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AUG 18 2004

JEANNE HICKS, Clerk
BY [Signature]

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7
8 Attorneys for Plaintiffs

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

11 **JOHN B. CUNDIFF and BARBARA C.)**
12 **CUNDIFF, husband and wife; BECKY NASH,)**
13 **a married woman dealing with her separate)**
14 **property; KENNETH PAGE and KATHRYN)**
15 **PAGE, as Trustee of the Kenneth Page and)**
16 **Kathryn Page Trust,)**
17 **Plaintiffs,)**
18 **vs.)**
19 **DONALD COX and CATHERINE COX,)**
20 **husband and wife,)**
21 **Defendants.)**

Case No. CV 2003-0399

Division 1 ✓

**PLAINTIFFS' RESPONSE
IN OPPOSITION
TO DEFENDANTS' REQUEST
FOR ORAL ARGUMENT
RE: ON-SITE INSPECTION
OF SUBJECT REAL PROPERTY**

16 Plaintiffs, John and Barbara Cundiff, Becky Nash, and Kenneth and Kathryn Page, by and
17 through undersigned counsel, hereby respond in opposition to Defendants Cox's request for oral
18 argument on Plaintiffs' request that the Court view the subdivision real property at issue in this case,
19 including Plaintiffs' and Defendants' property, as well as the surrounding area.

20 Plaintiffs' request that the Court view the property owned by Defendants Cox which is the
21 subject of litigation in this case, together with any other view of the subject sub-division that the Court
22 wished to undertake, was intended to assist the Court's understanding of the claims involved in this
23 litigation. Thus, Plaintiffs' map of the subdivision attached to their request carefully delineated *only*
24 the subdivision boundaries as well as the location of the parties' respective properties. Furthermore,
25 Plaintiffs specifically did not request that counsel for the parties be present with the Court for any on-
26 site inspection of the area.

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1 Plaintiffs' request for the Court's on-site inspection of the property was not intended to invite
2 an opportunity by Defendants Cox to argue their case to the Court in an inappropriate manner. Yet,
3 Defendants Cox have done precisely that. In their response to Plaintiffs' request for the Court to view
4 the subject real property, Defendants Cox attached a map of the subdivision replete with implicit
5 argument as to what other properties in the area were in violation of various provisions of the recorded
6 Declaration of Restrictions. Defendants Cox's map – with highlighted properties they contend are in
7 violation of the recorded covenants – presents unsubstantiated and uncorroborated argument.

8 Therefore, Plaintiffs respectfully request that the Court deny Defendants' request for oral
9 argument on the issue of the Court's inspection of the subject subdivision. The purpose of Plaintiffs'
10 request was to assist the Court by providing it with a visual overview of the subdivision, rather than
11 a mere dry record or still photographs depicting the area. The purpose of Plaintiffs' request was not
12 – as Defendants contend – a means of engaging the Court in the merits of the parties' arguments as
13 to what properties are or are not in violation of the recorded covenants and restrictions.

14 RESPECTFULLY SUBMITTED this 18th day of August, 2004.

15 FAVOUR, MOORE & WILHELMSSEN, P.A.

16
17
18 By Marguerite Kirk
19 David K. Wilhelmsen
20 Marguerite Kirk
Attorneys for Plaintiffs

21 ORIGINAL of the foregoing
22 filed this 18th day of August, 2004
with:

23 Clerk, Superior Court of Arizona
24 Yavapai County
Prescott, Arizona

25 A copy hand-delivered this 18th day
26 of August, 2004 to:

1 Honorable David L. Mackey
2 Division One
3 Superior Court of Arizona
4 Yavapai County
5 Prescott, Arizona

6 and, a copy mailed this 18th day
7 of August, 2004 to:

8 Jeffrey Adams
9 MUSGROVE, DRUTZ & KACK, P.C.
10 1135 Iron Springs Road
11 Prescott, Arizona 86302

12 By: Marguerite Kirk
13 Marguerite Kirk

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