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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2014 NOV 12 PM 4: 29

DONNA McQUALITY, CLERK ✓

BY: ~~_____~~ ← **GRESHAM**

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF YAVAPAI

8 JOHN B. CUNDIFF and BARBARA C.
9 CUNDIFF, husband and wife; ELIZABETH
10 NASH, a married woman dealing with her
11 separate property; KENNETH PAGE and
12 KATHRYN PAGE, as Trustee of the Kenneth
13 Page and Catherine Page Trust,

14 Plaintiffs,

15 vs.

16 DONALD COX and CATHERINE COX,
17 husband and wife,

18 Defendants.

CASE NO. P1300CV20030399

**REPLY IN SUPPORT OF
PLAINTIFFS' WITHDRAWAL
OF APPLICATION FOR
ATTORNEYS' FEES AGAINST
JOINED DEFENDANTS**

AND

**REQUEST THAT REMAINING
MATTERS BE RETURNED TO
JUDGE JONES FOR
CONSIDERATION**

19 Before this matter was appealed, the Cox Defendants filed their Motion to Join
20 Indispensable Parties Pursuant to Rule 19(A). This Court denied that motion as "not well
21 founded" and "untimely". In their brief to the Court of Appeals, the Cox Defendants argued that
22 all the owners of property subject to the Restrictions must be joined. On the basis of this request
23 the Court of Appeals stated:

24 "We conclude that the absent property owners are necessary parties
25 given the issue to be decided in this case. Under the rule,
necessary parties must be joined if they are 'subject to service of
process and . . . [their joinder] will not deprive the court of

1 jurisdiction over the subject matter of the action.’ Ariz. R, Civ. P.
2 19(a).”

3 This Court then ordered Plaintiffs to accomplish the joinder, which they did. The
4 inclusion of all the other Defendants in this case was at the behest of the Defendants Cox. All of
5 the fees incurred by Plaintiffs before and after the joinder can be ordered by Judge Jones to be
6 the responsibility of Defendants Cox or he can order further briefing as he mentioned in his
7 ruling.

8
9 Defendants note that Judge Jones sits on the Court of Appeals and seem to imply that for
10 that reason, he can not perform any further tasks in this matter. When Judge Jones agreed to
11 assist this Court in considering some remaining issues, he sat on the Court of Appeals. This has
12 not changed. This Court explained its reasoning for suggesting Judge Jones to the parties:

13
14 “The Court notes that the options for reassignment of this case to a
15 current Judge in Yavapai County with civil experience is
16 significantly limited given the notices of change of judge that have
17 been filed, the prior employment of some of the Yavapai County
18 Judges with a law firm that has provided representation to on tof the
19 parties in this litigation and the prior office sharing arrangement one
20 of the parties’ counsel had with on to the current Yavapai County
21 Judges.”

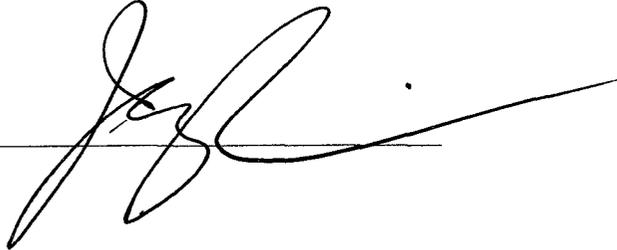
22 Judge Jones still has an intimate knowledge of the issues in this case and the only
23 remaining tasks are the consideration of the form of judgment and an application for attorneys’
24 fees. The Cox Defendants did not object to Judge Jones the first time and have not articulated
25 much of a reason why he could not finish the job based on Plaintiffs willingness to withdraw any
claims for fees against the non-Cox Defendants.

1 To avoid further noticing of judges and delay in locating a judge with sufficient civil
2 experience, Plaintiffs request that this Court invite Judge Jones to complete his consideration of
3 the two remaining pending matters:

- 4 • Plaintiffs/Varilek's Notice of Lodging Proposed Final Judgment;
- 5 • Plaintiffs' Rule 54(g) Motion for Award of Attorneys' Fees.

6
7 DATED this 12th day of November, 2014.

8
9 **J. JEFFREY COUGHLIN PLLC**

10
11 By: 

12
13 COPY of the foregoing
14 mailed this 12th day of
November 2014 to:

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Dated September 22, 2010

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