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FILED
SUPERIOR COURT METROPOLITAN DIVISION
COUNTY OF KERN

AUG - 6 2010

TEREY McNALLY, CLERK
BY _____ DEPUTY

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF KERN, METROPOLITAN DIVISION – UNLIMITED CIVIL**

12 DONALD PESTELL; HANNA PESTELL;
13 and PESTELL INTERNATIONAL MINING)
14 AND EXPLORATION, LTD., a Canadian)
15 Corporation,)

16 Plaintiffs,)

17 vs.)

18 AMERICAN CARRIAGE, INC.; MARK)
19 FECHNER; JOCELYN FECHNER; MARK)
20 AND JOCELYN FECHNER TRUST, and)
21 DOES 1-20, inclusive,)

22 Defendants.)

23 AMERICAN CARRIAGE, INC.; MARK)
24 FECHNER; JOCELYN FECHNER; MARK)
25 AND JOCELYN FECHNER TRUST,)

26 Cross-Complainants,)

27 vs.)

28 DONALD PESTELL; HANNA PESTELL;)
and PESTELL INTERNATIONAL MINING)
AND EXPLORATION, LTD, a Canadian)
company; and ROES 1-20, inclusive,)

Cross-Defendants.)

Case No.: S-1500-CV-264437 WDP

PROPOSED JUDGMENT

Honorable William D. Palmer

Trial Date: December 14, 2009

Time: 9:00 a.m.

Dept.: 15

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2 This cause came on regularly for trial on December 14, 2009, in Department 15 of the
3 above-entitled court, the Honorable William D. Palmer, Judge, presiding, sitting without a jury, a
4 jury having been duly waived. Plaintiffs appeared by their attorney Kassandra McQuillen.
5 Defendants appeared by their attorney Robert Brumfield, III of Kronick, Moskovitz, Tiedemann
6 & Girard. Evidence, both oral and documentary, having been presented by both parties, the cause
7 having been argued and submitted for decision, and the court, on request of defendants, having
8 caused to be made and filed herein its written statement of decision,
9

10 IT IS ORDERED, ADJUDGED, AND DECREED that
11

12 1. On the first cause of action for breach of contract judgment is entered in favor of Plaintiffs
13 Donald Pestell and Hanna Pestell in the amount of \$545,000 plus prejudgment interest at the
14 legal rate from April 1, 2008 in the amount of \$123,632.38, jointly and severally against
15 American Carriage, Inc., Mark Fechner, Jocelyn Fechner, and the Mark and Jocelyn Fechner
16 Family Trust.

17 2. On the second cause of action for the common count of money lent judgment is entered in
18 favor of Plaintiff Pestell International Mining & Exploration, Ltd. in the additional amount of
19 \$425,000 plus prejudgment interest at the legal rate from April 1, 2008 in the amount of
20 \$96,411.12, jointly and severally against American Carriage, Inc., Mark Fechner, Jocelyn
21 Fechner, and the Mark and Jocelyn Fechner Family Trust.

22 3. On the third cause of action for fraudulent misrepresentation, on both counts, plaintiffs shall
23 take nothing and judgment is entered in favor of defendants.

24 4. On the fourth cause of action for promise without intent to perform, plaintiffs shall take
25 nothing and judgment is entered in favor of defendants.

26 5. On the Cross-Complaint, cross-complainants shall take nothing and judgment is entered in
27 favor of cross-defendants.

28 6. The Court denies an award of attorney fees for any party.