Trucking, Parcel # 401-01-028 D. Exhibit 1
23 hereto.
24
25 2. Lonesome Valley Newsletter dated September, 2003. Exhibit 2 hereto.
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27 3. Lonesome Valley Newsletter dated October, 2003. Exhibit 3 hereto.
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29 4. Lonesome Valley Newsletters dated July, 2004. Exhibit 4 hereto.

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5. Lonesome Valley Newsletter dated December, 2004. Exhibit 5 hereto.

6. Articles of Incorporation - Arizona Business Corporation for International Business English and Software Training, Inc. Exhibit 6 hereto.

7. Letter from William and Linda Furbee dated May 18, 2005. Exhibit 7 hereto.

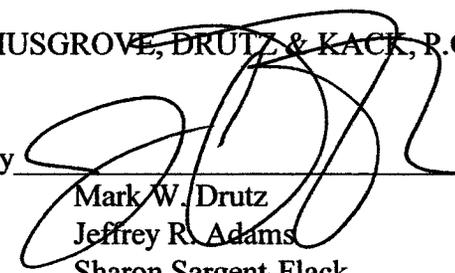
8. The Daily Courier article from May 30, 2005 regarding Wendy Dittbrenner's alpacas. Exhibit 8 hereto.

9. Letter from Ed Woodworth dated May 28, 2005. Exhibit 9 hereto.

10. Letter from Sue Stoks faxed to Musgrove, Drutz & Kack on June 10, 2005. Exhibit 10 hereto.

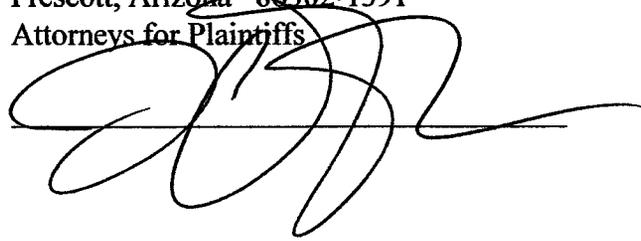
DATED this 24th day of June, 2005.

MUSGROVE, DRUTZ & KACK, P.C.

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

ORIGINAL of the foregoing was mailed this 24th 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

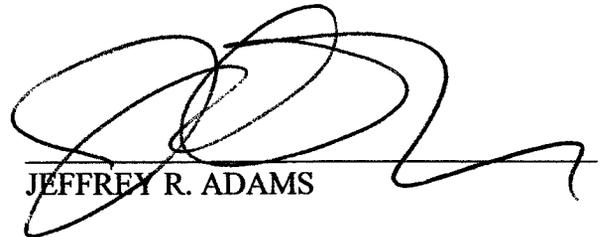


1 VERIFICATION

2
3 STATE OF ARIZONA)
4) ss.
5 COUNTY OF YAVAPAI)

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

7 That he is one of the attorneys for Defendants in the above-captioned matter and as such is
8 duly authorized to make this verification; that he has read the foregoing Fourth Supplemental Rule
9 26.1 Disclosure Statement and that the contents contained therein are true in substance and in fact,
10 except as to those matters stated upon information and belief, and as to those, he believes them to
11 be true.
12

13
14 
15 JEFFREY R. ADAMS
16

17 SUBSCRIBED AND SWORN to before me this 24th day of June, 2005, by JEFFREY R.
18 ADAMS.

19 
20 Notary Public

21 My Commission Expires:

22 Nov. 12, 2008
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