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13 *Landowners Association, Inc.*

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. & Current GLA Board  
18 of Directors,

19 Defendants.

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

**DEFENDANT'S MOTION TO QUASH  
SUBPOENAS FOR DEPOSITIONS AND  
BRIEF IN SUPPORT**

19 COMES NOW the above named Defendant Glastonbury Landowners Association, Inc. (GLA)  
20 and moves this Court for an ordering quashing the defective subpoenas commanding the depositions of  
21 Alyssa Allen and Janet Naclerio. These subpoenas are defective and impose an undue burden upon  
22 Janet Naclerio. GLA's counsel has attempted to resolve the scheduling of these depositions amicably  
23 with Plaintiffs, but they have refused to do so.  
24

25 **FACTUAL BACKGROUND**

26 Plaintiffs filed their Amended Complaint in February of 2013. Until May 23, 2014, they had not  
27 taken any depositions. On that date, Plaintiffs filed a "Notice of Delay of Discovery & Oral Deposition"  
28

1 purportedly explaining the discovery delay and stating they were going to subpoena Alyssa Allen for  
2 deposition. (See Attachment 1). Before this document was filed, Plaintiffs did not attempt to contact  
3 GLA's counsel regarding discovery or request deposition dates. Plaintiffs instead served Alyssa Allen  
4 with a defective subpoena on May 31, 2014 by an unidentified woman and Plaintiff Daniel O'Connell.  
5 (See Aff. Allen, Attachment 2, ¶ 1). This subpoena commanded Ms. Allen to appear for her deposition  
6 on June 13, 2014. (See Exhibit A of Attachment 1).  
7

8 Counsel for the GLA sent Plaintiffs a letter on May 28, 2014 requesting the date of the  
9 deposition be changed due to a pre-existing obligation and offering several alternative dates. (See  
10 Exhibit A of Attachment 4). Plaintiffs did not respond to this letter. Despite the defective subpoena and  
11 lack of communication by Plaintiffs, counsel for the GLA rearranged his schedule to accommodate this  
12 deposition. On June 11, 2014, Plaintiffs emailed Ms. Allen directly stating her deposition had been  
13 delayed, and filed a document titled "Delay of Deposition Pending Motion to Indemnify." (See (See  
14 Aff. Allen, Attachment 2, ¶ 1 and Exhibit B of Attachment 2). Plaintiffs stated they were postponing the  
15 deposition until a later date (to be announced) because of their pending indemnification motion before  
16 this Court<sup>1</sup>.  
17  
18

19 Although the indemnification motion has not been resolved, Plaintiffs personally served Ms.  
20 Allen with a defective subpoena on August 11, 2014. This subpoena commanded Ms. Allen to appear  
21 for her deposition on August 28, 2014. (See Aff. Allen, Attachment 2, ¶ 2 and Exhibit C of Attachment  
22 2). On August 13, 2014, former GLA Board member, Janet Naclerio, was served with a defective  
23 subpoena by an unidentified woman at her place of employment. (See Aff. Naclerio, Attachment 3, ¶ 1  
24 and Exhibit A of Attachment 3). This subpoena set Ms. Naclerio's deposition for August 28, 2014.  
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28 <sup>1</sup> This motion seeks to force the GLA to provide an attorney to Plaintiffs to represent them in the suit they filed against the  
GLA; this motion is meritless.

1 The GLA's counsel sent a letter to Plaintiffs on August 14, 2014 explaining counsel already had  
2 depositions in another case scheduled for August 28, 2014 and requesting alternative dates. (See Exhibit  
3 B of Attachment 4). However, this letter was sent without realizing that Ms. Naclerio would be  
4 unavailable September 8 through September 23 due to a family vacation for which she had already  
5 purchased non-refundable plane tickets, hotel accommodations, and other purchases. (See Aff. Naclerio,  
6 Attachment 3, ¶ 2).

8 Plaintiffs sent an email on August 18, 2014 agreeing to change the deposition dates to  
9 September 9, 2014. (See Exhibit C of Attachment 4). It was then realized then that Ms. Naclerio would  
10 be unavailable, and so GLA counsel sent Plaintiffs another letter informing Plaintiffs that Ms. Allen was  
11 available for her deposition, but Ms. Naclerio would be out of town. (See Exhibit D of Attachment 4).  
12 Plaintiffs responded by insisting that both Ms. Allen and Ms. Naclerio must appear for depositions on  
13 September 9, 2014. (See Exhibit E of Attachment 4). Plaintiffs have also filed a "Notice to Modify Date  
14 and Place of Depositions" stating Alyssa Allen and Janet Naclerio are to appear on September 9, 2014.  
15 (See Attachment 4).  
16

17 **ARGUMENT**

19 These subpoenas should be quashed because they are defective on their face and violate the  
20 Montana Sixth Judicial District Court Rules. Moreover, undue burden and expense would be imposed  
21 on Ms. Naclerio if she were to be forced to cancel her vacation plans. The GLA has tried to  
22 accommodate Plaintiffs despite their steadfast refusal to follow the Rules of Civil Procedure, to  
23 communicate with the GLA's counsel to find workable deposition dates, and to have any consideration  
24 for the burdens they place on others. The GLA should not have to accommodate Plaintiffs anymore and  
25 these subpoenas should be quashed.  
26  
27  
28

1  
2 **1. Plaintiffs cannot conduct discovery until they comply with the local rules.**

3 Rule 6(C)(1) of the Montana Sixth Judicial District Court Rules states:

4 Except with leave of Court, a party may not seek discovery from any source before making an  
5 appropriate pre-discovery disclosure and may not seek discovery from another party before  
6 service that party with an appropriate disclosure.

7 Plaintiffs have not made a pre-discovery disclosure and they are barred from seeking discovery,  
8 including taking depositions, until doing so. Therefore, these subpoenas should be quashed.

9 **2. The subpoenas are defective under Mont. R. Civ. P. 45.**

10 A subpoena must specify a time and place to attend and testify and it must set out the text of  
11 Rule 45(d) and (e). Mont. R. Civ. P. 45(a)(1)(A). A subpoena must be served by a person who is not a  
12 party, and if the person's attendance is commanded, by tendering fees for one day's attendance and  
13 mileage. Mont. R. Civ. P. 45(b). Proof of service when necessary shall be filed with the clerk of court.  
14 Mont. R. Civ. P. 45(c)(3).

15  
16 Ms. Allen's subpoena is defective because it fails to state the text of Mont. R. Civ. P. 45(d) and  
17 (e), and it was served by the Plaintiffs. (See Exhibit C of Attachment 2). The rule is clear; subpoenas  
18 must contain the language of Rule 45(d) and (e), and they must be served by a person who is not a  
19 party. Ms. Naclerio's subpoena is defective because it too fails to state the text of Mont. R. Civ. P. 45(d)  
20 and (e), and the unidentified person who served the subpoena failed to tender fees for attendance and  
21 mileage<sup>2</sup>. (See Attachment 3, ¶ 1 and its Exhibit A). Notably, the unidentified person had Ms. Naclerio  
22 sign that she had served herself and delivered to herself fees. This statement purports to make Ms.  
23 Naclerio serve herself. No proof of service for either subpoena was filed with the clerk of court, and any  
24 such proof would be improper because the subpoenas were defectively served.  
25  
26

27  
28 <sup>2</sup> Plaintiffs have apparently realized this defect and sent an email on August 22, 2014 stating a check for fees would be mailed. The rule states such fees must be served with the subpoena—not after the fact.

1 The omission of the text of Rule 45(d) and (e) is particularly egregious because that language  
2 explains how a person may seek protection from a subpoena and explains the duties in responding. For  
3 someone who has never received a subpoena before, the stress of it is compounded without this valuable  
4 guidance.

5 Ms. Allen and Ms. Naclerio were subpoenaed to appear on August 28, 2014. Plaintiffs have filed  
6 a "Notice to Modify Date and Place of Depositions" purportedly changing the date to September 9,  
7 2014, but Rule 45 clearly states the subpoena must state the time and place. This filing cannot take the  
8 place of a subpoena. If Plaintiffs want to change the date of the deposition, then they must reissue a  
9 correct subpoena and serve it properly.  
10

11 There is no excuse for failing to comply with the Rules of Civil Procedure, especially when  
12 counsel for the GLA has informed Plaintiffs their subpoenas were defective. These subpoenas are  
13 defective on their face and should be quashed.  
14

15 **3. Forcing Ms. Naclerio to appear on September 9, 2014 imposes undue burden and expense.**

16 "A party responsible for issuing and serving a subpoena must take reasonable steps to avoid  
17 imposing undue burden or expense on a person subject to the subpoena." Mont. R. Civ. P. 45(d)(1).  
18 Plaintiffs left this required text off their subpoenas which is not surprising as they obviously have  
19 refused to take reasonable steps to avoid imposing an undue burden or expense on Ms. Naclerio.  
20

21 As stated in her affidavit Ms. Naclerio started planning a family vacation with members of her  
22 family who live far away from her in May of 2014. She purchased plane tickets, hotel accommodations,  
23 and other non-refundable purchases well before Plaintiffs decided to take her deposition. She flies out of  
24 Bozeman on September 8 and returns the evening of September 22. (See Attachment 3, ¶ 2). For these  
25 reasons, counsel for the GLA informed Plaintiffs of Ms. Naclerio's unavailability September 8 through  
26 23. Despite this knowledge, Plaintiffs insist Ms. Naclerio must attend her deposition on September 9.  
27  
28

1 Plaintiffs filed their Amended Complaint in this case in February of 2013. They have had over a  
2 year and half to conduct depositions, and they have not done so. Now, they insist these depositions must  
3 be taken at the drop of a hat according to their schedule. Poor planning on Plaintiffs' part does not  
4 justify forcing others to accommodate their poor planning. The demand that Ms. Naclerio appear on  
5 September 9 should be quashed pursuant to 45(d)(3), and Plaintiffs should be ordered to refrain from  
6 attempting to subpoena her during the period of September 8 through 23.

7  
8 **4. Plaintiffs should be sanctioned for failure to comply with Rule 45(d).**

9 Plaintiffs clearly have a duty to avoid imposing undue burden and expense with their subpoenas.  
10 "The issuing court must enforce this duty and impose an appropriate sanction—which may include lost  
11 earnings and reasonable attorney fees—on a party or attorney who fails to comply." Mont. R. Civ. P.  
12 45(d)(1).  
13

14 Here, counsel for the GLA has tried to accommodate Plaintiffs' requests despite lack of proper  
15 discovery procedures and failure to comply with the rules. All of the conflict arising from these  
16 subpoenas could have been avoided with simple courtesy—a letter or email stating who they would like  
17 to depose and requesting dates of availability. But Plaintiffs refuse to extend such courtesy and instead  
18 serve defective subpoenas expecting everyone else involved to accommodate them.  
19

20 Now Plaintiffs take it a step further and insist Ms. Naclerio cancel a planned vacation resulting  
21 in a loss of time with family and loss of money. Despite knowing this, Plaintiffs proceed demonstrating  
22 that taking her deposition goes beyond discovery into a calculated attempt to harm Ms. Naclerio.  
23

24 Such conduct is intolerable and justifies the imposition of an appropriate sanction upon  
25 Plaintiffs. Further, the GLA requests this Court to order Plaintiffs to contact the GLA's counsel in  
26 writing regarding any future depositions to request the availability of who they would like to depose.  
27  
28

CONCLUSION

1  
2 The GLA has offered to make Ms. Allen available on September 9, and Ms. Naclerio can be  
3 available upon her return. Despite this offer, Plaintiffs have moved ahead with these subpoenas,  
4 necessitating this Motion. For the above reasons, GLA respectfully requests an Order from the Court  
5 quashing Plaintiffs' defective subpoenas, sanctioning Plaintiffs, and ordering them to consult with the  
6 undersigned counsel regarding any future depositions before serving future subpoenas.  
7

8 DATED this 26th day of August, 2014.

9  
10 BROWN LAW FIRM, P.C.  
11 315 North 24<sup>th</sup> Street  
12 P.O. Drawer 849  
13 Billings, MT 59103-0849

14 BY 

15 Michael P. Heringer  
16 Seth M. Cunningham  
17 The Brown Law Firm, PC  
18 Attorneys for Glastonbury  
19 Landowners Association, Inc.  
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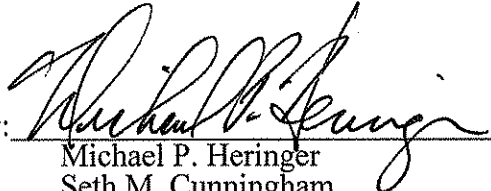
**CERTIFICATE OF SERVICE**

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 26<sup>th</sup> day of August, 2014:

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
*Plaintiffs pro se*

Daniel and Valery O'Connell  
PO Box 774  
Cayucos, CA 93430  
*Plaintiffs pro se*

Alanah Griffith  
Pape & Griffith, PLLC  
26 E. Mendenhall  
Bozeman, MT 59715  
Tel (406) 522-0014  
Fax (406) 585-2633  
*Attorneys for Respondents Glastonbury  
Landowners Association, Inc.*

By:   
Michael P. Heringer  
Seth M. Cunningham  
The Brown Law Firm, PC



MAY 27 2014

Daniel and Valery O'Connell-PRO SE  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

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

Daniel K. O'Connell (a Director of the	)	
Glastonbury Landowners Association	)	Cause No. DV-2011-114
Incorporated), & Valery A. O'Connell	)	
	)	<b>PLAINTIFFS</b>
Plaintiff(s),	)	<b>NOTICE OF DELAY OF DISCOVERY</b>
v.	)	<b>&amp; ORAL DEPOSITION</b>
"Glastonbury Board of Directors	)	
& GLA Glastonbury Landowners Assoc. Inc.)	)	
Defendant(s)	)	
_____	)	

Plaintiffs, Dan and Val O'Connell, hereby file notice of delay of discovery, and notice of further discovery by oral deposition on June 13, 2014 per M.R.Civ. P., 45 & 30.


**Factual Brief**

Plaintiffs contend for good cause that discovery has being delayed since fall 2013 to give Defendants more time to comply with issues in dispute since seven GLA Directors have been removed or resigned; also for proposed election (Nov. 12, 2014) of proposed amendments to the GLA Governing Documents that would settle some issues in dispute before trial; and also for medical reasons that took Plaintiff(s) Daniel out of state for several months for physical therapy.

This is also notice of discovery by subpoena to compel an Oral Deposition and documentation from Defendant and GLA President, Alyssa Allen on June 13, 2014 per M.R.Civ. P., 45 & 30 at County Court House lower room (across from Planning Dept.).

Submitted this 23rd day of May, 2014.

By:  Daniel K. O'Connell

By:  Valery A. O'Connell


Certificate of Service

The following parties were serviced the same day the forgoing documents by Plaintiff via first class mail postage prepaid to the following addresses:

GLA Attorney(s) of record:  
Alanah Griffith  
1184 N. 15th St. Suite #4  
Bozeman, Mt. 59715

Brown Law Firm, P.C.  
315 N. 24th St. (PO Drawer 849)  
Billings, MT. 59103-0849

Hon. Judge David Cybulski  
573 Shippe Canyon Rd.  
Plentywood, Mt. 59254

By:  Valery A. O'Connell

Daniel and Valery O'Connell-PRO SE  
PO Box 77  
Emigrant, Mt. 59027  
406-577-6339  
[valoc@mac.com](mailto:valoc@mac.com)

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O'Connell (a Director of the )  
Glastonbury Landowners Association ) Cause No. DV-11-114  
Incorporated), & Valery A. O'Connell )  
Plaintiff(s), ) **SUBPOENA**  
)  
v. )  
Glastonbury Board of Directors )  
& GLA Glastonbury Landowners Assoc. Inc.)  
Defendant(s) )  
\_\_\_\_\_ )

PLAINTIFFS TO:

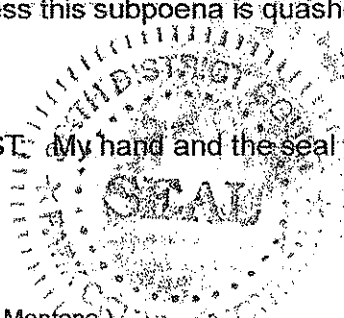
**Alyssa Allen**  
PO Box 333 / 53 Polaris Way.  
Emigrant, Mt. 59027

WE COMMAND YOU, that all business and excuses being laid aside, and that you appear in person regarding this matter, before the Court Reporter of the Sixth Judicial District, State of Montana, for the County of Park, at a term of the Court Reporter to be held at the Park County Court House (lower level room: across the hall from Planning Dept.) in Park County on **Friday, June 13th, 2014 at 2pm. or as this time, date, and place may be modified**, then and there to testify for deposition questions in the above said civil action now pending, on the part of the Plaintiffs and disobedience will be punished as a contempt of said court.

Please contact the O'Connells to confirm the time, date, and place when you must appear at (406) 577-6339. This matter may be continued, however, this subpoena will remain in effect for a new time, date, and place until final determination of this case or unless this subpoena is quashed.

Witness, Clerk of Court of the Sixth Judicial District, in the Sixth Judicial District, and seal of said Court, this 23rd day of May, 2014.

ATTEST: My hand and the seal of said court the day and year last above written.



JUNE LITTLE

Molly Bradburn Clerk  
Deputy Clerk

State of Montana )  
County of Park )

I HEREBY CERTIFY that I received the within Subpoena in said action on the \_\_\_\_ day of May, 2014, and personally served the same on the \_\_\_\_ day of May, 2012 & fees for one day service and mileage fee, on Charlene Murphy, being the person named in said Subpoena, by delivering to and leaving with said person personally, in the County of Park, State of Montana, a copy of said Subpoena & fees.

Dated this \_\_\_\_ day of May, 2014.

1 Michael P. Heringer  
2 Seth M. Cunningham  
3 BROWN LAW FIRM, P.C.  
4 315 North 24<sup>th</sup> Street  
5 P.O. Drawer 849  
6 Billings, MT 59103-0849  
7 Tel (406) 248-2611  
8 Fax (406) 248-3128  
9 *Attorneys for Respondents*  
10 *Glastonbury Landowners*  
11 *Association, Inc.*

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

8 DANIEL K. O'CONNELL and VALERY A.  
9 O'CONNELL,

10 Plaintiffs,

11 v.

12 GLASTONBURY LANDOWNERS  
13 ASSOCIATION, INC. & Current GLA Board  
14 of Directors,

15 Defendants.

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

**AFFIDAVIT OF ALYSSA ALLEN**

16 STATE OF MONTANA )  
17 ) :SS  
18 County of Park )

18 Alyssa Allen, being first duly sworn on her oath deposes and states:

19 1. I am the Vice-President of the Glastonbury Landowners Association, Inc. (GLA). On May 31,  
20 2014 I was served with a subpoena commanding me to appear at a deposition on June 13, 2014 along  
21 with a check for \$44.00 as fees for attendance and mileage. (See first subpoena attached as Exhibit A). I  
22 was served by an unidentified woman who was driven to my house by Daniel O'Connell. On June 11,  
23 2014 Daniel O'Connell emailed me informing me that my deposition was delayed, and I received a  
24 copy of Plaintiffs' "Delay of Deposition Pending Motion to Indemnify." (See Exhibit B).  
25

26 2. On August 11, 2014, at the GLA Board meeting, I was served with a second subpoena by  
27 Daniel O'Connell and Valery O'Connell. (Second subpoena attached as Exhibit C). This subpoena  
28

**ATTACHMENT 2**

1 commanded me to appear on August 28, 2014 for my oral deposition. On August 18, 2014, I received  
2 the unsigned document "Notice to Modify Date and Place of Depositions" which states that my  
3 deposition is to be held in Emigrant, MT on September 8, 2014. (Attached as Exhibit D).

4 Further, affiant sayeth naught.

5 DATED this 19 day of August, 2014.

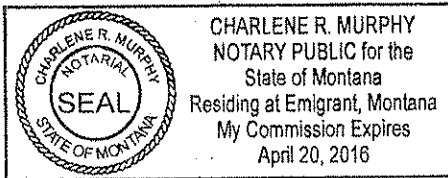
6  
7  
8 Alyssa Allen  
9 Alyssa Allen

10 SUBSCRIBED AND SWORN to me by Alyssa Allen on this 19 day of August, 2014.

11 State of Montana  
12 County of Park

13 Charlene R. Murphy  
14 Notary Public for the State of Montana

15 Printed or Typed Name of Notary  
16 Residing at: \_\_\_\_\_  
17 My commission expires: \_\_\_\_\_



Daniel and Valery O'Connell-PRO SE  
PO Box 77  
Emigrant, Mt. 59027  
406-577-6339  
valoc@mac.com

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O'Connell (a Director of the )  
Glastonbury Landowners Association ) Cause No. DV-11-114  
Incorporated), & Valery A. O'Connell )  
Plaintiff(s), ) **SUBPOENA**  
)  
v. )  
Glastonbury Board of Directors )  
& GLA Glastonbury Landowners Assoc. Inc.)  
Defendant(s) )  
\_\_\_\_\_ )

PLAINTIFFS TO:

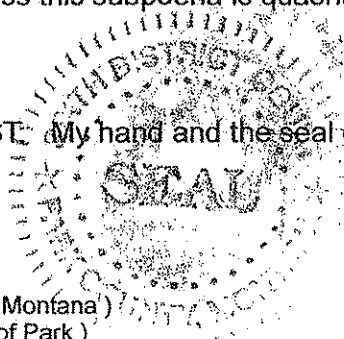
**Alyssa Allen**  
PO Box 333 / 53 Polaris Way.  
Emigrant, Mt. 59027

WE COMMAND YOU, that all business and excuses being laid aside, and that you appear in person regarding this matter, before the Court Reporter of the Sixth Judicial District, State of Montana, for the County of Park, at a term of the Court Reporter to be held at the Park County Court House (lower level room: across the hall from Planning Dept.) in Park County on **Friday, June 13th, 2014 at 2pm. or as this time, date, and place may be modified**, then and there to testify for deposition questions in the above said civil action now pending, on the part of the Plaintiffs and disobedience will be punished as a contempt of said court.

Please contact the O'Connells to confirm the time, date, and place when you must appear at (406) 577-6339. This matter may be continued, however, this subpoena will remain in effect for a new time, date, and place until final determination of this case or unless this subpoena is quashed.

Witness, Clerk of Court of the Sixth Judicial District, in the Sixth Judicial District, and seal of said Court, this 23rd day of May, 2014.

ATTEST: My hand and the seal of said court the day and year last above written.



JUNE LITTLE

Molly Bradbury Clerk  
Deputy Clerk

State of Montana )  
County of Park )

I HEREBY CERTIFY that I received the within Subpoena in said action on the \_\_\_ day of May, 2014, and personally served the same on the \_\_\_ day of May, 2012 & fees for one day service and mileage fee, on Charlene Murphy, being the person named in said Subpoena, by delivering to and leaving with said person personally, in the County of Park, State of Montana, a copy of said Subpoena & fees.

Dated this \_\_\_\_\_ day of May, 2014.

JUN 12 2014


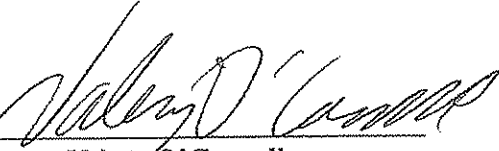
Daniel & Valery O'Connell -PRO SE  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

**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.	)	Cause No. DV-12-114
	)	
Plaintiff(s),	)	
	)	
v.	)	<b>DELAY OF DEPOSITION PENDING</b>
	)	<b>MOTION TO INDEMNIFY</b>
Glastonbury Landowners Association, Inc.	)	
Board of Directors	)	
	)	
Defendant(s)	)	

Plaintiffs-Daniel and Valery O'Connell, hereby submit this notice of "Delay of Deposition Pending Motion To Indemnify." Delay of Oral Deposition for Alyssa Allen is hereby temporarily postponed until a later date to be announced by Plaintiffs to allow for the indemnification motion of June 3, 2014 to be settled. This is because such indemnification can effect the oral deposition by providing legal council to the O'Connells.

DATED this 10th day of June, 2014.

Signed		Signed:	
	Daniel O'Connell		Valery O'Connell

**Certificate of Service**


We, Daniel & Val O'Connell, swear that a true and correct copy of forgoing document(s) were sent to the following parties via certified mail AND EMAIL on this same day to:

Alanah Griffith  
26 E. Mendenhall  
Bozeman, Mt. 59715  
[alanah@papegriffithlaw.com](mailto:alanah@papegriffithlaw.com)

Alyssa Allen  
PO Box PO Box 333  
Emigrant, MT. 59027  
[alyssaallen33@gmail.com](mailto:alyssaallen33@gmail.com)

Hon. Judge David Cybulski  
573 Shippe Canyon Rd.  
Plentywood, Mt. 59254

U.S.L.I. Insurance Agent & GLA attorney  
Brown Law Firm, P.C.  
315 N. 24th St. (PO Drawer 849)  
Billings, MT. 59103-0849  
[mheringer@brownfirm.com](mailto:mheringer@brownfirm.com)

By:   
Valery O'Connell



Daniel & Val O'Connell  
P.O. Box 77  
Emigrant, Mt. 59027 &  
P.O. Box 77 4  
406-577-6339

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. )

Cause No. DV-11-114

Plaintiff(s), )  
)

v. )

**SUBPOENA**

(modified date)

Glastonbury Landowners Association, Inc. )  
& current GLA Board of Directors )

Defendant(s) )  
)

PLAINTIFFS TO:

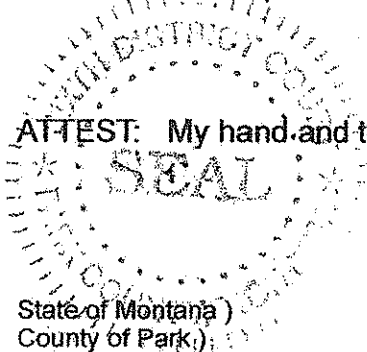
Alyssa Allen  
53 Polaris Way  
Emigrant, Mt. 59027

WE COMMAND YOU, that all business and excuses being laid aside, and that you appear in person regarding this matter, before the Court Reporter of the Sixth Judicial District, State of Montana, for the County of Park, at a term of the Court Reporter & using audio/visual recording devise to transcribe, to be held at the Court House in Park County on (modified) **Thursday, August 28th, 2014 at 12pm. or as this time, date, and place may be modified**, then and there to testify for oral deposition questions in the above said civil action now pending, on the part of the Plaintiffs and disobedience will be punished as a contempt of said court.

Please contact the O'Connells to confirm the time, date, and place when you must appear at (406) 577-6339. This matter may be continued, however, this subpoena will remain in effect for a new time, date, and place until final determination of this case or unless this subpoena is quashed.

Witness, Clerk of Court of the Sixth Judicial District, in the Sixth Judicial District, and seal of said Court, this 11 day of August, 2014.

ATTEST: My hand and the seal of said court the day and year last above written.



Jane Fink  
Clerk

\_\_\_\_\_  
Deputy Clerk

State of Montana )  
County of Park )

AUG 20 2014

Daniel & Valery O'Connell--PRO SE  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

**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. ) Cause No. DV-12-114

Plaintiff(s), )

v. )

**NOTICE TO MODIFY DATE  
AND PLACE OF DEPOSITIONS**

Glastonbury Landowners Association, Inc. )  
Board of Directors )  
Defendant(s) )

Plaintiffs-Daniel and Valery O'Connell, hereby submit this "Notice To Modify Date And

Place of Depositions" for Alyssa Allen and Janet Naclerio (both GLA Defendants). The August

11, 2014 Subpoenas originally stated the the date and place of these depositions "to be held at

the Court House in Park County on (modified) **Thursday, August 28th, 2014 at 10am.**

or as this time, date, and place may be modified,..." This notice hereby modifies this

date and place of these depositions to now be held at the Emigrant Hall (Emigrant

MT. next to the Emigrant Post Office) in Park County on ~~Monday~~ <sup>Tuesday</sup> September 2~~3~~ <sup>2</sup>

2014 at 10Am for Janet Naclerio and 12 PM for Alyssa Allen. This modified date was

requested by GLA Defendants council per attached email letter.

(Note: Oral Depositions may necessitate discovery of document requests to support oral

deposition statements given. Also GLA Board Defendants for no good cause have

repeatedly denied O'Connell/GLA member requests for documents made June-July

2014. This is because O'Connell's as members have a right to request GLA member documents that may or may not be used for discovery.)

Respectfully submitted this 18th day of August, 2014.

Signed Daniel K. O'Connell Signed: Valery O'Connell  
Daniel O'Connell 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:

Sixth Judicial District Clerk of Court  
414 E. Callender St.  
Livingston, Mt. 59047

Alanah Griffith  
26 E. Mendenhall  
Bozeman, Mt. 59715

Hon. Judge David Cybulski  
573 Shippe Canyon Rd.  
Plentywood, Mt. 59254

Brown Law Firm, P.C.  
315 N. 24th St. (PO Drawer 849)  
Billings, MT. 59103-0849

By: Valery O'Connell  
Valery O'Connell

From: **Kelly Anderson** KAnderson@brownfirm.com  
Subject: O'Connell v Glastonbury Landowners Association  
Date: August 15, 2014 at 10:20 AM  
To: dko@mac.com  
Cc: Michael Heringer MHeringer@brownfirm.com, Seth Cunningham SCunningham@BrownFirm.com, Anna Robertus ARobertus@BrownFirm.com

Attached is a letter from attorney Mike Heringer. The original has been placed in the U.S. mail.

Kelly Anderson  
Paralegal  
Brown Law Firm, P.C.  
315 North 24th Street  
P.O. Drawer 849  
Billings, MT 59103-0849  
Phone (406) 248-2611  
Fax (406) 248-3128  
email [kanderson@brownfirm.com](mailto:kanderson@brownfirm.com)

**CONFIDENTIALITY NOTICE:** The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure and is intended only for the use of the designated recipient(s). This information, along with any attachments constitutes attorney-client and/or attorney work product and is confidential in nature. This information is not intended for transmission to, or receipt by, any unauthorized person. The use, distribution, transmittal or re-transmittal by an unintended recipient of this communication is strictly prohibited without our express approval in writing or by e-mail. If you are not the intended recipient of this e-mail, please delete it from your system without copying it and notify the above sender so that our e-mail address may be corrected. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work-product privilege.

## BROWN LAW FIRM, PC

John J. Russell  
Michael E. Heringer  
Guy W. Rogers  
Scott G. Griston  
Kelly J.C. Gatzinger  
Jeffery T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

August 14, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

RE: **O'Connell v. Glastonbury Landowners Association**  
**Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

We have received copies of the subpoenas you served on Alyssa Allen and Janet Naclerio commanding them to appear at depositions on August 28, 2014. Unfortunately, this date will not work for us as we have depositions already scheduled in another case

Revised  
Rockwood Brown  
John Walker Ross  
Margo Heenan

on that date.

We are available for these deposition on August 26, 2014 or September 8, 9 10, or 11, 2014. Please let us know if one of those dates will work for you. If we do not hear back from you, we will move to quash the subpoenas because they are defective.

In the future, if you want to take depositions, it would be helpful to simply write us and let us know who you want to depose. Then, we can provide dates that the deponent and attorneys are available to avoid scheduling conflicts. Please feel free to contact me if you have any questions.

Sincerely,



Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen

1 Michael P. Heringer  
2 Seth M. Cunningham  
3 BROWN LAW FIRM, P.C.  
4 315 North 24<sup>th</sup> Street  
5 P.O. Drawer 849  
6 Billings, MT 59103-0849  
7 Tel (406) 248-2611  
8 Fax (406) 248-3128  
9 *Attorneys for Respondents*  
10 *Glastonbury Landowners*  
11 *Association, Inc.*

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

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

15 Plaintiffs,

16 v.

17 GLASTONBURY LANDOWNERS  
18 ASSOCIATION, INC. & Current GLA Board  
19 of Directors,

20 Defendants.

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

23 **AFFIDAVIT OF JANET NACLERIO**

24 STATE OF MONTANA )  
25 )  
26 ) :ss  
27 )  
28 )  
County of Park )

Janet Naclerio, being first duly sworn on her oath deposes and states:

1. I am a former member of the Glastonbury Landowners Association, Inc. (GLA) Board of Directors. I resigned from the Board of Directors on December 28, 2013. On August 13, 2014, an unidentified person came into my place of employment at Chico Hot Springs Resort where I was working at the front desk and asked for me. When I identified myself she told me she was serving me with a subpoena and requested that I sign a document. Attached as Exhibit A are true and correct duplicates of the subpoena and signature page. The subpoena commands me to attend my oral deposition on August 28, 2014. While the signature page is nonsensical, it seems to indicate that I was

1 given a fee for attendance and mileage. However, I was given no such fee, and at the time, I was so  
2 bewildered I did not realize what the signature page said.

3 2. I was later informed that Daniel O'Connell and Valery O'Connell changed the date of the  
4 deposition to September 8, 2014. This would create a great burden and expense for me. Beginning in  
5 May of 2014, I planned a family vacation on the east coast and purchased plane tickets, hotel  
6 accommodations, and other non-refundable purchases. I am leaving from Bozeman on September 8,  
7 2014 and returning the evening of September 22, 2014. To cancel my plans in order to attend this  
8 deposition would cost me the money spent on the plane tickets as well as other expenses. Further, it  
9 would be great burden to miss out on time spent with my family who live far away.  
10

11 Further, affiant sayeth naught.

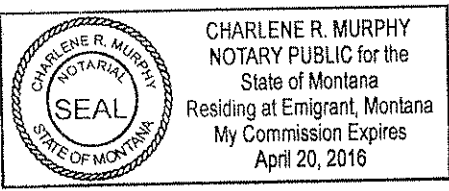
12 DATED this 20<sup>th</sup> day of August, 2014.

13  
14  
15 Janet Naclerio  
16 Janet Naclerio

17 SUBSCRIBED AND SWORN to me by Janet Naclerio on this 20 day of August, 2014.

18 State of Montana  
19 County of Park

20 Charlene R. Murphy  
21 Notary Public for the State of Montana  
22 Charlene R. Murphy  
23 Printed or Typed Name of Notary  
24 Residing at: Emigrant MT  
25 My commission expires: April 20, 2016



Daniel & Val O'Connell  
P.O. Box 77  
Emigrant, Mt. 59027 &  
P.O. Box 77 4  
406-577-6339

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. )

Cause No. DV-11-114

Plaintiff(s), )

v. )

**SUBPOENA**

Glastonbury Landowners Association, Inc. )  
& current GLA Board of Directors )

Defendant(s) )

PLAINTIFFS TO:

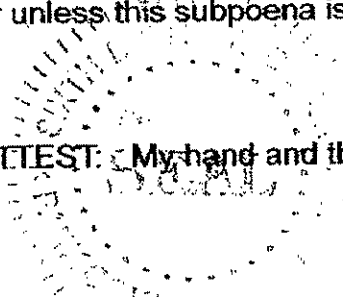
Janet Naclario  
119 Capricorn Drive  
Emigrant, Mt. 59027

WE COMMAND YOU, that all business and excuses being laid aside, and that you appear in person regarding this matter, before the Court Reporter of the Sixth Judicial District, State of Montana, for the County of Park, at a term of the Court Reporter & using audio/visual recording devise to transcribe, to be held at the Court House in Park County on (modified) **Thursday, August 28th, 2014 at 10am. or as this time, date, and place may be modified**, then and there to testify for oral deposition questions in the above said civil action now pending, on the part of the Plaintiffs and disobedience will be punished as a contempt of said court.

Please contact the O'Connells to confirm the time, date, and place when you must appear at (406) 577-6339. This matter may be continued, however, this subpoena will remain in effect for a new time, date, and place until final determination of this case or unless this subpoena is quashed.

Witness, Clerk of Court of the Sixth Judicial District, in the Sixth Judicial District, and seal of said Court, this 11 day of August, 2014.

ATTEST: My hand and the seal of said court the day and year last above written.



*Janet Naclario*  
\_\_\_\_\_  
Clerk

Deputy Clerk

State of Montana )  
County of Park )



Janet Naclerio HEREBY CERTIFY that I received the within  
Subpoena in said action on the 13<sup>th</sup> day of August 2014, and personally served the same on the 13<sup>th</sup>  
day of August, 2014 & fees for one day service and mileage fee, on Janet Naclerio, being the person  
named in said Subpoena, by delivering to and leaving with said person personally, in the County of Park,  
State of Montana, a copy of said Subpoena & fees.

Daniel & Valery O'Connell -PRO SE  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

**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. ) Cause No. DV-12-114

Plaintiff(s), )

v. )

**NOTICE TO MODIFY DATE  
AND PLACE OF DEPOSITIONS**

Glastonbury Landowners Association, Inc. )  
Board of Directors )

Defendant(s) )

Plaintiffs-Daniel and Valery O'Connell, hereby submit this "Notice To Modify Date And Place of Depositions" for Alyssa Allen and Janet Naclerio (both GLA Defendants). The August 11, 2014 Subpoenas originally stated the the date and place of these depositions "to be held at the Court House in Park County on (modified) **Thursday, August 28th, 2014 at 10am. or as this time, date, and place may be modified,...**" This notice hereby modifies this date and place of these depositions to now be held at the Emigrant Hall (Emigrant MT. next to the Emigrant Post Office) in Park County on ~~Monday~~ <sup>Tuesday</sup> September 9<sup>th</sup> 2014 at 10Am for Janet Naclerio and 12 PM for Alyssa Allen. This modified date was requested by GLA Defendants council per attached email letter.

(Note: Oral Depositions may necessitate discovery of document requests to support oral deposition statements given. Also GLA Board Defendants for no good cause have repeatedly denied O'Connell/GLA member requests for documents made June-July

2014. This is because O'Connell's as members have a right to request GLA member documents that may or may not be used for discovery.)

Respectfully submitted this 18th day of August, 2014.

Signed Daniel K. O'Connell Signed: Valery O'Connell  
Daniel O'Connell 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:

Sixth Judicial District Clerk of Court  
414 E. Callender St.  
Livingston, Mt. 59047

Alanah Griffith  
26 E. Mendenhall  
Bozeman, Mt. 59715

Hon. Judge David Cybulski  
573 Shippe Canyon Rd.  
Plentywood, Mt. 59254

Brown Law Firm, P.C.  
315 N. 24th St. (PO Drawer 849)  
Billings, MT. 59103-0849

By: Valery O'Connell  
Valery O'Connell

From: **Kelly Anderson** KAnderson@brownfirm.com  
Subject: **O'Connell v Glastonbury Landowners Association**  
Date: **August 15, 2014 at 10:20 AM**  
To: dko@mac.com  
Cc: **Michael Heringer** MHeringer@brownfirm.com, **Seth Cunningham** SCunningham@BrownFirm.com, **Anna Robertus** ARobertus@BrownFirm.com

Attached is a letter from attorney Mike Heringer. The original has been placed in the U.S. mail.

**Kelly Anderson**  
Paralegal  
Brown Law Firm, P.C.  
315 North 24th Street  
P.O. Drawer 849  
Billings, MT 59103-0849  
Phone (406) 248-2611  
Fax (406) 248-3128  
email [kanderson@brownfirm.com](mailto:kanderson@brownfirm.com)

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## BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Jeffrey T. McAllister  
Joni A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

August 14, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

### Via U.S. Mail and Email

**RE: O'Connell v. Glastonbury Landowners Association**  
**Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

We have received copies of the subpoenas you served on Alyssa Allen and Janet Naclerio commanding them to appear at depositions on August 28, 2014. Unfortunately, this date will not work for us as we have depositions already scheduled in another case

Retired  
Rockwood Brown  
John Walker Rees  
Margo Bonner

on that date.

We are available for these deposition on August 26, 2014 or September 8, 9 10, or 11, 2014. Please let us know if one of those dates will work for you. If we do not hear back from you, we will move to quash the subpoenas because they are defective.

In the future, if you want to take depositions, it would be helpful to simply write us and let us know who you want to depose. Then, we can provide dates that the deponent and attorneys are available to avoid scheduling conflicts. Please feel free to contact me if you have any questions.

Sincerely,



Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen

# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Matthew I. Tourlotte  
Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller

May 28, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027

RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005

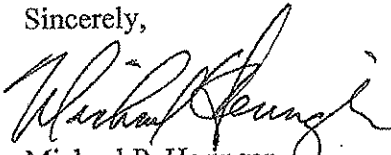
Retired  
Rockwood Brown  
John Walker Ross  
Margo Bonner

Dear Mr. and Ms. O'Connell:

I received your Notice of Delay of Discovery & Oral Deposition dated May 23, 2014. I have a conflict with June 13, 2014, and request that you set the deposition for either June 12, 17, or 18, 2014. If one of those dates is acceptable, please provide an amended notice of deposition including the time, date, method of recording the testimony, and the person before whom the deposition will be taken pursuant to Rule 28(a)(1) of the Montana rules of Civil Procedure.

If none of the proposed dates work with your schedules, I would be happy to provide more dates.

Sincerely,



Michael P. Heringer

MPH:  
cc: Alanah Griffith

# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

August 14, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

Retired  
Rockwood Brown  
John Walker Ross  
Margy Bonner

**RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005**

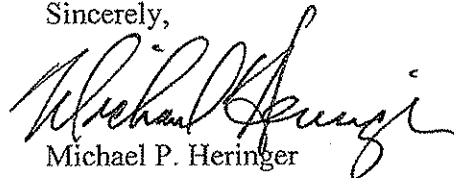
Dear Mr. and Ms. O'Connell:

We have received copies of the subpoenas you served on Alyssa Allen and Janet Naclerio commanding them to appear at depositions on August 28, 2014. Unfortunately, this date will not work for us as we have depositions already scheduled in another case on that date.

We are available for these deposition on August 26, 2014 or September 8, 9 10, or 11, 2014. Please let us know if one of those dates will work for you. If we do not hear back from you, we will move to quash the subpoenas because they are defective.

In the future, if you want to take depositions, it would be helpful to simply write us and let us know who you want to depose. Then, we can provide dates that the deponent and attorneys are available to avoid scheduling conflicts. Please feel free to contact me if you have any questions.

Sincerely,



Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen

**EXHIBIT B  
(OF ATTACHMENT 4)**

## Seth Cunningham

---

**From:** Daniel OConnell [dco@mac.com]  
**Sent:** Monday, August 18, 2014 10:45 AM  
**To:** Kelly Anderson  
**Cc:** Michael Heringer; Seth Cunningham; Anna Robertus  
**Subject:** Re: O'Connell v Glastonbury Landowners Association  
**Attachments:** Subpoena\_Discovery Request\_GLA.pages; ATT40839.htm

We are filing this notice to change the subpoena date and place to Tuesday September 9, 2014 at the Emigrant Hall.



# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

August 18, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

Retired  
Rockwood Brown  
John Walker Ross  
Margy Bonner

**RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

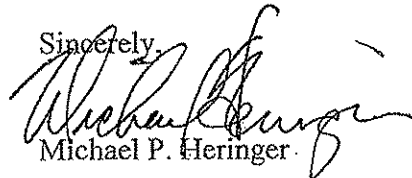
We have reviewed your email of August 18, 2014 with the attached "Notice to Modify Date and Place of Depositions," and we need to clarify some things regarding your taking the depositions of Alyssa Allen and Janet Naclerio. First, your email stated the depositions would be on Tuesday, September 9, 2014, but the "Notice to Modify Date and Place of Depositions" states you wish to depose Ms. Allen and Ms. Naclerio on Monday, September 8, 2014.

Second, Ms. Allen and Ms. Naclerio are not Defendants in this lawsuit. The only named and served Defendant is the Glastonbury Landowners Association, Inc. To refer to Ms. Allen and Ms. Naclerio as Defendants is erroneous.

Third, Ms. Naclerio is not available for her deposition from September 8 through September 23. She will be out of town visiting family, a trip planned well before you tried to subpoena her. She is available on August 26, and Ms. Allen and I are available that day as well. I would prefer to do both depositions the same day. However, if you want to depose only Ms. Allen on September 8 or 9, then we can be available.

Please let us know how you wish to proceed, and contact me with any questions.

Sincerely,



Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen

**EXHIBIT D  
(OF ATTACHMENT 4)**

## Seth Cunningham

---

**From:** Daniel OConnell [dco@mac.com]  
**Sent:** Monday, August 18, 2014 10:27 PM  
**To:** Kelly Anderson; Michael Heringer; Seth Cunningham; Anna Robertus  
**Cc:** alyssaallen33@gmail.com; Janet Naclerio  
**Subject:** Re: O'Connell v Glastonbury Landowners Association

Date: Aug. 18, 2014  
Re: Brown Law Firm letter of Aug. 18, 2014  
To: Brown Law Firm and Alyssa Allen, and Janet Naclerio,

The notice to modify date and place was changed at the last minute to September 9th, because Emigrant Hall was not available on the 8th.

and pleadings page one caption reads Defendants are "Glastonbury Landowners Association, Inc. & current GLA Board of Directors." Thus Allen and Naclerio are Defendants.  
Any captions without this are a typo and should read as stated above for Defendants.

Janet Naclerio must be at the oral deposition Scheduled for September 9, 2014. We changed the date at your request and booked the Emigrant Hall. We can not change it  
Emigrant Hall is not back to August as the 26th is not available, nor are we. We also need time to prepare and 7 days is not enough, since we put this off due to the date change. Therefore, September

Sin

Sincerely,  
Damn and Val O'Connell

On Aug 18, 2014, at 4:02 PM, Kelly Anderson <[KAnderson@brownfirm.com](mailto:KAnderson@brownfirm.com)> wrote:

Attached is a letter from Mike Heringer regarding the depositions of Alyssa Allen and Janet Naclerio. The original is being sent U.S. mail.

Kelly Anderson  
Paralegal  
Brown Law Firm, P.C.  
315 North 24th Street  
P.O. Drawer 849  
Billings, MT 59103-0849  
Phone (406) 248-2611  
Fax (406) 248-3128  
email [kanderson@brownfirm.com](mailto:kanderson@brownfirm.com)

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<8-18-14 O'Connell re depositions.pdf>