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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O'Connell & Valery A. O'Connell)
& on behalf of themselves as members of)
Glastonbury Landowners Association.)
Plaintiff(s),)
v.) **Cause No. DV-11-114**
Glastonbury Landowners Association, Inc.)
& current GLA Board of Directors)
Defendant(s))

**PLAINTIFFS MOTION FOR EXTENSION OF TIME &
MOTION TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Come now Plaintiffs & GLA members-Daniel and Valery O'Connell, and submit this "Motion For Extension of Time" To Answer Defendants Summary Judgement Motion and also file this "Motion to Strike Defendants' Summary Judgement Motion."

**FACTUAL BRIEF SUPPORTING MOTION FOR EXTENSION TO ANSWER
DEFENDANTS' SUMMARY JUDGMENT MOTION**

Pursuant to Rule 20(b) of the Montana Rules of Civil Procedure, Plaintiffs respectfully move this Court for an Order for extension of time to answer Defendants Motion for Summary Judgement (August 4, 2014) until this motion to strike the pleading is first settled. As explained below, this is because Plaintiffs can not restrict its answers & relief under Rule 12(7)(f) to

specific offensive statements or sections within the motion filed by Defendants, since the scandalous content pervades the entire motion.

M.R.Civ.P., Rule 20 (b) in part says "Extension. The district court for good cause shown may upon motion extend the time prescribed by these rules or by its order ...and may thereby permit an act to be done after the expiration of such time.." (not to exceed 90 days per §25-1-301MCA).

FACTUAL BRIEF SUPPORTING MOTION TO STRIKE SUMMARY MOTION

Pursuant to Rule 7(f) of Montana Rules of Civil Procedure, Plaintiffs respectfully move this Court for an Order (a) striking or dismissing Defendants' Motion For Summary Judgment (August 4, 2014) (b) directing Defendants to remove Defendants' Motion For Summary Judgment (August 4, 2014) and any references to it from their website (www.glamontana.org) and to take all steps necessary to prevent the further publication of it in any other forum; and (c) admonishing Defendants counsel to comply with the Montana Bar's Voluntary Standards of Professional Courtesy. Plaintiffs seek such relief upon the grounds that Plaintiffs' Summary Judgment Motion represents yet another instance in which Defendants improperly utilize the process of filing pleadings with this Court for the purpose of launching scandalous attacks upon its members and detractors, and as such they are wholly inappropriate in pleadings before this Court and should be stricken pursuant to Rule 12(7)(f).¹

I. This Court Should Strike Defendants' Summary Judgement Motion Because of Its Pervasive Scandalous Material

M.R.Civ.P., Rule 12(7)(f) provides, in pertinent part, that "upon motion made by a party . . . the court may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous

¹ Plaintiffs will file a substantive response to Plaintiffs' Summary Judgement Motion, but in so doing, Plaintiffs do not expressly or implicitly waive their right to seek relief pursuant to Rule 12(7)(f) & Rule 20(b) extension of time.

matter.” also see 5C C. Wright and A. Miller, Federal Practice and Procedure (Civil) 2d § 1382, at 465 (2004) (“Scandalous’ matter is that which improperly casts a derogatory light on someone, most typically on a party to the action.”)

Plaintiffs can not restrict its answers & relief under Rule 12(7)(f) to specific offensive statements or sections within a pleading filed by Defendants, since the scandalous content pervades the entire motion. Such scandalous motion is unnecessary to the decision on the matters. GLA Defendants improperly utilize the process of filing pleadings with this Court for the purpose of launching scandalous personal attacks upon its members—the O’Connells, and as such, they are wholly inappropriate in pleadings.

(“The striking of offensive material is particularly appropriate when the offensive material is not responsive to an argument but, rather, constitutes an inappropriate attempt to abuse the Court’s process to attack an individual personally.” See, e.g., Magill v. Appalachia Intermediate Unit 08, 646 F. Supp. 339, 343 (W.D. Pa. 1986))

While Plaintiffs have, in the past, attempted to restrict requests for relief under Rule 12(7)(f) to specific offensive statements or sections within a pleading filed by Defendants, in the case of Defendants’ Summary Judgment Motion, the scandalous content pervades the entire motion.

The following sets forth examples of Defendants’ rhetorical excesses and abuses:

*** Defendants’ motion page 2 continues Plaintiffs’ multi-year diatribe against O’Connells, in which they, once again, level highly improper and baseless allegations against Dan and Val O’Connell:** “Plaintiffs want to run the GLA”
“Plaintiffs “unable to persuade their fellow GLA members to elect them ... have instead resorted to these lawsuits to attempt to change the GLA...”

*** Page 5 & 6 falsely characterizes Plaintiffs as “telling their neighbors what to do” and “anger[y] at being rejected for leadership roles in their community.”**
(Note: On the contrary this case was filed June 2011 while Daniel was on the GLA Board in a position of leadership. “Exhibit 1B” evidence shows after witnessing “20 months ...of wrongdoings” by other Directors breach of fiduciary duties (per §27-2-202, MCA & Articles VIII.), misappropriation of funds, denial of member documents (per §35-2-906 (907) & (911) MCA), and much more, he became a whistleblower also to limit his association liability.)

*** Defendants' motion page 7 contains the highly charged and groundless accusation of Plaintiffs** "seeking to change rights and interests of every GLA member under these [governing] documents."

(Note Plaintiffs would include all members but for being PRE SE can not represent other members; which law suits are supported primarily by state law, not governing bylaws.)

*** Defendants motion page 9 and page 10 levels groundless assertions against O'Connells**, "continual ... frequent requests for GLA documents" "requested voluminous amounts of documents... incessant requests." "[&] provide no justification as to why they should receive special treatment."

(Note: Defendants Exhibit I shows GLA repeated denial of member document requests Dec. 2012, June & July 2014 that resulted in just over 100 pages copied out of thousands of possible documents. Plaintiffs never asked for any documents not allowed in state law, nor for special treatment.)

*** Defendants motion page 11, page 12, and page 13 presents more baseless and improper instances alleging Plaintiffs somehow feel "entitled" to "ask the Court to overrule the board" "reinterpret the Bylaws the way they see fit" and "entitled to disparate treatment."**

*** Defendants motion page 12 contains the childish yet inflammatory assertions against O'Connells of "nosiness and intent to harass other GLA members" and "refuse to follow the Settlement Agreement."**

(note: GLA denied member requests for any documents until months later. Denial of documents included membership list necessitating repeated requests as proven by exhibit 5 attached. O'Connells attached exhibit 5 requests Dec. 2012, June & July 2014 were the only documents requested allowed by state laws and repeated requests were all due to GLA repeated denial of documents.)

*** Defendants motion page 9, page 13 and page 15 also contains Defendants diatribe in which they again level highly improper and baseless allegations that O'Connells habitually requests documents "to harass the GLA" "with no intention of paying" and "not acting in good faith."**

(note: After repeated document requests, GLA in July 2014 finally gave not all but only limited documents, for which Plaintiffs used their own printer to copy GLA docs. Before this GLA tried to charge \$60 for a few documents received for discovery requests in July 2012 for the 193 lawsuit.)

*** Defendants motion page 10, page 13, and page 14 falsely characterize O'Connells as making "continual" "incessant" and "ever increasing demands and threats" for document requests pursuant to motion "Exhibit I."**

(note: This "Exhibit I" shows no threats were made. Asking "the court to intervene" to get documents is also not a threat. This exhibit shows GLA's July 22, 2014 letter denied members "any more document requests except through discovery," and shows all document requests over a few months were made for proper purpose in good faith as member requests. GLA used a church for member document inspection; for which the church kicked out the GLA after making only half requested documents available to members.)

* **Defendants motion page 14 criticizes Plaintiffs characterizing, with no foundation, the alleged website (mygla.org) "they are simply looking for other avenues to attack the GLA" and concluding with the highly charged and groundless statement,** "Plaintiffs published a scathing post on their website claiming the document inspections had revealed malfeasance by the GLA, making claims about past and current litigation, and threatening future litigation..."

(note: www.mygla.org website is a website belonging to all members who are invited to publish their opinions and no articles are signed or reported to be by O'Connells.)

* Defendants motion page 16 provides another example of vile rhetoric that has no place in a judicial pleading: Plaintiffs "request for the court to rewrite GLA's governing documents to how the Plaintiffs want them" and "Plaintiffs want the court to manage the GLA how they see fit ... a breathtaking waste of judicial resources, time, and money of all parties."

* **Defendants motion page 6 and page 25 refers to "a long history of frivolous lawsuits and "meritless lawsuits" in spite of the fact that no lawsuit filed by O'Connells has been properly found as such by any court.**

(Note: Defendants motion is factually refuted by the outcome of these lawsuits: Plaintiffs were granted all claims for relief in their 193 lawsuit & GLA's countersuit evidenced by "Exhibit 4" Settlement Agreement & "Exhibit 4" Axilon/Landers Dec. 2011 letter that prompted this lawsuit for such things as throwing members out of meetings for recording meetings against state law allowing recordings; & Plaintiffs won one claim for relief in the 220/164 joinder lawsuit that reversed the GLA/Minnick Management contract which gave Minnick agent "exclusive control over all GLA ...parcels in violation of state law, because these parcels are all member owned private properties. Not only did the GLA trample over member private property rights, the GLA hid this illegal contract from its members until lawsuit discovery forced them to hand it over.")

* **Allen's Affidavit (Aug. 4, 2014) at ¶ 5 levels more groundless assertions against O'Connells of "threaten[ing] to continue to sue the GLA ... unless the Board of Directors resigns" and alleging their lawsuits caused "loss of insurance coverage."**

(note: GLA lost claims in every lawsuit against O'Connells.; for which loss of insurance coverage was caused by GLA being deemed a high risk client. O'Connells have repeatedly refuted ever threatening to sue for any such reason. In fact 8 out of 12 Board member Defendants have already resigned from the Board as proof this claim is baseless and mute.)

As is clear from the above, Plaintiffs' disregard for civility in pleadings filed with this Court saturates their entire pleading, and were the Court simply to order the deletion of offensive statements, Defendants Summary Motion would more resemble Swiss cheese than a legal document. Moreover, it is the responsibility of Defendants' counsel to file pleadings that conform to the Court's rules; it is not the responsibility of Plaintiffs to seek relief to sanitize Defendants' pleadings after they have become part of the public record and been publicized by Defendants' website and often by their public relations newsletters. Accordingly, the only meaningful relief for GLA Defendants' abuse of the judicial process is an order striking their entire pleading, coupled with directives to remove it and any references to it from their website and to take all steps necessary to prevent the further publication of their motion in any other forum.

II. Because Defendants' Summary Judgment Motion Pleadings Containing Scandalous Material, Contrary to Montana Bar's Voluntary Standards of Professional Courtesy, This Court Should Admonish Defendants' Counsel to Comply With The Montana Bar Standards for Future Pleadings.

Defendants' Summary Judgment Motion runs afoul of Montana Bar's Voluntary Standards of Professional Courtesy (see General Principles for Attorneys "to act in a civil and courteous manner at all times.") Montana Bar standards are "voluntary" by their terms, U.S. Supreme Court has recognized that "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." Chambers v. NASCO, Inc., 501 U.S. 32, 43

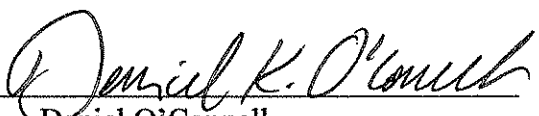
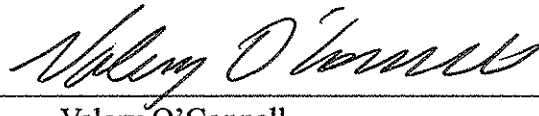
(1991) (quoting *Anderson v. Dunn*, 6 Wheat. 204, 227 (U.S. 1821)); see generally *Jaen v. Coca-Cola Co.*, 157 F.R.D. 146, 152-53 (D.P.R. 1994) (discussing role of civility in litigation).

The need for such an order is apparent in light of the content of Defendants Summary Motion. To permit Defendants to file pleadings of this nature, without the Court's admonition, provides the Court's tacit approval of Defendants' abusive practices. Defendants' tactics damage more than the targets of their vicious and groundless rhetoric; they damage the judicial process itself, and this Court should not countenance them.

Conclusion

For the foregoing reasons, Plaintiffs respectfully ask this Court for an Order (a) striking Defendants' Motion for Summary Judgment; (b) directing Defendants to remove Defendants' Motion for Summary Judgment and references to it from their website (www.glamontana.org) and to take all steps necessary to prevent the further publication of it in any other forum; and (c) admonishing Defendants' counsel to comply with Montana Bar's Voluntary Standards of Professional Courtesy.

Respectfully submitted this 18th day of August, 2014,

By:  Daniel O'Connell By:  Valery O'Connell

Certificate of Service

A true and correct copy of forgoing document(s) were sent to the following parties via first class mail on this same day to:

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By: 
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