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JEANNE HUNTS, CLERK

BY [Signature]

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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)**
PAGE, as Trustee of the Kenneth Page and)
Kathryn Page Trust,)

12 Plaintiffs,)

13 vs.)

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

16 Defendants.)

Case No. CV 2003-0399

Division 1 ✓

**PLAINTIFFS' OBJECTION
TO DEFENDANTS'
FORM OF PARTIAL FINAL
JUDGMENT**

17 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Katheryn Page, by and
18 through undersigned counsel, hereby object to Defendants' proposed form of partial final judgment.

19 This objection is supported by the following memorandum of points and authorities.

20 RESPECTFULLY SUBMITTED this 30th day of August, 2005.

21 FAVOUR MOORE & WILHELMSSEN, P.A.

22
23
24 By: [Signature]
David K. Wilhelmsen
Marguerite Kirk

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendants' proposed form of order on this Court's grant of summary judgment re agricultural
3 activities to Defendants on July 26, 2005 is deficient in several aspects. First, the precatory language
4 of the form of order proposed by Defendants fails to set forth that this Court had reviewed Defendants'
5 motion as well as Plaintiffs' response, in addition to hearing oral argument on the issue.

6 Secondly, Defendants proposed form of order at Exhibit 1 acts as a legal description of the real
7 property at issue in this case. However, there is no way of verifying this legal description without
8 Defendants attaching a complete copy of the deed evidencing Defendants' ownership of the land.


9 Additionally, paragraph 2 of the proposed findings does not accurately set forth this Court's
10 findings. In order to accurately reflect this Court's findings, paragraph 2 of the partial final judgment
11 should include the following italicized language:

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

16 The proposed form of partial final judgment must set forth that Counts II and III of Plaintiffs'
17 first amended complaint, as well as the declaratory and injunctive relief requested based on those
18 counts, is held in abeyance pending appellate review of the partial final judgment. Consequently, the
19 order must also reflect that the trial in this matter was vacated.

20 DATED this 30th day of August, 2005.

21 FAVOUR MOORE & WILHELMSSEN, P.A.

22 By: 
23 David K. Wilhelmsen
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Attorneys for Plaintiffs

1 Original of the foregoing
2 filed this 30th day of August,
2005, with:

3 Clerk, Superior Court of Arizona
4 Yavapai County
120 S. Cortez St.
5 Prescott, Arizona 86302

6 A copy hand-delivered this
30th day of August, 2005, to:

7 Honorable David L. Mackey
8 Division One, Superior Court of Arizona
Yavapai County
120 S. Cortez St.
9 Prescott, Arizona 86302

10 and, a copy mailed this
30th day of August, 2005, to:

11 Mark Drutz
12 Jeffrey Adams
13 MUSGROVE, DRUTZ & KACK, P.C.
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Attorneys for Defendants Cox

15 By: 
16 David K. Wilhelmssen

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