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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2015 JAN 20 PM 3: 33
DONNA McQUALITY, CLERK
J YOUNT
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10 SUPERIOR COURT OF ARIZONA
11 YAVAPAI COUNTY

12 JOHN B. CUNDIFF and BARBARA C.)
13 CUNDIFF, husband and wife; ELIZABETH)
14 NASH, a married woman dealing with her)
15 separate properly; KENNETH PAGE and)
16 KATHRYN PAGE, as Trustee of the)
17 Kenneth Page and Catherine Page Trust,)
18 Plaintiffs,)
19 v.)
20 DONALD COX and CATHERINE COX,)
21 husband and wife, *et al., et ux.*,)
22 Defendants.)

Case No. P1300CV20030399
**VARILEK'S OBJECTION
TO ASSIGNMENT OF CASE
TO DIVISION 1**

23 For the reasons set forth herein, property owner James Varilek ("Varilek") respectfully
24 objects to the Court's Order of January 8, 2015, assigning P1300CV20030399 ("2003-0399") to
25 the Honorable David L. Mackey, Division 1.

26 When Judge Mackey granted Varilek's *Request for Judicial Re-Assignment* by Order dated
27 June 30, 2011, the Judge recognized Varilek had timely filed a *Notice of Change of Judge* in
28 P1300CV20090822 ("2009-0822") and had strongly objected to the consolidation of 2009-0822
with 2003-0399. Accordingly, the consolidated matters were assigned to the Honorable Kenton
D. Jones, Division 4.

After Varilek and other Coyote Springs Ranch residents had been deemed indispensable
parties in 2003-0399 and Varilek had been aligned with the Plaintiffs at his request, Varilek and
Defendant Robert D. Veres filed a *Stipulation to Dismiss Without Prejudice*, dismissing 2009-

1 0822. Judge Jones signed the *Order Re: Stipulation to Dismiss Without Prejudice* on March 8,
2 2013.

3 As of March 8, 2013, Varilek had no reason to believe a dismissal without prejudice of
4 2009-0822 would jeopardize the change of judge he had been granted, Judge Jones would be
5 appointed to the Court of Appeals on September 12, 2013, or a reassignment of 2003-0399 to
6 Judge Mackey would be a possibility under any scenario. (Governor Brewer did not even invite
7 applicants for the position eventually filled by Judge Jones until May of 2013.)

8 On November 5, 2013, Judge Mackey issued a Notice Re: Reassignment in 2003-0399,
9 suggesting the parties to the then-pending motions might file a limited waiver to Varilek's
10 previous *Notice of Change of Judge* in order to allow the Judge to decide the motions. If no such
11 waiver were filed, 2003-0399 would be reassigned (as it subsequently was).

12 The Order of January 8, 2015 notes no response was filed to the Notice Re: Assignment of
13 November 5, 2013. Varilek would respectfully point out the Notice Re: Reassignment seemed to
14 him to *expressly recognize* the continuing validity of his *Notice of Change of Judge* since it was
15 predicated on the need for a waiver; he filed no response because he did not wish to waive his
16 *Notice of Change of Judge*; and he assumed Judge Mackey was already aware of the dismissal of
17 2009-0822 because the *Order Re: Stipulation to Dismiss Without Prejudice* was part of the
18 Court's file and the caption of the Notice Re: Reassignment itself referred to 2003-0399 alone.


19 Varilek respectfully urges the reassignment of 2003-0399 to Judge Mackey is clear error
20 and unnecessarily introduces yet another issue into this fantastically complicated matter, which the
21 Defendants have already promised is headed for appeal. Varilek respectfully urges the
22 reassignment to Judge Mackey is singularly inappropriate inasmuch as the only pending motions
23 (*Motion for Reconsideration Re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of*
24 *Varilek and James Varilek's Motion to Strike Exhibits 5-12 to Motion for Reconsideration Re:*
25 *August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of Varilek*) directly concern
26 Varilek (and the Coxes' motion is little more than a disguised second attempt to argue that Judge
27 Jones' award of summary judgment was inappropriate in light of Judge Mackey's prior rulings).

28

1 For the foregoing reasons, Varilek respectfully urges the Court to vacate the portion of its
2 Order of January 8, 2015 reassigning 2003-0399 to Division 1 and to reassign this matter to a
3 different Judge.

4 RESPECTFULLY SUBMITTED January 20, 2015

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11 Original of the foregoing filed
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16 Copy of the foregoing
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Cindi E. Lebash;
Roberta L. Baldwin;
James H. & Doris L. Strom;
Joy D. Basset;
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Tracy L. Greenlee;
Franklin B. & Laura L. Lamberson;
Rhonda L. Folsom;
Daniel & Louella Bauman;
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James & Shirley Stephenson;

1 West R. & Catherine S. Rivers;
2 Lawrence K. & Heide J. McCarthy,
3 Trustees of the McCarthy Living Trust
4 UDC 5-20-81;
5 Edward C. & Christine Woodworth;
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7 the Klein Family Trust;
8 Jeff & Mychel Westra;
9 Christine L. Bowra;
10 Charles R. Coakley, Trustee of the Charles
11 Coakley Trust UTD 6-10-91;
12 Else Clark, Trustee of the 2005 Else Clark
13 Revocable Trust UTD 10-27-05;
14 Wendy L. Changose;
15 Kari L. Dennis;
16 John P. & Karen R. Hough;
17 James Barstad;
18 Michael J. & Diane Glennon;
19 Michael D. White;
20 Steve M. & Deborah D. Wilson;
21 Ottis R. & Delores F. Clark;
22 Mark S. & Soma D. Williams, Trustees of
23 the Mark & Soma Williams Trust UTD 10-
24 10-07;
25 Geoffrey M. McNabb & Kristen D.
26 McNabb;
27 Grant L. & Pamela L. Griffiths;
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- 25 Warren Don Oster
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- 28 Todd and Barbara Bloomfield
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- Dave Slate
9910 E. Spurr Lane
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- Donn and Valerie Jahnke
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- 5 Yavapai Title Co.
6 Dennis J. Huber Living Trust
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7 Chandler, AZ 85224-8153

- 8 John C. Kennedy
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- 10 James D. & Cheryl J. Nardo
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- 12 Guaranty Mortgage Trust, L.L.C
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13 Flagstaff AZ 86005-4235
14 Kaaren L. Trone
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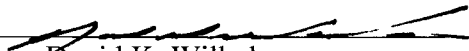
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