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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),)	
)	Cause No. DV-11-114
v.)	
)	
Glastonbury Landowners Association, Inc.)	
& current GLA Board of Directors)	
)	
Defendant(s))	

PLAINTIFFS' MOTION TO STRIKE OR DISREGARD DEFENDANT ALLEN'S AFFIDAVIT

Come now Plaintiffs & GLA members-Daniel and Valery O'Connell, and submit this "Motion to Strike or Disregard Defendant Allen's Affidavit" attached to Defendants response to Plaintiffs reply against summary judgment. Pursuant to Rule 7(f) of Montana Rules of Civil Procedure, Plaintiffs' motion respectfully move this Court for an Order striking or disregarding Defendant/Allen's false or misleading affidavit. Also because factual evidence attached to Plaintiffs' reply to summary judgment and attached affidavit all refute Allen's affidavit as obviously misleading or else false testimony, as shown below.

FACTUAL BRIEF SUPPORTING MOTION

A. Evidence disproving GLA/Allen affidavit, paragraph 3:

Allen Affidavit paragraph 3 says the 'GLA provided the Plaintiffs with a "membership list... without charge."

The GLA did charge O'Connells for a membership lists and did refuse to give

O'Connells documents requested. As proof see attached "Exhibit 01."

"Exhibit 01" proves GLA charged O'Connells for a membership lists shown by this \$60 charge to retrieve 7 documents including "membership list." This Invoice GLA Director Allen (owner of Algelis Designs) charged O'Connells \$60.00 to retrieve even a "membership list," yet denied O'Connells to view or copy any documents until they paid the GLA this \$60 amount.¹

Plaintiffs had to file a lawsuit (DV-12-193) just to get even one membership list allowed by state statute 35-2-535 MCA.

This "Exhibit 02" November 4, 2012 letter from GLA attorney dated four months AFTER the August 2012 Settlement Agreement says:

"It has come to my attention that the Board has not yet billed you for their cost on collecting the Draft Assessment Policy, Meeting Minutes, Membership lists, Drafts of Erickson Agreement, Minnick Management Agreement, Board Confidentiality Agreements and Board Conflict of Interest Statements for you in July. It is my understanding that these [7] documents were not part of the pending litigation in July. Please send the Board a check for that amount. The Board has sent a request for its management company to procure the check details and other documents. Once they are collected, they will be available for you [O'Connells] upon payment of this invoice, and the invoice generated regarding your request for the check details and other documents." (also see Plaintiffs' motion to dismiss summary motion page 15 that says, "O'CONNELLS [were] CHARGED \$60 JUST TO HAVE GLA FIND A FEW GLA DOCUMENTS")

Plaintiffs' reply to summary judgment (SJM Reply) Exhibit 5 emails shows O'Connells' numerous requests for documents (Dec. 2012, May & June 2012) were denied even for a membership list and meeting minutes.

This 2012 Settlement Agreement as follows required GLA to provide O'Connell membership lists twice a year. But then the GLA first violated this agreement by attached

"Exhibit 02" showing this \$60 charges and denial of requested documents:

(SJM Reply Exhibit 4) the GLA will 2."provide "OConnells with all documents they are entitled pursuant to Montana Non-Profit Corporation Act... ." Requested documents denied to O'Connells are cited within July 29, 2014 email and Dec. 27th email (Exhibit 5) two of three demands for GLA documents as given to Defendants.

¹ Note: 35-2-535 MCA for Plaintiffs complaint issue #6 authorizes "the district court ... [to] order the inspection or copying at the corporation's expense." Thus Plaintiffs injunction request for all GLA minutes authorizes this court to remove the \$60 charge to O'Connell members for such GLA documents.

More recent evidence GLA violated this [2012 GLA] settlement agreement is shown by the May 20, 2014 email letter (SJM Reply “Exhibit 5”) from GLA council.

This email states the GLA will not provide any requested documents such “as membership list” “until a date has been set for another member meeting.”

Exhibit 5 emails also show O’Connells numerous requests for documents (starting Dec. 2012, May & June 2012– Exhibit 5) even for a membership list were denied. Only after a member meeting was scheduled, were O’Connell members allowed some (not all) requested documents. The last GLA/Brown Law Firm July 22, 2014 letter (Exhibit 5) states, any more document “requests need to be made through discovery...”

Exhibit 5 (within Plaintiffs Reply Against Summary Judgment) shows GLA attorney (Brown) letter dated a few months later on May 20, 2014, specifically said they denied giving O’Connell members any such requested membership list, also falsely denied that such membership list exists by saying, “there is no such [membership] list at this time.”

Exhibit 5 (within Plaintiffs Reply Against Summary Judgment shows a GLA attorney (Landers) letter dated July 18, 2012, specifically says on page 2 “If and when the Board meets in private, it has a valid reason for doing so, ... Any such minutes or agenda, if they even exist, will not be provided” to O’Connell members.

GLA emails above denying O’Connell all requests for documents except “through discovery” violates above 2012 settlement agreement & violates other statute requirements below as follow:

35-2-535. Members' list for meeting. (3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

“35-2-906. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

Notice state statutes (above) and others below allows O'Connells to have all meeting minutes and such membership list in a reasonable time before during and (part b(3)) after "any adjournment" of any annual meeting of members. Yet Exhibit 5 (Plaintiffs SJM Reply) shows a GLA attorney (Brown) letter dated a few months later on May 20, 2014, specifically said they denied giving O'Connell members any such requested membership list saying, "there is no such [membership] list at this time." And Exhibit 5 GLA attorney (Landers) letter dated July 18, 2012, specifically admits on page 2 "If and when the Board meets in private, it has a valid reason for doing so, ... Any such minutes or agenda, if they even exist, will not be provided" to O'Connell members. In fact, the GLA annual meeting was held six months prior in November 2013, and the GLA website and January 2014 GLA newsletter "Exhibit 15" (attached to Plaintiffs SJM Reply) shows the next GLA annual meeting and elections had already been announced and mailed to GLA members January 2014 for "NOVEMBER 8, 2014."

Conclusion:

35-2-906 MCA that says "all meetings of its members and board of directors" be made available to its members as does 35-2-907 MCA Inspection of records by members and 35-2-535 MCA and email evidences above (also GLA Bylaw Art.VI(I)) all dispute Allen's affidavit paragraph 3 and support amended complaint (page 4) issues #1 for 1) GLA violation of a settlement agreement with O'Connell members (attached from case 193); and complaint issue #6) for GLA denied O'Connell members meeting minutes from all GLA "private meetings" and "committee meetings" and most open Board meetings.

B. Evidence disproving GLA/Allen affidavit, paragraph 4:

Allen affidavit paragraph 4 among other things says, "Plaintiffs would make general catch-all demands for whole categories of records without stating a proper purpose or describing with reasonable particularity the purpose and the record the member desires to inspect."

Not true. Again, (Plaintiffs SJM Reply) Exhibit 5 emails show O'Connells numerous requests for documents (Dec. 2012, May & June 2012) even for a membership list and meeting minutes were denied ONLY because they refused to pay the \$60 fee and also because:

The last GLA/Brown Law Firm July 22, 2014 letter (Exhibit 5) states any more document "requests need to be made through discovery..." This email denying all documents except "through discovery" is again a violation of the 2012 settlement agreement (SJM Reply Exhibit4) that states the GLA will 2. "provide "OConnells with all documents they are entitled pursuant to Montana Non-Profit Corporation Act... ." Requested documents denied to O'Connells are cited in the July 29, 2014 email (Exhibit 5)..." second demand for GLA documents as given to Defendants.

In fact, O'Connell members attached emails "Exhibit 03" from Dec. 27, 2012, May & June 2012 did state a proper purpose and described with reasonable particularity the purpose and the record the member desires to inspect; which in part says:

"Per this statute [35-2-907MCa], our demand for recent minutes is made in good faith and for a proper purpose to know and have a record of what happened at these meetings. We missed most of them and have a hard time hearing and/or recalling everything said at meetings. Such purpose is also to keep a record of actions taken at our Board meetings that effect members. Such minutes are directly connected with these proper purposes."

"Such document copies requested now include:

- * All GLA Board meeting and committee meeting minutes since April 2012.
- * All GLA private meeting minutes and agendas since April 2012
- * All documents approved by the Board since August, including all contractor/employee agreements with the GLA
- * Including the amended Minnick contract (as reviewed and approved by the Board Dec. 17, 2012)
- * Copies of all GLA receipts and expenditures for the last 3 years- including so called monthly "GLA check details"

Also two years later within their July 29th, September 15, & 26th 2014 emails (attached)

"Exhibit 04", O'Connells made more requests for different documents stating a proper purpose

describing with reasonable particularity the purpose and the record the member desires to inspect all but ignored for almost a year now, as follow:

“O’Connells 2014 document requests have nothing to do with discovery for the 114 lawsuit.

Continued request for documents from 3rd Demand email letter (sent today July 29th, 2014) is for:

- 1) GLA member complaint/suggestion letters to the Board for the last 36 months.
- 2) GLA member account balances &
- 3) GLA Board communications with members.
- 4) GLA payment plans with members.

...All these documents are allowed by the following state law for good cause & purpose as O’Connells board candidacy and need for these membership records for our ongoing records to know what our board is doing.”

Conclusion:

Again the last GLA/Brown Law Firm July 22, 2014 letter (Exhibit 5) states any more document “requests need to be made through discovery...” This last email is again a violation of the 2012 settlement agreement (Exhibit4) that states the GLA will 2.“provide “O’Connells with all documents they are entitled pursuant to Montana Non-Profit Corporation Act... .”

All these evidences These denial of document requests cited show a proper purpose and describing with reasonable particularity the purpose and the record the member desires to inspect. Therefore they dispute Allen’s affidavit and support amended complaint (page 4) issues #1 for “1) GLA violation of a settlement agreement with O’Connell members (attached from case 193); and proves complaint issue #6) for GLA denied O’Connell members meeting minutes from all GLA "private meetings" and “committee meetings” and most open Board meetings.

C. Evidence disproving GLA/Allen affidavit, paragraph 5:

Allen’s affidavit paragraph 5 says, “After these inspections, the records were in extreme disarray with no indication of what had been copied or taken by Plaintiffs making inspections in the future unworkable.”

This Allen's affidavit is misleading that says O'Connells requests for GLA document "inspections in the future [is] unworkable." This is not because of anything the O'Connells did, but because the GLA system keeping its corporate records in cardboard boxes for inspection by members is unworkable. The one a time allowing document inspection, O'Connells contend it was slow and almost impossible for them to find requested GLA documents in boxes. It is ludicrous for GLA to blame O'Connell members for GLA's own inept document storage method of cardboard boxes. Page 15 (Plaintiffs SJM Reply) proves this:

(Plaintiffs SJM Reply) "Exhibit 10" page 2 of GLA minutes shows the GLA admits it still keeps its GLA records in cardboard boxes or "17 boxes of GLA documents" even now. As this exhibit 10-April 14, 2014 meeting minutes also proves, to not digitize their GLA records in stored 17 cardboard boxes, nor use email, nor the programs like most companies to manage GLA paperwork, is material evidence or facts supporting Plaintiffs claim #5 that GLA waste \$12K yearly by not following "good business practices" "to the best of their ability" (as required per Covenant 11.05)" to not digitize their corporate records nor use electronic billing.

"35-2-906. Corporate records. (4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time."

Above state statute 35-2-906 MCA part 4 also requires the GLA "corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time." But this is "unworkable" as Allen's affidavit says because retrieval of GLA records stored in cardboard boxes; which are only separated by year. So even the Board not just members have to search through thousands of documents in 17 cardboard boxes just to find requested GLA documents, many missing or not found by members.

Also attached "Exhibit 01" & Exhibit 02" claims that O'Connells owe the GLA "3hrs" or 3 hours taken to "compile" or retrieve from boxes just 7 named documents violates statute 35-2-906

above since such 3 hour retrieval to get a few documents is not “within a reasonable time” as 35-2-906 MCA cited above requires.

Note: “Exhibit 03” Dec. 27, 2012 & June 2012 email from O’Connell requested to pay the GLA “10 cents per page” as reasonable, but the GLA refused this offer necessitating this amended lawsuit claim.

Conclusion:

“Exhibit 01 proves 3 hours just for the GLA to retrieve its own 7 documents is NOT “within a reasonable time” as state statute 35-2-906 MCA part 4 requires. Also GLA Allen’s affidavit admits after O’Connell inspection of some GLA corporate records in July 2014, the GLA have since denied O’Connell all subsequent document requests (Exhibit 04) that Allen calls “unworkable” due to GLA’s improper document storage in boxes. Thus attached exhibits and Allen’s affidavit paragraph 5 is prima facia evidence supporting Plaintiff members’ claim #1 for denial of documents violation of the settlement agreement and issue #6 GLA denial of document minutes and more.

D. Evidence disproving GLA/Allen affidavit, paragraph 6:

Allen reason “for the purpose of continuity” is improper to justify GLA denied member due process/notice (required per Bylaw XI.C., pg.15 Exhibit C.) for such things as the GLA Board “Policy for Length of Board Service” that without due process was enforced since 2013, “At the December board meeting, the board determined ... it will not be until the first board meeting after the annual elections that out-going directors will relinquish their duties.” (see Plaintiff reply to SJM “Exhibit 15” GLA Newsletter mailed to members January 2014 AFTER this policy was adopted effecting all members.)

Without citing any GLA Bylaws, Allen affidavit claims Bylaws require such GLA action, which had never been done before 2013. However, GLA Bylaw and state law below say just the opposite. GLA enforcement of this policy giving Directors up to 30 days extra term in office on

the board “after November elections” is without member due process AND contrary to Bylaw VI(D) and state law §35-2-417 MCA, that state:

35-2-417. Election, designation and appointment of directors. (1) If the corporation has members, all the directors except the initial directors must be elected ... at each annual meeting...”

GLA Bylaw VI. (D) Election and Term of Office...The members of the Board shall hold office until their respective successors have been elected by the Members ...” at each GLA annual election held November of each year.

This Bylaw and law above shows GLA Directors can not hold their office past the time that their successors have been elected **at the GLA annual elections every November**, not 30 days later. But this GLA “Policy for Length of Board Service” shows that is what happened. So this complaint claim restraining GLA for lack of member due process and notice when they enforced this policy thus denies duly elected directors from holding office up to 30 days after election. Therefore Allen’s affidavit is factual evidence supporting Plaintiffs complaint claim #2 denial of such due process & notice (required per Bylaw XI(C) cited on page eight of Plaintiffs SJM reply and Exhibit 13 & 15).

E. Evidence disproving GLA/Allen affidavit, paragraph 7 & 14:

Allen’s affidavit paragraph 7 admits “GLA has not shared[with members other member] phone numbers, account balances, private correspondence, and other information not considered part of membership records.” (Note: Allen also says this is for “maintaining member privacy.”

Allen affidavit paragraph 14 also claims the GLA can hold member elections by “secret ballot” “as confidential” and thus not share them with members.

Allen’s affidavit admissions above supports Plaintiff complaint claims #6 and #7 that said the GLA has denied members to declare GLA election ballots, proxies, certification, and vote tallies “confidential” since 2011 and denied to members other member documents like member email and correspondence from and to the GLA Board. So only the Board and a handful of

members sees election ballots! But review of GLA election ballots is the only way to prove GLA election results. Plus the GLA could remove member names, assign numbers to ballots like the county does. So there is no practical reason GLA denies members election ballots & results.

Plaintiffs SJM Reply "Exhibit 6" shows GLA's July 16, 2014 letter to all GLA members proposing these same requested member records (denied to O'Connells) remain "confidential" in direct violation of state laws §35-2-114(3)MCA, §35-2-907MCA, & §35-2-906MCA (cited below) that allow such member election records to members, as follow:

§35-2-114(3)MCA, part (42) "Vote" or "voting" includes but is not limited to the giving of consent in the form of a record provided electronically or by written ballot and written consent"

and §35-2-906MCA, part (5)(d) above that says members are allowed "the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;"

and §35-2-907MCA, part (1) **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)..." which includes "(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members; (d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years [like election ballots]; (e) the financial statements available to members for the past 3 years under 35-2-911;" and more; which 35-2-911 says "financial statements" must show "in reasonable detail its assets and liabilities and the results of the operations."

These state laws §35-2-114(3)MCA, §35-2-907MCA, & §35-2-906MCA (cited below) allow "actions" or election ballots "approved by members" that the GLA/Allen admit they deny to members. This law requires the GLA to share its member account balances, member and GLA correspondence, and other corporate information or "resolutions adopted by its board" or "records of all actions approved by the members." Just because Allen and the GLA Board claims these records are "confidential" or "not considered part of membership records" still does not mean they should violate these state statutes by continuing to deny members such documents requested, as follow:

"Exhibit 02 and 03" from Dec. 27, 2012, May & June 2012 and 3rd Demand email letter (sent July 29th, 2014) for:

“1) GLA member complaint/suggestion letters to the Board for the last 36 months,

2) GLA member account balances &

3) GLA Board communications with members,

4) GLA payment plans with members.

...All these documents are allowed by the following state law for good cause & purpose as O’Connells board candidacy and need for these membership records for our ongoing records to know what our board is doing.””

Conclusion:

Allen’s affidavit admission paragraph 7 above obviously admits it denied member document requests only because the GLA says are “confidential” for “maintaining member privacy” in direct violation of state laws §35-2-114(3)MCA, §35-2-907MCA, & §35-2-906MCA (cited above) that allow O’Connell and other members all these documents requested.

Allen’s affidavit admission paragraph 7 thus is prima facia evidence supporting Plaintiffs’ complaint claims #6 and #7 to restrain GLA actions they admit since 2011 deny members financial records, member email, and correspondence from and to the GLA Board, election ballots, proxies, certification, & vote tallies (and deny some meeting minutes shown below).

F. Evidence disproving GLA/Allen affidavit, paragraph 8 through 11:

Allen’s affidavit paragraph 8 admits, “sometimes detailed minutes are generated in closed [GLA Board] sections, and these [minutes] are not disseminated to members” that the GLA claims is “privileged or Privacy protected by law.” Allen’s affidavit yet admits if such private or privileged information in the Board meeting minutes “were completely redacted, they could be disclosed.”

Yes, but after all these numerous document requests by O’Connell members to get such private meeting minutes cited above since 2011, the GLA Board admit they “could be disclosed” so they have not take any steps to redact some; thus GLA/Allen affidavit admit they refuse to give members any private meeting minutes.

Also Allen affidavit paragraph 9 says “the GLA provide all other meeting minutes to its members.”

Again O’Connells exhibits and numerous requests cited above prove, this is not true, and only sometimes true for getting regular meeting minutes, but no private meeting minutes and no GLA committee minutes that GLA admits were not taken until 2014, nor available yet to members.

Also Allen affidavit paragraph 10 says, “these notes [by committee members] are committee minutes incorporated into the regular monthly board meeting minutes... done for a couple of years...” now.

The problem with this is that state law requires of the GLA more than notes of minutes:

§35-2-907, MCA. (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and copy (a) ...records required to be maintained under 35-2-906(1)” which says, “A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4)”

GLA GLA Bylaw VI(I) also requires, in part, “All committees shall keep Minutes reflecting the committee members attending and the actions taken.”

Plaintiff discovery requests for such documents are absent such proof. Also Plaintiffs

SJM Reply “Exhibit 8” 2011-2014 meeting minutes show the GLA took no committee minutes, nor minutes of GLA meetings via email, nor GLA annual meeting minutes when this lawsuit claim was filed since 2011.

Also Allen affidavit paragraph 11 admits to “subsequent ratification” of email records. This admission admits the GLA had failed in the past to follow its Bylaw, such as

GLA Bylaw (J) “Such written consent [by email meetings of the Board] or consents shall be filed with the Minutes of the proceedings of the Board...”

Since the Board has never done this as complaint claim #6 says, the GLA has not produce one bit of evidence otherwise. (Note: Prior to this lawsuit, much of what the GLA Board did was thus done in secret by committee or in private session without member notice, quorum, and without any minutes taken reflecting the private meetings or committee meetings, and absent members attending and actions taken therein.)

Conclusion:

Allen's affidavit admission paragraph 8-10 admits to only taking "committee minutes" for a couple of years" after this lawsuit was filed; and admits to "**subsequent ratification**" of **email records** only after this lawsuit was filed. Thus Allen's admissions support Plaintiffs claims #6 that the GLA denied members such meeting minutes since 2011 in direct violation of its Bylaw and state laws above §35-2-114(3)MCA, §35-2-907MCA, & §35-2-906MCA that allow members these document requests; which documents are members only proof of what GLA does in private meetings, committee meetings or annual meetings effecting member property.

G. Evidence disproving GLA/Allen affidavit, paragraph 12, & 13:

Allen affidavit paragraph 12 says, "The GLA can and does pay board members... rendering service in other capacities such as snow removal, construction, road maintenance, and administrative work..." paragraph 13 says bids are not required per se, and paragraph 14 says

Allen affidavit paragraph 13 claims, no bids are required and informed the members of job needs "at meetings, through the newsletter, and announcements." Note: Plaintiffs discovery and GLA Board have failed to provide proof of this claim that Board member Dan O'Connell claimed is false.

Evidence in Bolen and Allen's written depositions July 2013 #8 Response says "documents 000464 and 000465" were the only 2 contractor bids the GLA took since 2010.

Also, Complaint claim #5 says O'Connell while on the Board could find no record of such bids and jobs that the GLA claims they told membership.

Without taking any bids, GLA Directors then "derived an improper personal economic benefit" (per Articles VIII.) for getting such jobs & profit by default. Taking bids to get lower competitor price "is good business practice" required of the GLA (per GLA Covenant 11.05:

GLA Covenant 11.05: "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 to the best of their ability...". Note: the GLA Board has not defended itself against this Covenant claim.

GLA written depositions July 2013 #8 and Allen;s affidavit cited above shows the GLA simply refuses to get competitor bids; which duty requires they follow "good business practice."

Furthermore, (cited and explained in Plaintiffs' SJM Reply) GLA also fail to get any member consent for Director conflict of interests as state statute 35-2-418 below requires, especially for paying such directors a "profit" against its GLA Article III, thus all breached its Covenant 11.05 and Art. VIII fiduciary duties requirements.

35-2-418. Director conflict of interest. (3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if: (b) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction....(4) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction;..."

Director jobs done for the GLA paid with GLA assessments is an obvious "conflict of interest transaction with the corporation in which a director of the corporation has a direct or indirect interest" per **§35-2-418 MCA**; and "Material facts of the transaction and the director's interest were [NOT] disclosed or known to [all] the members" as 35-2-418 requires, and also NONE of the members "authorized, approved, or ratified the transaction" as required under state statute **§35-2-418 MCA**.

Discovery and Allen admission shows the GLA has never followed this state law requirement, but admit obvious conflict of interest² when the GLA Defendants paid themselves

² GLA failed to publish in any local paper or job service office such GLA jobs given to four GLA directors yearly since 2010; which is good business practice to solicit competitor bids for these numerous jobs and profit given to GLA Directors.

or least 4 Defendant Directors to do GLA jobs using GLA member funds without any approved vote of its members (which member votes of approval are certainly required by law above).

Conclusion:

GLA failed to follow obvious “good business practice” of taking competitor bid as this GLA Covenant 11.05 requires. Plaintiffs motion to dismiss SJM also cites proof that competitor bids are good business practiced by many other businesses. GLA Board also failed requirements of law 35-2-418 MCA that requires such Director conflict of interest to be first approved by a vote of its members that has never been done; which GLA denial of such required duties supports Plaintiffs’ complaint claim #5 GLA failure to get competitor bids, or member consent for Director conflict of interests, and especially for paying such directors a “profit” against its Article III³, a breach of its Covenant 11.05 and Art. VIII fiduciary duties requirements (as explained in Plaintiffs’ SJM Reply.

H. OTHER ISSUE #3:

GLA October 2012 meeting minutes “Exhibit 12” and Bolen/Allen deposition (cited in Plaintiffs’ reply to SJM) show GLA failed to give its members actual “Receipts & Expenditures” in 2011 and waited until October 2012 to give fake ones only after O’Connells’ complaint for this claim was filed.

Allen’s affidavit makes no mention of this complaint issue #3, likely because GLA Defendants written deposition (July 2013 page 4) already admits, “GLA denies that it gave

³ GLA Article III show members and Directors can not make “a profit,” or compensated over and above expenses incurred, for services rendered; which is making a profit. GLA admission statements 31 and more shows at least four Directors named in the check details are likely making a pecuniary or beneficial financial gain called profit. And 2010-2011 GLA meeting minutes show Board voted to give Director Defendant Alyssa Allen a stated salary of \$15.00 per hour “to manage the GLA.” June 2014, the GLA voted to hire Alyssa Allen as a “GLA employee” with a stated salary of \$15 per hour.

members a copy of GLA receipts and expenditures for the fiscal year 2010.” This issue admitted by the GLA is NOT yet settled, because after this time Plaintiffs claim members still are denied copies of actual GLA receipts and expenditures as its GLA Bylaw VIII(I) requires.

All together are eight amended complaint issues (page 4) asking to restrain GLA Defendants’ eight actions or breach of required duties cited above, as follow:

- 1) GLA violation of a settlement agreement with members (attached from case 193);
- 2) GLA deny member due process/notice (required per Bylaw XI.C., pg.15 Exhibit C.);
- 3) GLA deny members receipts & expenditure statements required per Bylaw VIII.F & H;
- 4) GLA misappropriation of GLA assessment funds (fiduciary/fraud) & liability (per Art. VIII. & Covenant 8.01(h) for overspending on High South Roads as non-aggregate spending and more; 4b) GLA refusal to utilize the GLA website to post member payments, notices, newsletters, etc.. (unnecessarily costing members approx. \$12,000 more per year in printing, mailing, labor costs instead); which also violates Covenant 11.05a. for not being consistent with its responsibilities and good business practices;
- 5) GLA paying Board members to do Board duties, the GLA has misappropriated GLA assessment funds (fiduciary/fraud) & liability (per Art. VIII. and Bylaw VI.K by paying Directors to do GLA jobs.;
- 6) GLA deny its members meeting minutes from all GLA "private meetings""committee meetings" and most open Board meetings (see attached email written request); which meetings GLA conduct in secret is in violation of Bylaw Art. VI (I);
- 7) GLA without member authority declare GLA election ballots, proxies, certification, and vote tallies "confidential" since 2011 and denied to members. GLA covenants;
- 8) GLA Board refuse to get or require written bids before hiring contractors (its own Board members)- thus in violation of GLA Article VIII & Bylaw VIII.K.;

CONCLUSION:

GLA/Allen affidavit disputes 7 out of 8 of these complaint facts listed above. Yet Allen’s affidavit is misleading or false as shown above. Yet Allen’s affidavit or rebuttals are found NOWHERE in Defendants summary judgment motion; which GLA summary judgment motion and Allen affidavit fails to disprove any genuine issues of material facts still in dispute evidenced and supported by numerous exhibits & affidavits. Therefore, pursuant to Rule 7(f) of Montana Rules of Civil Procedure, Plaintiffs respectfully move this Court for an Order **(a)** striking or disregarding Defendant/Allen’s misleading or false affidavit.

Respectfully submitted this 7th day of May, 2015,

By: Daniel R. O'Connell
Daniel O'Connell

By: Valery 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 the same day & via first class mail on the following business 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.
Plentywood, Mt. 59254

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

By: Valery O'Connell
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