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4 **MUSGROVE, DRUTZ & KACK, P.C.**
5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

8 Attorneys for Defendants

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; BECKY
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 v.

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

21 Defendants.

Case No. CV 2003-0399

Division No. 1

SUBPOENA DUCES TECUM

22 **THE STATE OF ARIZONA TO:**

ALFIE WARE
7850 East Florentine Road
Prescott Valley, Arizona 86314

23 **YOU ARE COMMANDED**, pursuant to the provisions of Rule 45, Arizona Rules of Civil
24 Procedure, to produce or permit inspection and copying of the designated books, documents or
25 tangible things described in this Subpoena:

26 APPEARANCE MADE BEFORE:

Certified Court Reporter

27 DATE AND TIME OF APPEARANCE:

August 22, 2005 at 9:00 a.m.
(NO APPEARANCE NECESSARY)

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PLACE OF APPEARANCE: Musgrove, Drutz & Kack, P.C.
1135 Iron Springs Road
Prescott, Arizona 86305

You are commanded to bring with you and produce these books, papers, documents or tangible things described below:

Any and all documentation, correspondence, books, records, cancelled checks, bank statements, hand-written notes, contracts or other written memoranda of any kind in your possession related, in any way, to an agreement with the Plaintiffs and/or Plaintiffs' attorneys (the law firm Favour, Moore & Wilhelmsen) for the payment of Plaintiffs' attorneys' fees and costs in connection with the above-captioned matter.

ANY FAILURE TO OBEY THIS SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED A CONTEMPT OF COURT, AND A CIVIL ARREST WARRANT MAY BE ISSUED.

*****THIS SUBPOENA DUCES TECUM MAY BE COMPLIED WITH BY MERELY HAND DELIVERING OR SENDING VIA CERTIFIED MAIL THE RECORDS TO MUSGROVE, DRUTZ & KACK, P.C., IN PRESCOTT, ARIZONA BY THE DATE INDICATED ABOVE. IF, HOWEVER, YOU CHOOSE TO APPEAR IN PERSON, PLEASE TELEPHONE OUR OFFICE TO CONFIRM.*****

Requests for reasonable accommodation for persons with disabilities must be made to the division assigned to the case by parties at least three judicial days in advance of a scheduled court proceeding.

You have been subpoenaed by Defendants whose attorney's name, address and telephone number is:

Mark W. Drutz, Esq.
Jeffrey R. Adams, Esq.
Sharon Sargent-Flack, Esq.
Musgrove, Drutz & Kack, P.C.
1135 Iron Springs Road
P.O. Box 2720
Prescott, Arizona 86302
(928) 445-5935

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See Rule 45(d)(1), Arizona Rules of Civil Procedure.

1 If this subpoena asks you to produce and permit inspection and copying of the designated
2 books, papers, documents, tangible things, or the inspection of the premises, you need not appear
3 to produce the items unless the subpoena states that you must appear for a deposition, hearing or
trial. See Rule 45(c)(2)(A), Arizona Rules of Civil Procedure.

4 YOUR RIGHT TO OBJECT

5 The party or attorney serving the subpoena has a duty to take reasonable steps to avoid
6 imposing an undue burden or expense on you. The Superior Court enforces this duty and may
7 impose sanctions upon the party or attorney serving the subpoena if this duty is breached. See Rule
45(c)(1), Arizona Rules of Civil Procedure.

8 You may object to this subpoena if you feel that you should not be required to respond to the
9 request(s) made. Any objection to this subpoena must be made within 14 days after it is served upon
10 you, or before the time specified for compliance, by providing a written objection to the party or
attorney serving the subpoena. See Rule 45(c)(2)(B), Arizona Rules of Civil Procedure.

11 If you object because you claim the information requested is privileged or subject to
12 protection as trial preparation material, you must express the objection clearly, and support each
13 objection with a description of the nature of this document, communication or item not produced so
14 that the demanding party can contest the claim. See Rule 45(d)(2), Arizona Rules of Civil
Procedure.

15 If you object to the subpoena in writing you do not need to comply with the subpoena until
16 a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an
17 order from the court to compel you to provide the documents or inspection requested, after providing
notice to you. See Rule 45(c)(2)(B), Arizona Rules of Civil Procedure.

18 If you are not a party to the litigation, or an officer of a party, the court will issue an order to
19 protect you from any significant expense result from the inspection and copying commanded. See
Rule 45(c)(2)(B), Arizona Rules of Civil Procedure.

20 You may also file a motion in the Superior Court of the county in which the case is pending
21 to quash or modify the subpoena if the subpoena:

22 (i) does not provide a reasonable time for compliance;

23 (ii) requires a non-party or officer of a party to travel to a county different from the county
24 where the person resides or does business in person; or to travel to a county different from where the
25 subpoena was served; or to travel to a place farther than 40 miles from the place of service; or to
26 travel to a place different from any other convenient place fixed by an order of a court, except that
a subpoena for you to appear and testify at trial can command you to travel from any place within
27 the state;

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(iii) requires the disclosure of privileged or protected information and no waiver or exception applies; or

(iv) subjects you to an undue burden. See Rule 45(c)(3)(A), Arizona Rules of Civil Procedure.

If this subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial trade information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial travel expense;

The court may either quash or modify the subpoena, or the court may order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that you will be reasonably compensated. See Rule 45(c)(3)(B), Arizona Rules of Civil Procedure.

YOU ARE NOTIFIED THAT ANY FAILURE TO OBEY THIS SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED A CONTEMPT OF THIS COURT, AND A CIVIL ARREST WARRANT MAY BE ISSUED. A CIVIL ARREST IS AN ORDER DIRECTING ANY POLICE OFFICER IN ARIZONA TO ARREST YOU AND BRING YOU BEFORE THIS COURT FOR FUTURE PROCEEDINGS.

SIGNED AND SEALED this date: 3.2

Clerk of the Superior Court
JEANNE HICKS

By 
Deputy Clerk