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BY: C. SELINSKY

Counsel for Defendants Robert and Catherine Cox

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

**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  
Page and Catherine Page Trust,

16 Plaintiffs,

17 v.

18 DONALD COX and CATHERINE COX,  
19 husband and wife, et al., et ux.,

20 Defendants.  
21

Case No. P1300CV20030399

**RESPONSE TO PLAINTIFFS'  
WITHDRAWAL OF APPLICATION  
FOR ATTORNEYS' FEES AGAINST  
JOINED DEFENDANTS; AND  
REQUEST THAT REMAINING  
MATTERS BE RETURNED TO JUDGE  
JONES FOR CONSIDERATION**

22 Defendants Cox, by and through counsel undersigned, hereby submit their Response to  
23 Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants; and Request  
24 That Remaining Matters Be Returned to Judge Jones for Consideration. This Response is supported  
25 by the following Memorandum of Points and Authorities and the record on file herein.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

The Court's Ruling dated August 22, 2014 addressed Plaintiffs' Rule 54(g) Motion for Award of Attorneys' Fees and Non-Taxable Costs. The Court stated as follows:

Defendants accurately assert that review and analysis of attorneys' fees incurred in this action is a monumental undertaking. In fact, referring to it in that fashion may well serve as a substantial understatement. And unlike the specificity as to the Defendant against whom Varilek sought fees, Plaintiffs seek sums against multiple Defendants unspecified within their motion for differing periods of their participation in the case with those periods as to each Defendant not being delineated. That being the case, the materials provided to the court appear to omit, generally, the information necessary to evaluate, much less determine, the appropriateness of the Plaintiffs' motion and requested relief. To the knowledge of the court, those materials might not be coalesced at any given point within the entirety of the record and additional briefing might be required to obtain the information necessary to address the award sought within Plaintiffs' motion. Of additional concern is the information necessary to address the award sought within Plaintiffs' motion. Of additional concern is the likelihood that once each Defendant against whom fees and costs are sought, and their period of involvement with the case is specifically delineated, they may wish to individually dispute the specifics of the fee application in their own unique regard, beyond what has been generally addressed to date.

Despite the Court's Ruling, Plaintiffs have elected not to comply with that Ruling but rather seek an award of all of their attorneys' fees against Defendants Cox. These fees will invariably include legal services that were unrelated to Defendants Cox. Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants; and Request That Remaining Matters Be Returned to Judge Jones for Consideration is an admission that they are unable or unwilling to apportion the attorneys' fees and costs which they have incurred among the various Defendants. Consequently, the Court should deny Plaintiffs' Rule 54(g) Motion.

Plaintiffs also seek to have Judge Jones reassigned to the case. Judge Jones sits on the Arizona Court of Appeals and is no longer a Superior Court Judge. He was temporarily assigned

1 to rule on certain pending Motions, which he did. That assignment has concluded. This matter  
2 should be reassigned to a Yavapai County Superior Court Judge.

3  
4 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of October, 2014.

5 MUSGROVE DRUTZ KACK & FLACK, PC

6  
7 By: \_\_\_\_\_

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Co-Counsel for Defendants Cox

10 COPY of the foregoing mailed  
11 this 30<sup>th</sup> day of October, 2014, to:

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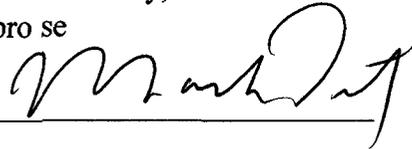
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