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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

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

PLAINTIFFS' Rule 52, 59, & Rule 60 MOTION IN OPPOSITION TO ORDERS Sept. 2014 &2015 & ORDERS GRANTING SUMMARY JUDGMENT MOTION

INTRODUCTION

Plaintiffs and GLA Members, Daniel and Valery O'Connell, hereby file this Motion pursuant to M.R.Civ.P. Rule 52, 59 & 60. Rule 52 motion is asking the District Court to amend and set aside all its findings and "question the sufficiency of the evidence supporting the findings" within its May 31, 2016, Orders. That Order was entered less than 28 days ago. This motion also pursuant to M.R.Civ.P. Rule 59 is asking the District Court to Alter, Amend, or

Reverse this same May 31, 2016 Order granting GLA[1] Summary Judgment dismissing the O'Connells complaint & allowed prior orders to stand (dated September 2014 & 2015) for attorney fees and costs. In rebuttal to these Orders, O'Connells cite the Due Process Clause prohibiting a State from punishing an individual without first providing that individual with an opportunity to present every available defense.

O'Connells contend their "Plaintiffs reply against Summary Judgment Motion"[2] gave numerous evidences to prove their Complaint claims. Yet the Orders failed to cite or even discuss these evidences that it basically ignored such evidence and facts in dispute therein that SJ reply. Also the District Court should not have dismissed their petition without first giving them leave to amend 2015 as requested, especially as no other party would have suffered prejudice. Plus O'Connells SJ Response page two requesting a Hearing (mistakingly called a jury trial) to "overcome the motion" was never granted as a mistake/oversight that should have been allowed.

Plaintiffs also hereby file another motion under Rule 60 for relief from all Orders in this case (including May 31, 2016, September 9, 2014, and September 17, 2015 Orders) due to court's "oversights and omissions, mistake, inadvertence, surprise, excusable neglect, and any other reason that justifies relief," because GLA Defendants answers to interrogatories and

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[1] **25-5-104 MCA "Action against [GLA] business association.** When two or more persons associated in any business transact such business under a common name, whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates in the same manner as if all had been named defendants and had been sued upon their joint liability."

[2] See "Plaintiffs Response in Opposition to GLA Summary Judgment Motion" file April 20, 2015

admissions prove nine facts WERE IN DISPUTE (cited below), yet all nine complaint facts were either missing or falsely mis-stated in the SJ Order, & because this Court denied amendments after discovery & denied O'Connells' rights to requested hearing on the SJ motion, and more:

1) The District Court errs & abused its discretion in granting summary judgment in favor of GLA due to the existence of genuine issues of material fact and denied O'Connells' right to a requested hearing on the SJ motion.
2) The District Court errs & abused its discretion to deny O'Connells Dec. 2015 Motion to amend their complaint for no cause given which fatally harmed O'Connells right to justice in overcoming complaint flaws after discovery.
3) The District Court errs in dismissing all O'Connells complaint claims with prejudice and deny a requested trial.
4) The District Court September 17, 2015 Order errs to grant GLA Protective Order and does not have jurisdiction when such Order denied O'Connell rights under a prior 2012 settlement agreement.
5) The District Court September 17, 2015 Order does not have jurisdiction to grant GLA "attorneys' fees and costs related to this motion" for protective order. This decision was also arbitrary, capricious, an abuse of discretion, and otherwise unlawful.
6) The District Court September 9, 2014 Order does not have jurisdiction to grant GLA "attorney fees and costs incurred for bringing [GLA] Motion" to quash subpoenas; especially due to the fact that O'Connells requested and were denied a hearing on such fees and cost as allowed by M.R.Civ.P. Rule ___.

Background: The original O'Connells' complaint was refiled and properly noticed in October 2012. It was dismissed 3 months later by the District Court on summary judgment in 2013 (shortly after it). The original complaint summary judgment dismissal was then reversed and remanded back to the lower court by the MT. Supreme Court on November 2013 who found 'claims for which relief could be granted.' This Supreme court then ordered that original complaint to be amended or rewritten for "clarity." Plaintiffs complied with court orders to do so thereby were forced to amend to add "clarity" but kept all their same original complaint claims 'claims for which relief could be granted.' in the amended complaint, refiled March 2014 called "new amended complaint." It was only AFTER the dismissed case was reversed and remanded

back to the lower court October 2012 that Plaintiffs after this time were afforded time to conduct full discovery. Had Plaintiffs been afforded time to conduct discovery before the higher court ordered their amended complaint, then there would have been no need to later seek leave to file another amended complaint.

During this 18 month discovery process, Plaintiffs discovery found pertinent new evidences supporting some original claims, resolving others, and supported updating and modifying other claims that supplement their original complaint claims. Their discovery findings were significant enough to require Plaintiffs to drastically amend and supplement their court ordered amended complaint and claims on December 28, 2015 (received by the Clerk of Court on Jan 4, 2016). Consequently, Defendants filed a response in opposition to Plaintiffs' motion to amend (called "Motion to file 2015 Amended Complaint") on January 12, 2016.

However Plaintiffs' motion to amend their complaint (for the first time after discovery) was ignored by the District Court and thereafter 60 days later such motion was deemed denied in March 2016.

Note however the GLA Motion for summary judgment had been submitted August 18, 2014 almost two years prior to this May 2016 Order granting SJ. Also GLA Defendants wrote this Order granting GLA summary judgment motion to dismiss, because it an exact copy of the GLA "Proposed Decision and Order Granting GLA's Motion for Summary Judgment..." filed by the GLA on Dec. 28, 2015.

ISSUE #1 as listed above:

The District Court errs & abused its discretion in granting summary judgment in favor of GLA due to the existence of genuine issues of material fact and denied O'Connells' right to a requested hearing on the SJ motion.

O'Connells contend the District Court should not have dismissed her petition without first giving them leave to amend per rule 15 (as follows), especially as no other party would have suffered prejudice. District Court erred when for no cause given it denied O'Connells motion to file amended and/or supplemental complaint Dec. 28, 2015. Thus the District Court failed to follow this rule that allows "The court should freely give leave when justice so requires.."

M.R.Civ.P. Rule 15:
Rule 15. Amended and Supplemental Pleadings.
(a) Amendments before Trial…
(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires… (d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time."

M.R.Civ.P. Rule 8: "(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically…(3) Construing Pleadings. Pleadings must be construed so as to do justice…."

Fasch v. M.K. Weeden Constr., Inc., 2011 MT 258, ¶ 14, 362 Mont. 256, 262 P.3d 1117. "The moving party has the burden of demonstrating the absence of a genuine issue of material fact. We draw all reasonable inferences and view all of the evidence in the light most favorable to the non-moving party. Fasch, ¶ 16. At the summary judgment stage, "the court does not make findings of fact, weigh the evidence, choose one disputed fact over another, or assess the credibility of witnesses." Fasch, ¶ 17 (quoting Andersen v. Schenk, 2009 MT 399, ¶ 2, 353 Mont. 424, 220 P.3d 675) (internal quotation marks admitted)."

It is clear that the District Court Order is contrary to Rule 8 and Rule 12(b)(6), because the Order DID NOT accept O'Connells' allegations as true for purposes of its Summary Judgment (SJ) decision.

Contrary to Opinions above, District Court Order of May 31, 2016 did just the opposite in this case; the Court did NOT view evidence favorable to Plaintiffs, and the Court Order did made numerous findings of facts against O'Connells complaint, thereby the Orders weighed the evidence and chose ONLY GLA disputed fact over facts raised by O'Connells that were completely ignored.

RULE 52:
PLAINTIFFS complain that this court's order does not comply with M. R. Civ. P. 52(a), which states that an order granting a motion under Rule 56 "shall specify the grounds therefor with sufficient particularity as to apprise the parties and the appellate court of the rationale underlying the ruling." (See e.g. Ravalli County Bank v. Gasvoda, 253 Mont. 16 399, 402, 833 P.2d 1042, 1044 (1992))_THE May 31, 2016 ORDER DOES NOT comply with Rule 52(a), because it only included GLA's defenses to those claims; which excluded all O'Connells facts in dispute.

In review of this Order, NONE of O'Connells actual facts were even included in that SJ Order. The SJ Order itself has completely made-up facts only GLA Defendants wrote or created. Again this SJ Order of May 31, 2016 was written entirely by GLA Defendants (NOT this Court because the Court never modified one word of it). So the Order is identical to the proposed Order written and submitted by the GLA Defendants on Dec. 28, 2015, and no changes were made. Yet this Order only included GLA SJ pleadings and DID NOT include complaint claims as stated below and thus DID NOT accept O'Connells' allegations as true. As more proof, GLA SJ pleading and Order deny all the facts of this case summarized in the complaint page 4, and found in the interrogatories and admissions questions and answers.

Instead **GLA SJ motion and Order completely changed the facts of this case and do not even resemble the facts in dispute below.** GLA Defendants answers to interrogatories and admissions include nine facts in dispute below, which all complaint facts were either missing

completely or falsely mis-stated in the SJ Order and motion. Missing from the Orders are 2013 &

2015 amendments & complaint claims for relief summarized here:

1) GLA Defendants documents show they repeatedly denied O'Connell members a requested membership list contrary to requirements to do so in 2012 settlement agreement, and required by state law 35-2-917 et all & in GLA BylawVI.;

2) GLA Defendants deny members receipts and expenditure as GLA Bylaw VIII require; & proven by GLA Defendants 2012 oral admissions saying GLA had never provide members such "receipts and expenditures" prior to the complaint filing.

3) GLA 2014 admissions/interrogatories prove they repeatedly deny these member due process/ notice as required BEFORE new rules and regulations that effect its members per their Bylaw Art. XI(C); such that GLA failed to give any 30 day notice after admission they implemented several new rules and regulations without member knowledge.

4) GLA 2012 written admissions prove they repeatedly misappropriated member assessment funds causing (fiduciary/fraud) & liability under its Articles of Inc.. GLA admitted in the 2012 oral admissions and again in 2014 admissions/interrogatories prove they that they failed to get any written bids, failed to get any competing contractor bids, but instead hired among themselves as GLA Board members, and other claims (per Art. VIII./ Covenants)

5) GLA 2014 admissions/interrogatories prove they never hired a certified accountant for GLA bookkeeping & other claims; which action is "not "good business practices" as required per GLA Covenants 11.05 that says: "11.05. Accounting, Allocation and Use of Funds. 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 has a duty to perform the responsibilities provided in these covenants to the best of its ability…"

6) GLA 2014 admissions/interrogatories prove they deny its members meeting minutes allowed by state laws Ch. 35.Sec. 2; which meeting minutes GLA writes on all minutes to be "confidential" and denied to members.." and GLA failed to take required minutes as state law and Bylaws require for so called "private meetings" and for "committee meetings;" which records being absent these minutes failed to follow state law that require them and require members to have all such meeting minutes upon request.

*New claims arising AFTER the 2013 amended complaint **only** within the 2015 amended complaint:

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

8) GLA VIOLATION OF STATE INDEMNIFICATION REQUIREMENTS under 35-2-447

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

* 3 claims (claims #7, #8, #9) are "new claims" only found in the 2015 amendments that arose after 2013, out of the decision of the GLA to misappropriate member funds and deny the member/Plaintiffs covenant contract rights. The rest, claims 1-6 "relate" directly back to the 2013 complaint, as basically the same claims corrected, updated, or modified by facts found during discovery. So ALL ABOVE new facts or theories ARE based on the same transaction or occurrence relate back to the original complaint. (see Simmons, 246 Mont. at 208, 806 P.2d at 8.)

GLA Defendants answers to interrogatories and admissions 2014 denied all nine facts in dispute above, yet these complaint facts were excluded from the SJ Order or **falsely** stated.

Under M. R. Civ. P. 56(c), summary judgment may be granted only "when the pleadings, depositions, answers to interrogatories, affidavits, and admissions on file show no genuine issues of material fact exist and when the moving party is entitled to judgment as a matter of law." Fasch v. M.K. Weeden Constr., Inc., 2011 MT 258, ¶ 14, 362 Mont. 256, 262 P.3d 1117.

O'Connells reply to summary judgment **and** 2015 amended complaints, **and** interrogatories and admissions answers ALL present substantial evidence that raised all nine genuine issues of material facts **cited above** (again having to do with GLA violating numerous governing documents (Covenants/Bylaws) and violated state laws requiring such corporation contract requirements, and also violated a settlement agreement with O'Connells). These included alleged facts written in those questions and answers to interrogatories and admissions; which restate all alleged facts in O'Connells motion against SJ absent from that SJ Order; thus all nine genuine issues of material facts above exist & were in dispute & actually disputed by the GLA's answers to interrogatories and admissions! Example: the Orders page 16 found "Plaintiffs have not provided any evidence that the Settlement Agreement had been breached" This is false as O'Connells Exhibit 5, 6 & 1 are evidences in "Plaintiffs [2015] Reply Against Summary Judgment Motion" gave factual evidences of this settlement agreement violation.

"Our well- established summary judgment standard dictates that we may not weigh the evidence or choose one disputed fact over another." Fasch, ¶ 17; see also Tacke v. Energy W., Inc., 2010 MT 39, ¶ 16, 355 Mont. 243, 227 P.3d 601; Andersen v. Schenk, 2009 MT 399 ¶ 2, 353 Mont. 424, 220 P.3d 675.

This Court Order did choose GLA facts over O'Connells' 9 facts IN DISPUTE above all found within the interrogatory/admission questions and answers. In other words, this Order to find NONE of these 9 complaint facts to be in dispute is absurd, **because all the facts written in this case were repeatedly disputed by GLA's interrogatory & admission answers.** May 31, 2016 SJ Order (**written solely by GLA**) falsely stated or failed to mention 9 alleged facts in dispute above, then denied such facts were in dispute as proven by GLA's interrogatory/ admission answers. O'Connells, therefore, claim such Orders should be set aside or amended per this Rule 52, 59, & Rule 60 motion due to error, oversight, omission, mistake dismissing their cause of action, because the Orders choose one disputed fact over another ALL such facts were in dispute as proven by GLA's interrogatory/admission answers.

All together summary judgment should not have been granted as per rule 56 "the pleadings, depositions, answers to interrogatories, affidavits, and admissions on file show [nine] genuine issues of material fact exist and the moving party is [not] entitled to judgment as a matter of law" (based on the interrogatory/admission questions and answers).

ISSUE #2 as listed above:
The District Court errs & abused its discretion to deny O'Connells Dec. 2015 Motion to amend their complaint for no cause given which fatally harmed O'Connells right to justice in overcoming complaint flaws after discovery.

M. R. Civ. P. 15(a) of the Montana Rules of Civil Procedure states that leave to amend should be freely given by the district courts. Upky v. Marshall Mtn., LLC, 2008 MT 90, ¶ 18, 342 Mont. 273, 180 P.3d 651. "While amendments are not permitted in every circumstance, they may be allowed when they would not cause undue prejudice to the opposing party." Upky, ¶

18. MT. Supreme Court said " we generally review a district court's decision denying leave to amend for an abuse of discretion. Deschamps v. Treasure State Trailer Court, Ltd., 2010 MT 74, ¶ 18, 356 Mont. 1, ___ P.3d ___. As we recently stated in Deschamps, "[a]lthough leave to amend is properly denied when the amendment is futile or legally insufficient to support the requested relief, it is an abuse of discretion to deny leave to amend where it cannot be said that the pleader can develop no set of facts under its proposed amendment that would entitle the pleader to the relief sought." Deschamps, ¶ 18 (quotation omitted)." "We review a district court grant of summary judgment de novo, applying the same standards as the district court pursuant to M. R. Civ. P. 56." Signal Perfection, Ltd. v. Rocky Mtn. Bank - Billings, 2009 MT 365, ¶ 9, 353 Mont. 237, 224 P.3d 604. Under M. R. Civ. P. 56(c), summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Amendments are permitted by M. R. Civ. P. 15(a), which provides that a party may amend the party's pleading by leave of the court. The proposed amendment should be permitted, in keeping with the policy that leave to amend "shall be freely given when justice so requires," unless: (1) the "motion causes undue delay, is made in bad faith, is based upon a dilatory motive on the part of the movant, or is futile," or (2) "the party opposing the amendment would incur substantial prejudice as a result of the amendment." Stundal v. Stundal, 2000 MT 21, ¶ 12, 298 Mont. 141, 995 P.2d 420.

In this case, O'Connells' proposed amendment were denied, but should have been permitted, in keeping with this policy that leave to amend "shall be freely given when justice so requires." O'Connell's motion to amend their complaint submitted Dec. 28, 2015 was deemed denied only because the District Court refused to address their motion to amend. So The District Court gave no stated basis to deny O'Connells amendments.

Absent any Court finding to deny the amendments, O'Connells claim their motion and attached amended complaint created no bad faith nor undue delay, because O'Connells 2015 amendments had a dilatory motive after discovery and no trial or other matters were pending. Their motive and stated reason to amend their 2015 amended complain shows justice so required such amendments and supplemental pleadings (that should have been granted) after discovery in

order to correct and overcome mistakes and deficiencies in the 2013 complaint written prior to discovery.

The Court to not allow O'Connells 2015 amendments and supplemental pleadings found AFTER discovery denied O'Connells the benefit of using such discovery to correct deficiencies in that 2013 complaint; which fatally harmed O'Connell's complaint dismissed on summary judgment. O'Connells also claim their 2105 amendments and supplemental pleadings (therein) overcame all objections raised in the SJ motion and Order and would have also corrected such deficiencies raised in that Order. But the District Court refused to allow justice requiring O'Connells to amend their complaint after this discovery; which Court denied amendments for no reason as arbitrary and capricious abuse of its discretion that fatally harmed O'Connells complaint. **NO wonder the SJ Order written by GLA Defendants never mentioned the 2015 complaint amendments and supplemental pleadings.**

It is worth repeating, had Plaintiffs been afforded time to conduct discovery before the Supreme court ordered O'Connells' amended complaint 2013, then there would have been no need to later seek leave to file another amended complaint 2015.

This May 31 Order prejudiced O'Connells complaint by not allowing any amendments or supplemental pleadings AFTER Discovery. O'Connells' complaint THEREBY SUFFERED irreparable harm BY BEING DISMISSED, because they were prevented from amending and barred from utilizing any and all discovery evidences in their amended complaint thereby preventing them from correcting those complaint deficiencies after discovery. O'Connells' rule 60 appeal is therefore warranted to reverse and retract this May 31 Order that NEVER ALLOWED for O'Connells 2015 motion & attached amendments; which District Court's

negligence, mistake, error, or similar action to deny O'Connells' Dec. 2015 motion to amend and supplemental pleadings fatally harmed and prejudiced O'Connells complaint.

ISSUE #3 as listed above:
The District Court errs in dismissing all O'Connells complaint claims with prejudice and deny a requested trial.

O'Connells original and amended complaints all requested a trial by jury, but this Court instead dismissed the entire complaint on summary judgment "with prejudice" by Orders (May31, 2016) after it chose GLA disputed fact over O'Connells (see *Fasch* above).

In *Meagher v. Butte-Silver Bow City-County, 2007 MT 129, ¶ 17, 337 Mont. 339, 160 P.3d 552.*, this Court held that "dismissal of a complaint for failure to state of claim upon which relief may be granted is not a "terminal" ruling on the merits; rather, the complainant may recast his or her complaint and file it again, providing it is done within the required period of limitations."

The District Court Order to dismiss the entire complaint "with prejudice" for failure to state a claim for relief clearly did not apply the law above correctly, because O'Connells' complaint should not have been dismissed WITH PREJUDICE as a "terminal" ruling. Absent any other relief found by this Court, O'Connell's should be free to recast their claims in a new Complaint. Therefore this is another instance of District Court Order of May 31, 2016 dismissal of the complaint "with prejudice" to be in error, oversight, omission, mistake and should be set reversed, modified, and/or aside per this Rule 52, 59, & 60 motion.

ISSUE #4 as listed above:
The District Court September 17, 2015 Order errs to grant GLA Protective Order and does not have jurisdiction when such Order denied O'Connell rights under a prior 2012 settlement agreement.

So as not to have to repeat O'Connells' arguments against that Sept. 2015 Orders found in "Plaintiff Response Against …Protective Order" this summary highlights the main errors, oversight, omission, and mistakes in that Order, because such Order denied O'Connells' state

rights and rights under a prior 2012 settlement agreement (attached to O'Connells' November 4, 2015 "Plaintiff Response Against …Protective Order:"

a) Protective Order forcing O'Connells to receive GLA corporate documents "only through discovery" denies O'Connell state rights to GLA corporate documents as members per 35-2-906 &7 & more
b) Protective Order forcing O'Connells to receive GLA corporate documents "only through discovery" denies O'Connells contractual right to communicate with GLA Board to request such GLA member documents allowed under a prior 2012 settlement agreement that said "the GLA will provide O'Connells with…a current membership list" and "provide O'Connells with all documents to which they are entitled pursuant to the Montana Non-Profit Act and GLA Bylaws[3] upon request."
c) Protective Order *forbidding* O'Connells to "disseminate any information acquired during this litigation to the public" denies O'Connells constitutional right to free speech to "disseminate any information acquired during this litigation to the public."

This District Court September 17, 2015 Order lacked any evidence to grant such protective Orders above, much less lacks authority to deny O'Connells rights above. Thus such 2015 Protective Order was arbitrary, capricious, an abuse of discretion, and otherwise unlawful for violating O'Connells' state rights and rights cited above under a 2012 settlement agreement. District Court Order of September 17, 2015 upheld again in the May 31, 2016 Order, is yet another instance of the Orders to be in error, oversight, omission, mistake and should be set reversed, modified, and/or aside per this Rule 52, 59, & 60 motion.

ISSUE #5 & 6 as listed above:

"Montana follows the general American Rule that a party prevailing in a civil action is not entitled to attorney fees absent a specific contractual or statutory provision." Natl. Cas. Co. v. Am. Bankers Ins. Co., 2001 MT 28, ¶ 27, 304 Mont. 163, ¶ 27, 19 P.3d 223, ¶ 27.
"Although we have recognized equitable exceptions to the general rule when a party is forced to defend a wholly frivolous or malicious action," see Foy v. Anderson (1978), 176 Mont. 507,

[3] Montana courts construe restrictive covenants [& Bylaws] under the same rules as are applied to contracts. Hanson v. Water Ski Mania Estates, 2005 MT 47, ¶ 15, 326 Mont. 154, ¶ 15, 108 P. 3d 481, ¶ 15.

511-12, 580 P.2d 114, 116-17, there is no evidence that the O'Connells filed any action solely to harass or otherwise abuse the judicial system.

The District Court September 17, 2015 Order does not have jurisdiction to grant GLA "attorneys' fees and costs related to this motion" for protective order. This is because this Order was absent any specific contractual or statutory provision to grant "attorneys' fees and costs" as the Order said. This Order sited no reason at all for granting such attorney fees/costs; thus the Order awarded such fees on an arbitrary, capricious basis as an abuse of discretion and absent any evidence of prejudice to the GLA (see O'Connells' motion reply against the protective order included herein as if fully stated), and the Order was fatally harmful to O'Connells' chances to defend against such arbitrary and capricious fees awarded without prior notice or warning.

Similarly another Order, District Court September 9, 2014 Order does not have jurisdiction to grant GLA "attorney fees and costs incurred for bringing [GLA] Motion" to quash subpoenas as that Order stated; and the fact that O'Connells requested and were denied a hearing on such fees and cost as allowed by M.R.Civ.P. Rules.

Also there was no prior order by the District Court to compel or deny discovery responses by subpoenas. In fact, the District Court gave NO warning that O'Connells subpoenas were in violation of anything prior to imposing over 5 grand attorney fees and costs in bring one motion to quash O'Connells' subpoenas. The district court Order gave NO reason for imposing such exorbitant attorney fees/costs. O'Connells filed a motion opposing and reversing this Order; which Order awarded such fees on an arbitrary, capricious basis as an abuse of discretion and absent any evidence of prejudice to the GLA (see O'Connells' motion reply against quash O'Connells' subpoenas included herein as if fully stated).

Thus two Orders to grant two motions' attorney fees/costs (Motion for protective order and Motion to quash subpoenas) were both absent any specific contractual or statutory provision to grant such "attorneys' fees and costs." Therefore Orders awarded such fees on an

arbitrary, capricious basis as an abuse of discretion, and otherwise fatally harmful to O'Connells' chances to defend against such exorbitant attorney fees/costs awarded without prior notice.

"Contractual provision awarding attorney's fees to a prevailing party is not effective when each party prevails on different issues." Winters v. Winters, 2004 MT 82, ¶ 59, 320 Mont. 459, ¶ 59, 87 P.3d 1005, ¶ 59.

O'Connells claim Orders of September 9, 2014 and Orders of September 17, 2015 granting two motions "attorney fees and costs" were "absent specific contractual or statutory provision" required (under Natl. Cas. Opinion above); but also O'Connells should have prevailed one one or more issues, because:

O'Connells' motion reply against quashing O'Connells' subpoenas (included herein as if fully stated) state they were merely exercising their right to SEEK discovery for which witness -Allen admitted she was available to depose and there was NO evidence of witness-Naclerio's one day delay scheduling conflict was a undue burden on her. O'Connells' motion reply against protective Order violated O'Connells prior 2012 settlement agreement rights, and there was no evidence to grant such protective Order that denies O'Connells right to free speech (see O'Connells' motion reply against the protective order included herein as if fully stated).

All together Orders were shown by O'Connells' motion replies to be in error, oversight, omission, mistake especially for lack of any authority to grant any "attorney fees and costs" and should be set reversed, modified, and/or aside warranted per this Rule 52, 59, & 60 motions.

CONCLUSION

"Plaintiffs Response in Opposition to GLA Summary Judgment Motion" (included hereby as if fully stated herein) gave numerous evidences of proof of their Complaint claims. Yet the Orders failed to cite or even discuss these evidences, basically ignored all the evidence and facts in dispute found therein that SJ response. The so called complaint facts in the 2016 Order do NOT even match the facts of this case as explained above. Also the District Court should not

have dismissed their petition without first giving them leave to amend as requested Dec. 2015, especially as no other party would have suffered prejudice.. Plus O'Connells SJ Response page two requesting a Hearing (mistakingly called a jury trial) to "overcome the motion" was never granted as mistake/oversight that should have been allowed. Opinions below sum up District Court erroneous Orders that should be reversed, modified &/or aside per Rule 52, 59, & 60.

"A district court abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason resulting in substantial injustice." Essex, ¶ 19. "When the district court refuses to set aside the judgment, only a slight abuse of discretion need be shown." Skogen v. Murray, 2007 MT 104, ¶ 11, 337 Mont. 139, 157 P. 3d1143;Karlenv.Evans,276Mont.181,185,915P.2d232,235(1996)).

Respectfully submitted ***this 28th day of June, 2016,***

By: _____ By: _____

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 email (minus exhibits) this day and first class mail with exhibits on the following day to:

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

Alannah Griffith
26 E. Mendenhall
Bozeman, Mt. 59715

Hon. Judge David Cybulski
573 Shippe Canyon Rd.
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Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

By: _____
Valery O'Connell