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9 **SUPERIOR COURT OF ARIZONA**  
10 **YAVAPAI COUNTY**

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  
16 Kenneth Page and Catherine Page Trust,

17 Plaintiffs,

18 v.

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

21 Defendants.

PI300  
Case No. CV 2003-0399

Division 4

(Assigned to Hon. Kenton Jones)

**JAMES VARILEK'S MOTION TO  
REQUIRE DEFENDANTS COX TO  
SERVE THE INDISPENSABLE  
PARTIES WITH DOCUMENTS  
COMPORTING WITH DUE  
PROCESS**

22 Property Owner James Varilek respectfully moves the Court for an order requiring  
23 Defendants Donald and Catherine Cox ("the Coxes") to serve all of the indispensable  
24 parties (*i.e.*, current property owners in Coyote Springs Ranch) with documents giving  
25 them adequate notice of what is really at stake in the adjudication of the Coxes'  
26 affirmative defense that the Declaration of Restrictions has been abandoned. Varilek  
27 respectfully urges that the documents served by Plaintiffs on the indispensable parties in  
28 2010 and 2011 do not satisfy the constitutional requirement of due process. Moreover,  
Varilek has also identified several instances where the service itself (*i.e.*, apart from the  
content of what was served) was defective and insufficient to subject some of the  
indispensable parties to the jurisdiction of the Court.

1 The principles of law on which this motion is based are discussed more fully below,  
2 but it is axiomatic that (1) due process is the foundation of the requirement to join  
3 indispensable parties; (2) notice is one of the touchstones of procedural due process; and  
4 (3) the notice requirement is satisfied only by a notice that is not misleading and that  
5 contains sufficient information to inform the recipient of the true nature of the  
6 proceedings.<sup>1</sup>

7 **The need to join the other property owners arises solely**  
8 **out of the Coxes' abandonment defense**

9 The need to join the other property owners in Coyote Springs Ranch was first raised  
10 by the Coxes themselves in a *Motion to Join Indispensable Parties* filed nearly eight years  
11 ago, on June 24, 2005. The Coxes recognized in their motion that the need for joinder  
12 was triggered in part by their affirmative defense that the Declaration of Restrictions has  
13 been abandoned. Judge Mackey summarily denied the Coxes' motion without a response  
14 by the Plaintiffs, but the Court of Appeals reversed the denial in its memorandum decision  
15 of May 24, 2007.

16 The Court of Appeals recognized that it was *solely* the Coxes' abandonment defense  
17 that triggered the need for joinder. Although the Coxes had argued in their *Motion to Join*  
18 *Indispensable Parties* that joinder was also necessary because even a judgment *upholding*  
19 the Declaration of Restrictions would be binding on absent property owners under the  
20 doctrines of *res judicata* and collateral estoppel, the Court of Appeals explained that this  
21 would not be the case: "Because none of the absent property owners is a party to this  
22 action, the doctrines of *res judicata* and collateral estoppel could not be employed to limit  
23 their claims or defenses in a subsequent case." Mem. Op. at 19, ¶ 32. As the Court of

24  
25 <sup>1</sup> The filing of this motion should not affect the Court's ruling on Plaintiffs' pending *Motion for*  
26 *Summary Judgment* (in which Varilek has joined) concerning the Coxes' abandonment  
27 defense. If the *Motion for Summary Judgment* is granted, this motion will become moot  
28 because, as is explained herein, the Coxes' abandonment defense is the only aspect of this  
case that required the joinder of the absent owners as indispensable parties in the first place.  
If the *Motion for Summary Judgment* is denied, on the other hand, the Coxes' abandonment  
defense will remain alive and this motion will require a decision.

1 Appeals recognized, nothing in Plaintiffs' *First Amended Complaint* required joinder.  
2 The possibility of a judgment that the Declaration of Restrictions was enforceable against  
3 the Coxes and that the Coxes' tree farm violated the restriction against commercial uses  
4 set forth in paragraph 2 would not have affected the rights of the absent property owners.

5 However, "A ruling in this case that the restrictions have been abandoned and are  
6 no longer enforceable against the Coxes' property *would* affect the property rights of all  
7 other owners subject to the Declaration." Mem. Op. at 19, ¶ 32 (emphasis added). At a  
8 minimum, the court stated, a judgment of abandonment would leave the Coxes free to  
9 violate any and all of the restrictions with impunity in contravention of the principle,  
10 firmly established in Arizona law, that restrictions must apply uniformly to all of the lots  
11 in a subdivision. *Id.* at 20, ¶ 35. The Court of Appeals thus determined that the absent  
12 property owners were necessary parties and left it to Judge Mackey to determine whether  
13 they were indispensable under the criteria set forth in ARCP 19(b).

14 After the Court of Appeals' mandate had come down, and the parties had further  
15 briefed the joinder issue, Judge Mackey heard oral argument on joinder on March 10,  
16 2008. The Coxes' counsel made the odd argument that Plaintiffs "should have" filed a  
17 "global" action seeking a declaratory judgment as to whether the Declaration of  
18 Restrictions was enforceable "not just against Mr. and Mrs. Cox but against everybody  
19 out there." Transcript of March 10, 2008 at 17, lines 6-15. (*Exhibit 1* hereto). Obviously,  
20 Plaintiffs had no obligation to bring such an action when their sole concern was the  
21 Coxes' use of their parcel for a tree farm. Nevertheless, Judge Mackey not only ordered  
22 joinder but also placed the burden of service on Plaintiffs because "it's plaintiffs who  
23 have made a choice to bring this action and defendants are simply defending and not  
24 bringing a separate action or a counterclaim or cross-claim to invalidate the declarations  
25 [*sic*], they're just simply defending on the basis of abandonment." Transcript of March  
26 10, 2008 at 25, lines 6-24. Varilek respectfully urges that Judge Mackey's ruling placing  
27 the burden of service on Plaintiffs was patently flawed because (1) nothing in Plaintiffs'  
28 *First Amended Complaint* would have required joinder at all; (2) Judge Mackey had the

1 benefit of the Court of Appeals' decision explaining that the Coxes' abandonment defense  
2 was the *sole reason* joinder was required; and (3) by the time of the hearing, the Coxes'  
3 affirmative defenses of waiver and abandonment were the *only matters remaining to be*  
4 *adjudicated* inasmuch as the Court of Appeals had determined, as the law of the case, that  
5 the Coxes' tree farm did violate paragraph 2 of the restrictions and that Judge Mackey had  
6 properly disposed of the Coxes' other affirmative defenses via summary judgment.

7 After Plaintiffs had filed a plan for joinder in which they also argued that joinder  
8 was not feasible and that the burden of service should not have been placed on them,  
9 Judge Mackey issued a ruling on August 22, 2008 (*Exhibit 2* hereto) in which he  
10 considered the criteria set forth in ARCP 19(b) for determining whether necessary parties  
11 are indispensable, ruled that the absent property owners were indispensable, and further  
12 ruled that the action would be dismissed unless Plaintiffs took substantial steps to join the  
13 absent owners within 90 days. Plaintiffs thereafter filed a *Petition for Special Action*, but  
14 the Court of Appeals declined to accept jurisdiction.

15 Plaintiffs' efforts at service on the absent property owners in 2010 and 2011 will be  
16 discussed later in this motion. The key points to be emphasized at this stage are:

- 17 • The Coxes' affirmative defense of abandonment is the *only reason* the other  
18 property owners must be joined at all.
- 19 • By the time joinder was ordered and service was undertaken, the Coxes'  
20 affirmative defenses of waiver and abandonment were the *only matters*  
21 *remaining to be adjudicated*.

22 **The stakes are now much higher than when the**  
23 **Court of Appeals addressed joinder**

24 The Court of Appeals focused on the fact that if the absent property owners were  
25 *not* joined and the Declaration of Restrictions were deemed abandoned, the Coxes would  
26 be the only owners in the subdivision legally entitled to violate any and all of the  
27 restrictions with impunity. Unfortunate as this state of affairs might have been, the effects  
28 would not have extended beyond the boundaries of the Coxes' parcel. With the joinder of

1 the other property owners, however, the stakes become much higher. Now *res judicata*  
2 and collateral estoppel *will* apply. As has been explained in previous filings, under the  
3 Arizona case law a finding of abandonment would require a determination that wholesale  
4 violations of the Declaration of Restrictions have so completely altered the character of  
5 Coyote Springs Ranch as a rural, residential subdivision that enforcing any of the  
6 restrictions anywhere in the subdivision would now be pointless. In short, what is at stake  
7 is no longer merely the possibility that the Coxes will be able to violate the Declaration of  
8 Restrictions with impunity on their parcel. If the Declaration of Restrictions is found to  
9 have been abandoned, *all* of the joined property owners will find themselves living in a  
10 subdivision with *no restrictions whatsoever*. This fact highlights the importance of  
11 serving the other owners with documents giving them adequate notice of what is really at  
12 stake.

13 **The documents served on the absent owners did not**  
14 **give them adequate notice of what is at stake**

15 Judge Mackey crafted a notice dated June 15, 2010 (*Exhibit 3* hereto) to be served  
16 on the absent property owners together with a summons and a copy of the *First Amended*  
17 *Complaint* (which included a copy of the Declaration of Restrictions as an exhibit).  
18 Plaintiffs served a number of the absent owners with these documents, then filed a *Motion*  
19 *to Serve Remaining Property Owners by Publication*. On January 26, 2011, Judge  
20 Mackey issued a ruling (*Exhibit 4* hereto) in which he noted discrepancies between  
21 Plaintiffs' list of owners and the Clerk of the Court's list, ordered Plaintiffs to reconcile  
22 their list with the Clerk's, and approved alternative methods of service on the remaining  
23 owners and on parcels whose owners were unknown. On April 18, 2011, Plaintiffs filed  
24 their *Notice of Compliance with June 17, 2010 Notice Re: Service of Property Owners*  
25 (*Exhibit 5* hereto) explaining their efforts to serve all of the absent owners either  
26 personally or by mail, by posting at the property or by publication as authorized in Judge  
27 Mackey's order of January 26, 2011.  
28

1 Notwithstanding these efforts by Judge Mackey and Plaintiffs, a preliminary review  
2 by Varilek has identified several defects in the service itself (*i.e.*, apart from the content of  
3 what was served). These defects include service on only one of two spouses or only one  
4 of multiple owners, which would be insufficient to subject the unserved parties to the  
5 jurisdiction of the Court. There have also been a number of changes in ownership since  
6 Plaintiffs filed their *Notice of Compliance*. In Judge Mackey's notice of June 15, 2010, he  
7 ordered each property owner to notify the Court if he or she no longer owned property in  
8 Coyote Springs Ranch and, if the property were subsequently sold, to notify the Court and  
9 provide the new owner with the notice and a copy of the *First Amended Complaint*. It is  
10 highly doubtful that these orders would suffice either to constitute service on a new owner  
11 or to satisfy the requirements of due process.

12 Turning to the content of what was served and whether it satisfied due process, the  
13 *First Amended Complaint* obviously did not give the absent owners adequate notice of  
14 what was at stake. It did not mention abandonment at all since this is an affirmative  
15 defense raised by the Coxes in their answer. Indeed, by virtue of the Court of Appeals'  
16 memorandum decision in 2007, the *First Amended Complaint* was largely moot by the  
17 time the absent owners received it; the Coxes' violation of paragraph 2 of the Declaration  
18 of Restrictions had already been decided.

19 This left Judge Mackey's notice of June 15, 2010 as the key document. Stating  
20 "THIS LAWSUIT MAY AFFECT YOUR COYOTE SPRINGS RANCH PROPERTY  
21 RIGHTS," the notice provided as follows in the critical second paragraph (the only one  
22 describing the action or specifically mentioning abandonment):

23 This lawsuit involves claims by the Plaintiffs that the  
24 Defendants are violating certain terms of the Declaration of  
25 Restrictions for Coyote Springs Ranch. The Defendants have  
26 denied the Plaintiffs' claims and are seeking an Order from this  
Court that certain terms of the Declaration of Restrictions for  
Coyote Springs Ranch have been abandoned and/or waived.

27 This was followed by a paragraph directing the absent owners to the Clerk of the Court's  
28 website if they wished to learn more.

1 Varilek respectfully urges that Judge Mackey's notice – and, therefore, the service  
2 on the absent owners – was both misleading and inadequate to give the absent owners  
3 notice of what was at stake:

- 4 • It failed to inform them that Plaintiffs' central claim that the Coxes' tree  
5 farm violated paragraph 2 of the Declaration of Restrictions, as set forth  
6 in the *First Amended Complaint*, had already been decided in Plaintiffs'  
7 favor by the Court of Appeals.
- 8 • It failed to inform them that the only matters remaining to be adjudicated  
9 were the Coxes' affirmative defenses of waiver and abandonment.
- 10 • It gave them no clue as to what "abandonment" means or that a finding of  
11 abandonment would result in them living in a subdivision with no  
12 restrictions whatsoever.
- 13 • It incorrectly and misleadingly stated that the Coxes were arguing that  
14 "certain terms" of the Declaration of Restrictions had been abandoned.  
15 By definition, a finding of abandonment would result in the *entire set* of  
16 restrictions becoming unenforceable.<sup>2</sup>

17 Unless an absent owner happened to be legally sophisticated enough to understand  
18 what "abandonment" means, Judge Mackey's notice and the *First Amended Complaint*  
19 gave no clue that what was really at stake was a single question with potentially disastrous  
20 consequences for the entire subdivision.

21 In the typical case where indispensable parties are joined early in the proceedings,  
22 the service of a summons and a copy of the complaint may constitute sufficient notice.  
23 But this is far from a typical case. By the time the absent owners were served in 2010 and  
24 2011, the case was already more than seven years old and the violation alleged in the *First*  
25

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26 <sup>2</sup> To constitute an abandonment, "the restrictions imposed upon the use of lots in a subdivision  
27 [must] have been so thoroughly disregarded as to result in such a change in the area as to  
28 destroy the effectiveness of the restrictions, defeat the purposes for which they were imposed  
and consequently to amount to an abandonment thereof." *Condos v. Home Development Co.*,  
77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954).

1 *Amended Complaint*, which involved only the Coxes' commercial use of their parcel for a  
2 tree farm, had been decided at the appellate level. What remained to be adjudicated – *i.e.*,  
3 an affirmative defense raised by the Coxes that received only incorrect and misleading lip  
4 service in Judge Mackey's notice – had potentially disastrous consequences for the entire  
5 subdivision. Varilek respectfully urges that the *First Amended Complaint* and Judge  
6 Mackey's notice were so inadequate and misleading as to violate the absent owners' due  
7 process right to notice reasonably calculated to inform them of the nature of the  
8 proceedings and what was at stake.

9 **Adequate notice is required in order to**  
10 **satisfy due process**

11 The principles of law on which this motion hinges are so axiomatic as to scarcely  
12 require the citation of authority:

13 **Due process is the foundation of the requirement to join indispensable parties.**

14 In *Connolly v. Great Basin Ins. Co.*, 6 Ariz. App. 280, 285, 431 P.2d 921, 926  
15 (1967), the court cited an influential law review article for the principle that “the concept  
16 of indispensable parties has a valid basis, arising out of concepts of due process.” *See*  
17 *also, Lakeview Trust & Savings Bank v. Estrada*, 480 N.E.2d 1312, 1326 (Ill. App. 1985)  
18 (“due process requires the joinder of all indispensable parties to an action”); *Napoletano*  
19 *v. CIGNA Healthcare of Connecticut, Inc.*, 680 A.2d 127 (Conn. 1996), *cert. denied*, 520  
20 U.S. 1103, (1997) (“Indispensable parties must be joined because due process principles  
21 make it essential that such parties be given notice and an opportunity to protect their  
22 interests by making them a party to the action.”).

23 **Notice is one of the touchstones of procedural due process.**

24 The elements of procedural due process are notice and an opportunity to be heard.  
25 *Phoenix Metals Corp. v. Roth*, 79 Ariz. 106, 109-110, 284 P.2d 645, 647 (1955). *Accord,*  
26 *Iphaar v. Industrial Com'n of Arizona*, 171 Ariz. 423, 426, 831 P.2d 422, 425 (App.  
27 1992). “Due process entitles a party to notice and an opportunity to be heard at a  
28 meaningful time and in a meaningful manner.” *Curtis v. Richardson*, 212 Ariz. 308, 312,

1 ¶ 16, 131 P.3d 480, 484 (App. 2006). *Accord*, *Cook v. Losnegard*, 228 Ariz. 202, 206, ¶  
2 18, 265 P.3d 384, 388 (App. 2011).

3 **The notice requirement is satisfied only by a notice that is not misleading and**  
4 **that contains sufficient information to inform the recipient of the true nature of the**  
5 **proceedings.**

6 “The notice required by due process is no empty formality.” *Sira v. Morton*, 380  
7 F.3d 57, 70 (2d Cir. 2004). *Accord*, *Brown v. Bd. of Ed. of Rochester City Sch. Dist.*,  
8 2005 WL 17838 at 3 (W.D.N.Y. 2005). Where due process requires notice, a “mere  
9 gesture” is insufficient. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,  
10 314 (1950). *Mullane* “establishes the rule that, if feasible, notice must be reasonably  
11 calculated to inform parties of proceedings which may directly and adversely affect their  
12 legally protected interests.” *Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956). *See*  
13 *also*, *Montana Power Co. v. Public Service Com'n*, 671 P.2d 604, 609 (Mont. 1983)  
14 (“Notice sufficient to comport with due process is that which is reasonably calculated,  
15 under all circumstances, to inform parties of proceedings which may directly affect their  
16 legally protected interests.”).

17 In the typical case where indispensable parties are joined early in the proceedings,  
18 the service of a summons and a copy of the complaint may well suffice to satisfy the  
19 notice requirement of due process. Thus, many reported decisions contain general  
20 statements such as, “The type of notice that due process requires is that which is  
21 reasonably calculated under all of the circumstances to apprise interested parties of the  
22 *pendency of the action* [emphasis added] and afford them the opportunity to present their  
23 objections.” *Iphaar v. Industrial Com'n of Ariz.*, 171 Ariz. at 426, 831 P.2d at 425 (citing  
24 *Mullane*). However, “completed service of process is not necessarily synonymous with  
25 procedural due process.” *Id.* In determining whether the notice in a particular case  
26 comports with due process, “it must be remembered that due process is a flexible concept  
27 and should be tailored to the circumstances of each case in a manner that meets the needs  
28 and protects the interests of the parties involved.” *Pickens v. Shelton-Thompson*, 3 P.3d

1 603, 607 (Mont. 2000). *See also, Small v. McRae*, 651 P.2d 982, 988 (Mont. 1982) (“In  
2 short, due process is not a fixed concept but, rather, is one which must be tailored to each  
3 situation in such a way that it meets the needs and protects the interests of the various  
4 parties involved.”). In the words of the *Mullane* Court, the notice must be “appropriate to  
5 the nature of the case,” 339 U.S. at 313, and “of such nature as reasonably to convey the  
6 required information,” *id.* at 314.

7 As is explained above, this is far from a typical case. By the time efforts were  
8 undertaken to join the absent owners, the case had been pending for more than *seven*  
9 *years* and the violation alleged in the *First Amended Complaint* had already been decided  
10 by the Court of Appeals. What the absent owners were being notified of was, in essence,  
11 a stand-alone “sub-case” within the original case, with the Coxes now in the role of  
12 plaintiffs prosecuting their allegation of abandonment. Varilek respectfully urges,  
13 therefore, that what was required by due process was not merely a notice informing the  
14 absent owners of the pendency of the original action brought by Plaintiffs, but one  
15 informing them that what the case was now about was an affirmative defense by the  
16 Coxes that could leave all of the residents of Coyote Springs Ranch living in a subdivision  
17 with no restrictions whatsoever. Varilek further respectfully suggests that, for the reasons  
18 set forth above, the notice that was served (*i.e.*, Judge Mackey’s notice and a copy of the  
19 *First Amended Complaint*) did not accomplish this and was both inaccurate and  
20 misleading.

21 Perhaps the most closely analogous reported decisions (because they never involve  
22 the mere service of a summons and complaint) are those involving notices given by  
23 government agencies and those given in class actions. In *Phillips Petroleum Co. v. Shutts*,  
24 472 U.S. 797, 812 (1985), the Court stated that in order to satisfy due process the notice  
25 of a proposed class action should “describe the action and the plaintiffs’ rights in it.” In  
26 that case, the Court approved the notice because it was “fully descriptive.” In a host of  
27 other decisions involving notices of administrative matters and class actions, however,  
28

1 state and federal courts have held that notices which are incomplete, inaccurate or  
2 misleading do not satisfy due process. For example:

- 3 • In *Hege v. Aegon USA, LLC*, 780 F.Supp.2d 416, 430 (D.S.C. 2011),  
4 involving a notice of a proposed settlement of a class action, the court  
5 emphasized that “if the class members are not provided with enough  
6 information to make an informed choice, the notice is constitutionally  
7 deficient.” The court quoted 7B *Federal Practice and Procedure* §  
8 1797.6 to the effect that “A proposed notice that is incomplete or  
9 erroneous or that fails to apprise the absent class members of their rights  
10 will be rejected as it would be ineffective to ensure due process. Only if  
11 sufficient information is provided will the recipient be able to determine  
12 whether to object to the proposal or, if permitted, to opt out of the  
13 compromise.” 780 F. Supp.2d at 430. The court further stated that “due  
14 process does require that the notice not be materially misleading. *See,*  
15 *e.g., Homeside Lending, Inc.*, 826 A.2d at 1010–11 (“If we are to hold  
16 that the notice was sufficient to confer jurisdiction by consent, class  
17 members had to be able to evaluate what they were consenting to.”);  
18 *Gersenson v. Pa. Life & Health Ins. Guar. Ass’n*, 729 A.2d 1191, 1197  
19 (Pa.Super.Ct.1999) (holding that class notice that contained material  
20 inaccuracies regarding benefits of remaining in class and legal rights of  
21 members who opt out was insufficient to bind plaintiffs to judgment).”  
22 *Id.*
- 23 • In *Alan v. County of Wayne*, 200 N.W.2d 628, 697 (Mich. 1972), which  
24 involved a notice to taxpayers concerning their rights in a bond matter,  
25 the court stated that “to comport with due process the notice must be  
26 phrased with the general legal sophistication of its beneficiaries in mind.  
27 As phrased it must not make any misleading or untrue statement; or fail  
28 to explain, or omit any fact which would be important to the taxpayer or  
elector in deciding to exercise his right. In short, the notice may not be  
misleading under all the circumstances.” The court concluded: “The  
notice is misleading. *Misleading process is not due process.*” 200  
N.W.2d at 698 (emphasis added). *Accord, Trussell v. Decker*, 382  
N.W.2d 778, 783 Mich. App. 1986) (inadequate notice of proposed  
special assessment district).
- In *Pickens v. Shelton-Thompson*, 3 P.3d 603, 607 (Mont. 2000),  
concerning an administrative notice of how to obtain judicial review, the  
court stated: “Neither party cites – nor have we found – any Montana  
cases addressing whether inaccurate or misleading notice is sufficient for  
due process purposes. Federal courts have addressed this issue, however,  
and have determined that notice which is confusing, misleading or  
inaccurate is insufficient to meet procedural due process requirements  
under the United States Constitution because such notice does not

1 adequately safeguard a person's concomitant due process right of an  
2 opportunity to be heard. *See, e.g., Walters v. Reno* (9th Cir. 1998), 145  
3 F.3d 1032, 1043; *Gonzalez v. Sullivan* (9th Cir. 1990), 914 F.2d 1197,  
4 1203.”

5 Arizona decisions in this vein include *Henricks v. Ariz. Dept. of Economic Security*,  
6 229 Ariz. 47, 270 P.3d 874 (App. 2012), and *Heidbreder v. Heidbreder*, 230 Ariz. 377,  
7 284 P.3d 888 (App. 2012). In *Henricks*, the court held that due process was violated  
8 because the notice sent to a recipient of welfare benefits “failed to properly notify her of  
9 the issue to be addressed at the overpayment hearing.” 229 Ariz. at 48, ¶ 1, 270 P.3d at  
10 875. In *Heidbreder*, the court held that due process was violated when the trial court  
11 modified child support at a custody hearing without notifying the mother that support  
12 would be considered. The court stated that “entry of the modification order under the  
13 circumstances of this case deprived Mother of her due process right to adequate notice  
14 and a meaningful opportunity to be heard.” 230 Ariz. at 381, ¶ 8, 284 P.3d at 892.

15 Although the opinion does not specifically discuss due process, *ESI Ergonomic*  
16 *Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203 Ariz. 94, 50 P.3d 844 (App.  
17 2002), is also instructive. The court held that a class action was superior to adjudicating  
18 numerous claims in bankruptcy court because the bankruptcy court’s notice to potential  
19 claimants was wholly inadequate: “As discussed earlier, the notice to the putative class  
20 members provided virtually no specific information about the claim to permit recipients to  
21 identify the matter at issue. Although the notice may have been adequate for the purposes  
22 of the bankruptcy court, it was not ‘the best notice practicable under the circumstances,’  
23 as required by Arizona Rule of Civil Procedure 23(c)(2).” 203 Ariz. at 102, 50 P.3d at  
24 852. *A. J. Bayless Markets, Inc. v. Superior Court of Pima County*, 145 Ariz. 285, 700  
25 P.2d 1385 (App. 1985), had previously made clear that the notice requirements of ARCP  
26 23 have due process as their foundation.

27 For the foregoing reasons, Varilek respectfully urges that the misleading and  
28 incomplete documents served by Plaintiffs on the absent property owners do not satisfy  
due process and that the Court should order the Coxes to assemble a complete and

1 accurate list of all current property owners in Coyote Springs Ranch for review by the  
2 Court and the other parties and to serve these owners with a notice, preapproved by the  
3 Court after a hearing on the matter, fully informing them in plain English of what is really  
4 at stake in the adjudication of the Coxes' abandonment defense.

5 RESPECTFULLY SUBMITTED April 8, 2013.

6 FAVOUR MOORE & WILHELMSSEN, P.A.

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Dated October 5, 2010

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Michael P. and Karen L. Wargo  
9200 E. Spurr Lane  
Prescott Valley, AZ 86315  
Pro Per

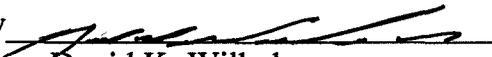
1 Linda J. Hahn  
2 10367 W. Mohawk Lane  
3 Peoria, AZ 85382  
4 Pro Per  
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6 Jesus Manjarres  
7 105 Paseo Sarta # C  
8 Green Valley. AZ 85614  
9  
10 Nicholas Corea  
11 4 Denia  
12 Laguna Niguel, CA 92677  
13  
14 John and Rebecca Feddema  
15 9550 E. Spurr Lane  
16 Prescott Valley, AZ 86315  
17  
18 Gary and Sara Feddema  
19 9601 Far Away Place  
20 Prescott Valley, AZ 86315  
21  
22 Jack and Dolores Richardson  
23 505 Oppenheimer Dr. # 412  
24 Los Alamos, NM 87544  
25  
26 Eric Cleveland  
27 9605 E. Disway  
28 Prescott Valley, AZ 86315  
29  
30 Rynda and Jimmy Hoffman  
31 9650 E. Spurr Lane  
32 Prescott Valley, AZ 86315  
33  
34 William and Judith K. Stegeman Trust  
35 9200 E. Far Away Place  
36 Prescott Valley, AZ 86315  
37  
38 Sergio Marinez and Susana Navarra  
39 10150 N. Lawrence Lane  
40 Prescott Valley, AZ 86315  
41  
42 Robert and Patricia Janis  
43 7685 N. Coyote Springs Rd  
44 Prescott Valley, AZ 86315  
45

1 William and Shaunla Heckethom  
9715 E. Far Away Place  
2 Prescott Valley, AZ 86315  
3 Leo and Marilyn Murphy  
9366 E. Turtlerock Rd  
4 Prescott Valley, AZ 86315  
5 James and Leslie Richie  
6 9800 E. Plum Creek Way  
7 Prescott Valley, AZ 86315  
8 Rhonda Folsom  
9305 N. Coyote Springs Rd  
9 Prescott Valley, AZ 86315  
10 Kenneth Paloutzian  
11 8200 Long Mesa Drive  
12 Prescott Valley, AZ 86315  
13 Robert Lee and Patti Ann Stack  
Robert Lee and Patti Ann Stack Trust  
14 10375 Lawrence Lane  
15 Prescott Valley, AZ 86315  
16 John and Dusti Audsley  
6459 E. Clifton Terrace  
17 Prescott Valley, AZ 86314  
18 Dana E. and Sherrilyn G. Tapp  
8595 E. Easy Street  
19 Prescott Valley, AZ 86315  
20 Richard and Beverly Strissel  
21 9350 E. Slash Arrow Drive  
22 Prescott Valley, AZ 86315  
23 Bonnie Rosson  
8950 E. Plum Creek Way  
24 Prescott Valley, AZ 86315  
25 Lloyd E. and Melva J. Self  
26 9250 E. Slash Arrow Dr.  
27 Prescott Valley, AZ 86315  
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Mike and Julia Davis  
9147 E. Morning Star Rd  
Prescott Valley, AZ 86315

Richard and Patricia Pinney  
10980 N. Coyote Springs Rd  
Prescott Valley, AZ 86315

By   
David K. Wilhelmsen

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

JOHN B. CUNDIFF and )  
BARBARA C. CUNDIFF, )  
husband and wife; BECKY )  
NASH, a married woman )  
dealing with her )  
separate property; )  
KENNETH PAGE and KATHRYN )  
PAGE, as Trustee of the )  
Kenneth Page and Kathryn )  
Page Trust, )  
Plaintiffs, )  
vs. )  
DONALD COX and CATHERINE )  
COX, husband and wife, )  
Defendants. )

No. CV 2003-0399  
Division I

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE DAVID L. MACKEY  
Judge of the Superior Court

ORAL ARGUMENT

Prescott, Arizona  
March 10, 2008  
10:00 a.m.

1 addressing whether the plaintiff will have an adequate  
2 remedy in this action if the action is dismissed for  
3 non-joinder, well, Your Honor, they do have an  
4 alternative remedy. If this case is dismissed,  
10:31:26 5 plaintiffs will still have an opportunity to bring  
6 another action. And that action -- and see actually the  
7 action they should have brought in the first place, they  
8 should have asked this court for declaratory relief.  
9 They should have asked this court to declare whether the  
10:31:42 10 declaration of restrictions is enforceable, not just  
11 against Mr. and Mrs. Cox but against everybody out  
12 there, because this court's ruling on declaration of  
13 restrictions that affect not just Mr. and Mrs. Cox but  
14 also the plaintiffs and every other property owner out  
10:32:00 15 there in Coyote Springs Ranch.

16 So we again go back to what this court's  
17 mandate was and what its order was to the plaintiffs.  
18 That order was to reflect and establish that joinder is  
19 not feasible. And in this case, Your Honor, joinder  
10:32:22 20 absolutely is feasible. These parties, these property  
21 owners out there are not dispensable, and consequently  
22 the plaintiffs have failed to prove that they are  
23 dispensable, and consequently they have to be part of  
24 this action, and the Court of Appeals has already said  
10:32:44 25 that they are necessary parties to this action because

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

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p align="right">Plaintiff,</p> <p align="center">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p align="right">Defendant.</p>	<p>Case No. CV2003-0399</p> <p><b>RULING</b></p>	<p align="center"><b>FILED</b> <b>AUG 25 2008</b></p> <p>DATE: _____ 12 O'Clock P .M. ✓</p> <p align="center">JEANNE HICKS, CLERK</p> <p>BY: <u>SHEETAL PATEL</u> Deputy</p>
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<p><b>HONORABLE DAVID L. MACKEY</b></p> <p><b>DIVISION 1</b></p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: August 22, 2008</p>
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After reviewing the Mandate and Memorandum Decision from the Court of Appeals, this Court Ordered that the Plaintiffs shall "file a legal memorandum setting forth their position that joinder is not feasible and that the Court should proceed with this action based upon the factors set forth in Rule 19(b), *Ariz.R.Civ.P.*" After briefing was completed, the Court held oral argument on March 10, 2008. After hearing argument, the Court Ordered that "the Plaintiff[s] shall join all landowners subject to the Declaration of Restrictions dated June 12, 1974." The Court Ordered that Plaintiffs file a notice with the Court including "a map of the properties subject to the Declaration of Restrictions as well as a list designating the parcel numbers as well as names and address of each property owner." The Court also Ordered that "the Plaintiff[s] shall also file a plan for joinder of all the property owners subject to the Declaration of Restrictions." The Court told the parties that it was keeping open whether the matter should proceed as a class action or whether the additional parties should be joined as Plaintiffs or Defendants.

The Plaintiffs complied with the Court Order to file a notice. In Plaintiffs' Plan For Joinder of Property Owners Subject To Restrictive Covenants, the Plaintiffs included a list of the property owners, their addresses and their parcel numbers as well as a map of the property subject to the Declaration of Restrictions. While the Defendants complain that not every owner for every parcel was listed, the Court finds that deficiency meaningless in light of the position taken by the Plaintiffs.

The Court notes that oral argument was requested by the Plaintiffs and Defendants. The Court pursuant to Rule 7.1(c)(2), *Ariz.R.Civ.P.* has determined that oral argument will not assist the Court in the determination of this motion.

**AUG 22 2008**

AFTER 2 P.M.

Although the Court had Ordered that Plaintiffs were responsible for the joinder of necessary parties, the plan they submitted for joinder was not a plan at all. The Plaintiffs continue to suggest that joinder is not feasible and argue over whether they should be responsible for joinder. Without saying it specifically, the Plaintiffs suggest that they are NOT going to join all the property owners but that the case should not be dismissed because of the factors set forth in Rule 19(b), *Ariz.R.Civ.P.* The Plaintiffs argue that “there are currently 273 non-party property owners . . . spread over 12 states (including Arizona) from California to New York.” Nothing in the information presented to the Court regarding the property owners causes the Court to even respectfully question the Court of Appeals ruling that they are all necessary parties pursuant to Rule 19(a), *Ariz.R.Civ.P.* Furthermore, there is nothing in the information provided to suggest that the other property owners cannot be joined other than the suggestion that the expense is prohibitive.

The Court finds that assertion unpersuasive. Out of State owners could be served by mail pursuant to Rule 4.2(c), *Ariz.R.Civ.P.* Service on in State owners could be attempted by mailing a waiver of service pursuant to Rule 4.1(c), *Ariz.R.Civ.P.* In addition, the Plaintiffs could request an order for alternative service by mail pursuant to Rule 4.1(m), *Ariz.R.Civ.P.* Their argument regarding the expense of service is best made towards the “impracticable” requirement of that rule. The Court finds that Plaintiffs have not established that the other property owners “cannot be made a party” as that phrase is used in Rule 19(b), *Ariz.R.Civ.P.* The Plaintiffs continued assertion that they should not be required to join the other property owners does not support a finding that the necessary parties cannot be joined.

While the Court believes that such a finding should resolve the matter and lead to the dismissal of the action due to Plaintiffs’ refusal to even attempt to join necessary parties over a year after being directed to do so by this Court, the Court of Appeals directed this Court to consider whether the property owners are indispensable pursuant to Rule 19(b), *Ariz.R.Civ.P.* so this Court will do so.

Rule 19(b), *Ariz.R.Civ.P.* provides:

“If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.”

The Court first considers “to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties.” The Court of Appeals Memorandum Decision already addresses the first part of that question. At ¶ 32, the Court of Appeals stated:

“A ruling in this case that the restrictions have been abandoned and are no longer enforceable against the Coxes’ property would affect the property rights of all other owners subject to the Declaration.”

The Court finds that the failure to join the other property owners would prejudice their property rights.

The second part of that first factor requires the Court to consider the prejudice to the parties. The Court finds that both the Plaintiffs and the Defendants may be subject to multiple litigation if the other property owners are not joined. As the Plaintiffs have noted, there are other property owners who are not yet parties that may align with either side in this lawsuit. Although unlikely, even if the Plaintiffs prevail in avoiding a finding of abandonment, a property owner who agrees with the Defendants’ position regarding abandonment of the Declaration of Restrictions could file another declaratory action and name the Plaintiffs as parties in the lawsuit. Without their joinder, the Plaintiffs could not claim the ruling in this case is binding upon such a property owner. More likely, if Defendants prevail, any other property owner who is not a party to this suit could file the same action against the Defendants as is currently pending. The Defendants will not be able to claim their victory in this case is binding upon other property owners unless they are joined. The Court finds that facing multiple litigation on the same issue is prejudicial to all the parties.

There is certainly a reason most modern declarations of restrictions name an association as the appropriate party to bring an enforcement action on behalf of all property owners. While the failure of the Declaration of Conditions to designate one entity to bring an action on behalf of all property owners is not the fault of either side in this case, neither side should be prejudiced by facing multiple litigation due to the terms of the Declaration.

Next, the Court considers “the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided.” The Plaintiffs argue that the Court should require the Defendants to join other property owners to lessen or avoid the prejudice. Other than that, the Plaintiffs offer no other suggestions for the Court to lessen or avoid the prejudice. The Plaintiffs’ argument ignores the fact that this Court has previously ruled that it is Plaintiffs who brought this action and if costs are to be incurred to get to a final resolution, it is Plaintiffs who will incur those costs initially. The Plaintiffs are reminded that, if they prevail, they can request a judgment

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Page Four  
August 22, 2008

against the Defendants for those costs at the conclusion of the case. Absent any other suggestion, the Court can think of no protective provision, terms of relief or other measures to lessen or avoid the prejudice when the issue sought to be resolved is the complete abandonment of the Declaration of Conditions.

Next, the Court considers “whether a judgment rendered in the person's absence will be adequate.” Although the Plaintiffs argue that a judgment from this Court would be adequate as between the parties, the Court does not agree. Certainly, if the Plaintiffs prevail they will consider an order from this Court prohibiting the Defendants from growing trees on their property to be adequate. However, the word adequate means more than that. If this were a case in which only a monetary judgment was sought, the Court might agree that a resolution of the matter between only these parties would be adequate even if other parties could claim monetary damages against either party for similar conduct. However, as noted by the Court of Appeals, the resolution of this case impacts the property rights of everyone covered by the Declaration of Conditions. Under those circumstances, “adequate” takes on a broader meaning. The resolution of this case will not resolve the broader question of whether the Declaration of Conditions continues to apply to all property owners whose property is covered by them or whether a term or terms have been abandoned by the other property uses in the area covered. The Court finds that a judgment rendered in the absence of all property owners subject to the Declaration of Conditions would not be adequate.

Next, the Court considers “whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.” Although the Plaintiffs may not like the result, the fact is that upon a dismissal of this case for nonjoinder, the Plaintiffs will have the same remedy they have at this time. They can file an action that joins all property owners subject to the Declaration of Conditions and seek to enforce the terms against the Defendants. A dismissal of this case at this time due to the failure to join indispensable parties will not deprive the Plaintiffs of their right to seek relief in the appropriate way.

The Court finds based upon the factors set forth above that “in equity and good conscience the action . . . should be dismissed” since all property owners subject to the Declaration of Conditions are necessary and indispensable parties. The Plaintiffs have delayed this matter long enough. However, the Court will give the Plaintiffs one final chance to comply with the Court’s orders for joinder.

**IT IS ORDERED** that in the event the Plaintiffs do not take substantial steps to join all necessary and indispensable parties within the next **ninety (90) days**, this matter will be dismissed.

cc: David K. Wilhelmsen/Marguerite Kirk – Favour Moore & Wilhelmsen, P.O. Box 1391,  
Prescott, AZ 86302  
Jeffrey Adams – Adams & Mull, P.O. Box 1031, Prescott, AZ 86302

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

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p style="text-align: right;">Defendant.</p>	<p>Case No. P1300CV20030399</p> <p><b>NOTICE</b></p>	<p style="text-align: center;"><b>FILED</b></p> <p>DATE: <u>    JUN 17 2010    </u> <u>    3    </u> O'Clock <u>    p    </u> .M.</p> <p style="text-align: center;">JEANNE HICKS, CLERK</p> <p>BY: <u>    SHEETAL PATEL    </u> Deputy</p>
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<p><b>HONORABLE DAVID L. MACKEY</b></p> <p><b>DIVISION 1</b></p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: June 15, 2010</p>
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**THIS LAWSUIT MAY AFFECT YOUR COYOTE SPRINGS RANCH  
PROPERTY RIGHTS.**

You have been served as a party in this lawsuit based upon your interest in real property subject to the Declaration of Restrictions for Coyote Springs Ranch so that you can decide what action you wish to take regarding this pending lawsuit. A copy of the Declaration of Restrictions for Coyote Springs Ranch is attached to the Plaintiffs' First Amended Complaint that is being served upon you along with this Notice.

This lawsuit involves claims by the Plaintiffs that the Defendants are violating certain terms of the Declaration of Restrictions for Coyote Springs Ranch. The Defendants have denied the Plaintiffs' claims and are seeking an Order from this Court that certain terms of the Declaration of Restrictions for Coyote Springs Ranch have been abandoned and/or waived.

If you wish to obtain additional information regarding this case, you may access the Clerk of the Yavapai County Superior Court's high profile case website to review the file in this case at <http://apps.supremecourt.az.gov/docsyav/>.

**JUN 15 2010**

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In the event you chose to file a responsive pleading in this case you must do so within the time set forth in the Summons. The Court will determine from your response whether you should be joined with the Plaintiffs or Defendants.

In the event you chose to do nothing after being served with this lawsuit, you will be bound by the decisions of this Court regarding the validity of the Declaration of Restrictions for Coyote Springs Ranch.

Since you have been served with this lawsuit, you must comply with the Orders of this Court as follows:

**IT IS ORDERED** if you no longer own an interest in real property that is subject to the Declaration of Restrictions for Coyote Springs Ranch you should provide written notice to the Court and the other parties to this lawsuit that you no longer own an interest in the property and the notice shall include your Assessor's Parcel Number together with the name, address and phone number of the new owner as well as a copy of any documentation reflecting the change in ownership.

**IT IS ORDERED** in the event you sell or transfer your interest in the property while this case is pending you shall provide the purchaser or transferee with a copy of this Notice and the Plaintiffs' First Amended Complaint no later than the close of escrow or the date of transfer.

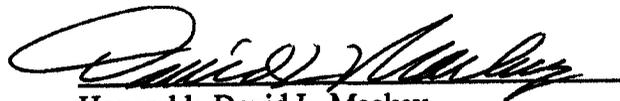
**IT IS ORDERED** in the event you sell or transfer your interest in the property you shall notify the Court in writing immediately and the notice shall include your Assessor's Parcel Number together with the name, address and phone number of the buyer or transferee.

**IT IS ORDERED** by June 30, 2010 or at the time of filing an initial pleading or motion with the Court, whichever is sooner, all parties and attorneys appearing in this case **SHALL** designate and maintain an e-mail address with the Clerk of the Court and the other parties. The e-mail address will be used to electronically distribute any document, including minute entries and other orders, rulings, and notices described in Rule 125, *Rules of the Supreme Court* by e-mail or electronic link in lieu of distribution of paper versions by regular mail. The e-mail address shall be designated on each document filed. In the event that a party's e-mail address changes, that change shall immediately be brought to the attention of the Clerk of Superior Court and included on subsequent filings and pleadings.

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**IT IS ORDERED** any party who declines to provide the Clerk of the Court and the other parties with an e-mail address **SHALL** be assessed the actual cost of mailing.

DATED THIS 15<sup>th</sup> DAY OF JUNE, 2010

  
Honorable David L. Mackey

cc: J. Jeffrey Coughlin – 114 S. Pleasant Street, Prescott, AZ 86303  
Jeffrey Adams – Adams & Mull, P.O. Box 1031, Prescott, AZ 86302

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

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p align="right">Plaintiff,</p> <p align="center">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p align="right">Defendant.</p>	<p>Case No. P1300CV20030399</p> <p><b>RULING</b></p>	<p align="center"><b>FILED</b></p> <p>DATE: <u>2/1/11</u> <u>10:44</u> O'Clock <u>A</u>.M. ✓</p> <p align="center">JEANNE HICKS, CLERK</p> <p>BY: <u>Karen Wilkes</u> Deputy</p>
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<p><b>HONORABLE DAVID L. MACKEY</b></p> <p><b>DIVISION 1</b></p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: January 26, 2011</p>
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The Court has considered the Plaintiffs' Motion For Permission To Serve Remaining Property Owners By Publication, the Response, the Joinder In Response and the Reply. The Court finds that the Plaintiffs have taken substantial steps to join all necessary and indispensable parties in a timely manner; however, after due diligence there still remains a number of parties to be served. The Plaintiffs claim that there are only seventeen (17) parties remaining unserved. The Court has reviewed the records of the Clerk of the Court and finds that there is no indication of service for the following twenty-five (25) parties and nineteen (19) parcels in which there are no property owners listed in the county records:

- Parcel No. 10301057E      Gordon and Becki Nash  
7901 N. Coyote Springs Rd. Prescott Valley, AZ 86315
- Parcel No. 10301057G      Kenneth and Katheryn Page Family Trust  
14810 N. 18th Pl. Phoenix, AZ 85022
- Parcel No. 10301058C      Eric and Coleen Davis  
P.O. Box 27947 Prescott Valley, AZ 86312
- Parcel No. 10301058D      Deborah Ann Curtis  
6070 Little Papoose Dr. Prescott Valley AZ 86314
- Parcel Nos. 10301058F  
10301058G      Jeffrey and Renita Donaldson  
2175 N. Concord Dr. #A Dewey, AZ 86327
- Parcel No. 10301061D      Jeffrey Carlson  
1451 W. Irving Pk Rd. #317 Itasca, IL 60143

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Page Two  
January 26, 2011

Parcel No. 10301073D	Michael A. Kelley Family Trust P.O. Box 26232 Prescott Valley, AZ 86312
Parcel No. 10301078C	Daniel and Ana M. Zepeda 8490 E. Spurr Prescott Valley, AZ 86314
Parcel No. 10301083A	Christopher Lefebvre 8250 E. Sparrow Hawk Rd Prescott Valley, AZ 86314
Parcel No. 10301086K	William E Brumbill Trust 8910 Morrow Dr Prescott Valley AZ 86314
Parcel No. 10301095J	Jayne Salazar 11826 Coyots Springs Road Prescott Valley, AZ 86315
Parcel No. 10301095K	Anglin Living Trust 11950 Coyote Springs Road Prescott Valley, AZ 86314
Parcel No. 10301116	Anthony B. Lee 8496 Coyote Spings Rd Prescott Valley, AZ 86315
Parcel No. 10301129A	Francis M. Moyer 6 Meadow Green Ct Johnson City, TN 37601
Parcel No. 10301130E	Robert and Therese Taylor/Thomason-Taylor Restated Trust 1987 Havens End Prescott, AZ 86305
Parcel No. 10301133E	Art and Debra G. Gustafson 9975 N. Coyote Springs Rd Prescott Valley, AZ 86315
Parcel No. 40101005Z	Wiley and Kathleen Williams 9575 E. Turtle Rock Prescott Valley, AZ 86315
Parcel No. 40101011M	Gilstrap Family Trust 9300 E. Mountain View Road Prescott Valley, AZ 86315
Parcel No. 40101026C	Kenneth and Kartheryn Page 14810 N. 18th Place Phoenix, AZ 85022
Parcel No. 40101028C	Jerry and Paulette Getz P.O. Box 25567 Prescott Valley, AZ 86312

Cundiff v. Cox  
P1300CV20030399  
Page Three  
January 26, 2011

Parcel No. 40101037B	Timothy and Virginia Kilduff 9315 E. Spurr Lane Prescott Valley, AZ 86315
Parcel No. 40101041C	Joyce E. Ridgway 4060 Salt Creek Road Templeton, CA 93456
Parcel No. 40101043	Todd and Barbara Bloomfield 9010 E. Plum Creek Way Prescott Valley, AZ 86315
Parcel No. 40101097	Daniel and Cynthia Warta 9125 E. Pronghorn Lane Prescott Valley, AZ 86315
Parcel No. 40101167F	Ollinger Family Revocable Trust 14202 N 68th Pl Scottsdale AZ 85254
Parcel Nos.	No owner of record
10301061B	
10301068	
10301070H	
10301081J	
10301086A	
10301086D	
10301090F	
10301109	
10301113H	
10301114B	
10301123H	
10301138E	
10301142	
10301147	
10301193	
40101012F	
40101012T	
40101020	
40101034	

**IT IS ORDERED** Plaintiffs' Counsel shall arrange a meeting with Kelly Gregorio of the Clerk of the Court to review the service documents that have been filed and to attempt to reconcile any differences between the Court records and the Plaintiffs' records.

Cundiff v. Cox  
P1300CV20030399  
Page Four  
January 26, 2011

**IT IS ORDERED** the Plaintiffs are then **GRANTED** leave to serve by alternative service the remaining parties in the following manner:

1. Substitute service on all those with known addresses within the State pursuant to Rule 4.1(m), *Ariz. R. Civ. P.* by posting in plain view on the front door or, if gated, on the gate and mailing by first class mail to the address of record.
2. Pursuant to Rule 4.2(f), *Ariz. R. Civ. P.* for those parties whose known residence is outside the State by publishing and mailing first class mail to the person's place of residence.
3. Publishing pursuant to Rules 4.1(n) and 4.2(f), *Ariz. R. Civ. P.* for those parties whose residence is unknown and for all parcels that do not show an owner of record in the county records.

**IT IS ORDERED** the Plaintiffs are **GRANTED** an additional **ninety (90)** days from this date to accomplish the alternative service and to file proof of such service with the Court.

The Court has considered Linda J. Hahn's Request For Joinder As a Plaintiff In This Action and there has been no response.

**IT IS ORDERED** Linda J. Hahn's Request For Joinder As a Plaintiff In This Action is **GRANTED** and Linda J. Hahn is joined as a party Plaintiff in these proceedings.

**IT IS FURTHER ORDERED** the caption in this case shall not be amended until the Court has determined the party status of all joined parties.

The Court has signed an Order Re Motion To Withdraw As Counsel of Record With Consent for Ms. Hahn's Counsel. However, the Court notes that Ms. Hahn's ownership of the property that is the subject of this action is through the Linda J. Hahn Revocable Living Trust. Although individual property owners can represent themselves, an individual cannot represent the interest of a trust before the Superior Court. See *Boydston v. Strole Development Company*, 193 Ariz. 47, 969 P.2d 653 (1998) and *Byers-Watts v. Parker*, 199 Ariz. 466, 18 P.3d 1265 (App. 2001).

**IT IS ORDERED** Linda J. Hahn is granted **thirty (30)** days to clarify on the record whether she owns an interest in the property that is the subject of this action individually or through a trust, and, if her ownership is through a trust, she is given an additional **sixty (60)** days to obtain the services of a licensed Arizona attorney to represent her in these proceedings.

**IT IS FURTHER ORDERED** Linda J. Hahn shall provide the Clerk of the Court with an email address within **thirty (30)** days of this date.

Cundiff v. Cox  
P1300CV20030399  
Page Five  
January 26, 2011

The Court has been provided letters to the Clerk of the Court from property owners regarding their preference in this case. The letters are attached to this Ruling and are from the following property owners:

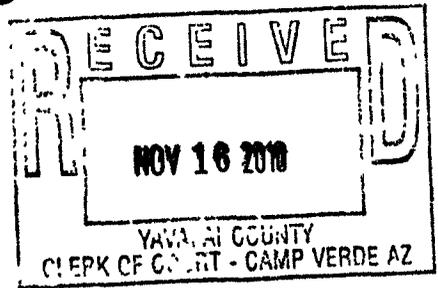
Parcel No. 10301090H	Jesus Manjarres
Parcel No. 10301058H	Nicholas Corea
Parcel No. 10301063F	Jack and Dolores Richardson
Parcel No. 40101016	Eric Cleveland
Parcel No. 10301055B	Joyce Hattab
Parcel No. 10301123K	Robert and Patricia Janis

Those parties are advised that their letters are not in proper form and do not constitute responsive pleadings. Therefore, they may be subject to orders being entered without their further participation if they do not file an appropriate responsive pleading.

The Court has considered the Motion To Withdraw filed by Jeffrey R. Adams on December 17, 2010. However, the motion is less than clear as to which parties his motion applies. He first refers to only Defendants Garry and Sabra Feddema, but also lists thirteen other Defendants. The Order also refers to numerous other Defendants. The motion should be clear and the Order should clearly set forth the name, address, phone number, email address and parcel number for each Defendant covered by the motion.

**IT IS ORDERED** the Motion To Withdraw filed by Jeffrey R. Adams on December 17, 2010 is **DENIED** without prejudice to renew upon compliance with this Court's directive set forth above.

cc: J. Jeffrey Coughlin – 114 S. Pleasant Street, Prescott, AZ 86303  
Jeffrey Adams – The Adams Law Firm, P.O. Box 2522, Prescott, AZ 86302  
Christopher D. Lonn/David B. Goldstein – Hymson, Goldstein & Pantiliat,  
14646 N. Kierland Blvd., Suite 255, Scottsdale, AZ 85254  
David K. Wilhelmsen/Marguerite Kirk – Favour Moore & Wilhelmseon, P.O. Box 1391,  
Prescott, AZ 86302  
William “Bill” Jensen – 2428 W. Coronado Avenue, Flagstaff, AZ  
Karen L. Wargo/Michael P. Wargo – 9200 E. Spurr Lane, Prescott Valley, AZ 86315  
Christopher D. Lonn, Counsel for Linda J. Hahn  
Linda J. Hahn, 10367 W. Mohawk Lane, Peoria, AZ 85382  
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 #412, Los Alamos, NM 87544  
Eric Cleveland, 9605 E. Disway, Prescott Valley, AZ 86315  
Joyce Hattab, 3449 Lorilou Lane, Unit D, Las Vegas, NV 89121-3783  
Robert and Patricia Janis, 7685 N. Coyote Springs Rd., Prescott Valley, AZ 86315



CASE #: P1300 CV 20030399  
Plaintiff: JOHN B CUNDIFF  
Defendant: DONALD COX  
Judge: Hon DAVID L. MACKAY

TO: CLERK OF SUPERIOR COURT YAVAPAI COUNTY, STATE OF ARIZONA

I HAVE TRIED TO GET MORE HISTORY ON THIS CASE ON THE INTERNET. BUT IT SEEMS IMPOSSIBLE. REASON IS THAT I GOT THIS NOTICE FROM PLAINTIFF LAWYERS, I DID SIGN ACCEPTANCE OF NOTICE, BUT I ALSO ASK HIM HOW CAN I CHOOSE TO BE IN FAVOR OR AGAINST IT, SO HIS ANSWER WAS, YOU CAN GET A FIRM ~~OUT~~ ON THE WEB, AND MAIL IT, WELL I WAS NEVER ABLE TO GET ONE. ANYHOW I AM IN FAVOR OF ANY CHANGES THE DEFENDANT WANTS TO HAVE ON THE OLD ~~FOR~~ DECLARATIONS OF RESTRICTIONS AND THE COVENANTS. ALSO I DO NOT HAVE OR OWN A COMPUTER FOR ANY "E" MAIL OK.

THANKS  
JESUS MANJARREZ

MY PARCEL # ON COYOTE SPRINGS IS 103-01-09CH-9

11-10-2010  
PHONE# 562 201 2358

P1300CV200399

TO WHOM IT MY CONCERN:

We would like to see

the CCR's followed.

However BUSINESSES

WITHIN THE HOUSE SHOULD

BE ALLOWED!

NICHOLAS CORREA

7/30/10

APN: 10301058H

AUG

2

29 July 2010

Superior Court, State of Arizona  
Division 1, Room 302  
120 South Cortez Street  
Prescott, AZ 86303

Case No. P1300CV20030399

Re: Coyote Springs Suit on Declaration of Restrictions

Honorable Judge Mackey:

Thank you for asking for the opinion of other property owners in the Coyote Springs area regarding this issue.

Both my wife and I are adamantly opposed to lifting the Declaration of Restrictions regarding the allowance of commercial enterprises, outdoor bath room facilities and maintenance of more than one single family residence on any Coyote Springs property.

Sincerely,



Jack Richardson

Owners of: 8110 Coyote Springs Road  
Prescott Valley, AZ 86315

Dolores Richardson

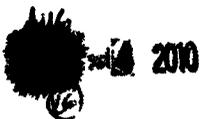


APN:

103-01-063F

DIV. 1

AUG 04 2010



29 July 2010

Superior Court, State of Arizona  
Division 1, Room 302  
120 South Cortez Street  
Prescott, AZ 86303

Case No. P1300CV20030399

Re: Coyote Springs Suit on Declaration of Restrictions

Honorable Judge Mackey:

Thank you for asking for the opinion of other property owners in the Coyote Springs area regarding this issue.

Both my wife and I are adamantly opposed to lifting the Declaration of Restrictions regarding the allowance of commercial enterprises, outdoor bath room facilities and maintenance of more than one single family residence on any Coyote Springs property.

Sincerely,



Jack Richardson

Owners of: 8110 Coyote Springs Road  
Prescott Valley, AZ 86315

Dolores Richardson



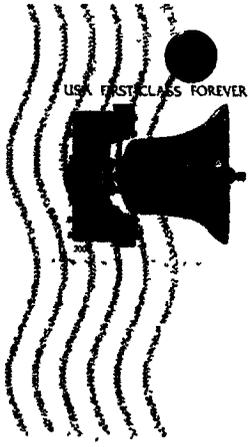
**DIV. 1**  
AUG 02 2010



Dody Richardson  
505 Oppenheimer Dr. #412  
Los Alamos, NM 87544

ALBUQUERQUE NM 871

30 JUL 2010 PM 3 L



Superior Court, State of Arizona  
Division 1, Room 302  
120 South Cortez Street  
Prescott, AZ 86303

86303+4704



To PRESCOTT SUPERIOR COURT 7-26-10

RE: CASE NO. P1300 CV 20030399

I AM A PROPERTY OWNER AT  
"COYOTE SPRINGS RANCH".

UPON PURCHASE OF THIS REAL  
PROPERTY, I HAVE SIGNED  
AND STILL AGREE AND APPROVE  
OF THE "DECLARATION OF RESTRICTIONS  
FOR COYOTE SPRINGS RANCH".

I HOPE THIS STATEMENT CLARIFIES  
MY POSITION IN THIS CASE.

SINCERELY

*Eric Cleveland*

ERIC CLEVELAND  
9605 E DISWAY  
PRESCOTT VALLEY, AZ.  
86314

DIV. 1  
AUG 03 2010

E-MAIL = FASTCHINO@  
PEOPLEPC.COM

ERIC CLEVELAND  
9605 E DISWAY  
PRESCOTT VALLEY  
ARIZONA 86314

PHOENIX AZ 852  
27 JUL 2010 PM 11 T



PRESCOTT SUPERIOR COURT  
120 S. CORTEZ  
PRESCOTT, AZ.

86303

RECEIVED JUL 28

CASE NO. P1300CV20030399

86303+9797



3449 Lorilou Lane, Unit "D"  
Las Vegas, NV 89121-3783  
July 31, 2010 Sat.

✓ Clerk of the Superior Court  
120 S. Cortez  
Prescott, AZ 86303

RE: CASE NO. P1300CV20030399

Please be advised that in subject case, I vote  
RESTRICTIONS be changed, such changes to be legal,  
and with the health and safety of the residents of  
Coyote Springs Ranch in mind. I believe there  
could be opp ortunities opened, that could help  
alleviate these difficult economical times in our  
Nation.

By "legal", I mean that the residents in this com-  
munity must abide to the laws of this Nation.

Respectfully submitted,

  
\_\_\_\_\_  
Mrs. Joyce Hattab

Enc: Cover Page of Subject Case for ID.  
Copy of letter to Atty. J. Jeffrey Coughlin

1 J. Jeffrey Coughlin (013801)  
2 J. JEFFREY COUGHLIN PLLC  
3 114 S. Pleasant Street  
4 Prescott, Arizona 86303  
5 Telephone: (928) 445-7137  
6 Facsimile: (866) 890-8989  
7 j.coughlin@azbar.org  
8 Attorney for Plaintiffs

R: 7/27/10 Tues

9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
10 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  
16 Page and Catherine Page Trust,

17 Plaintiffs,

18 vs.

19 DONALD COX and CATHERINE COX,  
20 husband and wife,

21 Defendants.

CASE NO. P1300CV20030399

**SUMMONS**

22 **THE STATE OF ARIZONA TO:**  
23 **ALL PROPERTY OWNERS AT COYOTE SPRINGS RANCH, PHASE I**

24 YOU ARE HEREBY SUMMONED and required to appear and defend in the above  
25 entitled cause and Court: (1) within TWENTY DAYS exclusive of the day of service, after  
service of this Summons upon you is completed, if served by delivery of a copy of the Summons  
and Complaint within the State of Arizona by a person authorized so to do; or (2) within  
THIRTY DAYS exclusive of the day of service, after service of this Summons upon you is  
completed, if served by delivery of a copy of the Summons and Complaint outside the State of  
Arizona by a person authorized so to do, or if served by registered or certified mail, or if served  
by publication in a newspaper.

3449 Lorilou Lane, Unit "D"  
Las Vegas, NV 89121-3783  
July 31, 2010 Sat.

J. Jeffrey Coughlin  
J. Jeffrey Coughlin PLLC  
114 S. Pleasant Street  
Prescott, AZ 86303

RE: CASE NO. PL300CV20030399

Dear Atty. Coughlin,

Thank you for clearing up what is needed of me in  
this case in our phone conversation of July 28th.

This letter is to confirm that my presence is not  
required, and that I may vote in this matter.

Enclosed, is a copy of my letter to the Clerk of  
the Superior Court for your information.

Thank you,

  
Mrs. Joyce Hattab

Enc: Copy of my letter to The Clerk of the Superior Court.

Mrs. Joyce Hattab

3449 Lorlou Lane, Unit "B"  
Las Vegas, NV 89121-3783

7/31 Sat.

7/31 10:10 AM '81



USA FIRST-CLASS FOREVER

RECEIVED AIR MAIL 7/31 10:10 AM '81

Clerk of the Superior Court

120 S. Cortez

Prescott, AZ 86303

*Handwritten signature*

BOB + PAT JANIS  
E-MAIL ADDRESS  
TWILIGHT - RANCH  
@ COMMSPEED.NET

J. JEFFREY COUGHLIN PLLC

114 SOUTH PLEASANT STREET  
PRESCOTT, ARIZONA 86303

CASE NO. CV 2003-0399  
DIVISION 3

July 22, 2010

CASE NO. P1300CV20030399  
SUMMONS

To All Property Owners at Coyote Springs Ranch, Phase I

Dear Property Owners:

Enclosed are copies of the following documents:

- 1. Summons
- 2. Acceptance of Service
- 3. Notice
- 4. Plaintiffs' First Amended Complaint with Declaration of Restrictions attached.

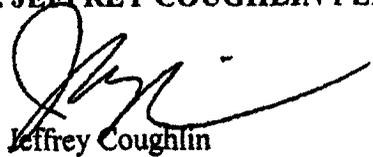
You are being served with copies of these documents because a lawsuit has been filed that may affect your property rights at Coyote Springs Ranch. Superior Court Judge David L. Mackey has issued the enclosed Notice which explains options and requirements.

Judge Mackey has given us permission to serve these documents upon you by mail, if you are willing to accept them. In accordance with the Judge's directions, one of the enclosed documents is an Acceptance of Service form. Please sign the Acceptance of Service and return that document only to me in the enclosed self-addressed, stamped envelope at your earliest convenience.

If you choose not to sign the Acceptance of Service form, you will be served with these documents by either certified mail or by a process server.

Sincerely,

J. JEFFREY COUGHLIN PLLC



J. Jeffrey Coughlin

JJC:cp

Enclosures

AUG-2,-2010

Superior Court of Garapa County  
Case no. CV 2003-0399

In the spring of 1994 my wife and I bought land in Coyote Springs. We had a contractor build our place. We moved to Coyote Springs in September of 1994.

When we bought our land we were told there was a road committee for Coyote Springs and there was C.C. & R.S. The road was not much more than a cow path. We were informed that the people that owned the land of Lonsome valley, better known as Coyote Springs sub divided the land and sold 7+10 acre plots. They wrote up the C.C. & R.S. I understand they put in a road, but it only held up for a short time.

When we first moved here I met a man that turned out to be a close friend. He asked for a donation to maintain the dirt road. My wife & I did.

About a year after we lived here we saw smoke coming from the north of us about two blocks. A house was on fire. By the time the fire truck showed up the home was lost. The road was so bad the fire truck had trouble coming in.

After several year's the County worked out a deal with us, but we had to have 51% of people in Coyote Springs to agree to pay for the road. Well then came the road. All of the people of Coyote Springs road payed for the road.

When the survey team + engineer's of the road were laying out the intersection on the north side

FROM  
BOB + PAT  
JANIS  
COYOTE SPRINGS  
ROAD.

of our property at the corner. They were planning to make an entrance to our side which is on the east side of Coyote Springs road. I informed them that was not a road, but was a cattle easment. I was informed that it was a road. Every forty acres on our side of the road according to the C.C. + R<sup>s</sup> is for cattle easment. We and our neighbor on the north side of us gave up 20 FT of our land for cattle easment. Our land survey marker is in the middle of that 40 FT. I went with my wife to the County building on Fair street. They showed me the plat of survey ~~going~~. The survey showed that it was a road.

Behind our property is B.L.M. land, and we found out that a road is on the plat survey going from north to south. Our cattle easment ties into it. The point is the County paid no attention to our C.C. + R<sup>s</sup> of Coyote Springs. Check on it. You will see that it is true. They stole our land.

About seven years back a tree nursery came into Coyote Springs. A couple blocks south of us. The C.C. + R<sup>s</sup> don't allow a Business in Coyote Springs. The county didn't care, and let them come in. My wife + I didn't think it was a good idea because of the water consumption on this big operation. If the wells of the neighbors went dry the county didn't care. When my wife + I moved here we saw there was.

a 50 acre race horse track just inside Coyote Springs. Its a big operation, and they have employees. The C.C. & R's dont allow it, but its their. This is just some of the business in Coyote Springs. Across the street from us is a 30 acre horse rescue ranch. They have employ working for them. When the wind blows hard in our direction the dust blows big time in our direction. There are no weeds or grass to hold the dirt down. That is not exactly Twilight eather.

Talking to people in Coyote Springs, I dont believ there ever was and appointed group of people to deal with C.C. & R's.

My wife and I moved here to retire. We dont real want to make waves with our neighbors.

My wife and I dont run a business on our property. We dont have outdoor toilets.

We are a single family residence. We have never run any kind of business from our home in Coyote Springs.

Our friends + neighbors did not receive this paper work or summons. This notice was supposed to go out to all property owners in Coyote Springs, according to law office of Jeffrey Coughlin PLLC

**Twilight Ranch**  
Robert & Patricia Jomis  
7685 N. Coyote Springs Rd.  
Prescott Valley, AZ 86314



7010 1060 0001 8729 7267



1000



86303

PRESCOTT VALLEY, AZ

86314  
AUG 02 10  
AMOUNT

**\$5.54**  
00076745-04

*Maricopa County Superior Court  
1205 Cortez Street Prescott AZ  
86303*

RECEIVED AUG - 2 2010

*ATTY CASE No. CV 2003-0399*

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2011 APR 18 PM 4:37

JEANNE HICKS, CLERK

BY: S. KELBAUGH

1 J. Jeffrey Coughlin (013801)  
2 **J. JEFFREY COUGHLIN PLLC**  
3 114 S. Pleasant Street  
4 Prescott, Arizona 86303  
5 Telephone: (928) 445-7137  
6 Facsimile: (866) 890-8989  
7 [j.coughlin@azbar.org](mailto:j.coughlin@azbar.org)  
8 Attorney for Plaintiffs

9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
10 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  
16 Page and Catherine Page Trust,

17 Plaintiffs,

18 vs.

19 DONALD COX and CATHERINE COX,  
20 husband and wife,

21 Defendants.

CASE NO. P1300CV20030399

**NOTICE OF COMPLIANCE  
WITH JUNE 17, 2010 NOTICE  
RE: SERVICE OF PROPERTY  
OWNERS**

22 Plaintiffs, by and through their attorney undersigned, hereby file this Notice of  
23 Compliance with this Court's Notice re: Service of Property Owners (filed June 17, 2010).

24 On or about July 22, 2010, Plaintiffs' counsel mailed the Summons, Notice, Plaintiff's  
25 First Amended Complaint with Declaration of Restrictions attached, and an Acceptance of  
26 Service to all known property owners in Coyotes Springs Ranch, Phase I. In the weeks  
27 following the mailing many property owners returned the Acceptance of Service and Plaintiffs'  
28 counsel filed them with this Court.

29 On or about September 10, 2010, certified letters containing the Summons, Notice and  
30 Plaintiff's First Amended Complaint with Declaration of Restrictions attached were mailed to the  
31 property owners who had not yet returned the Acceptance of Service. The receipts from the

1 property owners who accepted service by certified mail were returned to counsel for Plaintiffs,  
2 and then filed with this Court along with Affidavits of Service.

3 On or about September 29, 2011, additional property owners were identified and packets  
4 containing the Summons, Notice, Plaintiffs' First Amended Complaint with Declaration of  
5 Restrictions attached, and an Acceptance of Service were mailed to the newly identified property  
6 owners. All of the Acceptances of Service from the newly identified property owners were  
7 returned to Plaintiffs' counsel and were filed with this Court when received.

8 On or about November 10, 2010, Plaintiffs' counsel delivered the Summons, Notice, and  
9 Plaintiffs' First Amended Complaint with Declaration of Restrictions attached to Palmer  
10 Investigative Services requesting that the remaining property owners be personally served with  
11 the required documents. After personal service, Affidavits of Process Server were filed with this  
12 Court.

13 On February 1, 2011, this Court found that Plaintiffs had taken substantial steps to join  
14 all necessary and indispensable parties in a timely manner, but that there still remained a number  
15 of parties to be served. As a result of there being a discrepancy between the property owners  
16 Plaintiffs claimed remained unserved and those which the Clerk's office had determined were  
17 still unserved, this Court ordered Plaintiffs' counsel to meet with Kelly Gregorio of the Clerk of  
18 the Court to reconcile the differences. Counsel for the Plaintiffs did meet with Kelly Gregorio,  
19 reconciled the differences and filed Plaintiffs' Notice of Filing Third Revision of Property  
20 Owners List on March 7, 2011. In its February 1, 2011 ruling, this Court granted Plaintiffs leave  
21 to serve the remaining property owners by alternative service. The following property owners  
22 were served by posting the Summons, Notice, and Plaintiffs' First Amended Complaint with  
23 Declarations of Restrictions attached, on the property owner's door, or if gated, on the gate:

24 1. 10301058C Bruce & Teri Morgan  
25 8520 E Lonesome Valley Road  
Prescott Valley, AZ 86315

- 1           2. 10301073D       Michael A. Kelley Family Trust  
2                           P.O. Box 26232  
3                           Prescott Valley, AZ 86312
- 4           3. 10301078C       Daniel and Ana Zepeda  
5                           8490 E. Spurr  
6                           Prescott Valley, AZ 86314
- 7           4. 10301083A       Christopher Lefebvre  
8                           8250 E. Sparrow Hawk Rd  
9                           Prescott Valley, AZ 86314
- 10          5. 10301086K       William E. Brumbill Trust  
11                          8910 Morrow Drive  
12                          Prescott Valley, Arizona 86314
- 13          6. 10301095J       Jayme Salazar  
14                          11826 Coyots Springs Road  
15                          Prescott Valley, AZ 86315
- 16          7. 10301095K       Anglin Living Trust  
17                          11950 Coyote Springs Road  
18                          Prescott Valley, AZ 86314
- 19          8. 10301116        Anthony B. Lee  
20                          8496 Coyote Spings Rd  
21                          Prescott Valley, AZ 86315
- 22          9. 10301130E       Robert and Therese Taylor/Thomason-Taylor Restated Trust  
23                          1987 Havens End  
24                          Prescott, AZ 86305
- 25          10. 10301133E       Art and Debra G. Gustafson  
                          9975 N. Coyote Springs Rd  
                          Prescott Valley, AZ 86315
11. 40101005Z       Wiley and Kathleen Williams  
                          9575 E. Turtle Rock  
                          Prescott Valley, AZ 86315
12. 40101011M       Gilstrap Family Trust  
                          9300 E. Mountain View Road  
                          Prescott Valley, AZ 86315
13. 40101028C       Jerry and Paulette Getz

1 P.O. Box 25567  
2 Prescott Valley, AZ 86312

3 14. 40101037B Timothy and Virginia Kilduff  
4 9315 E. Spurr Lane  
5 Prescott Valley, AZ 86315

6 15. 40101043 Todd and Barbara Bloomfield  
7 9010 E. Plum Creek Way  
8 Prescott Valley, AZ 86315

9 17. 40101134E Leon F. Cardini  
10 275 S. 4th Street  
11 Camp Verde, AZ 86322

12 Certificates of Service of Service of Process by Certified Process Server were filed with  
13 this Court.

14 On or about March 9, 2011 Plaintiffs' counsel transmitted the Summons to the Camp  
15 Verde Journal for publication. The Summons was published in the Camp Verde Journal on  
16 March 16, 23, 30 and April 6, 2011 to complete service on the following property owners:

17 1. 10301061D Jeffrey Carlson  
18 1451 W. Irving Pk Rd. #317  
19 Itasca, IL 60143

20 2. 10301129A Francis M. Moyer  
21 6 Meadow Green Ct  
22 Johnson City, TN 37601

23 3. 40101041C Joyce E. Ridgway  
24 4060 Salt Creek Road  
25 Templeton, CA 93456

1. 40101134K Nancy L. Reed  
2040 Balsam Drive  
Boulder, CO 80304

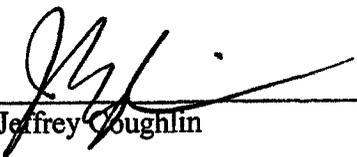
5. 40101134 Geoffrey McNabb and  
Kristen Moore  
7076 E. Encampment Dr  
Prescott Valley, AZ 86314

1 On April 12, 2011, counsel for Plaintiffs filed the Proof of Service by Publication  
2 regarding the above property owners.

3 For all of the reasons above, Plaintiffs give notice that they are in compliance with this  
4 Court's service requirements according to the Court's June 17, 2010 Notice and its February 1,  
5 2011 Ruling.

6  
7 DATED this 12<sup>th</sup> day of April, 2011.

8 J. JEFFREY COUGHLIN PLLC

9  
10  
11 By:   
J. Jeffrey Coughlin

12 COPY of the foregoing  
13 mailed this 18<sup>th</sup> day of  
April, 2011 to:

14 Jeffrey R. Adams  
15 THE ADAMS LAW FIRM PLLC  
16 125 Grove Avenue  
17 P.O. Box 2522  
18 Prescott, AZ 86302

19 Attorney for Defendants listed in Answer to  
20 First Amended Complaint by Joined Property Owner Defendants  
21 Dated September 22, 2010

22 David K. Wilhelmsen  
23 Marguerite Kirk  
24 Favour Moore & Wilhelmsen, PLC  
25 P.O. Box 1391  
Prescott, AZ 86302  
Attorneys for James Verilek

Mark W. Drutz  
Sharon Sargent-Flack  
Musgrove, Drutz & Kack, P.C.  
1135 W. Ironwood Springs Road  
P.O. Box 2720  
Prescott, AZ 86302

1 William "Bill" Jensen  
2 2428 West Coronado Ave.  
3 Flagstaff, AZ 86001  
4 Pro Per

5 Hans Clugston  
6 HANS CLUGSTON, PLLC  
7 1042 Willow Creek Road  
8 Suite A101-PMB 502  
9 Prescott, AZ 86301  
10 Attorney for Margaret Kizlowski and Northern  
11 Arizona Fiduciaries, Inc.

12 Karen L. Wargo  
13 Michael P. Wargo  
14 9200 E. Spurr Lane  
15 Prescott Valley, AZ 86315

16 Linda J. Hahn  
17 10367 W. Mohawk Lane  
18 Peoria, AZ 85382

19 Noel J. Hebets  
20 NOEL J. HEBETS, PLC  
21 127 East 14<sup>th</sup> Street  
22 Tempe, AZ 85281  
23 Attorney for William M. Grace

24  
25  
By: C. Padilla