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

14 DANIEL and VALERY O'CONNELL,

15 Plaintiffs,

16 v.

17 GLASTONBURY LANDOWNERS
18 ASSOCIATION, INC. Board of Directors,

19 Defendants.

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

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR ORDERS
REESTABLISHING PARTIES TO THE
COMPLAINT**

20 COMES NOW the above named Defendant Glastonbury Landowners Association, Inc. (GLA)
21 and responds in opposition to Plaintiffs' Motion for Orders Reestablishing Parties to the Complaint.

22 **SUMMARY OF PLAINTIFFS' MOTION**

23 Plaintiffs seek an Order from the Court "reestablishing" the parties to this case. They want the
24 Defendants to be the Glastonbury Landowners Association, Inc. and the "GLA Board of Directors"
25 specifically identifying Richard Bolen, Alyssa Allen, Laura Boise, William Smith, Sheridan Stenberg,
26 Gerald Dubiel, Paul Ranttalo, Rich Spallone, and Janet Naclerio. They also want to exclude Neil
27 Kramer, Claire Parker, and any new board members since March 2013.
28

1 Plaintiffs also state Daniel O'Connell's position as a GLA board member and the positions of
2 other board members when the original complaint was filed in 2011 should not change "regarding their
3 defense and liabilities under this complaint." Plaintiffs are actually moving to amend their complaint to
4 bring claims against individuals they already dismissed from this suit.

5 FACTUAL BACKGROUND

6 Plaintiffs original complaint was filed July 18, 2011 titled "Civil Petition/Claim for Relief
7 Judicial Review, Temporary Injunction." The caption named the following parties:

8
9 Daniel K. O'Connell (a Director of the Glastonbury Landowners Association Incorporated), &
10 Valery A. O'Connell & for and on behalf of the landowners & the many members of the
11 Glastonbury Landowners Association.

12 Plaintiff(s),

13 v.

14 Richard Bolen, Laura Boise, Janet Naclerio, Sheridan Stenberg, Alyssa Allen, Gerald Dubiel,
15 Rich Spallone, & William Smith (all Directors of) (& "the Glastonbury Landowners Board of
16 Directors" as Ordered to include)

17 Defendant(s)

18 Plaintiffs eventually served the eight individuals named in this complaint after the Court ordered them
19 to do so as sending a copy of the complaint to the GLA's PO Box was not sufficient. The Court then
20 dismissed the original complaint because it was not clear what relief Plaintiffs were seeking and against
21 whom relief was sought. Plaintiffs appealed¹ this dismissal to the Montana Supreme Court which
22 determined Plaintiffs should be given the chance to amend their complaint to make a more definite
23 statement.
24

25 Plaintiffs filed a "New Amended Complaint & Motion for Pleading" on February 31[sic], 2013
26 and this time the caption named the following parties:
27

28

¹ Which also added the Glastonbury Landowners Association to the list of defendants.

1
2 Daniel K. O'Connell & Valery A. O'Connell & on behalf of themselves as members of the
3 Glastonbury Landowners Association.

4 Plaintiff(s),

5 v.

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

7 Defendant(s)

8
9 The GLA board changes year to year as directors leave office and new ones are elected. At the times
10 pertinent to this motion the board consisted of the following:

	July 2011	March 2013	Present
11			
12	1) Richard Bolen*	Richard Bolen*	Daniel Kehoe
13	2) Laura Boise*	Laura Boise*	Ross Brunson
14	3) Janet Naclerio*	Janet Naclerio*	Robert Branson
15	4) Sheridan Stenberg*	Sheridan Stenberg*	Ed Dobrowski
16	5) Alyssa Allen*	Alyssa Allen*	Catherine Bielitz Fitzgerald
17	6) Gerald Dubiel*	Gerald Dubiel*	Gerald Dubiel*
18	7) Rich Spallone*	Rich Spallone*	Scott McBride
19	8) William Smith*	William Smith*	Janice McCann
20	9) Neil Kremer	Scott McBride	Charlotte Mizzi
	10) Clare Parker	Sean Halling	Jim Kozlik
	11) Daniel O'Connell	Kenneth Haug	Robert Wallace
	12) Paul Ranttalo ²	Paul Ranttalo	Paul Ranttalo
	*indicates named in original complaint		

21 Plaintiffs named only the GLA (the incorporated entity) and the "current GLA Board of Directors" in
22 the amended complaint. Plaintiffs did not name any individual directors nor did they serve individual
23 directors. Now, they want the Court to add parties to this case simply on their motion—such an action is
24 not proper under the Rules of Civil Procedure.
25
26

27
28 ² Paul Ranttalo was not named in the original complaint, and Plaintiffs proposed leaving him on the board with Daniel O'Connell, Neil Kremer, and Clare Parker. Plaintiffs do not explain why they now want to add him to the complaint when they apparently had no problem with him in 2011.

ARGUMENT

1
2 Mont. R. Civ. P. 10(a) states:

3 Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a)
4 designation. The title of the complaint must name all parties; the title of other pleadings, after
5 naming the first party on each side, may refer generally to other parties.

6 Plaintiffs original complaint named individuals. The amended complaint did not—rather it named the
7 GLA and the “current GLA Board of Directors.” An amended complaint supersedes the original. *Cass*
8 *v. Composite Industries of Amer., Inc.*, 2002 MT 226, ¶ 15, 311 Mont. 406, ¶ 15, 56 P.3d 322, ¶ 15.

9 Plaintiffs' amended complaint dropped the named individuals of the original which had the
10 effect of a dismissing the individual defendants. Rule 10(a) requires the complaint to name each party.
11 When Plaintiffs filed an amended complaint naming only the Glastonbury Landowners Association,
12 Inc., those individuals were entitled to rely on Plaintiffs' representation they were no longer pursuing an
13 action against the individual board members.

14
15 Plaintiffs also named the “current GLA Board of Directors” in the amended complaint. This is
16 not sufficient. As pointed out above, the board members change every year, and so simply naming the
17 “current” board would cause confusion as to the identity of the defendants. The list of defendants would
18 change year to year—this would not comply with the Rules of Civil Procedure which govern adding and
19 dropping parties to a suit. If Plaintiffs wanted to sue the individual “current” board members, they had
20 an obligation to name them under Rule 10(a) and properly serve them under Rule 4—Plaintiffs did
21 neither and instead file this motion to establish them as parties.

22
23
24 Montana case law on Rule 10(a) is silent but federal courts have interpreted the federal rule
25 which is substantially the same. One court stated, “Naming and serving a defendant is vital. How can
26 one defend without first becoming a party?” *Myles v. U.S.*, 416 F.3d 551, 553 (7th Cir. 2005). There, a
27 plaintiff prisoner sued the United States, and when his claim was dismissed he contended the judge
28

1 should have treated his claim as a constitutional claim against individual federal employees despite his
2 not naming on the complaint. The court rejected his argument and made it clear Rule 10(a) requires the
3 plaintiff to properly name a party. *Id.* at 552.

4 Here, the “current GLA Board of Directors” is not a proper party. Due to the changing nature of
5 the board, the members change. Plaintiffs seem to recognize the changing board as they used the
6 designator “current.” This also shows Plaintiffs intended to drop their claims against the board members
7 sitting in 2011 and proceed against the current board members instead.

8
9 However, the board in itself is not a legal entity like the GLA. To sue the individual board
10 members, they must be named and served. Plaintiffs were instructed to do this by the Court for the
11 original complaint and are aware of this requirement. Plaintiffs have made no attempt to amend their
12 complaint to the “current” board roster and serve those members.

13
14 Now, Plaintiffs file this motion seeking to amend their complaint again to name nine individuals
15 who were serving on the board in 2011: Richard Bolen, Alyssa Allen, Laura Boise, William Smith,
16 Sheridan Stenberg, Gerald Dubiel, Paul Rantalo, Rich Spallone, and Janet Naclerio. With the exception
17 of Paul Rantallo, these were the people named in the original complaint. Now, only Paul Rantallo and
18 Gerald Dubiel currently serve on the board.

19
20 Eight of these people were dismissed in the amended complaint in favor of the GLA and the
21 “current” board. However, the members of the “current” board have never been properly made a party
22 to this case. Now, Plaintiffs seek to drag people they dismissed from the case back into it. Such an
23 action is clearly prejudicial to those individuals, and Plaintiffs assert no grounds for amending. Plaintiffs
24 are not “reestablishing” the parties; they apparently feel they made a mistake by dismissing the
25 individuals and seek to improperly amend to correct the mistake.
26
27
28

1 Finally, Plaintiffs assert that Daniel O'Connell was a board member when the original complaint
2 was filed and so "Daniel's position as a GLA Director and others positions do not change regarding
3 their defense and liabilities under this complaint." The GLA cannot readily determine what Plaintiffs
4 are asserting by this statement. As stated in the factual background above, Daniel O'Connell named
5 himself in the original complaint as "a Director" and in the amended complaint he was named on behalf
6 of [him]self. If he was trying to bring a suit in his capacity as a board member in the original complaint,
7 he clearly dropped that position in the amended complaint. Plaintiffs have not identified what "defenses
8 and liabilities" they are talking about, and so the GLA cannot respond further to Plaintiffs' assertion nor
9 can the Court grant an order without knowing what Plaintiffs are asking.
10

11 **CONCLUSION**

12
13 For the foregoing reasons, Plaintiffs' Motion for Orders Reestablishing Parties to the Complaint
14 should be denied. A proposed order is attached to this brief.

15 DATED this 16th day of December, 2014.

16
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18 BY 

19 Michael P. Heringer
20 Seth M. Cunningham
21 The Brown Law Firm, PC
22 Attorneys for Glastonbury
23 Landowners Association, Inc.
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CERTIFICATE OF SERVICE

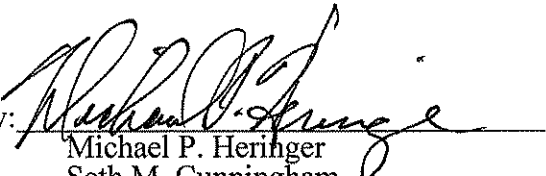
I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail, postage prepaid, and addressed as follows this 16th day of December, 2014:

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By: 
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5

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

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

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

9 Plaintiffs,

**ORDER DENYING PLAINTIFFS' MOTION
FOR ORDERS REESTABLISHING
PARTIES TO THE COMPLAINT**

10 v.

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

13 Defendants.
14

15 THE COURT, having reviewed Plaintiffs' Motion for Orders Reestablishing Parties to the
16 Complaint and Defendant Glastonbury Landowners Association, Inc.'s (GLA) response in opposition,
17 the file and the law, now makes the following findings and Order:

18 1. Plaintiffs' original complaint dated July 18, 2011 named and served eight individuals who
19 were on the GLA board of directors at the time: Richard Bolen, Alyssa Allen, Laura Boise, William
20 Smith, Sheridan Stenberg, Gerald Dubiel, Rich Spallone, and Janet Naclerio.

21 2. Plaintiffs' amended complaint dated February 31[sic], 2013 named the Glastonbury
22 Landowners Association, Inc. & current GLA Board of Directors. Plaintiffs failed to properly name and
23 serve the "current" GLA board of directors.
24

25 3. Plaintiffs amended complaint had the effect of dismissing the originally named individuals:
26 Richard Bolen, Alyssa Allen, Laura Boise, William Smith, Sheridan Stenberg, Gerald Dubiel, Rich
27 Spallone, and Janet Naclerio.
28

