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BY: 

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA

COUNTY OF YAVAPAI

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,)**

Plaintiffs,

vs.

14 **DONALD COX and CATHERINE COX,)**
15 **husband and wife,)**

Defendants.)

Case No. CV 2003-0399

Division 1

**PLAINTIFFS' MOTION FOR
CLARIFICATION
RE: ADVISORY JURY**

17 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Kathryn Page, hereby
18 request that the Court clarify that the jury to be empaneled in the trial in this matter is an advisory jury
19 because Plaintiffs' have sought injunctive relief, an equitable remedy solely within the Court's
20 discretion.

21 The Arizona court of appeals, in a case involving the enforcement of restrictive covenants, has
22 held that the grant or denial of injunctive relief "rests within the sound discretion of the trial court,"
23 as does a claim for attorney's fees. *Ahwatukee Custom Estates Management Assoc. Inc. v. Turner, 196*
24 *Ariz. 631, 634, 2 P.3d 1276, 1279 (App. Div. 1 2000)*. Consequently, where equitable remedies are
25 sought, it is for the Court "to structure the remedy so as to promote equity between the parties." *Id.*
26 *at 635, 2 P.3d 1280.*

