J. Jeffrey Coughlin (013801)
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Attorney for Plaintiffs

SUPERIOR COURT
2017 AUG 11 PM 3:43
DONNA ... CLERK
BY: M. T. RYAN

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

JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust, Plaintiffs, vs. DONALD COX and CATHERINE COX, husband and wife, Defendants.	CASE NO. P1300CV20030399 **MOTION REQUESTING ORDER REQUIRING DEBTOR TO PRODUCE DOCUMENTATION AND APPEAR FOR EXAMINATION**

This Court entered a judgment in Plaintiffs' favor on April 7, 2015 (a copy of which is attached hereto as Exhibit A). This Court entered another judgment in Plaintiff James Varilek's favor awarding attorneys' fees on May 5, 2015 (a copy of which is attached hereto as Exhibit B). This Court entered a Final Judgment *Nunc Pro Tunc* in Accordance With the Court's April 7, 2015 Ruling (a copy of which is attached hereto as Exhibit C). In Exhibit C, Judge Paupore stated:

> In *Reply*, Plaintiffs revised the proposed Final Judgment to address some of Defendants' concerns and attacked Defendants' transfer of the subject property in the midst of litigation to Defendant Coxes' newly created LLCs.

> Defendants' argument that the transfer of the subject property to newly created LLCs is not properly before the Court is disingenuous at best. This Court has personal jurisdiction over the Defendants and Judge Jones' granting of Plaintiffs' summary judgment touches, concerns, and runs with the subject property. The language in the proposed final Judgment paragraph 13 is appropriate under the circumstances.

Paragraph 13 of the Final Judgment states:

> 13. According to the official records of Yavapai County, Arizona, Defendants Cox, without notice to the Court or the other parties, transferred the real property legally described in paragraph 3 above to High C's, LLC, an Arizona limited liability company of which Defendants Cox were the sole members by a Quit Claim Deed recorded in the Office of the Yavapai County Recorder in Book 4592, Page 104. Thereafter, High C's. LLC, without notice to the Court or the other parties, transferred the real property legally described in paragraph 3 above to Prescott Valley Growers, LLC, an Arizona limited liability company of which Defendants Cox are members together with James Michael Cox, by a Quit Claim Deed recorded in the Office of the Yavapai County Recorder in Book 4753, Page 820. **The Court finds that these transfers should have been disclosed to the Court and the other parties and that this *Final Judgment* should be binding upon the Coxes' and any heir successor or assign of their interest in the real property described in paragraph 3 above in whole or part.**

(Emphasis added).

Pursuant to A.R.S. § 12-1631(A)(1) and Rule 69, Arizona Rules of Civil Procedure, Plaintiffs, Judgment Creditors, wish to obtain information from Judgment Debtors Donald Cox, Catherine Cox, non- party Prescott Valley Growers, LLC, non- party High C's LLC, non-party Rain Down, LLC and non-party James Michael Cox, who was added as a member of Prescott Valley Growers and to whom Judgment Debtors may have transferred an interest in one or more of their businesses and the property which is the subject of this litigation. Judgment Creditors request the Court order the following documents and information to be produced to Judgment

Creditor's counsel within two weeks from the issuance of an order compelling them to appear in this Court:

1. If there are any suits, actions, or legal proceedings of any kind against you pending and undetermined, provide documentation to the Judgment Creditors' counsel' counsel regarding same and be prepared to state the full particulars to each.

2. Other than the judgments recorded by Judgment Creditor, are there any judgments on record against you? Provide documentation to the Judgment Creditor's counsel regarding any other judgments recorded against you.

a. What amount and where?
b. Have payments been made on account by you or by any third party for you?
c. By what person?
d. Was satisfaction recorded?
e. If answer to item d. is "No," state why.

3. Provide all documentation to the Judgment Creditors' counsel regarding any supplementary proceedings on any of these judgments pending against you.

4. Provide all documentation to the Judgment Creditors' counsel regarding any judgment creditor's action that may have been commenced against you.

5. Provide all documentation to the Judgment Creditors' counsel regarding any interest you may have in real estate in this state or elsewhere.

a. Are you entitled to any reversion, remainder, or contingent interest in real estate; or is any real property held in trust for you? If so, provide the documentation to the Judgment Creditors' counsel regarding your entitlement.
b. Do you own any leasehold or have you any interest in any lease of real property? If so, provide documentation to the Judgment Creditors' counsel regarding your leasehold or interest in lease of real property.
c. Do you lease any real property? If so, provide documentation to the Judgment Creditors' counsel regarding any lease of real property.
d. Have you a lien on any interest in or under a lien on real property? If so, provide documentation to the Judgment Creditors' counsel regarding any and all liens.

6. Provide all documentation to the Judgment Creditors' counsel regarding an interest you may have in any will or trust.

a. Have you recently received any money or property under any will by inheritance? If so, provide information to the Judgment Creditors' counsel regarding your receipt of money or property recently inherited.
b. If the answer to item a. is "Yes," state disposition.

7. Provide all documentation to the Judgment Creditors' counsel regarding all real or personal property you own in this state.

a. Have you made any transfers of same and to whom? Provide information to the Judgment Creditors' counsel regarding any transfers of real or personal property in this state?

b. State circumstances.

8. Provide all documentation to the Judgment Creditors' counsel regarding any property you have outside the state.

9. Provide all documentation to the Judgment Creditors' counsel regarding any interest you have in mortgages on real or personal property or other investments, such as stocks, bonds, dividend certificates, interest coupons, certificates of deposit, promissory notes, drafts, or checks.

10. Provide all documentation to the Judgment Creditors' counsel regarding any interest you have in any pension, patent, copyright, or invention, or in any royalties.

11. Provide all documentation to the Judgment Creditors' counsel regarding your ownership of a seat in any stock, commodity, or other commercial exchange.

12. Provide all documentation to the Judgment Creditors' counsel regarding any interest you have in any right or interest or any prospect of pecuniary advantage under any contract or any interest in any suit in the courts of this or any other state, or in the federal courts.

13. Provide all documentation to the Judgment Creditors' counsel regarding any judgments in your favor in any action by or against you, or any judgments assigned to you.

14. Provide all documentation to the Judgment Creditors' counsel regarding any insurance on your life.

a. To whom was same made payable?

b. Have the beneficiaries changed?

c. If so, when and who are the present beneficiaries?

15. Provide all documentation to the Judgment Creditors' counsel regarding any policy on the life of another in which you are the beneficiary.

16. Provide all documentation to the Judgment Creditors' counsel regarding any property you had at the time when the debt for which this judgment was secured was contracted. Trace the disposition of this property.

17. Where do you live?

a. How long have you lived there?

b. Who owns the property?
c. How are they related to you?
d. Who provided the funds to purchase this residence?

18. Are you a member of any club?
a. What are the dues?
b. Are they paid?

19. Provide all documentation to the Judgment Creditors' counsel regarding your salary or income.

20. Provide all documentation to the Judgment Creditors' counsel regarding any uncollected debts or other money coming to you.

21. Identify all businesses in which you have an interest.
a. Where is the business located?
b. What is your ownership interest?
c. How long have you had such an interest?
d. Produce all documents, including computer accounting electronically stored information concerning these businesses, such as Quickbooks for the past 12 years.

22. What is your occupation?

23. Are you married?
a. Have you a family?
b. How large?
c. How many are dependent on you?
d. With whom do you live?

24. Produce all Federal and State tax returns for the years 2007 to 2017.

25. Provide all bank statements for the years 2007 to the present regarding all of your bank accounts.
a. In which banks do you have an account(s)?
b. Identify the account numbers for all your bank accounts.
c. When did you make your last deposit?
d. When did you draw your last check?

26. Provide all documentation to the Judgment Creditors' counsel regarding any property that you have pledged or pawned.

27. Provide all documentation to the court regarding whether you own or rent the place where you live.
a. Who owns the furniture in it?
b. What does it consist of?

28. Provide all documentation to the Judgment Creditors' counsel regarding your will.

29. Provide all documentation to the Judgment Creditors' counsel regarding the money you have spent since the service of this order.

30. Had you at the time of the service of this order any rights, real, or personal property, money, debts, claims, mortgages, leases, causes in action, judgments, insurance, watches, jewelry, checks, notes, bills of exchange, bonds, stocks, or certificates; any interest in a contract, patent, copyright, invention or royalties, which you are not now possessed of, or in which you now have no interest, or a lesser interest? If yes, provide all information to the Judgment Creditors' counsel regarding same.

WHEREFORE, Judgment Creditors, by and through counsel undersigned, respectfully move this Court for an Order requiring Judgment Debtors and James Michael Cox, produce the documentation above described to the Judgment Creditors' counsel no later than two weeks after this Court issues an order and personally to appear before the Superior Court of Yavapai County, Arizona, and answer questions concerning their property at a time decided by this Court pursuant to A.R.S. § 12-1631(A)(1) and Rule 69, Arizona Rules of Civil Procedure.

RESPECTFULLY submitted this 11th, day of August, 2017

J. JEFFREY COUGHLIN PLLC

By_____
J. Jeffrey Coughlin

EXHIBIT A

EXHIBIT A

EXHIBIT A

w/o

4:30 FILED ck P M.

JUN 30 2015

DC

By. J. HARSHMAN

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Attorneys for Property Owner James Varilek

SUPERIOR COURT OF ARIZONA

YAVAPAI COUNTY

JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate properly; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust, Plaintiffs, v. DONALD COX and CATHERINE COX, husband and wife, *et al., et ux.*, Defendants.	P1300 Case No. CV 2003-0399 Division 4 **FINAL JUDGMENT** **NUNC PRO TUNC IN ACCORDANCE WITH THE COURT'S APRIL 7, 2015 RULING**

This matter having come before the Court on Plaintiffs' *Motion for Summary Judgment,* said motion having been joined by joined Plaintiff property owner James Varilek ("Varilek"), and following oral argument thereon on April 16, 2013, the Court finds as follows:

1. On March 18, 2004, Plaintiffs filed *Plaintiffs' First Amended Complaint,* asserting three counts for breach of contract (Counts I-III), one count for declaratory relief (Count IV) and one count for injunctive relief (Count V), all relating to an alleged violation of the Declaration of Restrictions of Coyote Springs Ranch (as recorded in Book 916, page 680, official records of Yavapai County, Arizona) by Defendants Donald Cox and Catherine Cox ("Defendants

(X) Mtg/Attn J. Coughlin (e)
(X) Musgrove Drutz (e)
(X) DEF = Jeff Adams (e)
(Y) Pl = Favour & Wilhelmsen (e)
(Y) Murphy Schmitt Hathaway (e)
AND 18 DEF (HC)
Arb w/file
5 (e) 18 (HC)
Arbiter
Ret

Cox") on certain real property in Coyote Springs Ranch as legally described in paragraph 3 below.

2. The real property comprising Coyote Springs Ranch and to which said Declaration of Restrictions applies is legally described as follows:

> Government Lots One (1) and Two (2) and the south half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the Southwest quarter and the East half of the East half of the Northeast quarter and the Northwest quarter of the Northeast quarter of Section Thirteen (13); the East half of Section Twenty-Four (24); the East half of Section Twenty-Five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and
>
> All of Section Six (6); all of Section (7), Government Lots One (1), Two (2), Three (3, and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

3. The real property within Coyote Springs Ranch owned by Defendants Cox as of the date on which *Plaintiffs' First Amended Complaint* was filed is legally described as follows:

> All that portion of Section 25, Township 15 North, Range 1 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:
>
> BEGINNING at the East quarter corner of Section 25 marked with a GLO brass cap monument;
>
> Then South 00 degrees, 04 minutes, 15 seconds East, 660.28 feet along the East line of Section 25 to a one half inch rebar and the TRUE POINT OF BEGINNING;
>
> Thence South 00 degrees, 04 minutes, 15 seconds East, 660.28 feet to a one half inch rebar;
>
> Thence North 89 degrees, 59 minutes, 02 seconds West, 1321.37 feet;

> Thence North 00 degrees, 03 minutes, 08 seconds West, 660.32 feet;
>
> Thence South 89 degrees, 58 minutes, 54 seconds East, 1321.15 feet to the TRUE POINT OF BEGINNING.
>
> EXCEPT all oil, gas, coal and minerals as set forth in instrument recorded in Book 192 of Deeds, Page 415.

4. On May 21, 2004, Defendants Cox filed their *Answer to Plaintiffs' First Amended Complaint*, wherein they asserted the affirmative defenses of laches, estoppel, unclean hands, waiver and abandonment.

5. *Plaintiffs' First Amended Complaint* alleged that a business enterprise conducted by Defendants Cox on the real property legally described in paragraph 3 above violates the following sections of said Declaration of Restrictions:

> 2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
>
> 7.(e) No structure whatsoever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.
>
> 15. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained on the premises.

6. On December 1, 2004, Plaintiffs filed *Plaintiffs' Motion for Summary Judgment Re: Defendants' Violations of Restrictive Covenants; Affirmative Defenses of Estoppel, Laches and Unclean Hands.* On April 4, 2005, the Court entered an *Under Advisement Ruling* awarding partial summary judgment in favor of Plaintiffs on the affirmative defenses of estoppel, laches and unclean hands as asserted by Defendants Cox.

7. On June 24, 2005, Defendants Cox filed a *Motion for Summary Judgment Re: Agricultural Activities.* On July 26, 2005, the Court awarded partial summary judgment in favor of Defendants Cox on Count I of *Plaintiffs' First Amended*

Complaint. On February 10, 2006, the Court entered a *Partial Final Judgment*, finding that the business enterprise conducted by Defendants Cox did not violate section 2 of said Declaration of Restrictions and awarding summary judgment in favor of Defendants Cox on Count I of *Plaintiffs' First Amended Complaint* and on Counts IV and V to the extent they were predicated on a violation of section 2 of said Declaration of Restrictions.

8. On June 24, 2005, Defendants Cox filed a *Motion to Join Indispensable Parties Pursuant to Rule 19(A), Ariz. R. Civ. P., or, in the Alternative, Motion to Dismiss Pursuant to Rule 12(B)(7), Ariz. R. Civ. P., for Failure to Join Indispensable Parties*. On July 18, 2005, the Court entered a *Ruling Re: Motions* denying said motion.

9. Plaintiffs appealed the *Partial Final Judgment* to Division One of the Arizona Court of Appeals; Defendants Cox cross-appealed the partial granting of *Plaintiffs' Motion for Summary Judgment Re: Defendants' Violations of Restrictive Covenants; Affirmative Defenses of Estoppel, Laches and Unclean Hands* on their affirmative defenses of estoppel, laches and unclean hands, as well the denial of their *Motion to Join Indispensable Parties Pursuant to Rule 19(A), Ariz. R. Civ. P., or, in the Alternative, Motion to Dismiss Pursuant to Rule 12(B)(7), Ariz. R. Civ. P., for Failure to Join Indispensable Parties*. On May 24, 2007, the Court of Appeals issued its *Memorandum Decision* in No. 1 CA-CV 06-0165. The Court of Appeals affirmed this Court's award of partial summary judgment to Plaintiffs on the affirmative defenses of estoppel, laches and unclean hands as asserted by Defendants Cox; reversed this Court's award of partial summary judgment in favor of Defendants Cox on Count I of *Plaintiffs' First Amended Complaint*, holding on the basis of the appellate record and its interpretation of section 2 of said Declaration of Restrictions that the business enterprise conducted by Defendants Cox clearly violated said section 2; and reversed this Court's denial of the *Motion to Join Indispensable Parties Pursuant to Rule 19(A), Ariz. R. Civ. P., or, in the Alternative, Motion to*

Dismiss Pursuant to Rule 12(B)(7), Ariz. R. Civ. P., for Failure to Join Indispensable Parties, holding that all other property owners in Coyote Springs Ranch were necessary parties, and remanded for a determination as to whether the necessary parties were also indispensable under ARCP 19(b).

10. Upon remand, this Court on August 25, 2008 entered a *Ruling* finding the necessary parties to be indispensable and ordering Plaintiffs to take substantial steps to join all indispensable parties within 90 days. On April 18, 2011, Plaintiffs filed a *Notice of Compliance with June 17, 2010 Notice Re: Service of Property Owners.*

11. Served upon the indispensable parties, in addition to a summons and a copy of *Plaintiffs' First Amended Complaint,* was a *Notice* by the Court dated June 15, 2010, notifying them, *inter alia,* that the Court would determine from the nature of their responses whether they should be joined with the Plaintiffs or the Defendants. Varilek was subsequently joined with Plaintiffs and the other property owners who responded were joined with Defendants.

12. On December 28, 2012, Plaintiffs filed their *Motion for Summary Judgment* on the affirmative defenses of waiver and abandonment asserted by Defendants Cox. On January 7, 2013, Varilek filed *James Varilek's Joinder in Plaintiffs' Motion for Summary Judgment.* Following oral argument on said motion on April 16, 2013, the Court entered an *Under Advisement Ruling* on June 14, 2013, finding that Coyote Springs Ranch remains a rural residential development and that no genuine issue of material fact exists with respect to the affirmative defenses of waiver and abandonment of said Declaration of Restrictions as asserted by Defendants Cox and granting Plaintiffs' and Varilek's *Motion for Summary Judgment.*

13. According to the official records of Yavapai County, Arizona, Defendants Cox, without notice to the Court or the other parties, transferred the real property legally described in paragraph 3 above to High C's, LLC, an Arizona limited liability company of which Defendants Cox were the sole members, by a Quit

Claim Deed recorded in the Office of the Yavapai County Recorder in Book 4592, Page 104. Thereafter, High C's. LLC, without notice to the Court or the other parties, transferred the real property legally described in paragraph 3 above to Prescott Valley Growers, LLC, an Arizona limited liability company of which Defendants Cox are members together with James Michael Cox, by a Quit Claim Deed recorded in the Office of the Yavapai County Recorder in Book 4753, Page 820. The Court finds that these transfers should have been disclosed to the Court and the other parties and that this *Final Judgment* should be binding upon the Coxes' and any heir, successor or assign of their interest in the real property described in paragraph 3 above in whole or part.

14. After Plaintiffs and Varilek had jointly lodged a proposed form of *Final Judgment.* Defendants objected that Counts II and III of *Plaintiffs' First Amended Complaint,* alleging violations of sections 7(e) and 15 of said Declaration of Restrictions as set forth in paragraph 5 above, had never been litigated. The Court finds that Plaintiffs have consistently taken the position since at least the July 26, 2005 oral argument on the *Motion for Summary Judgment Re: Agricultural Activities* filed by Defendants Cox that the violations alleged in Counts II and III arise out of the violation of section 2 as to which summary judgment has been granted in favor of Plaintiffs and Varilek and that those alleged violations will be cured as part and parcel of the cure of the violation of section 2 by Defendants Cox. Moreover, Plaintiffs have stipulated to the dismissal of Counts II and III pursuant to Rule 15(b), Ariz. R. Civ. Proc. Accordingly, the Court finds that there are no remaining issues and that the entry of final judgment is proper.

15. After Plaintiffs and Varilek had jointly lodged their proposed form of *Final Judgment,* Defendants also objected that before granting Plaintiffs' and Varilek's *Motion for Summary Judgment* the Court had failed to rule on pending motions by Varilek and Defendants as to whether all indispensable parties had been properly served and joined. However, the Court of Appeals clearly

recognized in its *Memorandum Decision* described in paragraph 9 above that the other property owners in Coyote Springs Ranch were necessary parties only because of the possibility that the affirmative defense of abandonment asserted by Defendants Cox might be successful. Because this Court's ruling in favor of Plaintiffs and Varilek on their *Motion for Summary Judgment* disposed of the abandonment defense asserted by Defendants Cox, any issue as to the joinder of the indispensable parties, together with Varilek's and Defendants' pending motions, became moot. The *Final Judgment* will bind only Plaintiffs, Varilek, Defendants Cox and their successors and assignees as of the date of entry, and those indispensable parties who have appeared and been joined as Defendants.

16. As the successful parties, Plaintiffs and Varilek are entitled to an award against Defendants Cox of their costs incurred herein, as well as to an award against Defendants Cox pursuant to A.R.S. § 12-341.01(A) of their reasonable attorney fees incurred herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

A. Judgment is awarded in favor of Plaintiffs and against Defendants on *Plaintiffs' First Amended Complaint* as follows:

1. The Declaration of Restrictions of Coyote Springs Ranch, as recorded in Book 916, page 680, official records of Yavapai County, Arizona, has not been abandoned and is valid and enforceable against the real property legally described in paragraph 3 above.
2. The business enterprise operated by Defendants Donald Cox and Catherine Cox as described in *Plaintiffs' First Amended Complaint* on the real property legally described in paragraph 3 above violates said Declaration of Restrictions of Coyote Springs Ranch, and Defendants Cox and their heirs, successors and assigns, specifically including those identified in paragraph 13 above, are permanently enjoined from operating said business enterprise on said real property.

3. Defendants Donald Cox and Catherine Cox or their heirs, successors and assigns shall promptly and diligently eliminate any and all conditions or activities on the real property legally described in paragraph 3 above that violate section 2 of said Declaration of Restrictions as set forth in paragraph 5 above, such work of elimination to be completed no later than 90 days from and after the date this *Final Judgment* is entered by the Clerk of the Court.

B. As against Defendants Donald Cox and Catherine Cox, Plaintiffs and Varilek are awarded their costs incurred herein, together with their reasonable attorney fees incurred herein pursuant to A.R.S. § 12-341.01(A), said costs and reasonable attorney fees to be set forth in a separate *Judgment for Costs and Attorney Fees* after the determination of the amounts to which Plaintiffs and Varilek are entitled.

DONE IN OPEN COURT on June 23rd, 2015

HON. ~~KENTON D. JONES~~ Jeffrey G. Paupore
JUDGE OF THE SUPERIOR COURT

EXHIBIT B

EXHIBIT B

EXHIBIT B

w/o

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE; as Trustee of the Kenneth Page and Catherine Page Trust, Plaintiffs, vs. DONALD COX and CATHERINE COX, husband and wife, et al., et ux., Defendants.	**Case No. P1300CV20030399** **RULING**	**FILED** **DATE:** MAY 05 2015 10:20 **O'Clock** A **M.** **DONNA McQUALITY, CLERK** **BY:** J. HARSHMAN **Deputy**

HONORABLE JEFFREY G. PAUPORE	**BY:**	Tiffany Kolar, Judicial Assistant
DIVISION PRO TEM A	**DATE:**	May 4, 2015

The Court has reviewed James Varilek's *Notice of Submission for Entry of Separate Judgment for Attorneys' Fees and Costs* and *Defendants' Coxes* [sic] *Objection to Property Owner James Varilek's Separate Judgment for Attorneys' Fees and Costs.*

IT IS ORDERED James Varilek is awarded attorneys' fees in the amount of $90,490.00 and costs in the amount of $118.00 against Defendants Donald and Catherine Cox, husband and wife, for a total Judgment of $90,608.00.

IT IS FURTHER ORDERED interest shall accrue on the judgment from and after the date of this Order at the statutory rate of 4.25% until paid in full.

There are no further matters pending and this is a final judgment pursuant to Rule 54(c).

Dated: May 4th, 2015

Honorable Jeffrey G. Paupore

cc: J. Jeffrey Coughlin – electronically via Clerk's Office
Jeffrey R. Adams – electronically via Clerk's Office
Mark W. Drutz/Sharon M. Flack – Musgrove, Drutz & Kack – electronically via Clerk's Office
David K. Wilhelmsen/Lance B. Payette – Favour & Wilhelmsen – electronically via Clerk's Office
Robert E. Schmitt – Murphy, Schmitt, Hathaway & Wilson – electronically via Clerk's Office
Noel J. Hebets- Noel J. Hebets, PLC, 2515 North 48th Street #3, Phoenix, AZ 85008

William H. "Bill" Jensen, 14556 Howard Mesa Loop, Williams, AZ 86046
Gary and Sabra Feddema- 9601 East Far Away Place, Prescott Valley, AZ 86315
William R. and Judith K. Stegeman Trust- 9200 East Far Away Place, Prescott Valley, AZ 86315
Karen L. and Michael P. Wargo- 9200 East Spurr Lane, Prescott Valley, AZ 86315
Linda J. Hahn- 10367 W. Mohawk Lane, Peoria, AZ 85382
Sergio Martinez and Susana Navarro- 10150 N. Lawrence Lane, Prescott Valley, AZ 86315
Lloyd E. and Melva J. Self- 9250 E. Slash Arrow Drive, Prescott Valley, AZ 86315
Rynda and Jimmy Hoffman- 9650 East Spurr Lane, Prescott Valley, AZ 86315
William and Shaunla Heckethorn- 9715 East Far Away Place, Prescott Valley, AZ 86315
Leo M. and Marilyn Murphy- 9366 E. Turtlerock Road, Prescott Valley, AZ 86315
James C. and Leslie M. Richie- 9800 E. Plum Creek Way, Prescott Valley, AZ 86315
Rhonda L. Folsom- 9305 N. Coyote Springs Road, Prescott Valley, AZ 86315
Kenneth Paloutzian- 8200 Long Mesa Drive, Prescott Valley, AZ 86315
Bonnie Rosson - 8950 E. Plum Creek Way, Prescott Valley, Arizona 86315
John and Rebecca Feddema- 9550 E. Spurr Lane, Prescott Valley, AZ 86315
Robert Lee and Patti Ann Stack/Robert Lee and Patti Ann Stack Trust-10375 Lawrence Lane, Prescott Valley, AZ 86315
John and Dusti Audsley – 7899 E. Gazelle Rd., Prescott Valley, AZ 86315
Dana E. and Sherrilyn G. Tapp - 8595 E. Easy Street, Prescott Valley, AZ 86315
Richard and Beverly Strissel - 9350 E. Slash Arrow Drive, Prescott Valley, AZ 86314
Jesus Manjarres - 105 Paseo Sarta #C, Green Valley, AZ 85614
Nicholas Corea - 4 Denia, Laguna Niguel, CA 92677
Jack and Dolores Richardson - 505 Oppenheimer Drive #4, Los Alamos, NM 87544
Eric Cleveland - 960 E. Disway, Prescott Valley, AZ 86315
Robert and Patricia Janis - 7685 N. Coyote Springs Rd., Prescott Valley, AZ 86315
Mike and Julia Davis- 9147 E. Morning Star Road, Prescott Valley, AZ 86315
Richard and Patricia Pinney- P.O. Box 1558, Chino Valley, AZ 86323

EXHIBIT C

EXHIBIT C

EXHIBIT C

w/o

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE; as Trustee of the Kenneth Page and Catherine Page Trust, Plaintiffs, vs. DONALD COX and CATHERINE COX, husband and wife, et al., et ux., Defendants.	**Case No. P1300CV20030399** **RULING**	**FILED** **DATE:** APR 07 2015 4:42 **O'Clock** P **M.** **DONNA McQUALITY, CLERK** **BY:** J. HARSHMAN **Deputy**

HONORABLE JEFFREY G. PAUPORE **BY:** Tiffany Kolar, Judicial Assistant

DIVISION PRO TEM A **DATE:** April 3, 2015

The Court has considered Defendant Coxes' Motion for Reconsideration re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of Varilek; Varilek's Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Coxes' Response to Varilek's Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Varilek's Reply to Response to Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Varilek's Voluntary Withdrawal of Reply to Response to Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Plaintiffs' Rule 54(g) Motion for Award of Attorneys' Fees and Non-Taxable Costs, Affidavits of J. Jeffrey Coughlin and David K. Wilhelmsen in support of Application for Attorneys' Fees and Costs, Plaintiffs' Statement of Taxable Costs Paid to J. Jeffrey Coughlin, PLLC; Coxes' Response and Objection to Plaintiffs' Request for Award of Attorneys' Fees; Robert H. Taylor and Teri A. Thomson-Taylor's Joinder in Defendant Veres's Response to Plaintiffs' Motion for Award of Attorneys' Fees and Non-Taxable Costs; Veres Response to Plaintiffs' Cundiff, Nash and Page Rule 54(g) Motion for Award of Attorneys' Fees and Non-Taxable Costs; Reply in Support of Plaintiff's Motion for Award of Attorneys' Fees and Non-Taxable Costs; Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants and Request that Remaining Matters be Returned to Judge Jones for Consideration; Coxes' Response to Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants and Request that Remaining Matters be Returned to Judge Jones for Consideration; and 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; and Notice of Lodging of Proposed Final Judgment.

IT IS ORDERED, Denying Defendant Coxes' Motion for Reconsideration re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of Varilek.

In order for the Court to make a determination that hours claimed in attorneys' fees applications are justified, the application must be in sufficient detail to enable the court to assess the reasonableness of the time incurred; practitioners should prepare the summaries based upon contemporaneous time records which indicate work performed by each attorney for whom fees are sought, and if counsel expects that the fee application will be opposed on grounds that hours claimed are excessive, counsel may find that it is useful to submit actual time records to support the fee request. *Schweiger v China Doll Restaurant, Inc.*, 138 Ariz. 183 (1983).

Plaintiff withdrew their claim for attorneys' fees and costs against all Defendants with the exception of Defendants Cox.

Plaintiff's Motion for Attorneys' Fees included supporting affidavits with billing statements from the law firms of Favor, Moore and Wilhelmsen, P.A. ("Wilhelmsen") and J. Jeffrey Coughlin, PLLC, ("Coughlin").

Wilhelmsen's monthly billing statement identified the clients as Mr. and Mrs. John Cundiff v. Donald and Katherine Cox, Deed Restriction Enforcement. The Wilhelmsen affidavit avows "The Client has agreed to or has paid the hourly billing rates..."

Coughlin's monthly billing statement identified the client as Alfie Ware, Coyote Springs. The Coughlin affidavit avows "The Client has paid or agreed to pay the total charges ..." The Coughlin affidavit does not explain the nexus between the deed restriction enforcement case against the Coxes and Mr. Ware. The Court could find no reference in this lengthy civil litigation case where Mr. Ware was identified as a party Plaintiff. Therefore, Plaintiff's request for reasonable attorneys' fees under the Coughlin affidavit are denied.

This case has been litigated for over 12 years with each side winning a skirmish or two with Plaintiffs declared the ultimate winner by the Under Advisement Ruling dated June 14, 2013. The matter arises out of a contract and pursuant to A.R.S. §12-341.01(A). Pursuant to this Court's discretion, Plaintiffs are entitled to their reasonable attorneys' fees and costs.

IT IS ORDERED attorneys' fees are awarded against Defendants Cox and in favor of Plaintiffs in the amount of **$258,986.52**, and costs are awarded to Plaintiffs in the amount of **$4,117.74**.

Plaintiffs have lodged an initial proposed Final Judgment. Cox and those joined property owners aligned as Defendants ("Defendants") objected to the proposed Final Judgment claiming their Rule 19 Motion to Dismiss is still pending. Judge Jones' ruling in favor of Plaintiffs' and Varilek's Motion for Summary Judgment rendered Varilek's Motion to Require Defendants Cox to Serve the Indispensable Parties with Documents Comporting with Due Process *Moot*. Based upon the forgoing, the Court deems Defendant's Rule 19 Motion to Dismiss *Moot*.

In *Reply*, Plaintiffs revised the proposed Final Judgment to address some of Defendants' concerns and attacked Defendants' transfer of the subject property in the midst of litigation to Defendant Coxes newly created LLCs. Defendants argument that the transfer of the subject property to newly created LLCs is not properly before

the Court is disingenuous at best. This Court has personal jurisdiction over the Defendants and Judge Jones granting of Plaintiffs' summary judgment touches, concerns, and runs with the subject property. The language in the proposed Final Judgment paragraph 13 is appropriate under the circumstances.

IT IS ORDERED Defendant's Rule 19 Motion to Dismiss is *Moot*.

IT IS FURTHER ORDERED Plaintiff's revised Final Judgment is approved and signed by the Court on the date set forth below.

There are no further matters pending and this is a final judgment pursuant to Rule 54(c).

Dated: April 7, 2015

Honorable Jeffrey G. Paupore

cc: J. Jeffrey Coughlin – electronically via Clerk's Office
Jeffrey R. Adams – electronically via Clerk's Office
Mark W. Drutz/Sharon M. Flack – Musgrove, Drutz & Kack – electronically via Clerk's Office
David K. Wilhelmsen/Lance B. Payette – Favour & Wilhelmsen – electronically via Clerk's Office
Robert E. Schmitt – Murphy, Schmitt, Hathaway & Wilson – electronically via Clerk's Office
Noel J. Hebets- Noel J. Hebets, PLC, 2515 North 48th Street #3, Phoenix, AZ 85008
William H. "Bill" Jensen, 14556 Howard Mesa Loop, Williams, AZ 86046
Gary and Sabra Feddema- 9601 East Far Away Place, Prescott Valley, AZ 86315
William R. and Judith K. Stegeman Trust- 9200 East Far Away Place, Prescott Valley, AZ 86315
Karen L. and Michael P. Wargo- 9200 East Spurr Lane, Prescott Valley, AZ 86315
Linda J. Hahn- 10367 W. Mohawk Lane, Peoria, AZ 85382
Sergio Martinez and Susana Navarro- 10150 N. Lawrence Lane, Prescott Valley, AZ 86315
Lloyd E. and Melva J. Self- 9250 E. Slash Arrow Drive, Prescott Valley, AZ 86315
Rynda and Jimmy Hoffman- 9650 East Spurr Lane, Prescott Valley, AZ 86315
William and Shaunla Heckethorn- 9715 East Far Away Place, Prescott Valley, AZ 86315
Leo M. and Marilyn Murphy- 9366 E. Turtlerock Road, Prescott Valley, AZ 86315
James C. and Leslie M. Richie- 9800 E. Plum Creek Way, Prescott Valley, AZ 86315
Rhonda L. Folsom- 9305 N. Coyote Springs Road, Prescott Valley, AZ 86315
Kenneth Paloutzian- 8200 Long Mesa Drive, Prescott Valley, AZ 86315
Bonnie Rosson - 8950 E. Plum Creek Way, Prescott Valley, Arizona 86315
John and Rebecca Feddema- 9550 E. Spurr Lane, Prescott Valley, AZ 86315
Robert Lee and Patti Ann Stack/Robert Lee and Patti Ann Stack Trust-10375 Lawrence Lane, Prescott Valley, AZ 86315
John and Dusti Audsley – 7899 E. Gazelle Rd., Prescott Valley, AZ 86315
Dana E. and Sherrilyn G. Tapp - 8595 E. Easy Street, Prescott Valley, AZ 86315
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Jesus Manjarres - 105 Paseo Sarta #C, Green Valley, AZ 85614
Nicholas Corea - 4 Denia, Laguna Niguel, CA 92677
Jack and Dolores Richardson - 505 Oppenheimer Drive #4, Los Alamos, NM 87544
Eric Cleveland - 960 E. Disway, Prescott Valley, AZ 86315
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Mike and Julia Davis- 9147 E. Morning Star Road, Prescott Valley, AZ 86315
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