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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2012 AUG 29 PM 1:28

SANDRA K. BARKHAM, CLERK
BY: J. Ericson

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

11 **IN AND FOR THE COUNTY OF YAVAPAI**

12 JOHN B. CUNDIFF and BARBARA C.
13 CUNDIFF, husband and wife; BECKY
14 NASH, a married woman dealing with her
15 separate property; KENNETH PAGE and
16 KATHRYN PAGE, as Trustee of the Kenneth
17 Page and Catherine Page Trust,

18 Plaintiffs,

19 v.

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

22 Defendants.

Case No. CV 2003-0399

Division No. 4

**RESPONSE TO REQUEST FOR
ENLARGEMENT OF TIME FOR
DISCLOSURE OF NON-EXPERT
WITNESSES**

(Assigned to the Honorable Kenton D. Jones)

23 Defendants DONALD COX and CATHERINE COX, et al., et ux., by and through
24 undersigned counsel, hereby respond to the request to enlarge the time for disclosure of non-expert
25 witnesses. In responding, we disagree with the contention that default of subdivision property
26 owners should, for any reason, be a basis for enlarging the time for disclosures. Candidly, the
27 default issue is a smoke screen that Ms. Kirk and Mr. Coughlin have used for quite some time to
28 justify their delays in their prosecution of this case. As Judge Mackey articulated in the Court's
June 15, 2010, Notice that was to be served on all subdivision property owners along with a

1 summons and a copy of the most recent version of Plaintiffs' Complaint, property owners' failure
2 to file a responsive pleading and their ultimate default would merely result in those property
3 owners being subject to the ultimate decision in this case. In this regard, the Notice states:
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5 In the event you choose to do nothing after being served with this
6 lawsuit, you will be bound by the decisions of this Court regarding
7 the validity of the Declaration of Restrictions for Coyote Springs
8 Ranch.

8 See June 15, 2010, Notice attached hereto as Exhibit "1". Accordingly, a default of any
9 subdivision property owners merely forces them to live with, and be subject to, all Orders of this
10 Court including the final determination on the merits of Plaintiffs' claims as well as Defendants'
11 defenses. Thus is not a typical situation where a default results in a judicial determination on the
12 merits of the case and such potential defaults should have absolutely no impact on the scheduled
13 deadlines in this case.
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15 More importantly, while it may be true that some subdivision property owners have chosen
16 to file nothing with the Court in response to the Plaintiffs' claims and thereby have conceded to
17 whatever ultimate outcome the Court arrives at in this case, that fact has no bearing on the parties'
18 ability to timely conduct and complete their pre-trial preparation including making timely
19 disclosures and conducting discovery.
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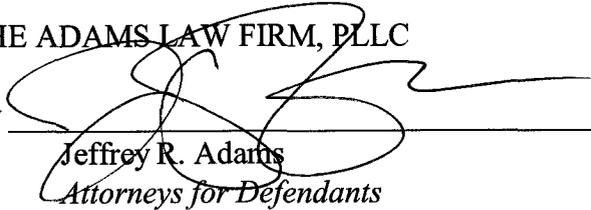
22 Notwithstanding the foregoing, these answering Defendants do not object to a very short
23 enlargement of time to disclose non-expert witnesses. However, Defendants' agreement in this
24 regard is subject to the condition that (i) Plaintiffs and any parties aligning themselves with
25 Plaintiffs stipulate that they will make no further requests for extensions of time and that the Court
26 Order that all remaining deadlines will remain in effect and that they will not request to vacate any
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1 other deadlines or the trial date; or (ii) that the Court enter an Order that no further enlargements
2 of time will be permitted.

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4 Not to sound like the proverbial broken record about the delay issue but we believe we
5 again need to put the length of time this case has been pending into perspective. During the nine
6 years this case has been before this Court, the following has occurred: (i) two Presidential
7 elections and five Olympic Games have come and gone and with a third Presidential election will
8 shortly come and go; (ii) our Country took out Saddam Hussein and Osama Bin Laden and their
9 brutal regimes and terrorist networks; (iii) we put a huge dent in global terrorism based out of
10 Afghansistan; and (iv) our Country has suffered through the worst real estate economy and
11 recession since the Great Depression. More importantly, Defendants Cox have been denied the
12 opportunity to develop and use their currently undeveloped ten acre parcel adjacent to the land on
13 which they currently operate their tree farm as a result of a stipulation entered nearly nine years
14 ago under the belief that this case would be resolved in something significantly less than nine
15 years. Accordingly, time now is of the essence and Defendants will agree to no delays or
16 enlargements of time that would give Plaintiffs any additional cause to request that the trial date
17 be vacated and which date took years to get.

21 RESPECTFULLY SUBMITTED this 29 day of August, 2012

22 THE ADAMS LAW FIRM, PLLC

23
24 By 
25 Jeffrey R. Adams
Attorneys for Defendants

26 COPY of the foregoing hand-delivered
27 this 29 day of August, 2012 to:

28 Honorable Kenton D. Jones
Yavapai County Superior Court
Division 4
Prescott, Arizona 86301

1 J. Jeffrey Coughlin, Esq.
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13 Attorneys for Property Owner James Varilek

14 COPY of the foregoing mailed
15 this 17th day of August, 2012, to:

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11 Trustees of the Robert Lee and Patti
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22 10980 N. Coyote Road
23 Prescott Valley, AZ 86315
24 pro se



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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>NOTICE</p>	<p style="text-align: center;">FILED</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>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</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/>.

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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 15th 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