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

12 DANIEL and VALERY O'CONNELL,

13 Plaintiffs,

14 v.

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

17 Defendants.

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

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR EXTENSION OF TIME & MOTION TO  
STRIKE DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

18 COMES NOW the above named Defendants Glastonbury Landowners Association, Inc. (GLA)  
19 and submit this brief in opposition to Plaintiffs' Motion for Extension of Time & Motion to Strike  
20 Defendant's Motion for Summary Judgment.  
21

22 **PROCEDURAL POSTURE**

23 The GLA moved for summary judgment on August 4, 2014. Plaintiffs did not file a response but  
24 instead filed a "Motion for Extension of Time & Motion to Strike Defendant's Motion for Summary  
25 Judgment." Plaintiffs ask the Court to strike the GLA's Motion for Summary Judgment due to its  
26 "scandalous content" under "Rule 12(7)(f) [sic]." Plaintiffs ask the Court to strike or dismiss the GLA's  
27  
28

1 Motion for Summary Judgment, to remove it from the GLA's website<sup>1</sup>, and to admonish the GLA's  
2 counsel. Plaintiffs also ask for an extension in replying to the Motion for Summary Judgment until their  
3 Motion to Strike is settled. Plaintiffs Motion to Strike should be denied, and the Court should Order  
4 them to respond to the merits of the Motion for Summary Judgment or grant the GLA's Motion.

#### 5 STANDARD

6  
7 "A motion to strike is addressed to the sound discretion of the court, and ordinarily, the refusal to  
8 grant it will not be disturbed, unless it clearly appears that the trial court's discretion has been abused.  
9 However, it is recognized that striking a pleading is a severe remedy and should be resorted to only in  
10 cases palpably requiring it for the administration of justice. The remedy will be granted only when the  
11 defect is plain, for where there is a semblance of a cause of action or defense set up in the pleading, its  
12 sufficiency cannot be determined on **motion to strike** it out." *Collishaw v. American Smelting &*  
13 *Refining Co.*, 121 Mont. 196, 198, 190 P.2d 673, 674 (1948) (citations omitted).

#### 15 ARGUMENT

16 Plaintiffs' Motion to Strike fails because Mont. R. Civ. P. 12(f) applies only to striking  
17 pleadings, not motions. Further, moving to strike a motion is improper. Mont. R. Civ. P. 12(f) states:

18  
19 The court may strike from a pleading an insufficient defense or any redundant, immaterial,  
20 impertinent, or scandalous matter. The court may act:

21 (1) on its own; or

22 (2) on motion made by a party either before responding to the pleading or, if a response is not  
23 allowed, within 21 days after being served with the pleading.

24 A pleading is defined as a complaint, an answer to a complaint, an answer to a counterclaim designated  
25 as a counterclaim, an answer to a crossclaim, a third-party complaint, and a reply to an answer. Mont. R.  
26 Civ. P. 7(a). Pleadings are not motions, and a motion to strike applies specifically only to pleadings.

27  
28 <sup>1</sup> The GLA maintains a website at [www.glamontana.org](http://www.glamontana.org) where it makes the public documents filed in this case available to  
its members so they are informed about these lawsuits.

1 Plaintiffs' Motion to Strike the GLA's Motion for Summary Judgment is not allowed under the Rules of  
2 Civil Procedure.

3 Further, filing a motion to strike in response to a motion for summary judgment is improper. In  
4 *State ex rel. McVay v. District Court of Fourth Judicial Dist.*, 126 Mont. 382, 395, 251 P.2d 840, 847  
5 (1952), the Montana Supreme Court cited with approval:

6  
7 A motion to strike from the files another motion is wholly unnecessary, and not recognized by  
8 our practice. If the motion objected to is not a proper one, or is not filed within the time required  
9 by the statute, then the objection arises and may be considered in ruling on the motion itself.  
10 There is no occasion for the filing of another motion in order to raise the objection. The court,  
11 therefore, properly overruled the motion to strike, and in doing so did not necessarily pass on the  
12 question as to whether the motion for a new trial was filed within the proper time.' *German*  
13 *Savings Bank v. Cady*, 14 Iowa 228, 86 N.W. 277, 278 (1901).

14 The Court observed that proper practice regarding a motion is one hearing where the proponent argues  
15 in favor and the opponent may argue in opposition. Allowing one motion to spawn others such as a  
16 motion to strike is duplicative and complicated. "No answer or other pleading to a motion is required.  
17 Nothing is required of the opposing party but to overcome, if he can, by competent evidence or by the  
18 citation of authority, the case made by the moving party." *State ex rel. McVay* at 393, 251 P.2d at 846.

19 Plaintiffs claim the GLA's Motion for Summary Judgment is scandalous and must be stricken.  
20 They simply assert the GLA's allegations and arguments are false without providing competent  
21 evidence or authority to the contrary. They avoid addressing the Motion on its merits and instead try to  
22 strike it. This is precisely why the Montana Supreme Court disallowed a motion to strike in response to  
23 a motion and stated a party opposing the motion must do so with evidence and authority.

24 In a motion for summary judgment, the party moving for summary judgment must demonstrate  
25 no genuine issues of material fact exist. Upon such demonstration, the burden shifts to the non-moving  
26 party to prove, by more than mere denial or speculation, a genuine issue of material fact exists. *Bruner*  
27 *v. Yellowstone Co.*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995). An "opposing party's facts must be  
28

1 material and of substantial nature, not fanciful, frivolous, gauzy, nor merely suspicions.” *Klock v. Town*  
2 *of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1265 (1997).

3 The burden is on the Plaintiffs to refute the facts and law the GLA presented with its Motion.  
4 These established facts and law support the arguments made by the GLA. Plaintiffs obviously take issue  
5 with the facts and argument presented by the GLA, but they do not present facts or law of their own.  
6 Instead, Plaintiffs’ Motion to Strike is “mere denial” and an attempt at avoidance. Plaintiffs’ position in  
7 this case is meritless, and rather than support their claims, they ask the Court to strike the Motion for  
8 Summary Judgment and disallow the publication of a public record to the members of the GLA who  
9 have an interest in this litigation.  
10

11 Plaintiffs failed to respond to the merits of the GLA’s Motion for Summary Judgment. Instead,  
12 they filed a motion to strike not allowed by the Rules of Civil Procedure or by the common law.  
13 Plaintiffs’ motion has needlessly wasted the time of the Court and the GLA’s counsel. Plaintiffs’  
14 Motion to Strike should be denied. As the basis for their Motion for Extension is meritless, that Motion  
15 should be denied as well.  
16

17 **CONCLUSION**  
18

19 For the above reasons, GLA respectfully requests an Order from the Court denying Plaintiffs’  
20 Motion for Extension of Time & Motion to Strike Defendant’s Motion for Summary Judgment.

21 DATED this 4<sup>th</sup> day of September, 2014.  
22

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24 BY 

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**CERTIFICATE OF SERVICE**

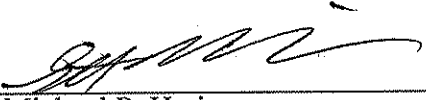
I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail, postage prepaid, and addressed as follows this 11<sup>th</sup> day of September, 2014:

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