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11 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

12 DANIEL K. O'CONNELL and VALERY A.  
13 O'CONNELL,

14 Plaintiffs,

15 v.

16 GLASTONBURY LANDOWNERS  
17 ASSOCIATION, INC. Board of Directors,

18 Defendants.

Cause No.: DV-2011-114  
Judge David Cybulski

**DEFENDANTS' BRIEF IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT**

19 COMES NOW Defendant Glastonbury Landowners Association, Inc. and submits this brief in  
20 support of its Motion for Summary Judgment.

21 **STATEMENT OF THE CASE**

22 Plaintiffs Daniel and Valery O'Connell (Plaintiffs) originally filed a complaint, petitions,  
23 affidavits, exhibits, and demands for temporary restraining orders throughout June and July of 2011.  
24 Upon a Motion to Dismiss by the GLA Board, this Court dismissed the complaint because it was  
25 confusing and unclear. On appeal, the Montana Supreme Court reversed and remanded to allow  
26 Plaintiffs to amend showing they are entitled to relief from the Glastonbury Landowners Association,  
27 Inc. (GLA). Plaintiffs have failed to do so.  
28

1 At the heart of this case is the dissatisfaction of two people in a community of hundreds.  
2 Plaintiffs want to run the GLA but their neighbors have repeatedly rejected them. As a result, Plaintiffs  
3 attempt to bend their neighbors to their will by continually filing lawsuits. At summary judgment oral  
4 arguments for two other lawsuits filed by Plaintiffs on June 5, 2013 (DV-12-164 and DV-12-220),  
5 Plaintiff Valery O'Connell stated:

6  
7 I have never, ever put something in litigation before warning them [the GLA] several times. The  
8 problem is they never listened to me, and they don't believe me, and they get it in their head that  
9 they're right. So, I think it's time that they realize that, you know, some of the things I say have  
10 to be right. I can't be wrong all the time....And it's a pity that we're here, again, and that I –  
every time they do something, I have to file a lawsuit, because the lawsuit I filed is too old to  
amend. (See page 14 of transcript attached as Exhibit E).

11 Despite Plaintiffs' baseless accusations, this case is not about fraud, abuse, or any other supposed  
12 wrongdoing by the GLA Board. This is case is about the Plaintiffs' wanting to tell their neighbors what  
13 to do, and their anger at being rejected for leadership roles in their community. There are no genuine  
14 issues of material fact and all of Plaintiffs' claims may be dismissed as a matter of law.

15  
16 **FACTUAL BACKGROUND**

17 The GLA is a nonprofit corporation formed for the mutual benefit of landowners within two  
18 developments self-named North and South Glastonbury in Emigrant, Montana in Park County,  
19 Montana. (See Affidavit of Alyssa Allen ¶ 2 attached hereto). The GLA has 396 membership interests  
20 with 334 unique owners in the two developments. The GLA is governed by its Articles of Incorporation  
21 (Exhibit A), the Bylaws of the Glastonbury Landowners Association, Inc. (Exhibit B), the Restated  
22 Declaration of Covenants for the Community of Glastonbury (Exhibit C), and the Land Use Master  
23 Plan. Parcels within the developments are primarily used as residences. (Aff. Allen at ¶ 2).

24  
25 The GLA Board consists of 12 volunteer directors, six each from North and South Glastonbury.  
26 Directors serve a two-year term, and six directors (three each from North and South Glastonbury) are  
27 elected every year (occasionally there are more vacancies if a director has left before the end of the  
28

1 term). (Aff. Allen at ¶ 3). The GLA, through its board, maintains the roads and common areas, collects  
2 assessments, approves building proposals, evaluates variance requests, enforces the restrictive  
3 covenants, and has a myriad of other tasks much like any landowners association. (Aff. Allen at ¶ 3).

4 Plaintiffs Daniel and Valery O'Connell reside in North Glastonbury. (Aff. Allen at ¶ 4).  
5 Plaintiffs have run for election in the GLA, and Daniel O'Connell was elected to the GLA Board in  
6 2009. (Aff. Allen at ¶ 4). The GLA members removed him from the Board in a special meeting on  
7 August 17, 2011. (Aff. Allen at ¶ 4). Since Daniel O'Connell was removed from the Board, both  
8 Plaintiffs have run for the GLA Board in 2011 and 2012 and have been defeated both times. (Aff. Allen  
9 at ¶ 4). In 2013, Valery O'Connell ran for the board and was defeated. Daniel O'Connell ran for  
10 ombudsman and was also defeated. (Aff. Allen at ¶ 4).  
11

12  
13 Plaintiffs have filed four lawsuits against the GLA since 2011 and threaten more. (Aff. Allen at ¶  
14 5). They complain these suits have cost the GLA over \$50,000 in legal fees but fail to acknowledge this  
15 is a result of Plaintiffs' own litigious behavior. Plaintiffs have threatened to continue to file lawsuits  
16 until the current GLA board resigns. (Aff. Allen at ¶ 5). The first lawsuit (which is the suit currently  
17 before the Court) was filed in 2011 and dismissed by this Court. The Plaintiffs appealed and while the  
18 Montana Supreme Court agreed that the Plaintiffs' complaint was incompressible they remanded this  
19 suit to allow the Plaintiffs to file an Amended Complaint.  
20

21 While the current suit was on appeal, the Plaintiffs filed another lawsuit in 2011 (DV-11-193)  
22 alleging the GLA was withholding documents from the Plaintiffs, and that the board was not following  
23 proper voting practices. That lawsuit was settled in a stipulated settlement agreement (attached as  
24 Exhibit D) where the GLA admitted no wrongdoing but agreed to provide documents to Plaintiffs as  
25 required by the Bylaws and state law and a membership list twice a year along with changing some  
26 voting procedures. The current lawsuit claims the GLA has breached this settlement agreement.  
27  
28

1 Two other lawsuits were filed by the Plaintiffs in 2012 and were decided in the GLA's favor by  
2 the District Court on summary judgment. The Plaintiffs' appealed; the Montana Supreme Court rejected  
3 their appeal and affirmed the District Court<sup>1</sup>.

4 Plaintiffs filed an Amended Complaint in the current lawsuit on March 4, 2013 (dated February  
5 31, 2013 [sic]) alleging numerous supposed breaches of duties by the GLA Board and asking the Court  
6 to step in and manage the affairs of the GLA. Specifically, Plaintiffs list 11 claims for relief:  
7

- 8 1) The GLA is barred by estoppel, laches, and/or waiver;
- 9 2) A reservation of rights to amend their Complaint;
- 10 3) A request for Declaratory Judgment;
- 11 4) A temporary restraining order under Mont. Code Ann. § 27-19-314 and removal of the GLA  
12 Board under Mont. Code Ann. §§ 35-2-423 and 35-8-1104; Plaintiffs also allege the GLA has breached  
13 a previous settlement agreement with Plaintiffs by not providing them with certain documents;
- 14 5) Discovery and an audit of GLA records with periodic audits regarding aggregate spending of  
15 GLA assessments;
- 16 6) A request for the Court to require the GLA to make meeting minutes, handouts, and agendas  
17 available via a website; give notice and allow comment periods before Board and committee votes; and  
18 bar the use of Roberts Rules of Order at Board meetings;
- 19 7) The reversal of findings from a variance review for Pete and Cyrese Erickson<sup>2</sup>;
- 20 8) Repayment of money spent on certain road maintenance and paid to Board members for  
21 services provided unrelated to their Board position;
- 22
- 23
- 24

25 \_\_\_\_\_  
26 <sup>1</sup> Published as a non-citable opinion as *O'Connell v. Glastonbury Landowner's Association, Inc.*, 2013 MT 359N. 373 Mont.  
442, 318 P.3d 174.

27 <sup>2</sup> This claim is duplicative of a claim already decided by Judge Gilbert in the GLA's favor and affirmed by the Montana  
Supreme Court. This Court appropriately dismissed this claim in its Order dated December 9, 2013 under the doctrine of *res*  
28 *judicata*. It is mentioned here for convenience of reference so the paragraph numbers here match the claims asserted in  
Plaintiffs' Amended Complaint.

1 9) Removal of the GLA Board for ten years for alleged breach of GLA governing documents  
2 and exceeding powers;

3 10) A request for fees, costs, nominal damages, and sanctions against the GLA Board payable to  
4 the GLA;

5 11) Further relief deemed just and proper by the Court. (See P.'s Am. Com. at 15-16 (Feb. 31,  
6 2013[sic])).

7  
8 Each of these claims fails as a matter of law, and Plaintiffs' Amended Complaint should be dismissed  
9 with prejudice.

10 **STANDARD**

11 Under well-established principles of Montana law, the party moving for summary judgment  
12 must demonstrate no genuine issues of material fact exist. Upon such demonstration, the burden shifts  
13 to the non-moving party to prove, by more than mere denial or speculation, a genuine issue of material  
14 fact exists. *Bruner v. Yellowstone Co.*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995). Generally, a  
15 court looks to the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits to  
16 determine whether a genuine issue of material fact exists. *Cate-Schweyen v. Cate*, 2000 MT 345, ¶ 14,  
17 303 Mont. 232, ¶ 14, 15 P.3d 467, ¶ 14. Evidence must be viewed in the light most favorable to the non-  
18 moving party. *Nelson v. Nelson*, 2005 MT 263, ¶ 15, 329 Mont. 85, 122 P.3d 1196. "Mere denial,  
19 speculation, or conclusory statements are insufficient to raise genuine issue of material fact." *Arnold v.*  
20 *Yellowstone Mountain Club, LLC*, 2004 MT 284, ¶ 15, 323 Mont. 295, ¶ 15, 100 P.3d 137, ¶ 15.  
21 Further, an "opposing party's facts must be material and of substantial nature, not fanciful, frivolous,  
22 gauzy, nor merely suspicions." *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1265  
23 (1997). Upon the determination that no genuine issues of material fact exist, a court must determine  
24  
25  
26  
27  
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1 whether the moving party is entitled to judgment as a matter of law. *Bruner*, 272 Mont. at 264, 900 P.2d  
2 at 903.

### 3 ARGUMENT

4 Plaintiffs' claims are without merit; they are simply the latest meritless claims in a long history  
5 of frivolous lawsuits designed to harass and cause monetary hardship on the GLA. Plaintiffs want the  
6 Court to manage the affairs of the GLA as Plaintiffs see fit. Plaintiffs have been unable to persuade their  
7 fellow GLA members to elect them to leadership positions and have instead resorted to these lawsuits to  
8 attempt to change the GLA, remove directors, and direct the affairs of the GLA. Each of Plaintiffs'  
9 claims fail as a matter of law.  
10

#### 11 1. Claims regarding estoppel, laches, and waiver are nonsensical and should be dismissed.

12 Plaintiffs claim the GLA is "barred by equitable doctrines or estoppel, laches, and/or waiver."  
13 (See P.'s Am. Com. at 15 (Feb. 31, 2013[sic])). These are not claims for relief. These are affirmative  
14 defenses under Mont. R. Civ. P. 8(c)(1) available to a defendant in a lawsuit. It is nonsensical for  
15 Plaintiffs use these as a basis for any claim against the GLA. This claim for relief should be dismissed  
16 as a matter of law.  
17  
18

#### 19 2. Plaintiffs' second claim for relief fails as a matter of law.

20 Plaintiffs' second claim for relief is simply a statement that they are reserving the right to amend  
21 their Complaint. (See P.'s Am. Com. at 15 (Feb. 31, 2013[sic])). This is not a claim for relief and does  
22 not bar the entry of summary judgment in favor of the GLA.  
23

#### 24 3. Plaintiffs' claim for Declaratory Judgment fails as a matter of law.

25 Plaintiffs' third claim for relief requests Declaratory Judgment in favor of Plaintiffs without  
26 stating what they seek Declaratory Judgment on. However, it is clear Plaintiffs' claims involve  
27 questions of validity or construction arising under the GLA governing documents. As such, Plaintiffs  
28

1 are requesting the Court deem their interpretations of the Bylaws, Covenants, and Master Plan correct.  
2 However, as addressed below, Plaintiffs are misinterpreting these documents or simply disagreeing with  
3 discretionary actions of the GLA Board.

4 But as a threshold issue, Plaintiffs have failed to bring a proper Declaratory Judgment action.

5 Mont. Code Ann. § 27-8-202 states:  
6

7 Any person interested under a deed, will, written contract, or other writings constituting a  
8 contract or whose rights, status, or other legal relations are affected by a statute, municipal  
9 ordinance, contract, or franchise may have determined any question of construction or validity  
arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of  
rights, status, or other legal relations thereunder.

10 Further, Mont. Code Ann. § 27-8-301 states:  
11

12 When declaratory relief is sought, all persons shall be made parties who have or claim any  
13 interest which would be affected by the declaration, and no declaration shall prejudice the rights  
of persons not parties to the proceeding.

14 Clearly, every member of the GLA is a party necessary to a declaratory judgment action seeking the  
15 Court's interpretation of the GLA's governing documents as Plaintiffs are seeking to change rights and  
16 interests of every GLA member under these documents. Thus, every member of the GLA is a party  
17 necessary to this action. *St. Paul Fire & Marine v. Cumiskey*, 204 Mont. 350, 358, 665 P.2d 223, 227  
18 (1983). Because Plaintiffs have failed to join the necessary parties, their claim under the Declaratory  
19 Judgment Act fails as a matter of law.  
20

21 **4. Plaintiffs' requests for removal of the board, allegations of breach of the settlement agreement,**  
22 **and arguments regarding document inspection fail.**

23 Plaintiffs request in their fourth claim for relief a temporary restraining order under Mont. Code  
24 Ann. § 27-19-314 against the GLA. They also request removal of the GLA Board under Mont. Code  
25 Ann. §§ 35-2-423 and 35-8-1104. Finally, Plaintiffs also allege the GLA has breached a previous  
26 settlement agreement with Plaintiffs by not providing them with GLA documents. None of these claims  
27 have merit and may be dismissed as a matter of law.  
28

1                   **a) Plaintiffs have no legal standing to remove the GLA board.**

2                   First, Plaintiffs have requested a restraining order under Mont. Code Ann. § 27-19-314 (which  
3 actually addresses temporary restraining orders). Other than this demand, Plaintiffs offer no other  
4 supporting information for this claim. They do not identify what behavior they want restrained, they  
5 have not asked for a hearing on a temporary restraining order despite filing this amended complaint over  
6 a year ago, nor have they explained what irreparable injury would result from a failure to grant a  
7 temporary restraining order. On its face, this demand fails as a matter of law.  
8

9                   Second, Plaintiffs seek removal of the GLA board under Mont. Code Ann. §§ 35-2-423 and 35-  
10 8-1104. As a threshold issue, these claims are procedurally defective and fail as a matter of law. Mont.  
11 Code Ann. § 35-2-423 allows for a judicial proceeding to remove a director of a nonprofit corporation  
12 in an action “commenced by the corporation, by its members holding at least 10% of the voting power  
13 of any class, or by the attorney general in the case of a public benefit corporation....” Plaintiffs cannot  
14 bring this action because they do not constitute 10% of the voting power of any class. Attached as  
15 Exhibit F is a current membership list. From this list, it is evident Plaintiffs’ one membership interest  
16 vote constitutes less than one percent of the total membership interest votes. Plaintiffs do not have  
17 statutory standing to bring this action, and it fails as a matter of law.  
18  
19

20                   Plaintiffs also cite Mont. Code Ann. § 35-8-1104 as grounds for removal of the GLA board as a  
21 “derivative action.” Again, this fails as a matter of law as that statute applies only to actions by  
22 members of limited liability companies. The GLA is a non-profit corporation and the statutes cited by  
23 Plaintiffs are inapplicable.  
24

25                   **b) The GLA has not breached a prior settlement agreement regarding document requests.**

26                   Plaintiffs also allege the GLA has breached a settlement agreement. The GLA and Plaintiffs  
27 settled a previous lawsuit by stipulated agreement. (See Agreement attached as Exhibit D). One the  
28



1 provisions states: "The GLA will provide O'Connells with all documents to which they are entitled  
2 pursuant to the Montana Non-Profit Corporation Act and GLA Bylaws upon request." One continual  
3 issue with Plaintiffs has been their frequent requests for GLA documents, the scope of the inspection,  
4 the purpose of the inspection, and refusal to pay for the reasonable costs of labor and material as  
5 allowed by Mont. Code Ann. § 35-2-908. Plaintiffs requested voluminous amounts of documents  
6 requiring a lot of work to compile and copy. Their requests are beyond the scope allowed, too vague,  
7 and fail to articulate a proper purpose for incessant requests.  
8

9 i) The terms of the Settlement Agreement

10 Ideally, the Settlement Agreement would have ended this issue as Plaintiffs agreed to request  
11 documents according to the Bylaws and Montana law. GLA Bylaws state: "The financial reports and  
12 Membership records of the Association shall be available at the principal office of the Association for  
13 inspection at reasonable times by any Member." (Bylaws Art. VI.B.13., Exhibit C at 6). GLA Bylaws  
14 require two items to be sent to members annually, a statement of receipts and expenditures for each  
15 fiscal year (Bylaws Art. VIII.H., Exhibit C at 13), and notices of annual and special meetings containing  
16 ballots and proxy forms. (Bylaws Art. V.D., Exhibit C at 3).  
17  
18

19 The Montana Nonprofit Corporation Act requires requests to inspect corporate records to be  
20 made in good faith and for a proper purpose. Mont. Code Ann. § 35-2-907(3)(a). Further, the member  
21 must describe "with reasonable particularity the purpose and the records the member desires to inspect"  
22 and the records must be directly connected with the purpose. Mont. Code Ann. § 35-2-907(3)(b) and (c).  
23 Finally, Mont. Code Ann. § 35-2-908(3) states: "The corporation may impose a reasonable charge,  
24 covering the costs of labor and material, for copies of documents provided to the member."  
25

26 Clearly the Settlement Agreement requires that both Plaintiffs and the GLA abide by the Bylaws  
27 and Montana law in regards to document requests. Plaintiffs may inspect GLA records at its principal  
28

1 office if their requests are made in good faith, for a proper purpose, specify the records to be inspected,  
2 and such records are connected to that purpose. They must also pay labor and materials for copies.  
3 Plaintiffs agreed to this in the Settlement Agreement, but now they allege the GLA Board has breached  
4 the Settlement Agreement by failing to provide documents free of charge or failing to provide  
5 documents beyond the scope of their inspection rights. Plaintiffs are not entitled to privileges above and  
6 beyond the rights of other members of the GLA. Plaintiffs provide no justification as to why they should  
7 receive special treatment.  
8

9 ii) The scope of Plaintiffs' inspection rights.

10 The Montana Nonprofit Corporation Act sets out the scope of a member's inspection rights of  
11 corporate records. While there are several cross-references, the main statute is Mont. Code Ann. § 35-2-  
12 907 which states:  
13

14 (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and  
15 copy, at a reasonable time and location specified by the corporation, any of the records of the  
16 corporation described in 35-2-906(5) if the member gives the corporation written notice or a  
17 written demand at least 5 business days before the date on which the member wishes to inspect  
18 and copy.

18 (2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and  
19 reasonable location specified by the corporation, any of the following records of the corporation  
20 if the member meets the requirements of subsection (3) and gives the corporation written notice  
21 at least 5 business days before the date on which the member wishes to inspect and copy:

- 22 (a) excerpts from any records required to be maintained under 35-2-906(1), to the extent not  
23 subject to inspection under subsection (1);
- 24 (b) accounting records of the corporation; and
- 25 (c) subject to 35-2-910, the membership list.

26 (3) A member may inspect and copy the records identified in subsection (2) only if:

- 27 (a) the member's demand is made in good faith and for a proper purpose;
- 28 (b) the member describes with reasonable particularity the purpose and the records the member  
desires to inspect; and
- (c) the records are directly connected with this purpose.

(4) This section does not affect:

- (a) the right of a member to inspect records under 35-2-535 or, if the member is in litigation with  
the corporation, to the same extent as any other litigant; or

1 (b) the power of a court, independent of this chapter, to compel the production of corporate  
2 records for examination.

3 The records a member is entitled to inspect under Montana law are the articles of incorporation, bylaws,  
4 minutes of meetings of members and records of actions approved by members for the past 3 years,  
5 financial statements showing assets and liabilities and results of operations, a list of names and  
6 addresses (home or business) of its current directors and officers, the most recent annual report to the  
7 secretary of state, and resolutions of the board of directors relating to the characteristics, qualifications,  
8 rights, limitations, and obligations of members. Mont. Code Ann. § 35-2-906(5). Additionally, a  
9 member may inspect minutes of all meetings of members, the board of directors, records of actions  
10 taken by members or directors without a meeting, and records of all actions taken by committees of the  
11 board of directors. Mont. Code Ann. § 35-2-906(1). Finally, a member may inspect accounting records  
12 of the corporation and a membership list<sup>3</sup>. Mont. Code Ann. § 35-2-907.

14 The GLA Bylaws state: "The financial reports and Membership records of the Association shall  
15 be available at the principal office of the Association for inspection at reasonable times by any  
16 Member." (Bylaws Art. VI.B.13., Exhibit C at 6). There is no definition for "financial report" or  
17 "Membership records" but those terms should be read in conjunction with the statutes above, and the  
18 GLA board has interpreted them to mean the records enumerated by the Montana Nonprofit Corporation  
19 Act. The board's interpretation is binding on the GLA because the board "has the power to interpret all  
20 the provisions of these Bylaws and such interpretation shall be binding on all persons." (Bylaws Art.  
21 XII.A., Ex. C at 16).

24 Therefore, Plaintiffs are not entitled to inspect or copy any documents beyond those enumerated  
25 above. However, Plaintiffs insist they are entitled to any records the board members may see. Further  
26

27  
28 <sup>3</sup> The corporation must maintain records of its members in a form that permits preparation of a list of the names and  
addresses of all members in alphabetical order by class showing the number of votes each member is allowed to cast. Mont.  
Code Ann. § 35-2-906(3). See Exhibit F.

1 they ask for other information not enumerated above such as all correspondence between the GLA and  
2 its members, payment arrangements made by members, phone numbers of members, and even records  
3 related to closed board sessions which include attorney client privileged material. Plaintiffs claim all  
4 these records are “membership records” or “financial records.”

5           What Plaintiffs fail to acknowledge is that the board, not Plaintiffs, has the power to interpret the  
6 Bylaws. Plaintiffs ask the Court to overrule the board and reinterpret the Bylaws the way they see fit.  
7 Such an action is not proper as the board has clearly acted within its discretionary powers.  
8

9           First, “membership records” and what information is made available to members has always  
10 been interpreted by the board to mean name, address, and number of votes pursuant to Mont. Code Ann.  
11 § 35-2-906(3). Recently, Montana law has changed to allow members to receive notice of member  
12 meeting via email in which the email address must also be disclosed. Mont. Code Ann. § 35-2-535. The  
13 GLA has not shared phone numbers, account balances, private correspondence, and other information  
14 about members because it has not considered that information part of “membership records.” The  
15 majority of feedback from members has been in support of maintaining the privacy of members.  
16

17           Further, Plaintiffs have never demonstrated such broad requests are in good faith and made for a  
18 proper purpose. Indeed, it is hard to imagine what proper purpose Plaintiffs could have for this  
19 information other than nosiness and intent to harass other GLA members. As for the frequency with  
20 which Plaintiffs request this information, they refuse to follow the Settlement Agreement where they  
21 voluntarily limited the number of membership lists they may request to no more than two per year.  
22  
23 (Exhibit D at ¶ 1).

24           Second, the board has interpreted “financial records” which a member may inspect to mean the  
25 statement of receipts and expenditures for each fiscal year (Bylaws Art. VIII.H., Exhibit C at 13) and  
26 financial statements showing assets and liabilities and results of operations. Mont. Code Ann. § 35-2-  
27  
28

1 906(5)(e). No matter how many times this information is provided to Plaintiffs, it is apparently  
2 insufficient, and they ask for more or claim the GLA is not providing "financial records." However, the  
3 GLA fulfills its obligation by providing these financial records.

4 iii) Plaintiffs must pay for copies and stop using inspection demands to harass the GLA.

5 Plaintiffs insist they do not need to pay for copies of records. Attached as Exhibit G is  
6 correspondence between Plaintiffs and the GLA's attorney Alanah Griffith. Attorney Griffith explains  
7 to Plaintiffs that new documents will not be provided until Plaintiffs pay for previously requested  
8 documents which were produced at a charge of \$60.00. (See invoice attached as Exhibit K). Plaintiffs  
9 claim charges are not allowed "per the settlement agreement." Plaintiffs are mistaken because the  
10 settlement agreement says no such thing.  
11

12  
13 To the contrary, Plaintiffs agreed documents would be provided pursuant to Montana law and  
14 the By-laws. Montana law clearly allows the GLA to "impose a reasonable charge, covering the costs of  
15 labor and material, for copies of documents provided to the member." Mont. Code Ann. § 35-2-908(3).  
16 Requesting documents with no intention of paying as agreed is not acting in good faith. Plaintiffs are  
17 not entitled to disparate treatment under the law or GLA governing documents. Every other member  
18 must abide by the law and pay the reasonable costs of labor and material when making requests and so  
19 should Plaintiffs.  
20

21 Recently, Plaintiffs have implemented a new tactic: they make demands to inspect documents  
22 and bring their own copy machine to make copies. Attached as Exhibit I is a string of correspondence  
23 showing the ever increasing demands and threats Plaintiffs have made. The GLA, through its attorneys  
24 has responded to each demand, and it is clear that although the demands are deficient, the GLA has been  
25 more than accommodating. Plaintiffs were given the opportunity to inspect the GLA's records on June  
26 28, 2014 and July 8, 2014 for nearly nine hours yet the demands keep coming.  
27  
28

1 First, Plaintiffs demand inspections on short notice. The law requires notice to be sent at least 5  
2 business days before the date of the inspection. Mont. Code Ann. § 35-2-907. Plaintiffs repeatedly make  
3 demands shorter than five days insisting demands must answered in two days—a claim unsupported by  
4 the clear language of the statute. Second, Plaintiffs fail to make their demands “in good faith and for a  
5 proper purpose.” Mont. Code Ann. § 35-2-907(3)(a). Plaintiffs insist that their documents requests are  
6 not discovery and have nothing to do with litigation yet after the document inspections, the Plaintiffs  
7 published a scathing post on their website claiming the document inspections had revealed malfeasance  
8 by the GLA, making claims about past and current litigation, and threatening future litigation. Plaintiffs  
9 fail to demonstrate they are making their requests in good faith and for a proper purpose because they  
10 are simply looking for other avenues by which to attack the GLA.  
11

12  
13 Third, Plaintiffs invariably ask for “all” documents in broad generalities, failing to describe  
14 “with reasonable particularity the purpose and the records the member desires to inspect.” Mont. Code  
15 Ann. § 35-2-907(3)(b). Making broad requests for all documents is simply a fishing expedition with no  
16 proper purpose. Plaintiffs should be required to describe specific documents they wish to inspect and  
17 what purpose the inspection is needed for. Finally, Plaintiffs fail to show “the records are directly  
18 connected with this purpose” and they must do so. Mont. Code Ann. § 35-2-907(3)(c).  
19

20 iv) Plaintiffs’ requests to inspect and copy documents must be reasonable.

21 A member’s inspection right under Mont. Code Ann. § 35-2-907 does not mention how  
22 frequently a member may request to inspect corporate documents. The requirement that a request be  
23 made in “good faith” encompasses that requests not be made incessantly. Here, Plaintiffs have made 11  
24 demands to inspect the GLA’s records since May. Despite being given nearly nine hours to inspect and  
25 copy these records, the demands keep coming. Despite the GLA’s offer to scan and make its records  
26 available electronically, the demands keep coming.  
27  
28

1 Mont. Code Ann. § 35-2-907 requires requests be made at least five business days in advance  
2 but allowing a request every five does is not “good faith” and would not be reasonable. “Interpretation  
3 must reasonable.” Mont. Code Ann. § 1-3-233. Further,

4 It has been called a golden rule of statutory interpretation that unreasonableness of the result  
5 produced by one among alternative possible interpretations of a statute is reason for rejecting  
6 that interpretation in favor of another which would produce a reasonable result. It is said to be a  
7 well established principle of statutory interpretation that the law favors rational and sensible  
8 construction. *Yunker v. Murray*, 170 Mont. 427, 434, 554 P.2d 285, 289 (1976) (citation and  
9 quotations omitted).

10 Clearly allowing the Plaintiffs to continue to harass the GLA with incessant document inspection  
11 requests is unreasonable, not in good faith, and subverts the purpose of the statute. Every request  
12 requires the GLA to expend time and money to assemble and arrange an inspection. Therefore the GLA  
13 requests the Court deny Plaintiffs’ claims regarding copies and inspections of records, and grant the  
14 GLA affirmative relief that it may reasonably limit the number of document inspection requests to no  
15 more than once per quarter.

16 v) Summary of requests relief.

17 The GLA requests that the Court enter an Order dismissing Plaintiffs’ claims alleging the GLA  
18 has breached the Settlement Agreement (Exhibit D) and that the GLA has failed to provide access to  
19 corporate records as required. Further, the GLA asks for affirmative relief from the Court ruling that  
20 Plaintiffs are entitled to inspect only those documents enumerated in the Montana Nonprofit  
21 Corporation Act as stated in section ii above, and that the GLA’s interpretation of its Bylaws and what  
22 constitutes “membership records” and “financial records” is correct and within its discretion. Also, the  
23 Plaintiffs’ right to receive a membership list is voluntarily limited by the Settlement Agreement to twice  
24 per year. Additionally, that for future requests, Plaintiffs must demonstrate the demand is made in good  
25 faith and for a proper purpose; describe with reasonable particularity the purpose and the records they  
26 desire to inspect; and show the records are directly connected with this purpose. And, that Plaintiffs  
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1 must pay for any copies of records received, and that the GLA may refuse to provide new copies until  
2 Plaintiffs pay for amounts past due. Finally, that Plaintiffs be reasonably limited to demanding GLA  
3 records no more than once a quarter as the frequency with which Plaintiffs make these demands shows  
4 they are not acting within good faith and places an undue burden on the GLA.

5 **5. Plaintiffs' claims for discovery and for audits of GLA records fails as a matter of law.**

6 Plaintiffs list discovery as a claim for relief. Discovery itself is not a proper claim for relief, but  
7 Plaintiffs have been given ample opportunity to conduct discovery. The Amended Complaint was filed  
8 over a year ago, and Plaintiffs have sent two discovery requests in that time which the GLA has  
9 answered. Plaintiffs noticed the deposition of Alyssa Allen but then canceled it. During the recent bouts  
10 of document requests Plaintiffs insisted they are not conducting discovery. Plaintiffs have clearly been  
11 afforded ample opportunity to conduct discovery, and this claim may be dismissed as a matter of law.  
12

13 Plaintiffs also allege the GLA has conducted "non-aggregate" spending and "over-spending" on  
14 the High South roads. Plaintiffs claim this is a violation of GLA Covenant § 8.01(h). (Exhibit B at 18).  
15 There are 22 miles of roads within the GLA that go from the valley floor at 5,000 feet to elevations of  
16 6,600 feet. (Aff. Allen at ¶ 6). The roads referred to as "High South" by Plaintiffs are in South  
17 Glastonbury in the higher elevations. (Aff. Allen at ¶ 6). (See map attached as Exhibit H). Because of  
18 the topography, some sections of the roads (including in those in High South) may require more snow  
19 plowing, grading, drainage maintenance, and gravel than others. (Aff. Allen at ¶ 6). Contrary to  
20 Plaintiffs' assertions, the GLA governing documents do not prohibit this. In fact, the spending of  
21 assessments for maintenance is at the discretion of the GLA Board.  
22  
23  
24

25 The Covenants make it clear that:

26 The Association intends to maintain a private road system within the platted road easements for  
27 vehicular access to the various parcels within the Community.... The Association may designate  
28 and define different qualities or levels of road construction and maintenance within the  
Community (such as residential roads, foothill roads, mountain roads, etc.) according to its



1 limited ability to deal with such conditions as topography, terrain, elevation, native soil and  
2 materials, slope, grade, easement location, parcel location, drainage, climate, weather, snow, ice  
and mud, and limited resources and equipment. (Covenants § 8.01(c), Exhibit B at 17).

3 Further, “The Association and all of the Landowners and their guests have the right to use any of the  
4 platted road easements opened by the Association...” (Covenants § 8.01(a), Exhibit B at 17).

5 Clearly, road maintenance benefits every member in the GLA and their guests. The landowners  
6 do not just use the roads to access their own property, but the property of friends and neighbors, the  
7 common properties set aside for recreation (most of which are located in High South), the school, the  
8 church, and the Forest Service lands at the far ends of the roads. The roads are used by vehicles, off-  
9 road vehicles, walkers, horses, and bicycles. (Aff. Allen at ¶ 7).

10 Plaintiffs make the nonsensical argument that “aggregate” spending means each foot of road  
11 within the GLA must receive the same amount of maintenance dollars, regardless of need or location.  
12 Plaintiffs argue the roads in High South which are steeper, longer, and reach further up the mountain  
13 receive “over-spending.” Plaintiffs claim spending must be equal for each foot of road, an absurd  
14 argument that disregards reality and common sense.

15 This argument fails as a matter of law. First, the Covenants § 8.01(h) (Exhibit B at 18) on which  
16 Plaintiffs rely states:

17 The Association’s road maintenance responsibility is limited by and conditioned upon the  
18 Landowners’ individual and collective payment of and the aggregate amount of the “annual  
19 community assessment” as provided in Section 11, together with its ability to increase the  
20 assessment to keep up with inflation or increased costs. The Association is not obligated to  
21 provide maintenance or snowplowing in excess of the amount that has been paid by Landowners  
22 through the annual assessment.

23 “Aggregate amount” does not mean what Plaintiffs think it means. “Aggregate,” given its common  
24 definition, means total or combined. Such a definition gives the meaning to the Covenants § 8.01(h) that  
25 the Association is not obligated to spend more on road maintenance than the total it collects. Any other  
26 meaning proposed by Plaintiffs would be absurd.

1 Some roads, due to the terrain, type of road (gravel or paved), amount of snow received, and  
2 whether culverts or other devices are needed likely receive more of the maintenance dollars than others.  
3 However, nothing in the GLA governing documents prevents this. Further, all GLA members receive  
4 the benefits of that maintenance because they all have a right to access the GLA roads. Those living in  
5 North Glastonbury have a right to use the roads in South Glastonbury to visit friends, use the common  
6 lands, or access Forest Service lands and vice versa. To stop maintaining or plowing roads once some  
7 dollar limit is reached would be contrary to the purposes of the GLA which is to ensure members can  
8 use all the roads.  
9

10 Plaintiffs ask this Court to order an audit and future audits to prevent “over-spending.” As  
11 argued above, there is no “over-spending” and hence no justification for an audit. Further, the decision  
12 to audit is a discretionary one which the board makes at the close of each fiscal year. (Bylaws Art.  
13 VIII.H., Exhibit C at 13). There is no justification for the Court to manage the affairs of the GLA as  
14 Plaintiffs request. If Plaintiffs want an audit, they could take the records which have already been  
15 produced in discovery and during document inspections and obtain an audit themselves. These claims  
16 fail as a matter of law.  
17  
18

19 **6. Plaintiffs’ requests for the Court to rewrite the GLA governing documents fail.**

20 Plaintiffs’ sixth claim for relief is a request for the Court to rewrite GLA’s governing documents  
21 to how Plaintiffs want them. Plaintiffs ask the Court to order the GLA to make meeting minutes  
22 available on a website, allow GLA members to receive all handouts given to board members, allow  
23 member comment periods before board votes and committee votes, give notice of all board and  
24 committee meetings via a newsletter and website, and an order barring the use of Roberts Rules of  
25 Order at board meetings.  
26  
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1           These are all things not required by the GLA's current governing documents but matters of  
2 discretion which Plaintiffs disagree with. In short, Plaintiffs want the Court to manage the GLA how  
3 they see fit. There is no justification for filing a lawsuit asking the Court to impose these changes when  
4 they are not required by the GLA's governing documents. Doing so is a breathtaking waste of judicial  
5 resources, time, and money of all parties.

6           The GLA does have a website: [www.glamontana.org](http://www.glamontana.org). The GLA was formed in 1997 when  
7 websites were not common and nothing in the governing documents addresses a website. However,  
8 because a website is a convenient communication and information medium, the GLA has one and has  
9 been working toward improving it over time. The website provides notices of upcoming events such as  
10 board meetings, the governing documents, board members, a way to email the GLA and leave voice  
11 mail for board members, maps, policies and standards, project review application forms, and other  
12 information relevant to any member or prospective member. The website, as Plaintiffs point out, does  
13 not contain meeting minutes. It was decided to not publish these as they are internal documents not  
14 given to the general public. (Aff. Allen at ¶ 8).

15           The administration of the website and what it contains is a discretionary function of the board  
16 which has "the powers and duties necessary for the administration of the affairs of the Association..."  
17 (Bylaws Art. VI.B., Exhibit C at 5). The board also may "Do any and all things necessary to carry into  
18 effect these Bylaws and to implement the purposes and exercise the powers as stated in the Articles of  
19 Incorporation, Covenants, Bylaws, Rules and any Land Use Master Plan adopted pursuant to the  
20 Covenants." (Bylaws Art. VI.B.14., Exhibit C at 6). Plaintiffs ask the Court, with no justification, to  
21 step in and handle the discretionary functions of the GLA by ordering it to administer its website in a  
22 specific fashion. The administration of the website (and whether to have one at all) is clearly a  
23 discretionary matter for the GLA Board to decide, and this claim should be dismissed.  
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1 Plaintiffs also want the Court to add By-law provisions regarding notices sent out. GLA By-laws  
2 require:

3 Prior to making any new Rules or Regulations, or taking any action to enforce any of the  
4 Covenants, Bylaws, Rules or Regulations, the Association, acting through the Board of Directors  
5 and officers, shall provide reasonable written notice in accordance with Article V, paragraph D,  
6 to all of the Members (in the case of rule-making) or to all directly-affected Members (in the  
7 case of a proposed enforcement action) and a reasonable opportunity for any such Member to be  
8 heard and to give written or oral comment to the Board of Directors or its designee(s). (Bylaws  
9 Art. XI.C, Exhibit C at 15).

10 Annual meeting notices must be sent to all members as well. (Bylaws Art. V.D., Exhibit C at 3). Notice  
11 of board meetings is required to be sent to board members. (Bylaws Art. VI.G., Exhibit C at 8).

12 Plaintiffs ask this Court to broaden the Bylaws and require the GLA to give “notices of all Board and  
13 Committee meetings and agendas using GLA newsletters and website...”

14 The Bylaws only require notice of certain meetings and actions. In practice, the GLA has used  
15 newsletters, phone-in announcements, and the website to provide notice of most board meetings and  
16 some committee meetings. Some landowners have received meeting agendas by email at their request.  
17 However, sometimes meetings are called on very short notice, and it isn't feasible for the numerous  
18 committees to publish every meeting. Members can get a hold of board members and committee  
19 members whenever necessary to provide input or ask questions. Further there is no requirement that the  
20 documents given to board members at meetings be given to members either. Indeed, such documents  
21 often contain confidential information or are in draft form which cannot be widely distributed. (Aff.  
22 Allen at ¶ 9). There is no basis for the Court to step in and manage the affairs of the GLA by enlarging  
23 the scope of notice requirements in the Bylaws.

24 Finally, Plaintiffs ask this Court to “insure all Board members equal representation rights and  
25 participation at meetings by barring Roberts rules of Order.” (P.'s Am. Com. at 16, Feb. 31, 2013). The  
26 board uses these commonly accepted and used rules to conduct its meetings. GLA Bylaws Article VI.P  
27  
28

1 gives a bare outline of the order of business to be used at board meetings, and the board may: “Adopt  
2 Rules from time to time for the conduct of any meeting, election or vote in a manner that is not  
3 inconsistent with any provisions of the Covenants, Articles of Incorporation or these Bylaws.” (Bylaws  
4 Art. VI.B.16, Exhibit C at 6).

5           Clearly, it is within the discretion of the board to adopt rules on the conduct of meetings. It is  
6 unclear why Plaintiffs take exception to using Roberts Rules of Order given they are the most widely  
7 used rules for conducting deliberative meetings, but there is no basis in law for the Court to manage  
8 such minute details of the GLA’s affairs. All of Plaintiffs claims in their sixth claim for relief fail as a  
9 matter of law.  
10

11 **7. Plaintiffs’ claims regarding the Erickson variance have already been determined.**

12           This Court appropriately dismissed this claim in its Order dated December 9, 2013 under the  
13 doctrine of *res judicata*. It is mentioned here for convenience of reference so the paragraph numbers  
14 here match the claims asserted in Plaintiffs’ Amended Complaint.  
15

16 **8. Plaintiffs’ claims regarding non-aggregate spending and compensation for board members for**  
17 **non-board related work fail as a matter of law.**

18           Plaintiffs seek repayment to the GLA from the board for alleged “unlawful distributions” under  
19 Mont. Code Ann. § 35-2-436. That statute makes a director who votes for or assents to the distribution  
20 of funds in violation of MCA Title 35, Ch. 2 personally liable to the corporation for those amounts.  
21 Plaintiffs allege “non-aggregate” spending and director compensation for board duties are “unlawful  
22 distributions.” However, Plaintiffs allegations are unsupportable.  
23

24           As argued in section five of this brief, Plaintiffs’ interpretation of “aggregate” as used in the  
25 Covenants § 8.01(h) (Exhibit B at 18) is absurd. That section limits the GLA’s fiscal responsibility for  
26 road maintenance to the aggregate (or total) of assessments collected. In no way does that section  
27 require Plaintiffs’ absurd spending scheme.  
28

1 Plaintiffs' other assertion is that board members are being compensated for their board duties in  
2 violation of the Bylaws. This too is unsupported. The Article VI.K. of the Bylaws states:

3 Directors shall not be compensated for attending meetings and for serving as Directors. By  
4 resolution of the Board, the Directors may be reimbursed for actual expenses incurred in  
5 attending a meeting. The Directors may not be paid either a fixed sum for attendance at meetings  
6 nor a stated salary. Nothing herein contained shall be construed to preclude any Director from  
7 rendering service to the Association in any other capacity and receiving reasonable  
8 compensation therefor. Compensation to be paid to any member of the Board of Directors for  
9 such services rendered must be approved by the Board of Directors. (Exhibit C at 10).

8 Additionally, the Board has the authority to:

9 Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws,  
10 supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers,  
11 agents, employees, or committee members of the Association. (Bylaws Art. VI.B.6, Exhibit C at  
12 6).

12 Officers of the GLA are elected by the Board and must be Board members. (Bylaws Art. VII.A., Exhibit  
13 C at 11). Reading the two provisions of the Bylaws together, it is clear that not only may Board  
14 members may be compensated for services rendered in capacities other than as Directors, but they may  
15 be compensated if they take on the additional burden of being an officer, employee, or committee  
16 member of the GLA. Plaintiffs attempt to strip this language from the Bylaws and allege any service  
17 rendered to the GLA by a Board member must be uncompensated.  
18

19 The GLA has paid Board members for non-Board services such as plowing the roads, road  
20 maintenance, building construction, organizational accounting, and administrative work. The GLA has  
21 paid other contractors for these same tasks. (Aff. Allen at ¶ 10). Plaintiffs have insisted that if a board  
22 member has a particular skill, the board member must donate that skill to the GLA regardless of  
23 whether it is an enumerated board duty or whether the GLA would normally pay someone for that skill.  
24

25 At a summary judgment hearing in a previous lawsuit Plaintiffs argued:  
26

27 The only necessary duties that they could give away, as I told them over and over again, is what  
28 they don't have the skills to do, not what they don't want to do. Not what they don't want to do  
volunteer wise, which is what they really claim, they don't want to do anything anymore, 'cause

1 they're volunteers, you know, and they have other jobs. So, I told them, quit the Board then.  
2 They don't listen. If you're, like, a CPA – it's good business practice to hire a CPA to do  
3 bookkeeping. That's a necessary duty, because they don't have the skills. There is no CPA on  
4 the Board. For years, and years, and years, there was one, but she is no longer on the Board. So,  
5 other than that – if they don't have the skills to maintain the roads, then that's fine to hire out.  
6 (Exhibit E at 13).

7 This is an absurd argument that is contrary to the Bylaws.

8 Plaintiffs have also claimed that Article III of the Articles of Incorporation precludes the GLA  
9 from expending its money to pay persons for services rendered to it. That provision states:

10 This association is a mutual benefit nonprofit corporation, pursuant to the Montana Nonprofit  
11 Corporation Act, which disavows any intent to exert political influence or engage in lobbying  
12 and which does not contemplate pecuniary gain or profit to the members hereof. No part of the  
13 net income or assets of the organization shall ever inure to the benefit of any director, officer, or  
14 member hereof or to the benefit of any private person(s). (Exhibit A at 1).

15 To read this provision to preclude payment to directors, officers, members, or any private persons for  
16 services rendered as outlined in the Bylaws is also absurd. Plaintiffs' argument would mean the GLA  
17 cannot ever pay anyone (not just directors) to accomplish its purposes.

18 Further, the Articles of Incorporation Article VI specifically allows the GLA:

19 Any and all powers, rights and privileges which a corporation organized under the Nonprofit  
20 Corporation Law of the State of Montana by law may now or hereafter have or exercise,  
21 including, but not limited to, the following:

22 A. To acquire (by gift, purchase or otherwise), own...real or personal property in connection  
23 with the affairs of the Association;

24 B. To pay all expenses incurred with the conduct of the business of the Association...;

25 C. To enter into, make, perform, or enforce contracts of every kind of description, and to do all  
26 other acts necessary, appropriate, or advisable in carrying out any purpose or power of the  
27 Association, with or in association with any person, firm, association, corporation or other entity  
28 or agency, public or private;

\*\*\*

E. To have and exercise such further purposes and powers, or to be limited in the exercise of its  
powers, as may be further provided from time to time in such Bylaws. (Exhibit A at 2).

The Articles grant the GLA all the powers given by the Montana Nonprofit Corporation Act. These  
powers include purchasing real and personal property, purchasing other entities, making contracts,  
issuing notes, lending money, investing funds, paying pensions, making charitable donations,

1 conducting a business, and fixing compensation of directors, officers, employees, agents. Mont. Code  
2 Ann. § 35-2-118.

3 Plaintiffs have claimed that the Articles prohibit paying not just directors, officers, or members  
4 but “any private persons.” Yet the Articles specifically incorporate the Montana Nonprofit Corporation  
5 Act which is contrary to this argument. Further, the Articles of Incorporation also allow the expenditure  
6 of funds. Plaintiffs’ argument would not allow the GLA to pay for road maintenance, snow plowing,  
7 mailing out notices, renting a venue for member meetings, and all the other expenditures necessary to  
8 conduct its business. Such an argument would create a conflict with the Montana Nonprofit Corporation  
9 Act and within the Articles of Incorporation; such an argument is absurd.

10  
11 There is a better interpretation. The Article III of the Articles of Incorporation states the GLA  
12 “does not contemplate pecuniary gain or profit to the members hereof. No part of the net income or  
13 assets of the organization shall ever inure to the benefit of any director, officer, or member hereof or to  
14 the benefit of any private person.” (Exhibit A at 1). Being a nonprofit corporation, this makes perfect  
15 sense as the purpose is not to gain profits and pay them out as dividends or some other benefit given to  
16 someone by sole reason of that person being a director, officer, member, or anything else. In other  
17 words, the income and assets are not to be given based simply on someone’s status.

18  
19 This does not preclude the expenditure of income or assets to procure goods or services from  
20 directors, officers, members, or other private persons. Indeed, such expenditures are specifically  
21 allowed by the Montana Nonprofit Corporation Act, the Articles of Incorporation, and the Bylaws as  
22 shown above. This interpretation gives meaning to all the provisions.

23  
24 Thus, the GLA may pay its directors, officers, employees, contactors, and agents for rendering  
25 services to the GLA. The only limitation is that it may not pay Board members for attending meetings  
26 and for serving as Directors. Article VI.K. of the Bylaws. (Exhibit C at 10). The GLA has never paid its  
27  
28



1 Board members for attending meetings or for serving as Directors. (Aff. Allen at ¶ 10). Plaintiffs have  
2 the burden of showing otherwise and they cannot do so. Mere allegations and suspicions are not  
3 enough; the GLA is entitled to summary judgment as a matter of law on Plaintiffs' eighth claim.

4 **9. Plaintiffs' request to remove the GLA Board fails as a matter of law.**

5 As discussed above, Plaintiffs do not have standing to bring a claim to remove the board under  
6 Mont. Code Ann. § 35-2-423. Additionally, Plaintiffs have provided no facts that would justify such an  
7 extreme remedy. Plaintiffs ask the Court to remove those legally elected by the community because  
8 Plaintiffs do not agree with their actions.

9 Plaintiffs allege "negligent/willful" violations of the governing documents and that the board  
10 exceeded its powers. Plaintiffs provide no evidence of this. "It is well established that 'a suspicion,  
11 regardless of how particularized, is insufficient to sustain an action or defeat a motion for summary  
12 judgment,' and that 'unsupported, conclusory, or speculative statements do not raise a genuine issue of  
13 material fact.'" *Glacier Tennis Club at Summit LLC v. Treweek Const. Co., Inc.*, 2004 MT 70, ¶ 37, 320  
14 Mont. 351, ¶ 37, 87 P.3d 431, ¶ 37 (overruled on other grounds). Plaintiffs can provide no evidence of  
15 their allegations, and the GLA is entitled to summary judgment as a matter of law.  
16  
17  
18

19 **10. Plaintiffs' claims for fees, costs, sanctions, and damages fail as a matter of law.**

20 Plaintiffs ask for fees, costs, nominal damages, and sanctions against the GLA board. All of  
21 Plaintiffs' claims fail as a matter of law, and in any case, Plaintiffs have given no basis for fees, costs,  
22 nominal damages, or sanctions. To the contrary, Montana law prohibits an award of attorney fees to a  
23 party when the party is represented by anyone other than an admitted attorney at law. Mont. Code Ann.  
24 § 37-61-215.  
25  
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1 **11. Plaintiffs' claims fail but the GLA's claim for vexatious litigation remains.**

2 Plaintiffs' final claim is for any other relief the Court deems just and proper. Clearly, Plaintiffs  
3 are not entitled to any relief. However, the GLA has filed a counterclaim seeking an injunction  
4 preventing Plaintiffs from filing future lawsuits without prior approval of the Court. Plaintiffs' history  
5 of filing meritless lawsuits justifies this claim, and the dismissal of Plaintiffs' claims here further  
6 illustrates the need for such an injunction.  
7

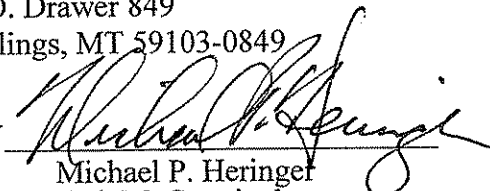
8 **CONCLUSION**

9 For the above reasons, GLA respectfully requests an Order from the Court entering summary  
10 judgment in its favor on all of Plaintiffs' claims dismissing their Amended Complaint with prejudice.  
11

12 DATED this 4th day of August, 2014.

13 BROWN LAW FIRM, P.C.  
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CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail, postage prepaid, and addressed as follows this 4th day of August, 2014:

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