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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.)

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

Defendant(s))

Cause No. DV-11-114
Hon. Judge Cybulski

PLAINTIFFS' 2015 AMENDED COMPLAINT

I. INTRODUCTION

COME NOW Plaintiffs'-Daniel and Valery O'Connell, and do hereby submit this "2015 Amended Complaint." Plaintiffs' 2015 amended complaint is brought pursuant to Title 27 and Title 35, Ch. 2 et seq., MCA based upon the facts and claims herein and exhibits and any further evidence that may be adduced by requested jury trial (hearing) and oral hearing on any summary judgment motion/counter-motion. In support of this amended complaint, Plaintiff(s) aver as follows:

Per M.R.Civ.P. Rule 15(a), the Motion for filing this "2015 Amended Complaint" is necessary and justice so requires this updated and amended complaint based on new evidences, discovery, GLA recent unauthorized actions, and amount of time elapsed since 2013 that has impacted, or changed the status of the complaint claims. In fact, some claims seem to have been resolved by the GLA as follows:

II. BACKGROUND ON GLA

GLASTONBURY LANDOWNERS ASSOCIATION CORPORATION & BOARD (HEREAFTER CALLED GLA) is a mutual benefit non-profit corporation owned by all its members who have a voting interest in the affairs of the GLA. Plaintiffs as current members of the GLA and former Director(Daniel) brought forth this original and amended complaint after they and their member friends witnessed the GLA Board majority refusal to acknowledge GLA numerous violations to its governing documents & state law.

For example, the DV-11-193 prior case and Settlement Agreement has proven and granted O'Connell claims (as GLA members) against the GLA FOR GLA's ban against GLA Board President voting, removed GLA's ban on member recordings of meetings, removed GLA's ban on a membership list to Board candidates, and enforced a state law banning GLA Board from casting Board candidate proxy votes. The 220/164 joinder cases filed after this was settled in O'Connells' favor by GLA removing an illegal GLA/ Minnick contract clause that gave Minnick "exclusive control over all member parcels" as members' private properties. For this last pending case (114), several complaint claims has already been partially resolved in O'Connells favor cited below & as follows: GLA started publishing Board election vote tallies (original complaint claim); GLA temporarily started providing members required statements of its "receipts and expenditures" & GLA began to take annual meeting minutes (after GLA President (Bolen) 2013 written interrogatory in this case admitted GLA never provided "receipts and expenditures" and never took "annual member meeting minutes" as state laws require before this complaint filing 2011(see President (Bolen) 2013 written interrogatory admissions), & more claims below likely settled; all of which are evidences supporting this complaint of GLAs' continued violations to its governing documents & state laws. (at NO TIME HAVE PLAINTIFFS "REQUESTED THE COURT TO REWRITE THE GLA GOVERNING DOCUMENTS." (see Defendants Dec. 2015 "proposed order" pp. 19))

III. ISSUES (from Original Complaint) LIKELY RESOLVED or SETTLED OUT OF COURT:

1a. Since this complaint filing June 2011, the GLA Board majority has agreed and/or is now complying with the following complaint claim: (¶ 25, GLA "Violation of Bylaw Art. VII (I) "...creation of a Committee of Directors and the appointment of members to must be approved by the greater of a majority of all Directors in office when the action is taken". Exhibit J part A p. 1, 7."

1b. Since complaint filing June 2011, the GLA Board has also agreed and/or is now complying with this complaint claim: (¶ 25, GLA stopped its violation of its Bylaw Art. VII (I) when they started taking minutes of its committee meetings.. ¶39 of Complaint, & ¶48 TRO Dist.Ct.Dkt. No. 33. "All committees shall keep Minutes reflecting the committee members attending and the actions taken." Complaint Exhibit J, part A at p.2

1c. Since complaint filing June 2011, the GLA Board has also agreed and/or is now complying with this complaint issue: (¶9 , GLA ceased its (fiduciary/fraud) & liability (per Art. VIII. when GLA started providing meeting minutes from all GLA "annual meetings" "private meetings" and most open Board meetings allowed by Bylaw Art. VI (I).

(PLAINTIFFS MAY AGAIN ADD RELIEF FOR THESE ISSUES ABOVE IF NEEDED).

IV. NEW CLAIMS INVOLVING GLA DEFENDANTS' BREACH OF GOOD FAITH, &/or BREACH OF DUTY, &/or BREACH OF FIDUCIARY DUTY:

2. Plaintiffs hereby seek inductive relief to prevent GLA "actions" or "omissions not in good faith," and/or GLA "breach of duty to the association and the members," and/or GLA "breach of a fiduciary obligation" & acts lacking honesty or good faith; which claims for relief are **set forth below** along with their applicable authorities under state laws & GLA governing contracts¹ (Bylaws, Covenants & Articles) including the following:

¹Mt. Supreme Court's decision in *Two Crow Ranch, Inc.* (1972), 159 Mont. 16, 494 P.2d 915, and a decision from the Washington state court of appeals, *East Lake Water Ass'n v. Rogers* (Wash.Ct.App. 1988), 761 P.2d 627. In *Two Crow Ranch*, the Supreme Court stated that it is well established precedent that "the bylaws of a corporation, together with the articles of incorporation, the statute under which it was incorporated, and the member's application, constitute a contract between the member and the corporation." *Two Crow*, 149 Mont. at 23, 494 P.2d at 919. The Washington court ruled in *East Lake Water*, that "[w]here a meeting of a nonprofit corporation is not in accordance with its bylaws, its proceedings are void."

Bridger Canyon Property Owners' Ass'n, Inc. v. Planning & Zoning Comm'n, 270 Mont 160, 890 P.2d 1268 (1995); applies to fiduciary breach of duty/fraud claims, as does *E.G. Green v. McAllister*, 103 Wash. App. 452, 468 (2000). Such Breach of Duty claims are also authorized pursuant to M.C.A. Title 28 for contracts; *Local Union Nu. 400 v. Bosh*, 220 Mont 304, 312, 715 P.2d 36 (1986). An Association as fiduciary, owed to members basic obligations of agency: loyalty and obedience, *Frederick*, 208 Mont. at 118, *State v. Frederick*, 208 Mont. 112, 676 P.2d 213 (1984).

NEW COMPLAINT CLAIM #1:

GLA BREACH OF DUTY &/or MISAPPROPRIATION OF GLA FUNDS & ACCOUNTING BOOKS:

3. Recent discovery of letters written Oct. 2015 by GLA volunteer bookkeeper Regina Wunch and by new GLA Board members wife Debbie Blaze stated that "for years GLA Board" 'failed to charge and bill any assessments ...for up to 20-35 GLA member dwelling units' & 'GLA Board failed to bill, notice or charge its members dwelling assessments causing unknown loss of assessment income for the GLA Association,' and loss of assessments by 'failing to bill 20-35 or more property interests.'
4. Oct. 2015 letter written by GLA volunteer bookkeeper Regina Wunch states GLA refusal (before November 2015) to hire a licensed bookkeeper or else CPA; "caused" GLA "quickbooks errors," "billing & accounting errors," "lost assessments," "under billing," "over billing," and other finical book discrepancies. Wunch's letter also said its a "systemic problem" and "basic concept that one should know" that its "not possible for someone without a [licensed] bookkeeping background to get these [GLA] accounts correct."
(Note: Plaintiffs' recording 11-9-15 (at 3:04) Kehoe said "it is in the best interest of the GLA to hire a bookkeeper" but "we always steered toward a volunteer" not a professional bookkeeper.)
5. These letters written by Regina Wunch and GLA Board member wife Debbie Blaze overall show for years GLA actions in ¶ 2,3 above breached "good business practices" and/or breach or negligence fiduciary duties under GLA Covenants below; failed to bill or caused unfair advantage over members billed for dwelling assessments; and/or violate contract rights and obligation between members and the GLA Board under GLA contracts including:

GLA Covenant 11.05 (in part) “The Association shall account for funds paid by Landowners pursuant to any assessment (the “assessment funds”) in any manner consistent with its responsibilities and good business practice...The Association is and shall be a fiduciary in the allocation, application and use of assessment funds. The Association has a duty to perform the responsibilities provided in these covenants to the best of its ability and to the extent that assessment funds reasonably allow.”

Covenant(s) 11.03: “Assessment shall be made by written notice to each Landowner of the property interest being assessed...If an annual assessment notice is mailed after January 15 of any year, the annual payment or first quarterly installment shall not be payable until fifteen (15) days after the date the notice is postmarked or personally delivered to the Landowner.”

Bylaw VI. B.(14) “GLA shall “Do any and all things necessary to carry into effect these Bylaws and to implement the purposes and exercise the powers as stated in the Articles of Incorporation, Covenants, Bylaws, Rules ...”

GLA Art of Inc. Article VIII, “Members of the Board of Directors of the Corporation shall not be liable to the Corporation or to members of the Corporation for monetary damages for breach of a director’s duties to the Corporation and its members, provided that this provision does not eliminate or limit the liability of a director: 1. For a breach of duty of loyalty to the Corporation or its members*; 2. For acts or omissions not in good faith* or that involve intentional misconduct or a knowing violation of law; 3. For a transaction from which a director derived an improper personal economic benefit;”

35-2-416 MCA “General standards for directors. (1) A director shall discharge the duties as a director, including the director's duties as a member of a committee: (a) in good faith; (b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and (c) in a manner the director reasonably believes to be in the best interests of the corporation...”

6. Any or all of these GLA actions described above in ¶ 3,4,5 violates §35-2-416 MCA “General standards for directors;” and contract rights and obligation between members when GLA failed to follow “good business practices” (per **GLA Covenant 11.05**); and/or breach or negligence or violation of GLA fiduciary duties (per **GLA Covenant 112.05 & Art. VIII above**); & for GLA failure to bill, notice or charge its members dwelling assessments (contrary to **Covenant 11.03** requirement to do so.)

7. CLAIM #1 PRAYER FOR RELIEF:

Pursuant to GLA Art VII(above) & M.C.A. Sections §35-2418, 35-2435, or 35-2436, GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, as set forth in GLA gov. documents (Covenant 11.03 &11.05) & numerous state corporate laws such as §35-2-416 MCA above, impugns the rights of Petitioner(s), if any or all claims for relief cited herein are met. GLA Members' complaint thus **seek injunctive relief for this claim #1** to restrain actions of the GLA & GLA Directors fiduciary breach of duty by hereby challenging GLA actions & decisions that exceed their authority/powers as a matter of law review &/or exceed GLA Covent Contract authority with its members.

NEW COMPLAINT CLAIM #2:

GLA FAILURE TO FILE FOR JUDGMENT LIENS CAUSED UP TO 100K IN NONCOLLECTABLE (or lost) ASSESSMENTS:

8. Plaintiffs' recent discovery requests revealed GLA's lien lists & documents showing that up to twelve (12) GLA contractor liens (for past due assessments) against its GLA members are more than 8 years old as to their filing date, or almost 8 years old. As of this amended complaint filing Dec. 2015, the GLA has not filed in court seeking any judgment liens against any of its members for their past due assessments owed to the GLA.

9. Several times before, during and after a GLA Special Meeting August 2014, O'Connells told the GLA and via emails making the GLA aware that some of these old GLA contract liens against some of its members have expired or else close to expiration at year 8 (after 7 years) for "Contracts in writing, [per] **Mont. Code Ann. § 27-2-202(1)** as follows in part:

Mont. Code Ann. § 27-2-202(1)"Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years;..."

10. O'Connells' numerous verbal & email notices to the GLA Board during and after Aug. 2014 also made GLA aware that they should seek "action" in the form of "judgement liens" to preserve from expiring GLA contractor liens (for past due assessments) against its GLA members; especially for their contractor liens less than 8 years old set to expire per Mont. Code Ann. § 27-2-202(1).

11. GLA per Bylaw VI(B)(4) is obligated to “Issue quarterly statements of account on the assessments and take necessary and appropriate action to collect assessments from Members and common charges from the Members, including the filing of liens and prosecuting foreclosures as provided in the Covenants or by law;” & GLA Covenant 11.06 which says: “The Association may bring an action at law against a Landowner to collect delinquent assessments, penalties and interest and/or to foreclose on the lien against the parcel, and there shall be added to the amount of such assessment the costs of collecting the same or foreclosing the lien thereof, including reasonable attorney’s fees.”

12. To date, the GLA has neglected these Bylaw/Covenant obligations to “take necessary and appropriate action to collect assessments from Members” or “bring an action at law” or else refuses to seek any judgment “liens” or “foreclosures” against any of its members (some of which past due assessments are 15 years old); which will or has caused up to 12 GLA written contract liens against some of its members to now expire after 7 years per **Mont. Code Ann. § 27-2-202(1)**; resulting in likely non-collectable LOSS of past due member assessments up to 100K (including principle owed, penalties, & interests).

13. Because GLA has neglected their Bylaw/Covenant obligations to “take necessary and appropriate action to collect past due assessments from its Members” or “bring an action at law” or else refuses to seek any judgment “liens” or “foreclosures” against any of its members, such breach of duty by the GLA association² likely caused up to 12 GLA written contract liens against some of its members to now expire after 7 years pursuant to **§ 27-2-202(1)MCA** (above): thus GLA acts or omissions caused monetary damages to the GLA which harm members contrary to contract GLA Art. of Inc., Art. VIII “as breach of duty of loyalty to the Corporation or its members, not in good faith or involve intentional misconduct or a knowing violation of law” under **27-2-202(1)MCA** (this claim also supported by GLA Board member Newby audio Comment from GLA Board meeting held 11-09-15 herein referenced for future use).

14. CLAIM #2 PRAYER FOR RELIEF:

² (Note: This is a common association complaint claim “arising out of breaches of ... the regulations [law], and bylaws and disputes over how the association assesses fines and collects delinquencies” says Randy Opotowsky, a partner at The Steeg Law Firm in New Orleans.)

Under M.C.A. Sections 35-2-418, 35-2-435, or 35-2-436 & applicable to non-profit corps like the GLA, and GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, as set forth in GLA gov. documents (Covenant 11.06) & state corporate law (27-2-202(1)), impugns the rights of Petitioner(s), if any or all claims for relief cited herein are met. GLA Members' complaint thus seeks **GLA pay monetary penalty &/or repayment** of uncollectable assessments after Aug. 2014.

Therefore Plaintiffs seek **injunctive relief** for this claim #2 to **restrain** actions of the GLA Directors fiduciary breach of duty/fraud claims by hereby challenging GLA actions & decisions that breach "duty of loyalty to the association and its members"&/or breach "good business practices" and/or breach GLA fiduciary duties that caused unnecessary loss of GLA past due member assessments up to \$100,000 loss (including penalties, interests); injunctive relief also requests the GLA collect or otherwise take "action at law" such as judgment liens to preserve contract liens before they expire (per §71-3-122 MCA).

NEW COMPLAINT CLAIM #3:

GLA MISAPPROPRIATION OF MEMBER FUNDS FOR UNAUTHORIZED MAINTENANCE OF DRY CREEK RD. OUTSIDE GLA BOUNDARY

15. Approx. 3/4 mile paved portion of Dry Creek Rd.. in Emigrant, Park County, Montana is located outside the GLA boundary (per GLA current boundary map filed with Park County Clerk & Recorder).

16. The GLA as recently as Nov. 25, 2015 and/or before this date spent member assessments to maintain (such as snow plow) approx. 3/4 mile paved portion of Dry Creek Rd.. located outside the GLA boundary (per GLA current boundary map filed with Park County Clerk & Recorder).

17. Furthermore per GLA Covenant 1.03 requirement (below), the GLA could have but never executed "a written agreement between the Association and the owner(s) describing the property to be added to the covenants," never notified, nor asked for written permission from its members to maintain (such as snow plow) approx. 3/4 mile paved portion of Dry Creek Rd.. located outside the GLA boundary (per GLA current boundary map filed with Park County Clerk & Recorder).

GLA Covenant 1.02 says, "The real property which shall and is hereby declared to be benefited by the covenants in this Declaration is described on Exhibits "A" and "B" attached..."

GLA Covenant 1.03. says, "Additional Property. The Glastonbury Landowners Association, Inc. (herein referred to as the "Association") shall have the exclusive right, at its option and at any time in the future, to add and subject additional property to any or all of the covenants in this Declaration, or any amended versions thereof, by executing and recording an instrument in writing describing any property owned by the Association to be added, or by executing and recording a written agreement between the Association and the owner(s) describing the property to be added to the covenants... When added, said additional property shall become burdened by and shall receive the benefit of the covenants as provided in the written instrument or agreement."

18. Upon recent discovery and per Covenants 1.02 & 1.03, O'Connells sent emails to the GLA Board starting April 2015 notifying the GLA Board for lack of member authority they cease and desist to use its member funds to maintain approx. 3/4 mile paved portion of Dry Creek Rd.. located outside GLA boundary map. The GLA Board via subsequent meeting minutes & O'Connell recording show GLA agree there is no current authority from its members to use member funds to maintain roads outside the GLA much less maintain approx. 3/4 mile paved portion of Dry Creek Rd.. located outside GLA boundary.

19. Thus the GLA Board 9 months ago became aware of their lack of authority to maintain Dry Creek Rd., yet (per Covenant 1.03 above) still failed to notify or asked for written permission from its members to maintain (such as snow plow) approx. 3/4 mile paved portion of Dry Creek Rd.. located outside the GLA. The GLA Board without any Covenant authority or without any member vote or authorization for such, then continued to spend member assessments to maintain (such as snow plow) approx. 3/4 mile paved portion of Dry Creek Rd.. located outside the GLA boundary.

20. In fact, on Nov. 25, 2015, O'Connells and a small fraction of GLA members (approx. 35 members) received an email from GLA Board member & Road Committee member Charlene Murphy that said:

County Rd. supervisor "Park[s] Frady said the county plow truck would be back to check on Dry Creek Rd at about 2:30 PM to get it ready for the school bus. Mr. Frady also stated that Dry Creek Rd is a priority road due to the heavy traffic. He stated that they learn from residents and from the sheriff if a county road is needing plowing/sanding beyond the normal schedule or criteria." But "knowing that the county would not pay for this work" we "dispatch[ed] the GLA

truck [to snowplow] on Dry Creek Rd today.” “GLA truck...[&] our driver was plowing SG and Dry Creek...He spent 1.5 hours clearing and sanding Dry Creek Rd.”

21. This Nov. 25, 2015, GLA Board email admits the GLA Board snowplowed approx. 3/4 mile paved portion of Dry Creek Rd.. located outside the GLA, even though it is a County owned road that Park County road supervisor intended to snowplow later that day. In fact, this portion of Dry Creek Rd. is solely owned by Park County, and discovery shows the GLA has no written permission (from the county nor its members) to use assessment monies to maintain it even after April 2015 notices & recordings show GLA became aware and admitted they had no authority to do so even under state law §35-2-436 MCA:

35-2-436. Liability for unlawful distributions. (1) Unless a director complies with the applicable standards of conduct described in 35-2-416, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-2-416; and

(b) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

22. CLAIM #3 PRAYER FOR RELIEF:

Under M.C.A. Sections 35-2-418, 35-2-435, 35-2-436 & §35-2-436MCA “Liability for unlawful distributions” **applicable to non-profit corps like the GLA**, and for GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, (as set forth in GLA gov. documents Covenats 1.02 & 1.03), impugns the rights of Petitioner(s), if any or all claims for relief cited herein are met. It is thus necessary to now **restrain** GLA from spending member assessment funds without authority to maintain (snowplow) the approx. 3/4 mile paved portion of lower Dry Creek Rd.. located outside the GLA boundary.

Therefore, GLA Members’ complaint claim #3 seeks **injunctive relief** to restrain actions of the GLA Directors & hereby challenge GLA action & decisions to maintain approx. 3/4 mile paved portion of Dry Creek Rd.. located outside the GLA boundary; which exceeds their authority/powers as a matter of law review &/or exceeds GLA Covenant 1.03 contract authority with its members (cited above); and/or breach of GLA “fiduciary duties” and “breach of loyalty to the association and its members” (PER GLA ARTICLE VIII cited above).

NEW COMPLAINT CLAIM #4:

GLA VIOLATION OF STATE INDEMNIFICATION REQUIREMENTS

35-2-451 MCA says in part, “ Determination and authorization of indemnification. (1) A corporation may not indemnify a director under 35-2-447 unless it is authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in 35-2-447. (2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board, in which selected directors who are parties may participate; or

(d) by the members of a mutual benefit corporation. However, directors who are at the time parties to the proceeding may not vote on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel. ”

35-2-454. Application. (1) A provision treating a corporation's indemnification ... is valid only if and to the extent the provision is consistent with 35-2-446 through 35-2-454. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles....” which includes **35-2-449:**

35-2-449. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if: (a) the director furnishes the corporation with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in 35-2-447;

(b) the director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-2-446 through 35-2-454.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-2-451.

23. For this claim #4, discovery requests show GLA failed to follow state requirements above cited under §35-2-446 through §35-2-454 MCA; specifically the GLA Board Directors as parties to this complaint not only voted to indemnify themselves (contrary to §35-2-451 MCA), they FAILED (per 35-2-449 MCA) to “furnish the corporation with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in 35-2-447” and failed to “furnish the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct;” and (per §35-2-447) failed to determine “that the facts then known to those making the determination would not preclude indemnification under 35-2-446 through 35-2-454...”

24. Lacking evidence to the contrary, Plaintiffs believe this claim is valid and enforceable against the GLA for their violation of state indemnification requirements cited above & §35-2-446 through 35-2-454 MCA.

25. CLAIM #4 PRAYER FOR RELIEF:

Under M.C.A. Sections 35-2-418, 35-2-435, 35-2-436 & & §35-2-446 through 35-2-454 MCA applicable to non-profit corps like the GLA, and for GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, (as set forth in these state laws), impugns the rights of Petitioner(s), if any or all claims for relief cited herein are met. It is necessary to now **restrain** GLA.

Therefore, GLA Members' complaint seeks **injunctive relief** for this claim #4 to restrain actions of the GLA Directors & hereby challenge GLA actions & decisions that likely violated state indemnification requirements cited above; which repeated action for other cases (193, 220 & 164 cited above on page 2) exceeds GLA's authority/powers as a matter of law review; and/or a breach of GLA “fiduciary duties” and “breach of loyalty to the association and its members” (PER GLA ARTICLE VIII).

NEW COMPLAINT CLAIM #5:

GLA “Privacy Policy” (adopted May 18, 2015) VIOLATES STATE LAW §35-2-906 & 907 MCA:

26. On May 18, 2015, the GLA Board majority voted to adopt a so called "Privacy Policy" that deems some corporate records "private information" not available to its members.

27. This GLA "Privacy Policy" (adopted May 18, 2015) declares the following GLA corporate documents (in bold) as "Private information" contrary to numerous state laws that follow, because state laws require such GLA corporate records be made available to all its members:

27a.) GLA "**member's financial account transactions**" shared with the GLA deemed "Private information" (contrary to §35-2-907(1) & (2)) as "permanent records of actions taken without a meeting" and "allowable "financial records;"")

27b.) GLA corporate and member "**correspondence**" and "**emails**" (including email addresses) deemed "Private information" (contrary to §35-2-906(1) & §35-2-907(1)) as "permanent records of actions taken without a meeting" and "allowable "accounting records;"")

27c.) GLA "**accounting records**" "**bank account**" statements such as cancel checks, check details and receipts deemed "Private information" (contrary to §35-2-907(1) & (2)) as "permanent records of actions taken without a meeting" and "allowable "accounting records;"")

27d.) GLA "**employment records**" "**employee-related issues**" deemed "Private information" (contrary to §35-2-907(1)) as "permanent records of actions taken without a meeting;"")

27e.) GLA "**income tax filings**" deemed "Private information" (contrary to §35-2-907(1) & (2)) as "permanent records of actions taken without a meeting" and "allowable "accounting records;"")

27f.) GLA corporate and member "**phone call records**" deemed "Private information" (contrary to §35-2-907(1) & (2) & (5)) as "permanent records of actions taken without a meeting" and "allowable "accounting records" and "records of all actions approved by the members for the past 3 years;"")

27g.) GLA deemed "Private information" "**other information that may be required to be kept confidential**" such as "actions taken by the members or directors without a meeting" (contrary to §35-2-906(1) & §35-2-907(1 & 5)) as "permanent records of actions taken without a meeting" and "records of all actions approved by the members for the past 3 years;"")

27h.) GLA member "**financial information provided**" to negotiate payment plans" deemed "Private information" (contrary to §35-2-907(1) & (5) as "allowable

“accounting records” and “records of all actions approved by the members for the past 3 years;”)

27i.) The GLA holds **“as private information ...[its] membership votes at annual and special meetings”** deemed **“Private information”** (contrary to §35-2-907(5) as “records of all actions approved by the members for the past 3 years;”)

27j.) **“The GLA prohibits the publishing of members images” “or audio or video recordings of the [GLA] meetings” “conversations and likenesses are not going to be posted on the internet”** (contrary to §45-8-213(c) MCA, & contrary to 2012 GLA/ O’Connell Settlement Agreement (case 193) that allows such member recordings, & contrary to Montana Constitution Article II, Section 7 right to free speech).

28. (27a-j) show several specific corporate records are either **“permanent records of actions taken without a meeting”** (per §35-2-906(1)) and/or **“accounting records”** (per §35-2-907(2)) and/or **“records of all actions approved by the members for the past 3 years”** (per §35-2-906(5)(c)), and such GLA corporate documents allowed to all its members can not be deemed **“private.”** GLA’s **“Privacy Policy”** (cited above) is contrary to such state laws (also cited above in bold), because these state laws (cited above) require GLA corporate records deemed **“private”** by this **“Privacy Policy”** yet be made available to all its members. Thereby GLA **“Privacy Policy”** **contrary to law is also contrary to GLA Bylaw VI(B)(10): which says (in part) “no Rule or Regulation so adopted shall be in conflict with Montana law...”** (Note: Plaintiffs deny Defendants new claim (set forth in Dec. 2105 “proposed order”) that they “harrassed” and made “incessant document requests.”) Plaintiffs repeated requests (2013-June 2014) were to comply with Defendants repeated requests to clarify the purpose of such requests and correct and specify which documents were requested. Which is why Defendants did allow document inspections in June-July, but deemed other documents **“private.”**

29. CLAIM #5 PRAYER FOR RELIEF:

Under M.C.A. Ch. 35 laws above applicable to non-profit corporations like the GLA, and for GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, (as set forth in state law & by GLA Art. III: **“This association is a mutual benefit nonprofit corporation, pursuant to the Montana Nonprofit Corporation Act...”**), GLA **“Privacy Policy”** (adopted May 18, 2015) impugns the rights of Petitioner(s) directly violated

member rights under these numerous state laws, if any or all claims for relief cited herein are met.

As these state laws (cited above) require GLA corporate records deemed “private” by this “Privacy Policy” yet be made available to all its members, therefore GLA Members’ complaint claim #5 seeks **injunctive relief** to restrain GLAs’ “Privacy Policy” (adopted May 18, 2015) that exceeds state authority/powers as a matter of law review & deny member rights under these numerous state laws; and/or is a breach of GLA “fiduciary duties” and “breach of loyalty to the association and its members” (PER GLA ARTICLE VIII cited above).

NEW COMPLAINT CLAIM #6:

GLA VIOLATION OF GLA BYLAW VI.(P) THAT says:

GLA Bylaw VI.P., “Meeting Agenda. The order of business at any regular or Special Meeting of the Board of Directors shall include: 1. Reading and disposition of any unapproved Minutes; 2. Reports of officers and committees; 3. Ombudsman report(s); 4. Unfinished business; 5. New business; 6. “Open floor comment period; and 7. Adjournment.”

30. Starting on or about Oct. 2014, the GLA Board majority altered or changed the above (Bylaw VI.P.) Board meeting agenda “order of business” thereby moving “6. Open floor comment period” to the #1 slot the beginning of meetings.

31. Plaintiffs hereby contend this GLA action of moving “Open floor comment period” to the beginning of meetings violates member rights under this Bylaw VI(P) required “order of business.” Plaintiffs also contend GLA actions to move “Open floor comment period” to the beginning of meetings has negatively impacted &/or prevents Plaintiffs and other members from participating, or commenting on GLA reports and business after meetings begin; which Board meetings impact members property rights.

32. CLAIM #6 PRAYER FOR RELIEF:

Under M.C.A. Ch. 35 laws above applicable to non-profit corporations like the GLA, and for GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, (as set forth by GLA Bylaw VI.(P) cited above), GLA action of moving “Open floor comment period” from the end of meetings to the beginning of meetings contrary to member rights under Bylaw VI(P) required “order of business,” if any or all claims for relief

cited herein are met. Therefore GLA Members' complaint claim #6 seeks **injunctive relief** to **restrain** GLAs' action of moving "Open floor comment period" from the end of meetings to the beginning of meetings deny member rights under GLA Bylaw VI.(P); and/or is a "breach of loyalty to its members" (PER GLA ARTICLE VIII cited above).

NEW COMPLAINT CLAIM #7:

GLA VIOLATION OF (193) 2012 SETTLEMENT AGREEMENT WITH O'CONNELLS

33. Starting on or about Oct. 2013, O'Connells gave several written requests to inspect GLA records, that were ignored or denied. Then after established good cause, the GLA made several excuses and gave **numerous times** delayed or again refused to allow O'Connell members to inspect requested GLA corporate records "5 business days." Plaintiffs claim these delays were contrary to the following: GLA Bylaw VIII.I, & §35-2-907 MCA; & contrary to GLA/O'Connell Settlement Agreement which says: "¶2. The GLA will provide O'Connells with all documents to which they are entitled pursuant to the Montana Non-Profit Corporation Act..."

GLA Bylaw VIII.I. Inspection of Books. The financial reports and Membership records of the Association shall be available at the principal office of the Association for inspection at reasonable times by any Member.

§35-2-907 MCA: "Inspection of records by members. (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in 35-2-906(5) if the member gives the corporation written notice or a written demand at least 5 business days before the date on which the member wishes to inspect and copy."

34. On or about June 2014 (about 9 months later), O'Connells were finally allowed to inspect most GLA records, but a recording by Alyssa Allen admits some requested records were missing. This prompted O'Connells to make more requests for missing documents that were outlined in the requests and in an affidavit and counter motion against a Protective Order filed September 2015.

35. Then this court Oct. 2015 issued an order granting Defendants' protective order denying any more O'Connell document requests except through "formal discovery."

36. Plaintiffs claim that all document requests made before this order not given within “5 business days” were contrary to **GLA Bylaw VIII.I., §35-2-907 MCA**, (above) & contrary to **GLA/O’Connell Settlement Agreement** which says: “¶2. The GLA will provide O’Connells with all documents to which they are entitled pursuant to the Montana Non-Profit Corporation Act...”

§35-2-907 MCA: “Inspection of records by members. (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in 35-2-906(5) if the member gives the corporation written notice or a written demand at least 5 business days before the date on which the member wishes to inspect and copy.”

37. Plaintiffs also contend that the October 2015 Orders & the GLA both unfairly deny Plaintiffs rights under state law **§35-2-907 MCA, & GLA Bylaw VIII.I, & “2012 Settlement Agreement:”** which all allow O’Connell members to inspect GLA corporate records. This claim is warranted because Plaintiffs’ motion & affidavit against protective order (incorporated hereby) show that O’Connells had completed discovery and all document requests for corporate records had nothing to do with this case; so that the Order unfairly forced O’Connells to conduct “formal discovery” just to have member records like a membership list used for election purposes. This is not only a waste of court resources, it is against Plaintiffs rights under state law **§35-2-907 MCA & other laws, & GLA Bylaw VIII.I**, and against a prior agreement/contract made with the GLA called the “2012 Settlement Agreement” which says: “¶2. The GLA will provide O’Connells with all documents to which they are entitled pursuant to the Montana Non-Profit Corporation Act...”

38. For this claim #7, Defendants (proposed Order Dec. 2015) for the first time make several outrageously false statements regarding member document requests: 1. “Plaintiffs have never demonstrated such broad requests are in good faith and made for a proper purpose.” (see pp. 12, Defendants’ proposed Order Dec. 2015) This false statement is proven by the fact that Defendants approved and allowed Plaintiffs so called broad requests twice in 2014 (June & July); which included inspection of 12 boxes where GLA keeps almost all of their corporate records. Plaintiffs also deny ever requesting, “ANY RECORDS THE BOARD MAY SEE” & REQUESTED GLA DOCUMENTS “FREE OF CHARGE.” (see pp. 11, Defendants’ proposed Order Dec. 2015) Plaintiffs request to inspect only those GLA records enumerated within CH. 35

MCA for the state purpose and use for GLA Board elections. In fact, emails attached to several pleadings provided by both parties including the Oct. motion against protective order prove this, and also show O'Connells have always used their own printer to copy GLA documents. As for documents charges claimed by the GLA for documents provided 2012 for the Settlement Agreement conference, Plaintiffs dispute their \$30 per hour charge, and contend that 10 cents per page for those document copies as a "reasonable charge" per §35-2-908(3). Plaintiffs also contend that Defendants only denied O'Connell further document requests after July 2014 because GLA unlawfully deem most GLA corporate documents "private" unavailable to its members before and after adopting a "Privacy Policy"(see claim #5 above "Privacy Policy").

39. CLAIM #7 PRAYER FOR RELIEF:

Under M.C.A. Ch. 35 applicable to non-profit corporations like the GLA, and for GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, (as set forth in Sections §35-2-907 MCA, §35-2-907 MCA, & GLA Bylaw VIII.I, & "2012 Settlement Agreement"), impugns the rights of Petitioner(s), if any or all claims for relief cited herein are met. It is thus necessary to now **restrain** GLA for violating this 2012 settlement agreement clause ¶ 2 (cited above) and reverse the October 2015 Order removing "formal discovery" requirements for members; and restrain GLA from charging more than 10 cents per page for GLA document copies as a "reasonable charge" per §35-2-908(3). Therefore, GLA Members' complaint claim #7 seeks **injunctive relief** to restrain actions of the GLA Directors & hereby challenge GLA action & decisions & Orders Oct. 2105 that deny O'Connell member document requests; which exceeds their authority/powers as a matter of law review &/or exceeds the prior 2012 Settlement Agreement contract authority (cited above); and/or breach of GLA "fiduciary duties" and "breach of loyalty to the association and its members" (PER GLA ARTICLE VIII cited above).

EXISTING COMPLAINT CLAIMS:

PLAINTIFFS HEREBY INCLUDE EXISTING CLAIMS PENDING FROM 2013 COMPLAINT

39. Most of those claims pending are from the 2013 complaint (as found on page 4-5 of that document) are hereby incorporated herein and cited below, as follows:

CLAIM #8 & RELIEF SOUGHT:

40. Plaintiffs request: Declaratory judgment (and if need be request the Court determine & enjoin all necessary parties for requested Declaratory judgment) & injunctive relief to **Restrain** GLA who frequently deny member proper due process & notice (required per Bylaw XI.C., pg. 15 Exhibit C.). While the GLA Board have lately complied with this claim, Plaintiffs still request Declaratory relief for the dispute of defining Bylaw XI.C. proper due process & notice.

CLAIM #9 & RELIEF SOUGHT:

41. Plaintiffs request: Declaratory judgment (and if need be request the Court determine & enjoin all necessary parties for requested Declaratory judgment) & injunctive relief to **Restrain** GLA for denying O'Connell members some "receipts and expenditures" allowed to members per GLA Bylaw VIII.F & H; While the GLA Board have lately complied with this claim providing expenditures, Plaintiffs still request Declaratory & injunctive relief to resolve what fairly constitutes actual copies of actual "receipts" (ie: bank records of cancelled checks) under Bylaw VIII.F & H. Plaintiffs disagree with Defendants new claim (see pp. 12, Defendants' proposed Order Dec. 2015) that merely a "statement" describing "receipts" satisfies this Bylaw. Without copies of cancelled checks, this does not allow members any proof to **verify** who, what, where & how much member funds were actually spent by the treasurer. After all, this is a "mutual benefit" member owned & operated corporation: which reasonable purpose of Bylaw VIII.F & H. is to allow its member/owners copies of "receipts" like cancelled checks & bank statements.

CLAIM #10 & RELIEF SOUGHT:

42. Plaintiffs request: Declaratory judgment (and if need be request the Court determine & enjoin all necessary parties for requested Declaratory judgment) & injunctive relief to **Restrain** GLA misappropriation of GLA assessment funds: for GLA failure to "follow good business practices" per GLA Covenant 11.03 for refusing to require written bids before hiring contractors (2010-2014), even hiring its own Board members without seeking competitor written bids first; & also for failure to utilize the GLA website to post member payments, post notices, newsletters, etc.. (unnecessarily costing members approx. \$12,000 more per year in printing, mailing, labor

costs instead); which claim #10 GLA did violate under of GLA Article VIII & not “follow good business practices” per GLA Covenant 11.03.

CLAIM #11 & RELIEF SOUGHT:

GLA Covenant 8.01(h) says the road budget is “limited by and conditioned upon the Landowners’ individual and collective payment of and the aggregate amount of the annual community assessment.”

44. Plaintiffs request: Declaratory judgment (and if need be request the Court determine & enjoin all necessary parties for requested Declaratory judgment) & injunctive relief to **Restrain** GLA misappropriation of GLA assessment funds “not following “good business practices” (per Covenant 11.03 & Art. VIII. (fiduciary duty/breach of duty to GLA & members) & Covenant 8.01(h)(pg. 18 above) for GLA failure from 2010 until 2014 to spend fairly and/or aggregately on North and South Glastonbury Roads, as follows:

45. 2013 Complaint exhibits and affidavits show GLA snowplowing cost for 2011 approx. \$20,000 dollars spent approx \$4,000 were spent for GLA roads North and \$16,000 was spent snowplowing GLA roads in South. This issue “non-aggregate” excessive spending on South roads was partially resolved by the GLA (after this filing) when in 2014, the GLA Board voted to split the road budget equally between North and South roads (or approx. 12,500 for each) However, this issue is still pending Declaratory relief request to resolve disputed term “aggregate” spending (per GLA Covenant 8.01(h)) requires fairly splitting the road budget between North & South.

CLAIM #12:

45. Plaintiffs request: Declaratory judgment (and if need be request the Court determine & enjoin all necessary parties for requested Declaratory judgment) & injunctive relief to **Restrain** GLA misappropriation of GLA assessment funds by Directors (Alyssa Allen, Rich Spalone, Gerald Dubiel, and Paul Rantallo) for breach of duties; & their liability per GLA Art. VIII. “For a transaction from which a director derived an improper personal economic benefit” when the GLA Board hired 4 other GLA Board members for profit to do GLA duties and profit paid to these 4 directors contrary to GLA Bylaw VI(K) & Art. III:

“Directors shall not be compensated for attending meetings and for serving as Directors...Nothing herein contained shall be construed to preclude any Director from rendering service to the Association in any other capacity and receiving reasonable compensation therefor.” Which Bylaw is superseded by GLA Art. of Inc., Art. III., “which does not contemplate pecuniary gain or profit to the members hereof:”

46. Claim #12; also see *TRO Request 4th Sworn Application*. Defendant Director Spallone is a Director and Co-Chair of the Road Committee and gets paid to perform maintenance of the roads including snow plowing, and Defendant Director Allen is a Director and Co-Chair of the Managerial Committee, and Project Review Committee paid to conduct project reviews required of the GLA, and paid for various Board duties formerly done by volunteer Board members; see *TRO Request 4th Sworn Application*, & Exhibit Default C at p.1. From the period of October 2010 through June 2011, Director Allen was paid and/or reimbursed for equipment used for GLA roads totaling 3,342.73; Exhibit Default Exhibit C, p.2.

47. Claim #12 also includes restraining GLA from not disclosing to its members all the GLA Director conflicts of interest as follows: from 2010-2014, up to four GLA Defendant Board Directors get or did get profit income directly or indirectly from the GLA & project reviews. Present and Former Board Directors: Alyssa Allen is the active GLA project review manager, and paid profit by GLA for managing GLA & hired as assistant manager to help Minnick costing almost \$30,000 for both. GLA Board Director Rich Spallone, a building contractor, was paid by GLA at profit to maintain and snowplow GLA roads in High South where he lives. At least since 2009, all High South roads or Spallone receive 40–75% of the entire GLA road budget (\$16,000) as profit for snowplowing South roads where he lives. Spallone also did contract out to members such as to extend Erickson roads as GLA required. Another GLA Board Director and surveyor Gerald Dubiel, also was paid GLA funds at profit for survey jobs required for member project review as he is also on Project Review Comm. privy to future GLA project reviews.

CLAIM #12 PRAYER FOR RELIEF:

48. Under M.C.A. Ch. 35 Sections §35-2-907 MCA & others applicable to non-profit corporations like the GLA & GLA Art. VIII. fiduciary breach of duty & 35-2-436. **Liability for unlawful distributions**, for GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, (as set forth in these state laws), impugns the rights of

Petitioner(s), if any or all claims for relief cited herein are met. Therefore GLA Members' complaint claim #12, it is necessary for Declaratory relief (cited above) & to now **restrain** GLA for GLA misappropriation of GLA assessment funds when (2010-2014) the GLA Board hired 4 other GLA Board members (Alyssa Allen, Rich Spalone, Gerald Dubiel, and Paul Rantallo) for profit to do GLA duties contrary to §35-2-907 MCA & GLA Art. III "which does not contemplate pecuniary gain or profit to the members hereof."

49. All pleadings and recorded meetings show O'Connells tried to resolve all issues with the GLA Board Defendants before a last resort of legal action.

V. AFFIRMATIVE PLEADINGS

1st: Defendants are barred by equitable doctrines or estoppel, laches, and/or waiver.

2nd: Plaintiffs reserve the right to rely on further affirmative pleadings which may become available, or apparent during the course of discovery or trial preparation, and reserve the right to amend this Complaint to assert any such affirmative pleadings;

FINAL CLAIM FOR RELIEF:

Plaintiffs request award of reasonable fees, costs, and disbursements incurred herein and by way of nominal damages, and sanctions against GLA Board payable to the Association; & Plaintiffs request such other and further relief as the Court deems just and proper.

VI. CONCLUSION

GLA Covenant 11.05 requires in part, that "The Association is and shall be a fiduciary in the allocation, application and use of assessment funds. The GLA Board failed to perform this duty as shown above on numerous occasions nor to the best of their "ability and to the extent that assessment funds reasonably allow." Several claims for relief under GLA Art. of Inc. Art. VIII are warranted for Defendants' continued "breach of director's duty of loyalty to the Corporation or its members" which evidences have been severally met.

Furthermore in the 21 months which followed Daniel O'Connell's election to the Board, "Plaintiff(s) gathered evidence of numerous and frequent Defendant infractions and continuous violations of their GLA governing documents" (cited herein) and Directors were made aware of their violations (see authentic evidence per M.R.Evid. 901). Yet Defendants chose not to correct their behavior; which supports this claim of GLA breach of duties & liability to members.

Respectfully submitted this _____ day of December, 2015,

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 email the same day & via first class mail on the following business day to:

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Livingston, Mt. 59047

Alannah Griffith
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Hon. Judge David Cybulski
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Plentywood, Mt. 59254

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By: _____
Valery O'Connell

