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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

BY SHELLY BREEDEN  
DEPUTY

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

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PLAINTIFFS BRIEF & COUNTER-MOTION FOR PROTECTIVE ORDER & SANCTIONS  
AGAINST GLA DEFENDANTS & PLAINTIFFS' REPLY TO DEFENDANTS MOTION  
FOR PROTECTIVE ORDER

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**I. INTRODUCTION**

COME NOW Plaintiffs, per M.R.Civ.P., Rule26(c), to hereby file attached affidavit with this "Brief & Counter-Motion for Protective Order & Sanctions Against GLA Defendants ... & Reply to Defendants Motion For Protective Order."

**GLA's motion for protective order is fatally flawed because:**

- 1) GLA's motion that denies member requests for documents (except through discovery) directly violates the 2012 GLA/O'Connell Settlement Agreement (Exhibit 2); 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..."
- 2) GLA's motion Exhibits (A-38 & A-39) show GLA already allowed O'Connell at least three member requests for documents at the same time O'Connells conducted numerous discovery for this case: and GLA's motion (pp.3) admits members make their own copies of documents which avoids duplicity or cost to GLA; and such requests were allowed (per 2012 Agreement & §35-2-906 &907); which facts all refute GLA's claim of undue burden, and "improper communication between parties." GLA motion is trying to circumvent the 2012 GLA Settlement Agreement (Exhibit 2) & legislature laws (under §35-2-906, 907 and more) that

freely created to allow members access to corporate documents. Corporate members are the ones unduly burdened if forced to use the courts for member document requests, including forced unsolicited discovery, denial of rights under law, delay of settlement conference & trial, and increase pleadings and costs.

- 3) GLA motion errs to cite Remington case as authority, where Plaintiff-Sullivan admitted using member document requests for informal discovery and refused to use formal discovery in that case; because for this case (114), there's NO evidence of discovery abuse since O'Connells already conducted extensive formal discovery; and evidence shows member requests for documents since 2011 have been used "for election purposes only."
- 4) GLA's motion is meritless, vexatious, malicious, being absent case law or persuasive authority having nothing to do with rule 26(c) discovery for this case, having nothing to do with claims in this case, but are new claims against Plaintiffs made absent a petition or complaint.
- 5) This includes GLA's motion demanding Plaintiffs surrender their property (recordings of a GLA meeting allowed by law (§45-8-213) belonging to Plaintiffs; and censor article(s) on www.mygla.org that, without proof, GLA alleges belong to O'Connells, contrary to MT. Constitution Art. II, Sec. 7 free speech rights, laws, and inapplicable to rule 26(c) "governing discovery;" thereby absent case law or persuasive authority.
- 6) GLA's motion for protective order also demanding "the return of GLA meeting minute [copies]" is inapplicable to rule 26(c) "governing discovery;" thereby absent case law or persuasive authority; & GLA omitted the facts & never mention O'Connell's offer of payment to resolve this dispute; GLA thereby failed to "in good faith confer with [O'Connells] in an effort to resolve the dispute without court action" (per rule 26(c).)

**Plaintiffs' brief & "Counter-Motion for Protective Order:"** seeks to restrain GLA actions above, causing annoyance, embarrassment, oppression, and undue burden or expense on Plaintiffs AND sanction GLA Defendants for their meritless, vexatious, and malicious "Motion For Protective Order" being absent applicable case law or persuasive authority to support their claims.

GLA's motion that seeks to deny member document requests "except through discovery; and GLA's "Privacy Policy" declaring corporate documents "private" (contrary to §35-2-906 & 907 MCA) violates 2012 GLA/O'Connell Settlement Agreement (Exhibit 2) 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's motion to seize Plaintiffs property and censor articles on members website(s) has nothing to do with rule 26(c) discovery; all of which claims are absent applicable case law or persuasive authority to support their claim; thereby GLA actions cause annoyance, embarrassment, oppression, and undue burden or expense on Plaintiffs; and warrant Plaintiffs Motion for Protective Order & Sanctions against GLA.

Plaintiffs are the "party or any person<sup>1</sup> from whom discovery is sought" for this counter-motion for a protective order.

## II. BACKGROUND

Since this case was filed 2011, Plaintiffs already conducted extensive discovery in this case, including numerous discovery requests for hundreds of documents, written depositions, interrogatory requests, and admissions requests. At the same time starting 2007, O'Connells, as GLA members, requested AND received most (not all) member document requests of corporate records allowed (per §35-2-906, 907 MCA) for the stated purpose of "annual GLA elections."

GLA Board (Defendants) have always stored its corporate documents in 10-12 cardboard boxes in binders (sorted only by year) with each binder containing hundreds of pages. This poor business practice requires members to search hours through thousands of documents to find requested documents. GLA's motion (pp.3) admits O'Connells make their own copies for these member inspections, thereby GLA avoids any duplicity and expense for copies, making GLA's protective order meritless. O'Connells affidavit also states, "GLA records stored in binders in

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<sup>1</sup> Though Rule 26(c) does not contain commas after "party and "sought", courts within the Sixth Circuit have interpreted this phrase to permit "a party" or "a person from whom discovery is sought" to seek a protective order. See *White Mule Co. Et al., v. ATC Leasing Co., LLC*, No. 3:07CV0057, slip op. 2008 WL 2680273 \*4

cardboard boxes lends itself to disorganization of records from any and all members who make copies is impossible to prevent rendering any protective order useless."

In 2012, 2013, and 2014, pursuant to law and 2012 Settlement Agreement (Exhibit 2) O'Connells again requested AND received some (not all) GLA corporate documents for the usual purpose of "annual GLA elections." But many corporate documents were missing then. On July 8, 2014, the GLA allowed O'Connells to conduct another document inspection, and again many documents were still missing. GLA Motion Exhibit (A-38 & A-39 GLA/Brown letter dated July 3, 2014, last paragraph) then admitted that numerous "GLA documents are in transition from Minnick" and could take many weeks, which shows O'Connells were denied such corporate documents at the 2014 inspections.

On July 11th, 2014, GLA Director Allen (Exhibit 3, 3A & recording Exhibit CD-1) agreed to email the rest of the corporate documents (cited below) "missing" from GLA binders to O'Connells. GLA Motion Exhibit A-49 (attached hereto as Exhibit 3A) July 11th letter is factual evidence of Allen's discussion with O'Connells about emailing these missing documents:<sup>2</sup>

"At the conclusion of the document inspection on July 8, 2014 we discussed the GLA's scanning in its records and making them available electronically to you...All that remains is for the board to officially approve the expenditure of funds to do the scanning."

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<sup>2</sup> "Exhibit 5 emails (within Plaintiffs' "Response to Summary Judgment") show numerous member requests for missing GLA documents (starting Dec. 2012, May & June 2012– Exhibit 5) including: 1. "All written correspondence between members, agents, and GLA Board since 2011 (including email addresses)" 2. "All GLA committee & private meeting minutes since 2011, 3) All GLA Board email votes and Board email meeting minutes since 2011" 4) All GLA finical records since 2011, including: a. all GLA finical records of check details since 2011, b. all GLA finical records of lien lists since 2011, c. all GLA finical records of member balance summary since 2011, d. all GLA financial records of receipts and expenditures (and profit and loss) since 2011" and more (see O'Connell May/June 2014 document requests, GLA Motion Exhibit A). Exhibit 5 and Exhibit 6 are evidence of material facts supporting [complaint] claim # 1 for GLA denial of documents & breach of the settlement agreement since 2012."

However a week later, the GLA changed its mind saying that such “missing” documents (missing from binders for member inspections) should remain “confidential:”

See SJM Response “Exhibit 6” of GLA’s July 16, 2014 letter mailed to all GLA members proposed these same requested member records (denied to O’Connells) should remain “confidential” (as contrary to §35-2-114(3)MCA, §35-2-907MCA, & §35-2-906MCA).

One week after GLA’s July 16th, GLA wrote another letter (attached Exhibit 4 letter July 22, 2014) stating, “any future requests need to be made through discovery.” Yet since 2011, the GLA allowed O’Connell members documents requests for “annual GLA elections” at the same time O’Connells were conducting numerous discovery for this case. In response to GLA’s SUDDEN demand for discovery, O’Connells (Exhibit 5 July 29, 2014) letter said:

“O’Connells 2014 document requests [from members’ own association] have nothing to do with discovery for the 114 lawsuit.” (Note: this July 29, 2014 O’Connell letter Exhibit 5 and Exhibit 6 letters dated September 15, 2105, September 26, 2014 were omitted from GLA’s Motion Exhibits, but show GLA Board is seeking to hide its corporate records from all its members by proposing members vote to have them “remain confidential.”

GLAs’ Motion for Protective Order also **OMITS** GLA’s July 16, 2014 letter and **NEVER MENTIONS** GLA’s new “Privacy Policy” (Exhibit 6 adopted without member votes May 2015) which says these same corporate documents requested by O’Connells are “private information:”

GLA “Privacy Policy” states: **“Private information that the GLA may have is defined as ...”** “**member’s financial account transactions;**” GLA/member “**correspondence**” & “**emails**” (including email addresses); GLA “**employment records**” & “**employee-related issues;**” GLA “**income tax filings;**” “**financial information provided [under GLA Covenant 12.01 as proof of member hardship] to negotiate payment plans;**” “**phone call records;**” & “**other information that may be required to be kept confidential;**” (as contrary to §35-2-907(1) & (2)) as these documents are GLA “permanent records of such actions taken without a meeting;”)

GLA also holds “**as private information ...[its] membership votes at annual and special meetings**” (contrary to §35-2-907(5) as “records of all actions approved by the members for the past 3 years;” and “**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” (as contrary to §45-8-213(c) MCA, & 2012 GLA Settlement Agreement which both allow such member recordings).**

This evidence is the elephant in the room for GLA’s motion that OMITs this “Privacy Policy” showing GLA documents should “remain confidential” as “private information;” which shows GLA motion failed to disclose these pertinent facts regarding O’Connell doc. requests.

**GLA allowed four member inspections of corporate documents after this lawsuit filing 2011.** GLA’s Motion for Protective Order now suddenly claims these O’Connell member document requests are “improper communications between the parties,” which is hypocritical, since GLA already provided most document requests every year since this lawsuit filing 2011.

Finally, GLA’ Motion for Protective Order under M.R.Civ.P. Rule 26(c) also demand Plaintiffs surrender their property (recordings of a GLA meeting) belonging to Plaintiffs, and censor article(s) on [www.mygla.org](http://www.mygla.org) that, without proof, GLA alleges belong to O’Connells. This rule 26(c) “governing discovery,” offers no authority to seize Plaintiffs property (recordings) and censor member website article(s) as unconstitutional having nothing to do with discovery.

## II. ARGUMENT

**GLA’s Motion for protective order motion, claims #1-3 (below) are meritless, vexatious, malicious, contrary to law, absent case law or persuasive authority having nothing to do with rule 26(c) discovery for this case, have nothing to do with claims in this case, but are new claims against Plaintiffs made absent a petition or complaint:**

Both Defendants and Plaintiffs’ motions for protective order seek authority under M.R.Civ. P. Rule 26(c) “General Provisions Governing Discovery” in pertinent part:

“A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense...” [caused from such discovery request]

This Rule 26(c) allows a motion for protective orders "governing discovery" requests only. Notice GLA's motion for protective order claims 1-3 are absent any discovery requests:

- 1) GLA motion seeks a protective order under rule 26(c) for “the destruction and takedown” of “private meeting” statement(s) published on members website(s) (contrary to §45-8-213(c) MCA and MT. Constitution Art. II, Sec. 7 free speech rights)
- 2) GLA motion seeks a protective order under rule 26(c) for “the destruction and surrender of member recordings” allegedly from a GLA “private meeting May 18, 2015” (contrary to law 45-8-213);
- 3) GLA motion seeks a protective order under rule 26(c) for “the return of GLA [copies]” of “GLA meeting minute [copies]” allegedly “stolen” or “taken by Mr. O’Connell” (contrary to facts below).

**GLA Motion Claim #1 is contrary to law 45-8-213 MCA & rule 26(c):**  
**Plaintiffs seek sanctions against GLA’ for GLA motion costs, fines; and**  
**frivolous and vexatious motion claim #1 having nothing to do with rule 26(c)**  
**discovery; and contrary to §45-8-213(c) MCA and Montana Constitution**  
**Article II, Section 7 free speech rights of members;**

GLA motion claim # 1 seeks a protective order under rule 26(c) for “the destruction and takedown” of “private meeting” statement(s) published on members website(s) (contrary to §45-8-213(c) MCA and Montana Constitution Article II, Section 7 free speech rights)

Exhibit 1 (last 2 pages) is a copy of an email and internet article (published May 2015) sent to many GLA members. GLA's motion yet seeks a protective order to remove this article already read by most members regarding GLA Director Kehoe calling members and detractors “nuts.” Since this article is within hundreds of members emails, it would do no good to remove it as GLA requests, especially since GLA has no proof that this article was written by O’Connells. Kehoe was so upset when several members published his insulting “nuts” comment, that he

brought a box of mixed nuts to the next Board meeting, and placed the nuts on the meeting table right in front of everyone.

**Plaintiffs requests sanctions for Defendant GLA failure to “in good faith confer with [O’Connells] in an effort to resolve the dispute without court action” (per rule 26(c)).**

GLA’s motion also alleges O’Connells July 5th 2015 letter (Exhibit 7) **“refused”** to hand over or destroy recordings of **“private meetings”** and **“copies of such recordings on www.mygla.org website.”** O’Connells affidavit states GLA motion is false, because O’Connells’ letter July 5th and July 14th said nothing of the sort. Both O’Connells’ July 5th, 2015 and July 14, 2015 letters actually said”

“your client—the GLA, make several false assumptions and errors...Please understand that without your citing specific published words or phrases that you know are attributed to the O’Connells, then they will not and can not possibly comply with your demands to confiscate their property involving a recording of the GLA Board. Nor can they fully and properly respond to your [GLA’s July 1, 2015] letter until and unless you state, with particularity, what if anything, therein published on the member owned website (www.mygla.org) is a “breach” of the attorney-client privilege.” This website belongs to all members.

GLA Motion (Exhibit B GLA/Brown letters July 1, 2015 & July 13, 2015) shows GLA failed to respond to this letter’s reasonable request. O’Connells’ letter fairly tried to resolve this issue by asking GLA/Brown what specific article or statement they objected to, but Defendants never responded back. Defendant thereby GLA failed to “in good faith confer with [O’Connells] in an effort to resolve the dispute without court action” (as required per rule 26(c)).

Therefore Plaintiffs requests sanctions for Defendant GLA failure to “in good faith confer with [O’Connells] in an effort to resolve the dispute without court action” (per rule 26(c)).

Furthermore, GLA motion claim #1 demanding **“the destruction and takedown”** of “private meeting” statement(s) published on member website(s) is nothing short of a constitutional right violation of member “free speech” and censorship\* of member website(s).



\*Free speech is closely linked to freedom of the press, because this freedom includes both the right to speak and the right to be heard. The U.S. Supreme Court ruled in *Reno v. ACLU* (1997) that speech on the Internet receives the highest level of First Amendment protection. The Supreme Court explained that “our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.” So it is clear from the courts that “free speech” constitutes most anything said on members’ “website” “publication” or “other electronic means.”

Many GLA member repeatedly express their dissatisfaction with GLA wrongdoing by publishing articles on [www.GlastonburyLandownersForPositiveChange.wordpress.com](http://www.GlastonburyLandownersForPositiveChange.wordpress.com) and/or [www.mygla.org](http://www.mygla.org) (Exhibit 1) including (Exhibit 1, pp. 1 article written by GLFPC), **“THE [GLA] BOARD IS PROVIDING A SMOKESCREEN WHICH WOULD ALLOW THEM TO MEET AND MAKE DECISIONS SECRETLY.”** GLA Board repeatedly discredit and try to censor these articles published on several member websites. O’Connell Affidavit says:

“Kehoe told members of GLFPC website, they must limit access to its website with a password. GLA wants to limit access to [www.mygla.org](http://www.mygla.org) cite too. In 2012, GLA first attacked O’Connells for recording meetings, resulting in a settlement agreement (Exhibit 2) that GLA “rescind the existing prohibition against recording member meetings.”

US & state constitutions, case law, and statute §45-8-213(c) all allow members to publish such free speech articles on member websites. O’Connells’ affidavit concludes GLA Motion claim #1 is yet another unlawful attack by the GLA against member recordings and member free speech. **O’CONNELL AFFIDAVIT STATES THEY NEVER RECORDED GLA “PRIVATE MEETING”**

Once a month at St. John’s Church hall, the GLA Board holds a public Board meeting followed by a so called “private meeting” the same night. This church hall doors remain unlocked during all such GLA meetings where anyone can enter at any time.

Affidavit shows GLA motion falsely claim #1, on May 18, 2015, Daniel O’Connell “secretly recorded part of GLA’s private meeting.” Even though Allen and McSherry were at the May Board meetings, only Kehoe’s affidavit mentions Mr. O’Connell recording the “private

meeting.” Kehoe’s affidavit says Mr. O’Connell entered the room and after apologizing said, “I will not publish anything that I hear on this [recorder] from your private meeting I promise you.” O’Connell’s affidavit says, he made this promise at the time, because Dan had NO way of knowing if GLA’s “private meeting” had started. Come to find out, it had NOT.

O’Connell’s approx. 6 minute recording in question (see transcript Exhibit 2, CD-1 Exhibit), clearly shows various GLA Board chatting about the public meeting, then Kehoe’s insult about member being “nuts,” and laughing. All the while, GLA Secretary Alyssa Allen was having difficulty setting up a conference call with their attorney Seth. BEFORE attorney Seth even got a chance to speak to the Board, you can then hear Allen yelling, “wait, wait wait,” because Mr. O’Connell just entered the church hall to retrieve his recording device accidentally left behind. O’Connell affidavit states they always leave this recorder on the GLA Board table in clear view of the GLA Board to record every meeting. So this recording portion is lawful.

O’Connell’s recording (transcript Exhibit 2 and CD-1 Exhibit) from this GLA’s May 18th Board meeting factually shows this recording obviously ends BEFORE the “private meeting” with the attorney starts contrary to GLA’s motion claim. Therefore, Plaintiffs requests sanctions for motion costs, fines for GLA’s meritless, frivolous and vexatious motion claim #1 having nothing to do with rule 26(c) discovery, and contrary to the facts above; and contrary to §45-8-213(c) MCA and contrary to Montana Constitution Article II, Section 7 free speech right of members.

**GLA Motion Claim #2 is contrary to law 45-8-213 MCA & rule 26(c):**  
**Plaintiffs seek sanctions against GLA (motion costs, fines) for GLA’s meritless, frivolous and vexatious motion claim #2 having nothing to do with rule 26(c)**

**discovery; as contrary to law 45-8-213 MCA; and for GLA motion falsifying facts cited below.**

GLA motion claim # 2 seeks a protective order under rule 26(c) for “the destruction and surrender of ... member recordings May 18, 2015” allegedly from a “GLA private Board meeting” (contrary to law §45-8-213 MCA).

GLA Motion (Exhibit B of a GLA/Brown letter July 1, 2015) says (in part):

“You [O’Connells] recorded a portion of the closed session meeting...Leaving the recording device in the room was possibly a criminal offense under Mont. Code Ann. § 45-8-213. Further, it was a breach of the attorney-client privilege. Finally, you have compounded the breach by intentionally publishing information from the closed board meeting on your website www.mygla.org an offense warranting sanctions by the Court.”

O’Connell’s affidavit & recording itself factually shows it was NOT part of a “private meeting.” Notice GLA’s July 1, 2015 letter regarding the recording used §45-8-213(c):

**§45-8-213(c)MCA:** “a person commits the offense of violating privacy in communications if the person knowingly or purposely:(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

- (i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;
- (ii) persons speaking at public meetings;
- (iii) persons given warning of the transcription or recording, and if one person provides the warning, either party may record;..”

CONSPICUOUSLY ABSENT, GLA’s motion claim throws out this law authority, then falsely claims rule 26(c) “GOVERNING DISCOVERY” is somehow authority for “the destruction and surrender of ... member recordings.” Yet GLA’s own words in their July 1st letter stated §45-8-213 is the proper authority. GLA’s motion failed to mention any breach of attorney-client privilege nor this law, perhaps because O’Connells’ recorder was never “hidden.” O’Connell’s affidavit states their recording device at the May 18, 2015 meeting and every meeting is always put in plain view on the GLA Board table; which precludes using §45-8-213 authority absent any secret recording. But rule 26(c) “GOVERNING DISCOVERY” also lacks

authority for “the destruction and surrender of ... member recordings,” as GLA motion demands.

Therefore for such member recordings allowed under law §45-8-213 MCA, Plaintiffs seek sanctions against GLA (motion costs, fines) for GLA’s meritless, frivolous and vexatious motion claim #2 having nothing to do with rule 26(c) discovery; and absent any other authority.

**GLA’s Motion Claim #3 is contrary to the facts & rule 26(c): Plaintiffs seek sanctions against GLA (motion costs, fines) for GLA’s meritless, frivolous and vexatious motion claim #3 having nothing to do with rule 26(c) discovery; and for GLA motion falsifying facts cited below.**

GLA motion claim #3 seeks a protective order under rule 26(c) for “the return of GLA meeting minutes [copies]” allegedly “stolen” or “taken by Val O’Connell” (contrary to facts below).

GLA’s motion and affidavits for protective order falsely claims O’Connells’ July 2015 letter “refused to hand over” “stolen” copies of “meeting minutes (see Exhibit 7). O’Connells’ letter never said anything or the sort. O’Connell’s July 14th letter to the GLA said:

“Regarding missing minutes ... it is possible anyone of 28 members present at the May meeting took the minutes accidentally...If you can give us factual proof that we accidentally took them, then we would be glad to pay GLA copy charges at a reasonable rate of 10 cents per page to make new copies of such minutes.”

O’Connells’ letter cited above fairly tried to resolve this issue by asking GLA/Brown for proof they were taken by her, but GLA never responded back. Exhibit 9 email is a witness who attended this meeting and said, “I would agree that anyone of those [members] at the meeting on May 18, 2015 could have taken those loose pages of minutes.” Affidavit shows O’Connell’s July 14th letter offered to pay for such copies of the minutes after providing proof, but the GLA never responded to this offer to resolve the issue out of court.

Furthermore, members have a right to have such “minutes of all meetings ...of the Board” under §35-2-906(5) MCA, so why would anyone steal them as GLA alleges? Also, these

same meeting minutes were already published and made available to members to view and copy.

However without proof, GLAs' motion falsely claims Mrs. O'Connell "stole or took such meeting minutes. But Affidavit of Karleen McSherry (employee of the GLA) only claims Val O'Connell "removed pages of minutes out of the binder" in order to share them with other members. GLA employee McSherry does NOT say who took these minutes after this time.

GLA omitted these important facts in their motion, and never mention the July 14, 2015 letter from O'Connell's offer of payment to resolve this dispute. Defendant GLA thereby failed to "in good faith confer with [O'Connells] in an effort to resolve the dispute without court action" (per rule 26(c)).

Therefore, Plaintiffs requests sanctions for Defendant GLA failure to "in good faith confer with [O'Connells] in an effort to resolve the dispute without court action" (per rule 26(c)); and sanctions for motion costs, fines for GLA's meritless, frivolous and vexatious motion claim #3 having nothing to do with rule 26(c) discovery; and contrary to the facts above.

**GLA Motion Claim #4 is contrary to state law §35-2-906, 907, & 2012 GLA/O'Connell Settlement Agreement:**

**Plaintiffs seek sanctions against GLA (motion costs, fines) for GLA's meritless, frivolous and vexatious motion claim #4 that seeks to deny member document requests (except through discovery); contrary to state laws §35-2-906, 907, & violates 2012 GLA/O'Connell Settlement Agreement (Exhibit 2):**

GLA's final motion claim #4 seeks a protective order under rule 26(c) to 'stop member document requests except through' "formal discovery requests," (contrary to state law 35-2-906, 907, and more).

GLA claim #4 is the only claim that bears even a slight resemblance to discovery.

However, GLA is not seeking discovery themselves, nor complaining about any discovery request made. Instead GLA's motion claim #4 seeks to deny member document requests (except through discovery); as directly violates the 2012 GLA/O'Connell Settlement Agreement (Exhibit

2); 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..,” including §35-2-906, 907 MCA:

**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.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(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;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

**35-2-907. 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.

(2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice at least 5 business days before the date on which the member wishes to inspect and copy:

(a) excerpts from any records required to be maintained under 35-2-906(1), to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) subject to 35-2-910, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) only if:

(a) the member's demand is made in good faith and for a proper purpose;

(b) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and (c) the records are directly connected with this purpose.

**GLA “Privacy Policy” deeming corporate records “private” is contrary to state laws §35-2-906 &907 and shown above to violate 2012 GLA/OConnell Settlement Agreement; as good cause for Plaintiffs Motions for Protective Order & Sanctions against the GLA.**

Keep in mind in the last 16 months, ten Board Directors quit the Board replaced by ten new Board Directors led by Dan Kehoe who declared war on members that criticize the Board. O'Connell's affidavit states they believe GLA Board directors like Kehoe, by this "Privacy Policy" "seek to now stop members from publishing GLA "meeting recordings" "financial records, "correspondence" records, and other records on member websites as potentially harmful to the GLA Boards' reelection. GLA Board minutes, May 18, 2015 (Exhibit 6) show the GLA Board "unanimously" adopted its so called "Privacy Policy" that declares many corporate documents "private." This 2015 GLA "Privacy Policy" specifically declares, "Private information that the GLA may have is defined as:" (in bold)

- 1) GLA "**member's financial account transactions**" shared with the GLA (contrary to §35-2-907(1) & (2)) as "permanent records of actions taken without a meeting" and "allowable "financial records;")
- 2) GLA corporate and member "**correspondence**" and "**emails**" (including email addresses) (contrary to §35-2-906(1) & §35-2-907(1)) as "permanent records of actions taken without a meeting" and "allowable "accounting records;")
- 3) GLA "**accounting records**" "**bank account**" statements such as cancel checks, check details and receipts (contrary to §35-2-907(1) & (2)) as "permanent records of actions taken without a meeting" and "allowable "accounting records;")
- 4) GLA "**employment records**" "**employee-related issues**" (contrary to §35-2-907(1)) as "permanent records of actions taken without a meeting;")
- 5) GLA "**income tax filings**" (contrary to §35-2-907(1) & (2)) as "permanent records of actions taken without a meeting" and "allowable "accounting records;")
- 6) GLA corporate and member "**phone call records**" (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;")
- 7) GLA "**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;")
- 8) GLA member "**financial information provided** [under GLA Covenant 12.01 as proof of member hardship] **to negotiate payment plans**" (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;")

- 9) The GLA holds “**as private information ...[its] membership votes at annual and special meetings**” (contrary to §35-2-907(5) as “records of all actions approved by the members for the past 3 years;”)
- 10) “**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, & 2012 GLA Settlement Agreement that allows member recordings, & contrary to Montana Constitution Article II, Section 7 right to free speech).

GLA’s “Privacy Policy” (Exhibit 6) show several corporate records (cited in **bold** above)

deemed “private documents” in direct violation of these state laws (§35-2-906 & 907 MCA);

because all “private documents” 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));. Thus GLA’s “Privacy Policy” contrary to these state laws is also a violation of the 2012 GLA/O’Connell Settlement Agreement (Exhibit 2); 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...”

O’Connells’ Affidavit and Exhibit 5 (July 29, 2014) letter “repeatedly said, O’Connells document requests have nothing to do with discovery for the 114 lawsuit” and with very few state restrictions on privacy of corporate records, it behooves the court to deny GLA’s motion absent case law or persuasive authority, especially since GLA’s motion that **allowed** four member document requests to now suddenly deny them (except through discovery) directly violates the 2012 GLA/O’Connell Settlement Agreement (Exhibit 2) and state laws.

**GLA motion denies O’Connell member requests made outside the scope of this case are not relevant to this case.**

GLA’s motion alleges, after four years GLA allowed O’Connells four requests for documents, now these documents GLA deemed “private” may be relevant to this case. It was not



enough that GLA's "Privacy Policy" deemed most GLA corporate document "private" (contrary to §35-2-906, 907), now this GLA Motion, without any proof, claims O'Connell members access to corporate documents (since 2007 under §35-2-906, 907) is suddenly an undue burden.

This GLA motion claim #4 admits this claim is for the slight chance that member document request MIGHT be used for this case. Yet the 2012 Settlement Agreement (Exhibit 2) allows these requests. Plus their affidavit shows GLA allowed 4 or more O'Connell member requests for documents since 2011 have been used "for election purposes only," and there is simply no evidence to suspect these requests are anything but member requests. GLA motion claims of annoyance, embarrassment, oppression, undue burden or expense related to O'Connell member requests for documents are thus proven false, especially after GLA already allowed several member requests for corporate documents after this case was filed 2011. O'Connell's Affidavit and document requests 2014 -2015 state:

"repeatedly said: O'Connells 2014 document requests have nothing to do with discovery for the 114 lawsuit." (see O'Connell letter dated July 29, 2014, Exhibit 5) O'Connell (July 6th, 2015, Exhibit 1) letter to GLA also said these, "solely a member request, [are] not part of any lawsuit (DV-11-114) ... to gather information for our member records; and to use such information to solicit member awareness and/or votes; [for] upcoming election to be held by the corporation. All records requested are directly connected with these purpose(s)."

The fatal flaw against GLA's motion claim #4 is the fact that Plaintiffs have already conducted extensive discovery for this case. As explained below, GLA's motion is trying to circumvent laws our legislature created that freely allow members access to corporate documents (under §35-2-906, 907 and more), because corporate members are the ones unduly burdened in having to use the courts for simple document requests.

**Plaintiffs motion seeks sanctions for GLA/Allen falsifying Affidavit Facts:**

GLA's motion citing Allen Affidavit says Alen 'gave O'Connell requested documents on June 28th and July 8th 2015' as "previously provided information or documents." This is factually refuted by GLA's own Motion Exhibits (A-38 & A-39) & Allen's statement (Exhibit 3A), and GLA July 8th & 22, 2014 letter (Exhibit 5), & O'Connell Affidavit & recording of Allen (Exhibit CD-1) showing after O'Connell members complained about missing documents:

Aylssa Allen therefore agreed, "we will scan in the missing documents and email them to you [O'Connells]." (see **attached transcript**) GLA's letter July 3, 2014 last paragraph) admitted that numerous "GLA documents are in transition from Minnick" and could take many weeks, which shows O'Connells were denied such corporate documents at the 2014 inspections. (See GLA Motion Exhibit (A-38 & A-39 GLA/Brown letter dated July 3, 2014) Then GLA's July 16, 2014 letter declared these missing documents should "remain confidential" followed by GLA "privacy Policy" that deemed these to be "private" documents.

These evidences (especially Exhibit CD-1) show Allen admitted she did NOT give O'Connells ALL requested documents. Allen's affidavit thus falsely reported she 'gave O'Connell requested documents on June 28th and July 8th 2015.'

Since Allen's affidavit under oath is NOT "reasonably based on belief or lack of information," this warrants sanctions against the GLA under M.R.Civ. P. Rule 11(b)(4).

Also GLA's motion claim #4 is fatally flawed for allowing "O'Connells at least four member document requests (but not all), not to mention other members.

**GLA motion authority cites a district court order taken out of context involving Remington Ranch Association (RRA) & Plaintiffs (Sullivan) in Red Lodge, MT..**

Copies of that Carbon County case filings (Exhibit 8) show the May 2013 court order was granted against the Plaintiffs (esp. Michael Sullivan) because Plaintiffs refused to conduct any "formal discovery" whatsoever, and admitted (Plaintiff Sullivan Reply Brief pp.3) they were using member document requests instead of "formal discovery." This admission by Plaintiffs allowed Remington Ranch to have protective orders only to compel "formal discovery."

GLA's motion falsely claims that Remington Ranch Order now applies to this case. However unlike that case, **Plaintiffs in this case (DV-11-114) have already conducted extensive discovery; including numerous discovery requests for hundreds of documents, written depositions, interrogatory requests, and admissions requests. Plaintiffs do not need nor request any more discovery at this time.** So unlike Plaintiffs refusal to conduct any "formal discovery" in the Remington case, O'Connells already conducted extensive discovery.

Defendants' motion for protective order is thereby fatally flawed and harms Plaintiffs, waste time and money of all parties and the court for demanding Plaintiffs conduct more unsolicited discovery. Indeed rule 26(c) says, "only the the party ... from whom discovery is sought may move for a protective order." This would apply only to the Plaintiffs' Counter-motion for protective order, not the Defendants motion, since GLA Defendants sought to unduly burden Plaintiffs with discovery.

Especially since this case is coming to a conclusion, Plaintiffs will shortly file a motion for settlement conference and trial. Plaintiffs would be unduly burdened for delay of such settlement conference, trial, and for increase pleadings and costs if plaintiffs were forced to conduct unsolicited discovery. Also unlike the Remington case, Plaintiff-Sullivan admitted to using member document requests for informal discovery and refusal to use formal discovery in that case, but there is no such evidence of discovery abuse in this case.

Instead O'Connell numerous discovery requested and O'Connell 2014 document requests 2014 through 2015 "repeatedly said, O'Connells 2014 document requests [allowed under §35-2-906 & 907 MCA] have nothing to do with discovery for the 114 lawsuit." (see O'Connell letter dated July 29, 2014, Exhibit 5) O'Connell (July 6th, 2015, Exhibit 1) letter to GLA also said these, "solely a member request, [are] not part of any lawsuit (DV-11-114) ... to gather information for our member records; and to use such information to solicit member awareness and/or votes; [for] upcoming election to be held by the corporation. All records requested are directly connected with these purpose(s)." As allowed (under §35-2-906 & 907 MCA), O'Connell members as

candidates for annual Board elections, have requested such information “to solicit member awareness and/or votes; [for] annual elections to be held by the corporation;” This includes hot button issues like member liens; various GLA road repairs; chip sealing, financial dealings especially with members; and for numerous other election issues. (see O’Connell affidavit)

Its worth noting GLFPC website article and other members published disparaging articles against the GLA is likely why GLA “Privacy Policy” seeks to now hide its corporate documents by declaring GLA records “private” (contrary to §35-2-906, 907 and 2102 Settlement Agreement (Exhibit 2); which “Privacy Policy” members will likely challenge through the court costing every party in this case more litigation, time and cost; unless this court allows this Plaintiff motion for protective order to allow member document without costly discovery.

Facts above thus prove O’Connell members’ document requests made under §35-2-906 & 907 (cited above in the Introduction) for “election purposes” falls outside the scope of this case, not relevant to this case, thereby bears no rational relationship to allegations in GLA’s motion claim #4. Therefore, Plaintiffs requests sanctions against GLA (motion costs, fines) for GLA’s meritless, frivolous and vexatious motion claim #4 contrary to facts above, having nothing to do with rule 26(c) discovery, nor any persuasive authority.

#### **IV. CONCLUSION**

Plaintiffs’ motion for protective order is warranted for all the above reasons to restrain and sanction GLA Defendants (under Rule 11(b)(4) AND 37(a)(5)(B), M.R.Civ.P.); & for Defendant GLA failure to “in good faith confer with [O’Connells] in an effort to resolve GLA’s motion dispute(s) without court action” (per rule 26(c)); & sanctions for motion costs and fines due to GLA’s meritless, frivolous, vexatious motion claims contrary to facts; absent authority

having nothing to do with discovery rule 26(c); and for GLA's motion, "Privacy Policy" and actions to suddenly deny member document requests in violation of 2102 Settlement Agreement (Exhibit 2); 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..."

*Respectfully submitted this 7th day of August, 2015,*

By: *Daniel K. 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  
108 N. 11th, Unit #1  
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

Daniel & Val O'Connell  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339 dko@mac.com

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. )	Hon. Judge Cybulski
)	
Glastonbury Landowners Association, Inc. )	
& current GLA Board of Directors )	
)	
Defendant(s) )	

PLAINTIFFS MEMBERS' AFFIDAVIT IN SUPPORT OF ITS BRIEF & COUNTER-  
MOTION FOR PROTECTIVE ORDER & SANCTIONS AGAINST GLA DEFENDANTS

STATE OF MONTANA )  
:SS  
County of Park )

Plaintiff(s) Daniel and Valery O'Connell, on our oath depose and state to the best of our knowledge & belief, information herein is true, correct, & complete, as follows:

- (a) We are both current members of the GLA Corporation, over the age of 18, and of sound mind to lawfully file this affidavit having personal knowledge of such matters; including O'Connell Exhibit CD-1 recording May 18, 2015 AND Exhibit 3 transcript of true and correct recording of actual events therein.
- (b) Exhibit 5 (July 29, 2014) O'Connell letter "repeatedly said, O'Connells document requests [allowed (under §35-2-906 & 907 MCA) have nothing to do with discovery for the 114 lawsuit;" these, "solely a member request, [are] not part of any lawsuit (DV-11-114) ... to gather information for our member records; and to use such information to solicit member awareness and/or votes; [for] upcoming election to be held by the corporation. All records requested are directly connected with these purpose(s)." As allowed (under §35-2-906 & 907 MCA), O'Connell members as candidates for annual Board elections, have requested such information "to solicit member awareness and/or votes; [for] annual elections to be held by the corporation;" This includes hot button issues like member liens; various GLA road repairs; chip

sealing, financial dealings especially with members; and for numerous other election issues.

- (c) GLA's motion to deny member document requests (except through discovery) directly violates the 2012 GLA/O'Connell Settlement Agreement (Exhibit 2); which allows "O'Connells with all documents to which they are entitled pursuant to the Montana Non-Profit Corporation Act..."
- (d) GLA's motion for protective order and Alyssa Allen's affidavit falsely said she 'gave O'Connell requested documents on June 28th and July 8th 2015.' Affidavit, transcript & a recording of Alyssa Allen (Exhibit CD-1) and GLA attorney from July 8th, 2014 shows since O'Connell members had not completed viewing documents, and since other documents were missing: Aylssa Allen therefore agreed, "we will scan in the missing documents and email them to you [O'Connells]." Again GLA's letter July 3, 2014 last paragraph) admitted that numerous "GLA documents are in transition from Minnick" and could take many weeks, which shows O'Connells were denied such corporate documents at the 2014 inspections. (See GLA Motion Exhibit (A-38 & A-39 GLA/Brown letter dated July 3, 2014) Then again GLA's July 16, 2014 letter declared these missing documents should "remain confidential" followed by GLA "privacy Policy" that deemed these to be "private" documents; which "Privacy Policy" thereby contradicts laws §35-2-906, 907 MCA and more.
- (e) GLA motion is false, because O'Connells' letter July 5th & July 14, 2014 actually said" "your client—the GLA, make several false assumptions and errors...Please understand that without your citing specific published words or phrases that you know are attributed to the O'Connells, then they will not and can not possibly comply with your demands to confiscate their property involving a recording of the GLA Board. Nor can they fully and properly respond to your [GLA's July 1, 2015] letter until and unless you state, with particularity, what if anything, therein published on the member owned website ([www.mygla.org](http://www.mygla.org)) is a "breach" of the attorney-client privilege." This website belongs to all members.
- (f) Kehoe told members of GLFPC website, they must limit access to its website with a password. GLA wants to limit access to [www.mygla.org](http://www.mygla.org) too. In 2012, GLA first attacked O'Connells for recording meetings, resulting in a settlement agreement (Exhibit 2) that GLA "rescind the existing prohibition against recording member meetings." GLA Motion claim #1 is yet another unlawful attack by the GLA against member recordings and member free speech.
- (g) GLA motion falsely claim #1, on May 18, 2015, Daniel O'Connell "secretly recorded part of [this] GLA's private meeting." When Mr. promised not to publish the private meeting, he made this promise at the time, because Dan had NO way of knowing if GLA's "private meeting" had started. O'Connell recording at the May 18, 2015 (Exhibit CD-1) factually shows it was NOT part of a "private meeting." O'Connell's recordings of this & every meeting is always put in plain view on GLA Board table to record every Board meeting.

- (h) GLA's motion and affidavits for protective order falsely claims O'Connells' July 2015 letter "refused to hand over" "stolen" copies of "meeting minutes (see Exhibit 7). O'Connells' letter never said anything or the sort. O'Connell's July 14th letter to the GLA said: "Regarding missing minutes ... it is possible anyone of 28 members present at the May meeting took the minutes accidentally...If you can give us factual proof that we accidentally took them, then we would be glad to pay GLA copy charges at a reasonable rate of 10 cents per page to make new copies of such minutes." But the GLA never responded to this offer to resolve the issue out of court.
- (i) GLA motion claim #4 admits this claim is for the slight chance that member document request MIGHT be used for this case. Yet the 2012 Settlement Agreement (Exhibit 2) allows these requests. Plus GLA allowed 4 or more O'Connell member requests for documents since 2011 used "for election purposes only," and there is simply no evidence to suspect undue burden or that these requests are anything but member requests. Including the fact that O'Connells make their own copies for these member inspections, thereby GLA avoids any duplicity and expense for copies;& GLA records stored in binders in cardboard boxes lends itself to disorganization of records from any and all members who make copies. impossible to prevent making GLA's protective order useless.
- (j) We believe GLA Board directors like Kehoe, "seek to now stop members from publishing GLA "meeting recordings" "financial records, "correspondence" records, and other records on member websites they deem potentially harmful to GLA Boards' reelection.
- (k) Plaintiffs' motion for protective order is warranted for all the above reasons to restrain and sanction GLA Defendants (under Rule 37(a)(5)(B), M.R.Civ.P.);& for Defendant GLA failure to "in good faith confer with [O'Connells] in an effort to resolve GLA's motion dispute(s) without court action" (per rule 26(c)); & sanctions for motion costs and fines for GLA's meritless, frivolous, vexatious motion claims contrary to facts; absent authority having nothing to do with discovery rule 26(c).

FURTHER AFFIANT SAYETH NAUGHT. Dated August 7th, 2015.

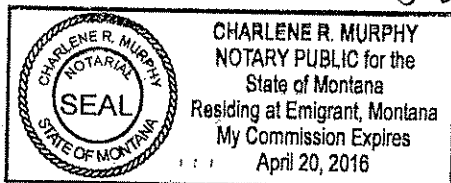
Signed Daniel K. O'Connell  
Daniel O'Connell

Signed: Valery O'Connell  
Valery O'Connell

(SEAL)

*Signed before me by Daniel O'Connell and  
Valery O'Connell on August 7, 2015*

*State of Montana County of Park Charlene R. Murphy  
notary*





**TRANSCRIPT JULY 8, 2015 DOCUMENT INSPECTION**

Daniel: It's 1:30, we're not done and accordingly somebody is going to be coming in here I guess and use the room. Are you going to require us to make yet another request through your attorney and come back here?

Alyssa: [Indistinct] How many hours to do?

Daniel: Yeah it takes a long time and we've only got...

Allyssa: Another five hours?

Daniel: We've only got a pile that big...All this time.

Alyssa: You only have that?

Daniel: Yeah. That's how long it takes.

Seth: Do you have an estimate, for how much more time you need to get.

Daniel: How much more time do you need [Valery] You mean today? [To Seth & Allyssa] How much more time do you need today [talking to Valery]. But today may be out of the question [To Seth & Allyssa]

Valery: I've got...I didn't finish last time we were here the five hours almost. I didn't even finish.

Daniel: It takes a long time.

Valery: I got up to the year 2000 and stopped. And then I started over again in 2008 and I stopped at 2009. And I didn't do any of 2010.

Seth: Ok.

Valery: And I'm not trying to copy every thing, I'm just trying to go through to copy what I want.

Daniel: That's not even everything.

Valery: There's no way that's everything.

Transcripts

TRANSCRIPT MAY 18, 2015

[Cross talk multiple conversations and laughter]

Allyssa: Hey we need to huddle around the speakerphone.

Dan Kehoe: Gather around the fireplace.

Charlotte: Do we stand up or put chairs there?

Allyssa: Yeah maybe we just sit, forget the tables.

Karleena: I'm not getting a dialtone...ok so i...everything is set up the way it needs to be.

Charlotte: So who are we talking with?

Paul: Seth

Allyssa: Seth, our attorney we will be talking with.

Karleena: It's running out of battery, that's the problem.

[Crosstalk of multiple conversations and laughter]

Dan Kehoe: Ok.

Unknown director: Who is seth?

Allyssa: Seth is our attorney from brown law firm that's been hired by our liability insurance

Karleena: I still don't have a dialtone.

Allyssa: To defend us from the lawsuit for the last 2 1/2 years. so he is the one that is um very highly aware of what our...

[crosstalk]

Karleena: He set it up. he set it up. [indistinct]

Allyssa: Covenants and governing documents say. so this is our...we don't pay for this our liability insurance is covering it.

[Crosstalk]

Alyssa: [indistinct]...brown law firm is a really [indistinct]...highly regarded attorneys.

Unknown director: Is that the only law firm we have?

Alyssa: Yeah for the lawsuit, but we do get some advice from alanah...

[Crosstalk]

Dan Kehoe to Karleena: Ok so try to call him [ross(director at home)]

[alyssa with other crosstalk]

unknown director: So this conversation then is for the lawsuit?

alyssa with other crosstalk: Yes for the lawsuit. so we're going to have ross and seth on the line. yeah ross is going to come on in a minute

[cross talk]

alyssa: Are you on speaker?

karleena: I just put it on speaker

[Dan, Alyssa, Karleena discussing tech issues]

Charlotte: Usually if i put it in speakerphone it won't hang up.

Alyssa: Is it on speaker?

Karleena: This is on speaker here

[crosstalk with loud interference]

Alyssa: Ok ross?

Ross: Yeah?

Alyssa: Can you hear us?

Ross: [indistinct]

Alyssa and others: yeah.

Alyssa: Ok now your going to get seth on...

Ross: [indistinct]...just call.

Alyssa: Oh ok.

[Multiple directors laughter]

Ross: Ok so i'm going to call seth now and reverse the call, just stay there.

Alyssa: Ok.

[Cross talk and giggling]

Karleena: Anybody want some nuts?

Dan Kehoe: I've had my fill tonight.

[Multiple directors laughter]

Karleena: I set you up for that one.

[Crosstalk giggling]

Robert Wallace: [indistinct]...i thought that...would make everyone realx, but it didn't[giggling]

Dan Kehoe: No that's great news. that's fantastic news.

[Crosstalk agreeing with Kehoe]

Dan Kehoe: Right out of the park.

[Crosstalk]

Janice: Clare withdrew her statement.

Alyssa with others: Yeah, yeah.

[Crosstalk]

[Sound of busy signal]

Robert Branson: Well it was the best possible hope for out, outcome.

[Multiple voices agree]

[Crosstalk]

Robert Wallace: Yeah because you could sort of see there was a lot of friction building, people taking sides.

Kevin: Yeah there sure is [indistinct]

Alyssa: You know Ross may have to call...he's initiating a three way call so he has to call us and then...

Dan Kehoe: Oh.

Alyssa: Seth.

[Sighs]

[Phone rings]

Alyssa: Ok that's Ross.

Dan Kehoe: There you go.

Alyssa: Hey.

[Muffled voice]

Alyssa: Ok, he's going to try to merge so go ahead and press and I'll hang up.

Ross Brunson: You there?

Dan Kehoe, Alyssa, and others: Yeah we're here.

Ross: Ok everybody there?

Dan Kehoe: Yeah.

Unknown: I...[giggles]

Ross: Ok I'm going to mute...[indistinct]

Dan Kehoe: Ok.

Alyssa: [Whispers] Can everyone hear?

Multiple voices: Yes we can hear.

Attorney Seth: Alright so there's a little bit of feedback there.

Ross: Yeah we're on the cell network it's the best we can do.

Attorney Seth: Ok. Alright well uh. good evening i guess...[indistinct]... at this point,  
[indistinct] I'm seth Cunningham...[insdistinct]...

Alyssa allen: Oh Wa...wait. just a second, just a second  
[crosstalk]

Daniel O'Connell: I left my phone here i apologize.

Alyssa: Ross hold on.

Daniel O'Connell: it's probably been recording your whole meeting too. i'm the only one  
and my wife the only other person that hears this...

Alyssa: You can leave the room now.

Daniel O'Connell: I will leave.

Alyssa: Ok.

Daniel O'Connell: I will not pu...[recorder was turned off by O'Connell]

[end of recording]

Exhibit I

# Glastonbury Landowners For Positive Change

This website is for residents of North and South Glastonbury in Emigrant, MT to support and dialog for Positive Change in reorganizing their landowner association.

## GLFPC Email to GLA Board 7-2-2015

Note: On July 2, 2015 this email was sent to the GLA Board, all of the subscribers to the Glastonbury Landowners for Positive Change and other landowners.

### **Requested Information:**

- 1) The advertised list of duties of the GLA Administrative Assistant at time of hire,
- 2) The current list of Admin Assistant duties, if it has been revised since Admin Assistant was hired, (the non-board member, volunteer GLA Secretary, Alyssa Allen, stated in June 2015 GLA Board Meeting, that there was such a documented list of the Admin Assistant duties),
- 3) Any weekly or monthly status reports our paid assistant has submitted during her GLA employment, accounting for her time charged,
- 4) The check registry records of payments made to the Admin Assistant since her date of hire, including dates and amount paid.

### **Glastonbury Landowner for Positive Change (GLFPC) Concerns:**

It appears to several landowners that the use of the Admin Assistant's time and GLA funds may be misdirected:

1. Which Board Member is the primary Point of Contact (POC) to whom the Admin Assistant reports to? This is the person primarily responsible for directing and prioritizing work, verifying hours charged and receiving/verifying work products completed.



6. GLA Project Review Committee Members should spend the time required to be sure each submitted application is complete and approved and work directly with the landowner themselves, as this will allow them to become familiar with what is requested and to be done. The Project Review Committee should also be responsible for verifying any Park County permissions or permits granted prior to GLA Board approval.

iii. **Concern:** The Admin Assistant is being paid to perform Project Review duties that are normally performed by Project Review Committee members voluntarily (unpaid), again resulting in an unnecessary expenditure of GLA funds.

Signed: Glastonbury Landowners For Positive Change

**Update: As of 7-23-2015 the GLA Board of Directors has chosen to ignore our questions and request for information.**

Share this:



Be the first to like this.

July 27, 2015

Hello GLA Members,

This is an open letter to GLA landowners from the Glastonbury Landowners for Positive Change, a loosely organized group of concerned landowners who seriously study our Governing Documents and regularly attend GLA meetings, carefully listening, observing and speaking up when necessary.

We are writing to invite you to sign up for our service of emailed summaries of GLA meetings sent to landowners who request them. Reader response is way beyond our expectations. In fact concern about how our board is managing our association business is mounting. It is our firm belief that well-informed members are the key to positive change within our Glastonbury corporation.

It is easy to start receiving our meeting summaries and interpretations of GLA meetings. Just email us at [glastonburylandownersgroup@gmail.com](mailto:glastonburylandownersgroup@gmail.com). To learn more we encourage you to visit our ever-expanding website where you can find our summaries of GLA meetings as well as letters and comments from concerned landowners: [glastonburylandownersforpositivechange.wordpress.com](http://glastonburylandownersforpositivechange.wordpress.com).

We boldly and unabashedly acknowledge that our summaries have a point of view – in fact we intentionally label every posting as both a Summary and an Interpretation. We value open transparent leadership and governance from our board of directors and when that is not apparent, we speak up. For example, the board is currently asking for landowner input on a new policy (sent to you with the GLA July 2015 Newsletter), "**Criteria for Closed Board or Board Committee Meeting**" that would give the board the right to hold closed meetings on "Matters pertaining to intra-board communication infrastructure that the disclosure of which would hinder or disrupt lawful Board communications." Without a clear disclosure by the board of what these "Matters pertaining to intra-board communication infrastructure" really are – and how the disclosure of which would hinder or disrupt Board communication - the suspicion is that the board is providing a smokescreen which would allow them to meet and make decisions secretly.

From research we understand that the Board has no right to take any action or adopt any policy, such as the Closed Meeting Criteria, that would limit or change landowner rights to open meetings, as specified in the GLA Bylaws, Article VI, paragraph F. Actually, a majority vote of landowners is required to change anything that affects all landowners. Lastly, we see no reason for the board to propose a new closed meeting policy at all. The GLA Governing Documents already define the board's right to hold closed meetings and that is solely when confidentiality is required.

Even more disturbing is that we see this proposed policy as but another tool the board can use to further isolate and insulate itself from member input and allow the board to govern as it wishes. For example, it used to be possible to request copies of GLA's check register, but now such requests must include the reason for the request and be subject to board discretion about whether or not to release such information. With restricted record access already in place, and restricted meeting access about to be approved and implemented by the Board, per this proposed closed meeting criteria policy, we fear further erosion of each landowner's right and access to open transparent GLA functions.

The deadline for giving input to the GLA board on this proposed Closed Meeting Criteria policy is August 10, 2015. You can either email comments to [info@glamontana.org](mailto:info@glamontana.org) or write to GLA at Box 312, Emigrant, MT 59027. Your input is critical to positive change.

A second proposed policy with the same August 10, 2015 landowner input deadline refers to a new **Conflict of Interest Policy for GLA Directors and Officers**. From our perspective, GLA's existing Conflict of Interest Policy as posted on the official GLA website and Montana Statute 35-2-418 seems adequate for the board to follow. Before the Board approves this new Conflict of Interest Policy, the board needs to disclose why the state law is not adequate and what they hope to achieve through this proposal.

If time allowed, we could share other points of view, but from the above you get the point. We pay attention and we participate in GLA meetings in substantive and positive ways. In doing so we naturally form our point of view, and we certainly welcome your point of view.

Again, we are pleased to invite you to sign up and receive our meeting summaries emailed to you within a week or two of the meeting. Just email us at [glastonburylandownersgroup@gmail.com](mailto:glastonburylandownersgroup@gmail.com). To learn more we encourage you to visit our website at: [glastonburylandownersforpositivechange.wordpress.com](http://glastonburylandownersforpositivechange.wordpress.com).

We are attaching our latest **GLFPC Summary and Interpretation of the July 13, 2015 GLA Board Meeting** as an example of what you will receive from the GLFPC via email, also posted on our website.

We look forward to hearing from you and working with you.

Sincerely,

The Glastonbury Landowners For Positive Change otherwise known as the GLFPC.

Email: [glastonburylandownersgroup@gmail.com](mailto:glastonburylandownersgroup@gmail.com)

Website: [glastonburylandownersforpositivechange.wordpress.com](http://glastonburylandownersforpositivechange.wordpress.com)

July 13, 2015

To the GLA Board of Directors,

My husband and I are writing to you about our concerns for the Yaney parcel (38 B) which is adjacent to ours. Based on a comment from a construction worker and local talk, it is our understanding that there are plans to change this residence into a church and or learning center.

With this letter we want to formally be on the record as objecting to any change or intensification of what we believe is the non-compliant use of Yancey's parcel.

As the structure currently stands, we believe it violates the following GLA Covenants:

1. Height. As viewed from the back, it is a three-story residence built on top of a garage. There is no way a structure of this design is less / or at 30 feet tall as measured, per GLA Master Plan section 2 Height, from the lowest point of the slope.
2. This structure is visible from nearly every parcel in NG and as far away as Chico yet per Master Plan section 2 Building Placement, ridgeline structures need to appear as one story buildings.
3. This home dominates the view shed of parcel owners westerly, northerly, and easterly and to some extent to the south. Yet, per Master Plan section 2 Building Placement this should not be allowed.
4. Adjacent property owners had no way to give input into the review of the plans for this home prior to board approval of the project. It defies logic when board members, who are ultimately responsible to protect the residential property value of all parcels, officially approve development plans that are not in compliance with its own Covenants and Master Plan.

If this home were to become a church with your approval, not only would the above "violations" continue, but the impact of them would intensify. It is only logical that the traffic and parking needs for a church are greater than for a home, and thus any church use of this parcel would further compromise the beauty, order and harmony rights of other land owners.

Further, if church plans are ever approved for this parcel, we believe each "yes" voter would also be in conflict of interest. Personal values and religious beliefs are subservient and must give way to the greater common benefit of having the residential nature of Glastonbury protected.

For the record we note that best management practice for non-conforming land uses is containment (no part of it can be intensified or expanded) and limited maintenance (maintenance is limited to 50% of the market value).

In closing, we ask that this letter be formally attached to the official minutes of this meeting to serve as out official notice that we would object to having a church next to our home.

Respectfully,

~~Chuck and Sally Muto NG 27~~

PS For your reference an outline of relevant citations from GLA Governing Documents follows.

# Glastonbury Landowners For Positive Change

This website is for residents of North and South Glastonbury in Emigrant, MT to support and dialog for Positive Change in reorganizing their landowner association.

## Keeler Letter to GLA Board 7-20-2015

To Board of Directors, Glastonbury Landowners Association  
cc: Provided to Glastonbury Landowners For Positive Change.

I appreciate the opportunity to express my concerns and views to the Board and audience at the July 13th Board Meeting. I was speaking about the documents I received that were stamped as mailed on July 6th on conflicts of interest and criteria for closed meetings of either the Board or any committee.

I hope I was clear in presenting my confusion about the documents and what I feel is a improper process the Board appears to be following prior to holding a vote on those documents. I think I was clear in stating that I have no problem with the Board establishing methods or procedures for the Board members to interact with each other. However, I am concerned that the Board appears to be taking action and steps that impact me, my use of my land, or my ability to be present when the Board or a committee discuss actions that "may" impact me. If such actions affect me, they will affect all landowners. I am concerned because the Board appears to be following this procedure to establish rules and regulations.

After the meeting, President Dan Kehoe approached me and commented that he had conflicting thoughts about titles for the closed meeting and conflict of interest documents presented to members, as Policy or as Procedures. I did not present my concerns to Dan at that time, but do so below. Sorry this is so long, however, I've heard a lot of doubts and comments about challenging the GLA Board process, and I hope this information that will be beneficial to all Board members.

Please understand the basis for my comments are found in standard common law interpretation.

Bylaws are the written **rules for conduct** of a corporation, association, partnership, or any organization. Bylaws provide for meetings, elections of a board of directors and officers, filling vacancies, notices, types and du-

cussion. Those with a conflict of interest should be restricted to answering questions from other Board members. Past experience has shown me that if those with a conflict of interest freely participate in a discussion, offering their opinions or topics to be discussed, etc., they will be improperly influencing the subsequent vote and get what they want.

My final recommendation here is that Members should have the opportunity to identify what they feel is a conflict of interest before a vote is held, especially when contracts might be issued to other Members.

An additional concern I have about Board processes and interactions with Members arose during my short, non-specific discussion with Dan, as well as seeing how the Board in general responded to my presentation.

I believe there is quite a bit of confusion among Board members and Members between making rules, regulations, and policies that affect Members, and establishing procedures for the Board to follow. I believe, because there is no reference to making policies within the Bylaws, Covenants, or Articles of Incorporation, that presenting a document as a policy is likely a disguised method to establish a rule or regulation that effects Landowners without a landowner vote. I offer that past actions that established policies presented on GLA's web site confirm this belief.

However, before I present the problems with the policies on the GLA website, I would like to express my confusion and concern that all documents Members need to make evaluations of GLA operations are not shown on the web site. Specifically, I believe an amendment was made to the Bylaws recently but the only one shown on the web is dated November 1998.

Because the recent news letter stated that at the May 18th Board meeting, the Board of Directors approved the Conduct of Meeting and Privacy policies, I began there.

Unfortunately, my reading of those policies demonstrates to me that the Board has unintentionally violated the process for establishing rules and regulations. Please consider that within the governing documents, there are clear references to the requirement that actions impacting Members must be made by a vote of all Members, not just the Board. In the following, I will present some of the relevant Bylaws and Covenants.

The dual Conduct of Meeting policy and Privacy policy specifically states *"The purpose of this policy is to set out the basic operating **rules** for Membership, Board and Committee meetings .... and to establish **rules** of decorum **for all persons** .... GLA landowners and member of the public attending the meetings."* I have highlighted the word "rules and all persons" because although the Board can establish rules controlling Board Member actions and Board Process, it cannot pass rules or regulations effecting "all persons". I believe everyone would benefit if the Board restricted itself, and presented reasons a person may be requested to leave or have the Board terminate the meeting.

Exhibit 2

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

DANIEL K. O'CONNELL and VALERY )  
 A. O'CONNELL & for and on behalf of )  
 Members of the Glastonbury Landowners )  
 Association, )  
 )  
 Plaintiffs, )  
 v. )  
 GLASTONBURY LANDOWNERS )  
 ASSOCIATION, INC. (the GLA )  
 Corporation), )  
 )  
 Defendant. )

Cause No. DV-2011-193

**STIPULATED  
SETTLEMENT AGREEMENT**

The parties to the above-captioned matter met for mediation on the 20<sup>th</sup> day of July, 2012, and agreed as follows:

1. The Glastonbury Landowners Association, Inc., hereinafter referred to as "GLA," Board of Directors will provide a current GLA membership list to the O'Connells upon request, but not more than two times a year.
2. The GLA will provide O'Connells with all documents to which they are entitled pursuant to the Montana Non-Profit Corporation Act and GLA By-Laws upon request.

9.x.h.h.it.2



1           3.     The GLA Board President will vote in accordance with the GLA By-Laws and not  
2 solely for the purpose of breaking a tie vote.

3           4.     The GLA Board will rescind the existing prohibition against recording member  
4 meetings.

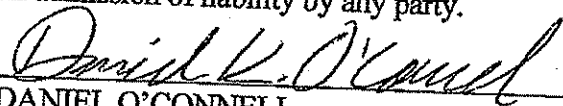
5           5.     The parties will dismiss the above-captioned Complaint and Counter-claim with  
6 prejudice.  
7


8           6.     The GLA Directors may not cast proxy votes for members in any capacity; however,  
9 they may cast their own votes as landowners. The Proxy Authorization form will be amended  
10 accordingly.

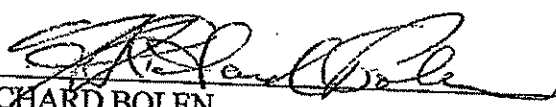
11           7.     This Stipulated Agreement is subject to ratification by the GLA Board.

12           8.     Each party shall bear its own attorney's fees and costs.

13           9.     No provision included in this Stipulated Settlement Agreement shall be construed as  
14 an admission of liability by any party.  
15

16   
17 DANIEL O'CONNELL  
18 Plaintiff  
19 Date of Signature: 7/20/2012

  
VALERY O'CONNELL  
Plaintiff  
Date of Signature: July 20, 2012

20   
21 RICHARD BOLEN  
22 President, Glastonbury Landowners Association  
23 Defendant  
24 Date of Signature: 07/20/2012


25   
26 FREDERICK P. LANDERS, JR.  
27 Counsel for Glastonbury Landowners Association  
28 Date of Signature: 7-20-12

Exhibit 3A

# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.5128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Granten  
Kelly J.C. Collinger  
Jeffrey T. McAllister  
Jon A. Wilson  
Seb M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

July 11, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005

Dear Mr. and Ms. O'Connell:

At the conclusion of the document inspection on July 8, 2014 we discussed the GLA's scanning in its records and making them available electronically to you. Alyssa Allen has researched the options and talked with other board members. All that remains is for the board to officially approve the expenditure of funds to do the scanning. Discussion and voting on the measure is on the agenda for the upcoming board meeting on July 14, 2014. (See the attached agenda). It is predicted the measure will be passed, and the documents will be sent out for scanning next week.

Please feel free to contact me if you have any questions.

Sincerely,

  
Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen  
Dan Kehoe

On Jul 7, 2014, at 2:33 PM, Daniel OConnell <[dko@mac.com](mailto:dko@mac.com)> wrote:

Date: July 7th, 2014  
From: Dan and Val O'Connell  
PO Box 77  
Emigrant, MT. 59027  
To: GLA Board, & council Brown Law Firm,  
Re: 7th Written Demand for GLA documents, & response to Brown Law Firm letter of July 3rd & 7th, 2014  
(7th Written demand sent June 28, 2014; 6th Written Demand sent June 23, 2014; 5th Written Demand sent June 19, 2014;  
3rd & 4th Demand sent June 11, 2014; 2nd Demand sent June 8, 2014; 1st Demand sent May 12, 2014);

The Brown Law Firm, on behalf of the GLA, sent us a letter emailed on July 3rd, 2014. This correspondence letter incorrectly states that GLA made available for inspection the records we requested. On the contrary, not all requested records were available to us then; which is why the same day we requested these missing documents restated in your July 3rd letter items 1-4 as follows:

1. **Request.** All written correspondence between members and the GLA since 2011. [per Bylaw VIII(I.)]
2. **Request.** All GLA committee member minutes, especially since 2011.
3. **Request** All GLA Board email votes and Board email meeting minutes since 2011 [Action by Written Consent per Bylaw VIII(J.)]
4. **Request.** Also all GLA finical records since 2011, [per Bylaw VIII(I.)] including:
  - a. all GLA finical records of check details since 2011,
  - b. all GLA finical records of lien lists since 2011,
  - c. all GLA finical records of member balance summary since 2011,
  - d. all GLA finical records of receipts and expenditures (and profit and loss) since 2011.

(GLA Bylaw VIII(I.) "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." GLA Bylaw VIII(J.) Action by Written Consent... Such written consent or consents shall be filed with the Minutes of the proceedings of the Board...)

The O'Connells have been requesting such documents 1-4 in general since May 12, 2014. GLA Bylaw VIII(I.) cited above allows inspection of GLA finical reports and GLA records; which means ALL financial reports and records are we members allowed to inspect. But since these documents were requested in general on June 28, 2014, but were missing or not available on that date, the burden and fault is the GLA's or else a misunderstanding.

**it should be obvious that all our requests for documents here are indeed made in good faith and for a proper purpose and with reasonable particularity as such request is for the July 23, 2014 "Special Meeting" and for O'Connell's candidacy to the GLA Board this year. HOWEVER BYLAW VIII(I) above DOES NOT REQUIRE THIS STATED PURPOSE FOR ITS MEMBERS. Also these Bylaws above and state laws below allow or do not prevent multiple inspection or do NOT limited to one inspection of such documents to GLA Corporate members. Thus there is no legal reason to deny such documents to the O'Connells. This is why the GLA should put its documents on the GLA website for its members, especially because it is a burden to us GLA members to copy such documents that the GLA stores right now in notebooks and boxes.**

Lastly, you falsely claim that we "are attempting to obtain discovery through document inspection which is costly and time consuming for the GLA." GLA document inspection has NOTHING to do with us obtaining discovery, since this document request is not for discovery and has NOTHING to do with discovery. All these documents listed above were requested by the O'Connells as GLA members only. The O'Connells as GLA members have a right to such GLA documents (per bylaws and §35-2-535 & §35-2-906 (below), and have NOT requested them for any lawsuit nor any discovery. For you to refute this our stated intention then and now is disingenuous as contrary to our recorded conversation we had with you and Alyssa on June 28, 2014.

The only documents 1-4 above that do NOT exist are the GLA committee minutes since the GLA already said they do not take minutes for GLA committee meetings. Committee reports do

Exhibit 4

# BROWN LAW FIRM, PC

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

July 22, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

Retired  
Rockwood Brown  
John Walker Ross  
Margo Bonner

**RE: O'Connell v. Glastonbury Landowners Association**  
**Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

This letter is in further response to your email dated July 12, 2014 where you requested that the GLA provide you with all written correspondence between members and the GLA since 2011, all GLA committee member minutes, all GLA Board email votes and Board email meeting minutes since 2011, and all GLA financial records of receipts and expenditures (and profit and loss) since 2011. You demanded these items by email no later than the week of July 21, 2014 which is an arbitrary and unreasonable deadline. We have already responded to your request for all member phone numbers and so this letter will address the remaining requests.

As you well know, the GLA is in the process of transferring its records from Minnick Management to an office space in Emigrant. The board has been diligently working towards renting office space at the Caspari Center, but the space is likely not available until August 15, 2014. Additionally, the board has been preparing and organizing its records for scanning into electronic form (something you have suggested the GLA do). Despite the difficulty of doing so, the GLA has accommodated your requests, and you have had nearly nine hours total of time to inspect and copy records.

Your continual requests for records inspections appear to be calculated to disrupt the GLA's transitioning of its records. Every time you send a request to inspect records, these processes are delayed in order to arrange a meeting space, pull the requested records, and organize them. This costs the GLA time and money. Further, your inspection requests appear calculated to avoid abiding by discovery rules in the lawsuit you filed against the GLA.

Therefore, any future requests need to be made through discovery until the conclusion of litigation. This letter fulfills the GLA's obligation under Mont. R. Civ. P. 26(c)(1) to make a good faith effort to resolve this dispute. Any further "document

inspection" requests will be responded to with a Motion for a Protective Order by the GLA and a request that the Court order you to pay the expenses incurred in filing the Motion including attorney fees.

The GLA responds to your latest requests as follows:

- 1) All written correspondence between members and the GLA since 2011.

Neither the GLA By-laws nor the Montana Nonprofit Corporation Act require the GLA to provide all written correspondence between the members and the GLA. Additionally, it would be unduly burdensome to do so. The GLA does not maintain separate files for "correspondence." Correspondence sent or received is filed with the documents it is in reference to. For example, newsletters are correspondence and they are filed as "newsletters." Correspondence regarding variance requests is filed with the specific variance file. If correspondence is discussed at board meetings, it is typically filed with the minutes. Thus, responding to this request would require going through every file in the GLA to pull correspondence—clearly overly burdensome. Further, such a request is too broad. Even if you were entitled to inspect correspondence, the Montana Nonprofit Corporation Act requires that you describe documents you want to inspect with "reasonable particularity"—simply asking for "all correspondence" fails to meet this requirement.

- 2) All GLA committee member minutes, especially since 2011.

As has been explained to you before, the committee member minutes are contained within the minutes binders which you have already inspected. Your dissatisfaction how committee minutes are taken is immaterial to the fact that the GLA has produced what it has.

- 3) All GLA board email votes and board email meeting minutes.

As has been explained to you before, the actions of the Board, including the outcome of email votes, are reported at the meetings and are captured in the meeting minutes which you have been given the opportunity to inspect.

- 4) All GLA financial records of receipts and expenditures (and profit and loss) since 2011.

These records were previously provided for your inspection at the inspections on June 28, 2014, and July 8, 2014. Your claim that receipts and expenditures does not exist or has been misnamed because the GLA titles the document "profit and loss" is pointless quibbling. The profit and loss statement shows receipts and expenditures, and you have been given the opportunity to inspect it twice now.

Daniel and Valery O'Connell  
July 22, 2014  
Page 3

As previously agreed, the documents which were provided for your inspection on June 28, 2014 and July 8, 2014 will be provided to you electronically once the GLA has finished having them scanned. It is estimated this will take up to three weeks as there are over 17 years of documents to sort and bundle according to how the GLA wants them scanned. Further document requests will simply delay this work and prompt a request by the GLA for the Court to intervene.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Heringer" followed by a flourish and the word "for".

Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen  
Dan Kehoe



# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
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Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

July 3, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

## Via U.S. Mail and Email

Retired  
Rockwood Brown  
John Walker Ross  
Margo Bonner

RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005

Dear Mr. and Ms. O'Connell:

In response to your June 28, 2014, email, please be advised that contrary to your assertion, on Saturday, June 28<sup>th</sup>, the GLA made available for inspection records you had previously requested. On June 28, 2014, the GLA had its records available for your inspection for nearly 5 hours. The GLA fully intends to provide documents for inspection as required by its Bylaws and as required by Montana law. It is obvious however, that your requests are not made in good faith and for a proper purpose, your purpose for inspecting the records has not been stated with reasonable particularity where required, the requests are unduly burdensome, and you are attempting to obtain discovery through document inspection which is costly and time consuming for the GLA. In response to your written request please be advised as follows:

1. Request. All written correspondence between members and the GLA since 2011.

Response. Please be advised that neither the GLA Bylaws, Articles of Incorporation, and nowhere under the Montana Non-Profit Corporate Organization Act are members of a non-profit corporation entitled to written correspondence between corporation members and the board of directors, especially when privacy concerns exist for the correspondence. Furthermore, it would be unduly burdensome to provide these documents for inspection. If you have legal authority for your request, the GLA will consider it.

2. Request. All GLA committee member minutes, especially since 2011

Response. The meeting minutes made available to you on Saturday, June 28, 2014, did include committee reports that provide a record of committee meetings and actions taken by committees that are incorporated into the monthly board

Daniel and Valery O'Connell  
July 3, 2014  
Page 2

meeting minutes. The GLA will make the meeting minutes, which did include committee reports and provide a record of actions taken by committees since 2011, available to you on July 8, 2014.

3. Request. All GLA Board email votes and Board email meeting minutes since 2011.

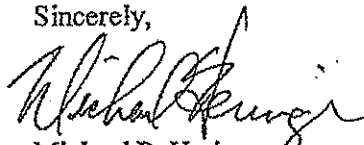
Response. The GLA provided for inspection minutes of all meetings of its members and board of directors on June 28, 2014. The GLA believes that your demand is not made in good faith and proper purpose, your purpose for the inspection has not been stated with reasonable particularity, and is unduly burdensome. The GLA believes that you are requesting these documents and multiple inspections for the purposes of pursuing your lawsuit. The proper method for pursuing matters in litigation is through discovery, not repeated demands for records inspections particularly where the GLA made the records available to you for nearly five hours on June 28, 2014. Furthermore, the actions of the Board, including the outcome of email votes, are reported at the meetings and are captured in the meeting minutes which were provided to you on June 28, 2014.

4. Request. Also all GLA financial records since 2011[sic], including:
- a. all GLA financial records of check details since 2011,
  - b. all GLA financial records of lien lists since 2011,
  - c. all GLA financial records of member balance summary since 2011,
  - d. all GLA financial records of receipts and expenditures (and profit and loss) since 2011.

Response. Even though GLA has no requirement under its Bylaws, or Montana law, it will provide you with the financial records of lien lists since 2011. The GLA will also make available for inspection, the financial records that you have requested.

As GLA documents are in transition from Minnick, it is not yet determined where the inspection will take place. The location of the inspection will be provided to you once that is determined. Alternatively, the GLA is willing to provide you with the above identified records in electronic format, thereby foregoing the need for the requested meeting on July 8, 2014. Let us know if this is acceptable, and the records will be e-mailed to you in PDF format.

Sincerely,



Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen  
Dan Kehoe

Exhibit 5

From: Daniel O'Connell dko@mac.com  
Subject: Re: 3rd Written Demand for GLA documents since July 16, 2014 & response to GLA/Brown Law Firm letter July 22, 2014  
Date: July 29, 2014 at 3:11 PM  
To: Anna Robertus ARobertus@BrownFirm.com, Robert Wallace robhw@wispwest.net, Laura Boise lauraboisegla@wispwest.net, GLA email Box info@glamontana.org, Sheridan Stenberg sheridan.stenberg@gmail.com, Janice McCann mccanns8@gmail.com, Paul Rantalo paulrantalo@mail.com, Robert Branson robranson@bigsky.net, Gerald Dubiel gpDubiel@yahoo.com, Denise Orr Kirk denisegla@wispwest.net  
Cc: MHeringer@brownfirm.com, Seth Cunningham SCunningham@BrownFirm.com

Date: July 29, 2014,  
From: Dan and Val O'Connell  
PO Box 77  
Emigrant, MT. 59027  
To: GLA Board, council Brown Law Firm, & Minnick Agent  
Re: Response to GLA/Brown Law Firm letter July 22, 2014 & 3rd Written Demand for GLA documents (1st Demand sent July 16, 2014: 2nd Demand sent July , 2014: 3rd Demand sent today July 29th, 2014)

To the above parties,

**GLA's Proposed Confidentiality Policy:**

The GLA July 16, 2014 letter to all its members has proposed members vote to keep some member records confidential, specifically including: "phone #s, e-mail addresses, member complaint/suggestions to the Board, account balances & communications, & payment plans with members."

However, these member records are not "confidential" and must be made available, because state laws allow corporate members to have these specific membership records. These state laws include, §35-2-114(3)MCA, §35-2-907MCA, & §35-2-906MCA that require the GLA to let its members inspect/copy records such as "addresses" "accounting records" "financial statements" "membership list" "minutes of all meetings" & "resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members."

For instance, the laws cited above allow the following in quotes:

1. O'Connell underlined requests for member "addresses" includes state law term "membership list" and e-mails, (courts found "the term "address" as used in [all state] statutes is sufficiently broad to include email addresses"); as the GLA already complied with.
2. O'Connell's pending requests for GLA account balances in state law is called "accounting records" and "financial statements;"
3. O'Connell's pending requests for GLA minutes of [GLA] meetings" is named the same in state law & includes all Board meeting minutes such as confidential Board meetings and Board committee minutes;
4. O'Connell's pending requests for GLA communications, & payment plans with members is the same as state laws that allow "resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members."

Thus all these proposed confidential records "e-mail addresses, member complaint/suggestions to the Board, account balances & communications, & payment plans with members" are allowed by state law & thus can not be classified as "confidential member records" as this "confidentiality policy" seeks to do.

**O'Connells 8th Document Request:**

Response to July 22, 2014 GLA/Brown Law Firm letter to O'Connells re: GLA document requests:

As repeatedly said, O'Connells 2014 document requests have nothing to do with discovery for the 114 lawsuit. Your excuse for delay of these document requests is, "the GLA is in the process of transferring its records from Minnick Management to an office space in Emigrant...and you have had nearly nine hours total of time to inspect and copy records" & claiming these requests are somehow hidden "discovery" requiring a **"Motion for Protective Order."**

On the contrary, the GLA fired Minnick before June 16th, 2014 Board meeting more than 45 days ago. In fact it has been since July 12, 2014 or 12 business days and counting since O'Connells made this document requests. Also many of O'Connell document requests were denied them. For example, they were not allowed any time to inspect/copy "phone #s, member complaint/suggestions to the Board, account balances & communications, & payment plans with members." Waiting many weeks just to inspect any of these documents is unreasonable and contrary to §35-2-906MCA below that requires only 2 business days. These requests were made in writing in good faith & proper purpose as stated on July 12th, & because such documents were missing from the July 12 member inspection. Therefore it is the GLA's actions that removed these documents from inspection that caused the O'Connells to make another request for such documents. So to say the O'Connells are somehow to blame for the GLA's own denial of these requested documents is absurd. But to say this last doc. request is somehow to "avoid discovery rules" and "calculated to disrupt the GLA's transitioning of its records" is absolutely false and malicious claims against the O'Connells.

As proof, the GLA did allow two prior document requests during this Minnick transition time and never made these claims then, so to do so

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now shows they are obviously false. This is especially true since again this document requests was caused by the GLA's own actions that now admits the GLA is not capable of complying with inspection of documents within 2 business days, because the GLA until now kept all records in cardboard boxes and refused to convert these member records into a form capable of recovery & conversion within 2 business days contrary to §35-2-906MCA.:

§35-2-906MCA, says in part, "(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. (5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:" such records as

"(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;"

"(e) the financial statements available to members for the past 3 years under 35-2-911;" and more.

Again as repeatedly said, O'Connells 2014 document requests have nothing to do with discovery for the 114 lawsuit.

**O'Connells are merely exercising their GLA member rights under state laws above to have such requested documents. For the GLA & Brown Law Firm to claim otherwise, it appears they are using such false claims as delay tactics to again deny O'Connell these July 12th requested documents cited above. Now six weeks later and counting, this delay tactic appears to be calculated to allow the GLA time to enact their "confidentiality policy" which policy lists these same exact documents requested in order to claim them as "confidential;" which will likely generate a new lawsuit. This apparent deliberate attempt to deny document request deadlines under state laws in order to allow time to enact this illegal GLA "confidentiality policy", including the threat of a "Motion for Protective Order" are then actionable claims for any new lawsuit against the GLA.**

If the GLA does not comply with O'Connells' July 12, 2014 document request (& 3rd notice) by Thursday July 30, 2014, then they will presume that the GLA has for the third time refused such document requests for GLA member: "phone #s, member complaint/suggestions to the Board, member account balances & communications, & payment plans with members."

Sincerely,  
Dan and Val O'Connell

From: **Daniel O'Connell** dko@mac.com  
Subject: **Re: New documents request (3rd request)**  
Date: **September 26, 2014 at 2:29 PM**  
To: **Anna Robertus** ARobertus@BrownFirm.com, **Robert Wallace** robhw@wispwest.net, **Laura Boise** lauraboisegla@wispwest.net, **GLA Mailbox** info@glamontana.org, **Sheridan Stenberg** sheridan.stenberg@gmail.com, **Janice McCann** mccanns8@gmail.com, **Paul Rantallo** pauiranttalo@mail.com, **Robert Branson** robranson@bigsky.net, **Gerald Dubiel** gpDubiel@yahoo.com

Date: **September 26, 2014**

From: **Dan and Val O'Connell**

TO: **GLA Board and Brown Law Firm**

Re: **3rd written demand for new GLA documents below AND continued request for documents from 3rd Demand email letter (sent today July 29th, 2014)**

The September 15th and September 18th email written document request below is incorporated herein this request as if fully contained herein. The below September 15th and September 18th member document requests i have been ignored by the GLA, yet such documents to members are allowed under state law cited below therein these emails. As proof, all the documents requested are member documents and are not discovery requests nor attempted discovery. That is why all these document request states "O'Connells 2014 document requests have nothing to do with discovery for the 114 lawsuit."

**For GLA'a refusal to provide these documents to us, O'Connells again make request for these documents 1-4 below for a good cause (O'Connells board candidacy & elections):**

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.
- 5) GLA Board meeting minutes from "closed secessions" for the last 36 months.

For the GLA to continue to deny us members such member documents at the GLA's new office location on Liberty Lane is considered an unsupported refusal and denial of such member documents for no good cause as grounds for a new litigation claim.

Sincerely,  
Dan and Val O'Connell  
PO Box 77  
Emigrant, Mt. 59027

**From:** Official GLA Info Account info@glamontana.org  
**Subject:** Your email to info@glamontana.org has been received. Re: New documents request (3rd request)  
**Date:** September 26, 2014 at 2:29 PM  
**To:** dko@mac.com

Thank you for your e-mail to the Official GLA Info Account.

Your email has been immediately forwarded to ALL members of the GLA Board, and will be handled as soon as possible by the appropriate officer, committee or the entire board depending on the issue.

Please be aware that complex or multi-part questions, formal complaints, and anything requiring consultation with legal or financial staff may take longer for final resolution.

The Glastonbury Landowners Association Board of Directors

From: **Daniel O'Connell** dko@mac.com  
Subject: **Response to Brown's Letter dated July 13, 2015**  
Date: **July 13, 2015 at 6:40 PM**

To: **Robert Wallace** robhw@wisptest.net, **Charlette Mizzi** mizzi@wisptest.net, **Scott & Valerie McBride** valerie144@gmail.com, **Rudy Parker** itsme@rudyparker.com, **Janice McCann** mccanns8@gmail.com, **Dan Kehoe** dankehoegla@gmail.com, **Gerald Dubiel** gpDubiel@yahoo.com, **GLA email Box** info@glamontana.org, **Rudy Parker** itsme@rudyparker.com, **Ed Dobrowski** ed@wisptest.net, **Robert Branson** robranson@bigsky.net, **Marian Kozlick** nvcgiraffe1220@yahoo.com, **Catherine Bielitz Fitzgerald** catherinesb3@gmail.com, **Kevin Newby** kg\_newby@yahoo.com, **Gerald Dubiel** gpDubiel@yahoo.com, **Robert Branson** robranson@bigsky.net, **Paul Rantallo** paulrantallo@mail.com, **Michael Heringer** MHeringer@brownfirm.com, **Sandy Williams** swilliams@brownfirm.com

Date: **July 14, 2015**  
To: **GLA Board and attorney (Brown Law Firm)**  
From: **Dan and Val O'Connell**  
Re: **Response to Brown's Letter dated July 13, 2015**

Your July 13, 2015 email letter we received is without any merit whatsoever and allegations against us are false or greatly exaggerated.

You seem to have a tolerance for causing us pain and suffering and emotional distress, all because we legitimately exercise our member rights. Your pleadings in the cases have also been rude, nasty, and extremely condescending of our person. We also believe your clients, the GLA Board spokesman is intentionally giving you false information about us, and do not give you all of the facts; and now threaten legal action against us in an apparent attempt to harass us, or to drop our lawsuit or drop new legal claims.

**1) Regarding GLA meeting recording:**

As we already stated in our July 5th email letter:

Note that [www.mvqla.org](http://www.mvqla.org) is member owned and operated site, and any GLA member can contribute content. In your letter your client—the GLA, make several false assumptions and errors; also your letter does NOT state what specific content on the website [www.mvqla.org](http://www.mvqla.org) that the GLA objects to; also your letter fails to state, with any particularity, what therein on this website does your GLA client refers to that allegedly: "breach[ed] [the attorney-client privilege] by intentionally publishing information from the {GLA} closed board meeting on your website [www.mvqla.org](http://www.mvqla.org), an offense warranting sanctions ...[and] a protective order from the Court..." This protective order called for by your client—GLA Board entails the GLA Board (per §40-15-204 (part 8) MCA.) "to file a petition for an order of protection;" which court term "petition" is commonly know as a lawsuit.

Please understand that without your citing specific published words or phrases that you know are attributed to the O'Connells, then they will not and can not possibly comply with your demands to confiscate their property involving a recording of the GLA Board. Nor can they fully and properly respond to your letter until and unless you state, with particularity, what if anything, therein published on the member owned website ([www.mvqla.org](http://www.mvqla.org)) is a "breach" of the attorney-client privilege.

In the mean time, the O'Connells believe that your letter in question appears to be false reports against them by your client—the GLA Board without any basis in law. If your client—the GLA does file a suit or any legal action against the O'Connells based on such false reports, this action would warrant a countersuit against the GLA for violating state law §35-2-213 MCA for such GLA "acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; [&] a breach of the director's duty of loyalty to the [GLA] Corporation or its members."

**2) Regarding missing minutes:**

Your firm has not made a good effort to get accurate facts, especially since there is a likely a good explanation of the missing minutes. For instance, the GLA has no proof and can not actually know who took copies of meeting minutes. It is possible anyone of 28 members present at the May meeting took the minutes accidentally. The GLA Board has asked members to return the minutes; which we have a right to view and copy. However since this is the first and last time minutes have disappeared ever, then it is likely an accident and someone does not know it. If we accidentally took the minutes, they would be problematic to find in our huge file cabinet. If you can give us factual proof that we accidentally took them, then we would be glad to pay GLA copy charges at a reasonable rate of 10 cents per page to make new copies of such minutes.

Therefore, if we receive any more communication from your office about this matter of a protective order over missing minutes, we may be forced to sue your client and sue you personally for malicious prosecution.



**3) Regarding our member document requests made July 6, 2015:**

Your July 13, 2015 letter refuses to allow us to inspect requested documents requested (July 6, 2015), because you state our "document inspection request violates our [Brown Law Firm] request that you make all such [member document] requests through discovery since your claims in the current lawsuit pertain to the GLA's alleged failure to accommodate document inspection requests."

However, our document request made the following disclaimer that said, "**Disclaimer: This request is solely a member request, not part of any lawsuit (DV-11-114).**" This disclaimer should be enough to allow us to make requests as member for documents allowed to members, and not as litigants. Your requirement last year that all future document request be made through discovery is a violation of these state rights (under §35-2-906 MCA, §35-2-433 MCA, & other) that allow us to have such member documents.

If you still refuse to allow us as members to inspect such documents this week, then we will file a motion to include your latest bad faith document request and ask for appropriate sanctions against you and your client.

**Regarding Membership list request:**

It is obvious from your July 13, 2015 letter that you are not objecting to our stated purpose for documents we requested. As proof, you provided a partial membership list as one of the documents we requested as members.

However the partial membership list that you provided on behalf of the GLA does not follow the state law requirements, "The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting" and "who are entitled to vote at the meeting but not entitled to notice of the meeting."

In other words, the partial membership list in question that you provided is missing all the "authenticated electronic identification" (member email addresses); also missing the "number of votes each member is entitled to vote;" and also missing those "who are entitled to vote at the meeting, but not entitled to notice of the meeting" (which includes proxy voters).

As we said in our document request, in 2013, the Mt. Legislature amended the non-profit corporation act that defines non-profit corp. membership list and added "**authenticated electronic identification**" pursuant to 35-2-535, MCA part (1) that says, "The list must show the address or **authenticated electronic identification** and number of votes each member is entitled to vote at the meeting." Also, **35-2-114, MCA. says in part:** " (3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications." The GLA already collects or uses e-mail addresses of its members; for which copies of GLA member email addresses are hereby requested. Thus state law and the 2012 settlement agreement allows us to have all GLA member addresses; **including all available GLA members email addresses.**

Since you have failed to provide a complete membership list, our motion will include a second bad faith document request refusal unless you provide such completed membership list (as described above) immediately.

Sincerely,  
Dan and Val O'Connell

Exhibit 6

**Privacy Policy - Draft 4**

Adopted May 18th 2015

**PURPOSE:** The purpose of this policy is to delineate the level of protection of personally identifiable membership information that the Glastonbury Landowners Association, Inc. (GLA) collects, maintains, uses, disseminates or discloses to third parties. Membership information is available per the Bylaws and Montana law. However, certain private information of members that the GLA may have is kept private per federal and Montana law and because the members have expressed that they have a right to privacy with regard to that information which outweighs the members' right to know the information.

Corporate records that are available to GLA members may still be considered private information to persons who are not GLA members, and such records may be protected by privacy laws.

No part of this Privacy Policy supersedes the GLA Bylaws. This policy will be updated as appropriate in response to changing business circumstances and/or legal developments.

**Private Information**

We share members' private information only as needed with our employees and other parties who require such information to assist us with fulfilling GLA obligations to its members.

Further, a member's private information may be disclosed:

- As permitted or required by applicable law or regulatory requirements;
- To protect the rights and property of the GLA;
- During emergency situations or where necessary to protect the safety of a person or group of persons; or
- With a member's consent.

Private information that the GLA may have is defined as:

- Social Security numbers, taxpayer identification numbers or driver license numbers;
- Email addresses, unless it is the official address on the membership list;
- A member's financial account transactions (does not include account balances);
- Bank account, credit card or debit card account numbers or information;
- Phone numbers;
- Date of birth or family information (such as number of, names of, or ages of children);
- Employment records;
- Minutes of closed Board meetings that deal with confidential matters such as litigation or employee-related issues;
- **Income tax filings and any personal financial information provided to negotiate payment plans, and**
- Other information that may be required to be kept confidential under Montana law.

**Protection of Free Speech**

Members attending any GLA meetings do not have an expectation of privacy within the community, but they have a reasonable expectation that their conversations and likenesses are not going to be posted on the internet thereby making it open to the general public.

In order to make sure members' free speech rights are not suppressed,

- The GLA prohibits the publishing of members' images taken while at a meeting, or audio or video recordings of the meetings to the general public, including the internet, without the express written permission of all of the parties who are recorded.
- Membership votes at Annual and Special Membership meetings are held as private information.

Exhibit 6

**Glastonbury Landowners Association, Inc.**  
**Board of Directors Meeting Minutes – Final**  
**May 18, 2015**  
**CONFIDENTIAL – DO NOT COPY**

**1. Call to Order**

The meeting was called to order by Dan Kehoe at 7:05 p.m. at St. John's Church.

**PRESENT:** Dan Kehoe (President), Ross Brunson (Vice President, arrived at 9:40 via phone), Janice McCann (Treasurer, arrived at 7:45 p.m.), Alyssa Allen (Secretary), Robert Branson (aka Robert B.), Ed Dobrowski, Gerald Dubiel, Charlotte Mizzi, Kevin Newby, Rudy Parker, Paul Ranttalo, Robert Wallace (aka Robert W.).

**Also attending:** Karleen McSherry (Administrative Assistant)

**Landowners:** Edward Anderson, Miriam Barker, Debbie Blais, Tim Brockett, Phillip & Ann Marie Covington, Debbie DeGraaf, Jose Gonzalez, Jennie Hayward, Leo & Dorothy Keeler, Damiaan & Clazina Kletter, Jerry Ladewig, Donna Lash-Andersen, Constance Macdonald, Chuck & Sally Muto, Dan & Valery O'Connell, Clare Parker, Pedro Pinardo, Chuck Tanner, Joe Trosclair, Ia Williams, Ronald Wartman, Regina Wunsch.

**2. Set Agenda**

**3. Approve Meeting Minutes – April 13 & May 6, 2015**

Valery O'Connell asked for a copy of the draft meeting minutes to be given to the landowners and Alyssa explained that the attorney has advised not to give out minutes until the board has reviewed and approved them. **Motion:** Charlotte motioned and Rudy seconded to approve the April 13, 2015 meeting minutes. **Motion carried** (1 abstention – Robert B.). **Motion:** Rudy motioned and Paul seconded to approve the May 6, 2015 phone meeting minutes as written. **Motion carried** (2 Abstentions – Robert B. & Charlotte).

**4. Visiting Landowner Input Period**

Clare Parker announced that landowners from lower SG were in attendance to ask the board to call a special meeting to vote on the maintenance of Dry Creek Rd (DCR) and that a petition was circulating. Clare later withdrew her request after hearing the Road Committee report. Discussion involved various opinions being expressed regarding the maintenance of DCR, including those who don't want GLA money to be used to fix a county road, those that do, and some who want both parties to take responsibility for it; the idea that there is dual liability if dual maintenance; that County Commissioners are open to working with the GLA; a suggestion to hold a meeting and vote of landowners to put money in the kitty for DCR repair. Robert W. asked that this discussion wait until he gives the Road & Weed Committee and Road Management reports. There was a question about where the Road Policy stands in relation to the Bylaws and Covenants as well as concern regarding the status of existing committees, their purpose, nature and composition. Dan replied that this would be covered in the Governing Documents Committee report.

**5. Officer and Committee Reports**

**5.1 President's Report – DK**

**5.1.1 Conduct of Meeting Policy**

**Motion:** Robert B. motioned and Robert W. seconded to accept the Conduct of Meeting Policy draft three as written. **Motion carried unanimously.**

**5.1.2 Privacy Policy**

**Motion:** Rudy motioned and Charlotte seconded to approve the Privacy Policy as written. **Motion carried unanimously.**

**5.1.3 Criteria for closed meeting topics**

Dan reported that the Board wrote criteria for closed meeting topics, based on Colorado law, which the attorney has overseen and approved. The criteria will be

Exhibit 788

Joel W. Todd  
Attorney at Law  
Identification No.: 11248  
P.O. Box 1614  
Red Lodge, MT 59068-1614  
Ph: 406-446-1137  
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Attorney for Plaintiffs

**FILED**  
Carbon County District Court

NOV 16 2012  
By *Rochelle Loyning*  
Rochelle Loyning, Clerk

**MONTANA TWENTY-SECOND JUDICIAL DISTRICT COURT  
CARBON COUNTY**

MICHAEL and DIANE SULLIVAN; JOY W. HUNT; DR. HERSCHEL R. and MARY BETH HARTER; JEFF and RENEE Gildehaus; ANDY and DIANE BERES; GARY and EMILY RUSSELL; STEVEN M. and LEIGH L. GOSE; WILLIAM L. WAGNER; MARY WAGNER; MIKE KAUTZMAN; CATHERINE GROTT; DOUGLAS A. and JUDY K. BARNES; J. LANCE and MARY KAY DISSEL; RICHARD and JEAN ANNE BULLOCK; MARTHA L. BROWN; MARTY CLAGUE; and ELIZABETH FRAZER,

Plaintiffs,

v.

REMINGTON RANCH ASSOCIATION, INC.; THOMAS CHEREWICK; RONALD M. HENRY; and NANCY GAMMILL,

Defendants.

Cause No. DV-11-122 = 62

Hon. Blair Jones

**PLAINTIFFS' REPLY BRIEF TO  
DEFENDANTS' MOTION FOR  
A PROTECTIVE ORDER**

Plaintiffs, by and through their attorney, Joel W. Todd, Esquire, hereby respond to **DEFENDANTS' MOTION FOR A PROTECTIVE ORDER** ("Defendants' Motion for Protective Order"). Plaintiffs oppose Defendants' Motion for Protective Order as set forth in this brief.

*Exhibit 8*

## I. INTRODUCTION

Defendants' move this Court for a Protective Order pursuant to *Mont. R. Civ.P. 26 (c)* to require Plaintiffs to use the formal discovery process, prohibit improper communications between the parties, and prohibit requests for, according to Defendants, previously provided information and documents. Defendants' Motion for Protective Order, pp. 1-2. Defendants also request their expenses, including attorneys fees, pursuant to *Mont. R. Civ.P. 37 (a) (5)*. Defendants' Brief, pp. 4-5.

Defendants argue, *inter alia*, that inspection and exchange of documents within RRA records should be done through formal discovery requests to aid in identifying what has been produced, and that Plaintiff Sullivan's intent in seeking inspection of RRA records has been to harass the RRA indicating that Defendants need protection from undue burden, annoyance and expense. Defendants' Brief, p. 4.

Informal agreement between Plaintiffs' prior counsel and Defendants' counsel was reached such that the "complete books and records of RRA" were to be made available for inspection or copying. Defendants' Brief, p. 2. This informal agreement was made without a formal discovery plan, Scheduling Order or pre-discovery disclosure in accordance with the Montana Twenty-Second Judicial District Court Rule 6. In addition, Plaintiff Sullivan's requests to access RRA records were not formal discovery requests, were authorized by Montana statute, § 35-2-907, *MCA*, and RRA Bylaws, Section 9.1. Defendants' Brief, p. 3.

Plaintiff Sullivan's attempts to review RRA records began before the original *Complaint* was filed on September 23, 2011 and this lawsuit was initiated, in part, because of Defendants' refusal to provide members such as Plaintiff Sullivan access to RRA records in accordance with RRA Bylaws. Memorandum attached hereto and made a part hereof as Plaintiffs' Exhibit "A". Defendants' "willingness to co-operate" with Plaintiffs' request to review records only started after Plaintiffs were forced to institute litigation.

It is also significant that following the Court's advice for community cooperation, informal requests for RRA records were made in an effort to accomplish such cooperation, reduce the parties' expenses and promote the ascertainment of truth. Even though counsel apparently agreed the "complete books and records of RRA" were to be made available for inspection or copying, Defendants still have not produced these records which Plaintiff Sullivan had, and continues to have, the right to see by statute and RRA governing document. The "duplicative inspections" requested by Plaintiff Sullivan were caused by the failure of Defendants to produce the requested RRA records. Plaintiffs' Exhibit A.

Defendants now reject this cooperative approach, and Plaintiffs will refrain from any further informal requests and go forward with formal discovery in accordance with Court Rule 6 and Rule 26, M.R. Civ.P.

## II. LEGAL ARGUMENT

### A. **The Precise Reason for the "Duplicative Inspections" of RRA Records is Defendants' Failure to Provide RRA Records for Inspection as Agreed.**

While Defendants have accommodated Plaintiff Sullivan's requests for inspection of RRA records, any "duplicative inspections" were caused by Defendants' failure to provide the records which were requested. Plaintiffs' Exhibit A. Plaintiffs' prior counsel informally requested, and Defendants agreed, to allow for the inspection of the complete books and records of RRA. Defendants' Brief p. 2. Plaintiffs, however, have never been provided with access to the complete books and records of RRA.

Plaintiffs' prior counsel's request to informally inspect the books and records of RRA was made in the interest of cooperation, and Plaintiff Sullivan's requests to inspect the books and records of RRA, which began before this lawsuit, were made in accordance with RRA Bylaws and were intended to determine exactly how RRA was being administered and member funds were being spent. The voluntary resignation of Defendants from the RRA Board, leaving RRA without a bookkeeper and funds, provides



credible support for Plaintiff Sullivan's concerns about the RRA Board and administration of RRA.

**B. Plaintiff Sullivan's Requests to Inspect RRA Records Comply with Montana Statute and RRA Bylaws.**

As acknowledged by Defendants, Plaintiff Sullivan has the right as a member of RRA to inspect and copy the records of RRA. § 35-2-907, MCA. Plaintiff Sullivan also has a contractual right to inspect the books, records and papers of RRA. RRA Bylaws, Section 9.1. Defendants again, however, showed no "willingness to co-operate" with Plaintiff Sullivan in the exercise of his rights until after they were sued.

Plaintiff Sullivan's requests were done "informally." Defendants' Brief, p. 3. If such informal inspections had been done in "the interest [of] congeniality", all of the records and books of RRA would have been made available to Plaintiff Sullivan. Defendants' Brief p. 3. Plaintiffs do agree with Defendants that Defendants have "acquiesced" in these informal inspections. Defendants' Brief p. 3. More importantly, Plaintiffs intended, by joint inspection of the RRA records and books, to ascertain the truth by assuring mutual knowledge of the relevant facts already known by Defendants, which would promote the ultimate disposition of this lawsuit. Had this been Defendants' intention, all of the RRA books and records would have been made available for inspection as informally agreed by counsel.

**C. Defendants Are Not Entitled to a Protective Order Pursuant to M. R. Civ.P. 26 (c).**

Plaintiff Sullivan's requests to inspect RRA books and records were not a formal discovery request made in accordance with Rule 26, M.R. Civ. P., a Scheduling Order of this Court or made in accordance with Montana Twenty-Second Judicial District Court Rule 6. These were informal requests, initiated by counsel, done in "the interest [of] congeniality" and were acquiesced to by Defendants. Plaintiff Sullivan's requests were reasonable, and specifically since Defendants had agreed to provide, but have not, the

complete books and records of RRA that Plaintiff Sullivan has a right to see as a member of this nonprofit corporation.

There is no formal discovery plan in place or agreed to by counsel, the parties have not filed appropriate pre-discovery disclosure and Plaintiff Sullivan's requests to inspect RRA records were not made as a request for formal discovery pursuant to or under the guise of the authority of Rule 26. Defendants' Brief, Exhibit I. Plaintiffs believe that Defendants' Motion for Protective Order is just another tactic to manipulate the litigation process by directing the Court's attention away from the wrongful conduct of Defendants. In this regard, Defendants cite no case law or persuasive authority to support their claim that they are entitled to a protective order. The purpose of discovery is to enable courts and parties to determine the truth so that cases may be resolved justly. *Peterman v. Herbalife International, Inc.*, 2010 MT 142, ¶ 17, 356 Mont. 542, 234 P.3d 898 (citing *Richardson v. State*, 2006 MT 43, ¶ 22, 331 Mont. 231, 130 P.3d 634.

There is no evidence or indication in Defendants' Brief or Exhibits that Plaintiff Sullivan's actions were intended to inflict significant and unjustified costs on Defendants. If Defendants had provided what was promised, Plaintiff Sullivan's requests would have been satisfied and there would have been no need for Defendants' Motion for Protective Order. *See* M.R. Civ.P. 26 (c) (providing for a protective order from oppressive discovery requests). This is not a matter of discovery abuse by Plaintiffs, but another instance where Defendants apparently attempt to prevent Plaintiff Sullivan from accessing factual information which he, as well as other members of RRA, have a right to know by Montana statute and specific RRA contractual document.

These requests were made in good faith, acquiesced to by Defendants and Defendants concede that the RRA records are relevant. Defendants' Brief p. 4. Plaintiff Sullivan's lawful requests did not callously disregard the rights of Defendants, have not prejudiced Defendants and Defendants were given multiple opportunities by their own choice to provide Plaintiff Sullivan with the complete books and records of RRA, as promised by Defendants, but failed to do so resulting in Plaintiff Sullivan's additional requests to inspect these RRA records.

Had Plaintiff Sullivan's requests to inspect and copy the complete books and records of RRA been made as a formal discovery request in compliance with the Court Rule 6 and Rule 26, M.R. Civ.P., Defendants' refusal to provide this discovery would be grounds for court imposed sanctions against Defendants pursuant to M.R. Civ.P. 37. *Linn v. Whitaker*, 2007 MT 46, ¶ 15, 336 Mont. 131, 152 P.3d 1282 (citing *McKenzie v. Scheeler*, 285 Mont. 500, 516, 949 P.2d 1168, 1177 (1997)).

Defendants also acknowledge that RRA books and records are relevant as evidence in the instant case. Defendants' Brief, p. 4. Plaintiffs do agree with Defendants that RRA records "should be tracked closely", Defendants' Brief, p. 4, and Plaintiffs are willing to take possession of these records and maintain these records at no cost to Defendants so that such records are "tracked closely" throughout the litigation until its resolution.

**D. Plaintiffs Have Not Violated Court Rule 6 or Rule 26, M.R. Civ.P., and Defendants Are Not Entitled to Attorney Fees.**

Twenty-Second Judicial District Court Rule 6 (4) provides that a sanction may be imposed for violation of Rule 6, and sanctions shall be imposed in accordance with Rule 37, M.R. Civ.P. Plaintiff Sullivan's actions in seeking access to the complete books and records of RRA was not done in violation of Rule 6, and there is no allegation in Defendants' Motion for Protective Order that Plaintiff Sullivan violated Rule 6.

Plaintiff Sullivan's requests were not formal discovery requests made in accordance with or under the authority of Rule 26 M.R. Civ.P., and Defendants are not entitled to a protective order as Plaintiff Sullivan did not seek discovery from Defendants as defined by Rule 26 (a), M.R. Civ.P. As important, even if Plaintiffs had sought the production of the complete records and books of RRA in accordance with this Court's Rule 6 and Rule 26 M.R. Civ.P., Plaintiff Sullivan's actions and conduct would not provide a basis for sanctions against Plaintiffs as Defendants have not produced all of the books and records of RRA, which are relevant to this case, and as agreed. *See Linn at ¶¶ 20 and 24. See also Peterman at ¶ 24.*

Plaintiff Sullivan's conduct did not necessitate Defendants' Motion for Protective Order, and seeks to specify terms for discovery when no formal discovery plan has been agreed to by the parties, proposed by the parties or approved by this Court. Defendants' request for sanctions disregards Court Rule 6, the specific language of Rule 26 (a), M.R. Civ.P., case law and the circumstances of Plaintiff Sullivan's requests which make an award of expenses unjust. M.R. Civ.P. 37 (a) (5) (A) (iii).

**E. Plaintiffs Are Entitled to Reasonable Expenses Incurred in Opposing Defendants' Motion.**

Defendants' Motion for Protective Order is not substantially justified when considering Court Rule 6, Rule 26 (c) or Rule 37 (a) (5), M.R. Civ.P. Unlike Defendants, Plaintiffs are entitled to reasonable expenses incurred in opposing Defendants' Motion for Protective Order, including attorney fees. Rule 37 (a) (5) (B), M.R. Civ.P.

**III. CONCLUSION**

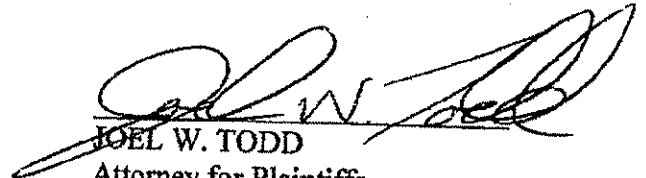
The precise reason for the informal "duplicative inspections" of RRA records is Defendants' failure to provide RRA records for inspection as agreed by counsel. Plaintiff Sullivan's requests to inspect RRA records comply with Montana statute and RRA Bylaws. Defendants are not entitled to a protective order pursuant to Court Rule 6, Rule 26 (c) or Rule 37 (a) (5), M.R. Civ.P.

**WHEREFORE**, Plaintiffs respectfully request this Court deny Defendants' Motion for Protective Order, and require Defendants to pay Plaintiffs reasonable expenses incurred in opposing Defendants' motion, including attorney fees, in accordance with Rule 37 (a) (5) (B), M.R. Civ.P.

Plaintiffs will defer liquidating their request for attorney fees until all substantial claims are adjudicated in accordance with Montana Twenty-Second Judicial District Court Rule 17 E.

A form of Order is attached hereto.

DATED this 6<sup>th</sup> day of November, 2012.

  
JOEL W. TODD  
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of November, 2012, a copy of Plaintiffs' Reply Brief to Defendants' Motion for a Protective Order was served upon the following counsel of record as stated.

Kelly J. C. Gallinger  
Brown Law Firm, P.C.  
315 North 24<sup>th</sup> Street  
P.O. Drawer 849  
Billings, MT 59103-0849  
Attorney for Defendants  
Email: kgallinger@brownfirm.com

Brendon J. Rohan  
Poore, Roth & Robinson, P.C.  
1341 Harrison Avenue  
P.O. Box 2000  
Butte, MT 59702-2000  
Attorney for Counter-Defendant Michael Sullivan  
Email: bjr@montana.com

Randall G. Nelson  
Nelson & Dahle, P.C.  
2615 St. Johns Avenue, Suite A  
Billings, MT 59102  
Attorney for Counter-Defendant Diane Sullivan  
Email: rgnelson@nelson-dahle.com

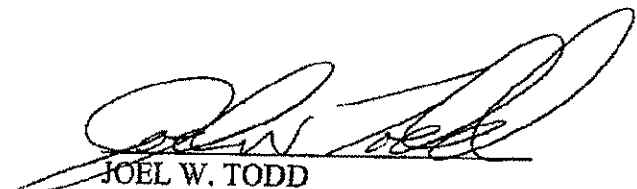
J. Michael Young  
Luinstra & Young, PLLC  
615 Second Avenue North, Ste. 300  
P.O. Box 3169  
Great Falls, MT 59403  
Attorney for Counter Defendant Joy Hunt  
Email: myoung@gfntlaw.com

Michael B. Anderson  
Anderson & Liechty  
Wells Fargo Center, Suite 902  
175 North 27<sup>th</sup> Street  
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Billings, MT 59103-3253  
Attorney for Counter-Defendants Dr. Herschel R. and Mary Beth Harter  
Email: manderson@a-llaw.com

Tammy Wyatt-Shaw  
Williams Law Firm, P.C.  
235 E. Pine  
P.O. Box 9440  
Missoula, MT 59807-9440  
Attorney for Counter-Defendants Jeff and Renee Gildehaus, Marty Calgue,  
Martha L. Brown and Elizabeth Frazer  
Email: twshaw@wmslaw.com

Calvin J. Stacey  
Stacey & Funyak  
100 N. 27<sup>th</sup> Street, Suite 700  
P.O. Box 1139  
Billings, MT 59103-1139  
Attorney for Counter-Defendants Douglas A. and Judy K. Barnes  
Email: cstacey@staceyfunyak.com

Robert L. Stephens, Jr.  
Southside Law Center  
P.O. Box 1438  
Billings, MT 59103-1438  
Email: rstephens@southsidelaw.net

  
JOEL W. TODD  
Attorney for Plaintiffs

**EXHIBIT "A"**



**MICHAEL D. SULLIVAN**  
**#9 Bitterroot Circle**  
**Red Lodge, Montana 59068**  
**PHONE: (406) 446-1159 FAX: (406) 245-2441 CELL: 406-861-6391**

---

**M E M O R A N D U M**

**TO: Joel W. Todd, Attorney**  
**FROM: Michael D. Sullivan**  
**DATE: November 1, 2012**  
**RE: Cause No. DV-11-122**

---

Mr. Todd:

I have reviewed the recent "Defendants Remington Ranch Association, Inc., Thomas Cherewick, Ronald M. Henry; and Nancy Gammills Brief in Support of their Motion for a Protective Order" and wanted to express some concerns in regards to the Defendants' attorney representations. In particular, Ms. Gallinger's statement,

Clearly Plaintiff Sullivan's intent has been to harass the RRA with his repeated requests ignoring attorney Gallinger's response and improperly contacting Defendants directly in regards to matters in this litigation.

There has never been any effort to harass any of the Defendants. The effort has simply been to attempt to review Remington Ranch Association records. You might recall that this suit began in part related to the Remington Ranch Association's refusal to provide members access to the Association records which are guaranteed under the Association's By-Laws, Section 9.1, "Books and Records." It was not until we filed suit that we were allowed to first review these records at the Brown Law Firm on 11/02/11. When I submitted my annual association dues check for \$450 on 02/29/12, I did enclose a note requesting confirmation regarding some important issues related to the operation of Remington Ranch Association. This stated:

In addition, please provide confirmation that individuals and business providing services to the Association have signed contracts in place, verification of liability insurance, and are registered with the Montana Department of Labor as independent contractors (Independent Contractor Exemption Certificate) (Exhibit B).

There was never a response to this request.

Moving forward, I was provided with a copy of a letter that had been authored by Ms.

Joel W. Todd  
November 1, 2012  
Page II

Gallinger dated 03/09/12. In this letter, Ms. Gallinger concludes,

Please forward these letters on to your respective clients. In future, I would ask that any communication from your clients to mine come through me (Exhibit C).

This was simply a request and did not mention anything about the discovery process. I also note that she did not indicate that the communication should come through the attorneys; it simply said those communications should "come through me."

Based upon the above, on 03/13/12, following Ms. Gallinger's letter, I submitted a letter to her which once again requested the information that had been sent with my annual dues on 02/29/12. Ms. Gallinger did not respond to this (Exhibit D).

Due to continued concerns regarding the manner in which the Association's affairs were being administered, I once again made a direct request to the President of the Association, Thomas Cherewick, in a letter dated 05/17/12 (Exhibit E). This letter was two months after the letter that I had submitted directly to Ms. Gallinger which was never responded to. Mr. Cherewick did not respond to this request to review records.

Due to Mr. Cherewick's failure to respond to the questions I had asked, I once again requested these records on 06/07/12 (Exhibit G). This letter did apparently result in a response from Ms. Gallinger in a letter dated 06/11/12 (Exhibit H).

It was not until 09/10/12 that we were once again allowed access to the Remington Ranch Association records at the Brown Law Firm. Some of the requested records were not provided by Ms. Gallinger. Ms. Gallinger further failed to provide the password for the Association's QuickBooks until several weeks later.

Joel W. Todd  
November 1, 2012  
Page III

All of this is very important because the correspondence has not been harassing; it has simply been an effort to gain an understanding about how the Association is being administered by this board. This is of significance in light of the fact that the board has recently resigned and left the Association with an account balance of less than \$50. As you are aware, from the point in time that I began to request records, in the summer of 2011, until the board resigned recently, there have been tens of thousands of dollars that had been run through the Remington Ranch Association account. Several thousand dollars have been paid to a Board Member's business. We now are left with having to make alternate arrangements for snow removal. I remain concerned about a board who has resigned having complete control of the Association's records. This is not harassment; this is simply an effort to assure transparency and accountability. Ms. Gallinger's characterization is inaccurate and harmful. As a member of the Remington Ranch Association I have the right to inspect records as clearly outlined in the bylaws.

Michael D. Sullivan

MDS/jdo

Carbon County District Court

Case Register Report  
DV-5-2011-0000122-IJ

Michael Sullivan, etal. vs. Thomas Cherewick, etal.

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
179.000	03/12/2013	03/12/2013	Defendant's Status Report	Jones, Blair
180.000	03/12/2013	03/12/2013	Plaintiffs' Response to Defendants' Status Report	Jones, Blair
181.000	03/21/2013	03/21/2013	Pre-discovery disclosure statement of counter-defendants Jeff and Renee Gildehaus; Martha L. Brown; Marty Clague; and Elizabeth Frazer.	Jones, Blair
182.000	04/01/2013	04/01/2013	Defendants' Response in Opposition to Plaintiffs' Partial Motion for Summary Judgment and Cross-Motion for Partial Summary Judgment Regarding Red Lodge West, LLP	Jones, Blair
183.000	04/03/2013	04/03/2013	Stipulation to dismiss defendant Nancy Gammill with prejudice.	Jones, Blair
184.000	04/03/2013	04/03/2013	Notice of filing of original affidavit with attached Affidavit of Joseph DeFilippis.	Jones, Blair
185.000	04/15/2013	04/15/2013	Progress Report from Johnny D. Seiffert, Limited Custodial Receiver with attachments.	Jones, Blair
186.000	04/15/2013	04/15/2013	Plaintiffs' Reply Brief in Support of Motion for Partial Summary Judgment, and Response to Defendants' Cross-Motion for Partial Summary Judgment Re: Red Lodge West, LLP with attached Order Denying Defendants' Cross-Motion for Partial Summary Judgment Re: Red Lodge West, LLP.	Jones, Blair
187.000	04/17/2013	04/17/2013	Order dismissing defendant Nancy Gammill with prejudice, signed and filed.	Jones, Blair
188.000	04/25/2013	04/25/2013	Plaintiffs/Counter-Defendants Barnes' Motion to Compel.	Jones, Blair
189.000	04/25/2013	04/25/2013	Plaintiffs/Counter-Defendants Barnes' Brief in Support of Motion to Compel.	Jones, Blair
190.000	04/30/2013	04/30/2013	Notice of service (Diane Sullivan's First Discovery Requests to Defendants).	Jones, Blair
191.000	05/02/2013	05/02/2013	Defendants' reply in support of thrie cross-motion for partial summary judgment regarding Red Lodge West, LLP.	Jones, Blair
192.000	05/09/2013	05/09/2013	Order granting motion for a protective order (and setting hearing on the issue of movant's reasonable expenses on 6/18/13 @ 1:30 pm), signed 5/7/13 and filed 5/9/13.	Jones, Blair
193.000	05/20/2013	05/20/2013	Request for Scheduling Conference on Amended Verified Counterclaim	Jones, Blair
194.000	05/20/2013	05/20/2013	Counterclaim Plaintiff and Defendant's Response to Counterclaim Defendant's Motion to Dismiss Pursuant to Montana Rules of Civil Procedure Rule 12(B)(6).	Jones, Blair
195.000	05/21/2013	05/21/2013	Order Setting Scheduling Conference on Amended Verified Counterclaim (set for 06/18/2013 @ 1:30 pm, Telephonic), signed 05/20/2013 and filed 05/21/2013.	Jones, Blair

Carbon County District Court

Case Register Report  
DV-5-2011-0000122-IJ

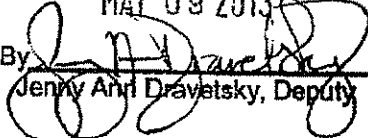
Michael Sullivan, etal. vs. Thomas Cherewick, etal.

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
215.000	07/18/2013	07/17/2013	Order vacating hearing date (on 9/6/13 and reset to 8/21/13 @ 1:30 pm), signed 7/16/13 and filed 7/17/13.	Jones, Blair
216.000	07/18/2013	07/17/2013	Order authorizing joinder of third-party plaintiff, Western Investments, Inc., signed 7/15/13 and filed 7/17/13.	Jones, Blair
217.000	07/18/2013	07/17/2013	Order setting deadline for discovery responses (Douglas A. and Judy K. Barnes), signed 7/15/13 and filed 7/17/13.	Jones, Blair
218.000	07/22/2013	07/22/2013	Jury Trial Scheduling Order, signed 07/18/2013 and filed 07/22/2013.	Jones, Blair
219.000	08/09/2013	08/09/2013	Motion to order settlement of all claims between plaintiffs and defendant RRA.	Jones, Blair
220.000	08/09/2013	08/09/2013	Brief by plaintiffs in support of motion to order settlement of all claims between plaintiffs and defendant RRA with attached exhibits.	Jones, Blair
221.000	08/16/2013	08/16/2013	Substitution of counsel, consent to substitution, and notice of substitution. (Paul N. Tranel for J. Michael Young).	Jones, Blair
222.000	08/19/2013	08/19/2013	Defendants' Motion for Leave to Exceed Brief Twenty Page Limit.	Jones, Blair
223.000	08/22/2013	08/21/2013	Notice of Filing of Original Affidavit	Jones, Blair
224.000	08/22/2013	08/21/2013	Order For Expenses From Motion For Protective Order, signed and filed.	Jones, Blair
225.000	08/22/2013	08/21/2013	Minute Entry (Hearing on Motions)	Jones, Blair
226.000	08/28/2013	08/27/2013	Withdrawal of Motion to Order Settlement of All Claims Between Plaintiffs and Defendant RRA.	Jones, Blair
227.000	08/28/2013	08/28/2013	Defendant and Counterclaim Plaintiff's Demand for Local District Court Rule 6 Disclosure Statements	Jones, Blair
228.000	08/28/2013	08/28/2013	Notice of Service of Counterclaimants' Pre-discovery Disclosure Statement Pursuant to Local Rule 6	Jones, Blair
229.000	08/29/2013	08/29/2013	Pre-Discovery Disclosure of Michael Sullivan	Jones, Blair
230.000	09/30/2013	09/30/2013	Defendant Remington Ranch Association Inc.'s Notice of Substitution of Counsel.	Jones, Blair
231.000	10/01/2013	10/01/2013	Motion for Remington Ranch Association, Inc. ("RRA") Board Election, and motion for voluntary dismissal of defendant RRA with prejudice.	Jones, Blair
232.000	10/01/2013	10/01/2013	Defendant Remington Ranch Association, Inc. 's consent to plaintiff's motion for RRA board election and motion for voluntary dismissal of defendant RRA with prejudice.	Jones, Blair
233.000	10/02/2013	10/02/2013	Substitution of counsel, consent to substitution, and notice of substitution. (Tammy Wyatt-Shaw)	Jones, Blair
234.000	10/02/2013	10/02/2013	Defendants Thomas Cherewick's and Ronald Henry's notice of substitution of counsel (Tom Singer).	Jones, Blair

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**FILED**  
Carbon County District Court  
Rochelle Lovning, Clerk

MAY 09 2013  
By   
Jenny Ann Dravetsky, Deputy

**MONTANA TWENTY-SECOND JUDICIAL DISTRICT, CARBON COUNTY**

\_\_\_\_\_)  
MICHAEL and DIANE SULLIVAN; JOY )  
W. HUNT; DR. HERSCHEL R. and MARY )  
BETH HARTER; JEFF and RENEE )  
GILDEHAUS; ANDY and DIANE BERES; )  
GARY and EMILY RUSSELL; STEVEN M. )  
and LEIGH L. GOSE; WILLIAM L. and )  
MARY WAGNER; MIKE KAUTZMAN; )  
CATHERINE GROTT; DOUGLAS A. and )  
JUDY K. BARNES; J. LANCE and MARY )  
KAY DISSEL; RICHARD and JEAN ANNE )  
BULLOCK; MARTHA L. BROWN; MARTY )  
CLAGUE; and ELIZABETH FRAZER, )  
Plaintiffs, )  
vs. )  
REMINGTON RANCH ASSOCIATION, )  
INC.; THOMAS CHEREWICK; RONALD )  
M. HENRY; and NANCY GAMMILL, )  
Defendants. )

Cause No. DV 11-122 = 192

Judge: Blair Jones

**ORDER GRANTING MOTION  
FOR A PROTECTIVE ORDER**

Before the Court is a *MOTION FOR A PROTECTIVE ORDER* filed on October 23, 2012 by Defendants Remington Ranch Association, Inc.; Thomas Cherewick; Ronald M. Henry, and Nancy Gammill (together, "Defendants"). Plaintiffs Michael and Diane Sullivan; Joy W. Hunt;

1 Dr. Herschel R. and Mary Beth Harter; Andy and Diane Beres; Gary and Emily Russell; Steven M.  
2 and Leigh L. Gose; William L. and Mary Wagner; Mike Kaurzman; Catherine Grott; Douglas A.  
3 and Judy K. Barnes; J. Lance and Mary Kay Dissel; Richard and Jean Anne Bullock; Martha L.  
4 Brown; Marty Clague; and Elizabeth Frazer (together, "Plaintiffs") oppose the motion. After due  
5 consideration of the briefs, together with the applicable law, the Court determines that  
6 Defendants' motion should be granted.

#### 7 STANDARD OF REVIEW

8 Rule 26(c), Mont. R. Civ. P. provides that a party from whom discovery is sought may  
9 move for a protective order "specifying the terms, including time and place, for the discovery"  
10 and "prescribing a discovery method other than the one selected by the party seeking discovery."  
11 Rule 26(c)(1)(B) and (C), Mont. R. Civ. P. Such a party may make a motion upon "certification  
12 that the movant has in good faith conferred or attempted to confer with other affected parties in  
13 an effort to resolve the dispute without court action." Rule 26(c)(1), Mont. R. Civ. P. For "good  
14 cause," a district court may issue an order to protect a party from "annoyance, embarrassment,  
15 oppression, or undue burden or expense." *Id.*

#### 16 DISCUSSION

##### 17 **A. Defendants' motion for protective order**

18 In this case, Defendants request a protective order "forbidding further improper  
19 communications from Plaintiffs to Defendants and forbidding further requests by Plaintiffs to  
20 inspect or copy the RRA records except in the case of a formal discovery request." (Defs.' Br.  
21 Supp. Mot. Protective Order 3.) Given the circumstances here, the Court determines that a  
22 protective order is appropriate. Although § 35-2-907(1) and (2), MCA provides that members of  
23 a corporation are entitled to "inspect and copy" certain corporate records under specified  
24 conditions, such access is limited to a "reasonable time and location specified by the corporation."  
25 Because the parties are in litigation where access to the records and the content of the records is at  
26 issue, it is reasonable to require the parties to exchange such records through formal channels of  
27 discovery. Doing so aids in identifying which records have been produced and the scope of the  
28 requests and avoids inadvertent duplicity of effort and expense. Defendants' counsel has made

1 good faith attempts to resolve the dispute without court action, by actually accommodating  
2 Plaintiffs' requests on two occasions and by multiple letters to Plaintiffs' counsel requesting the  
3 use of formal discovery.

4 Furthermore, Plaintiffs fail to address Defendants' legitimate concern about improper  
5 conduct between represented parties. Regardless of whether Plaintiffs—as parties—are entitled to  
6 access RRA records under law or contract, it is at best questionable for an attorney to allow his or  
7 her client to attempt to obtain discovery by direct contact with a represented opposing party.

8 Rule 4.2(a) of the Montana Rules of Professional Conduct provides that “[i]n representing  
9 a client, a lawyer shall not communicate about the subject of the representation with a person the  
10 lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent  
11 of the other lawyer or is authorized to do so by law or a court order.” The Comment to the  
12 identical ABA Model Rule 4.2 provides that this rule protects a represented person against “the  
13 uncounselled disclosure of information relating to the representation.” The stated purpose of this  
14 protection is “the proper functioning of the legal system.” MODEL RULES OF PROF'L CONDUCT, R.  
15 4.2 cmt. (2012).

16 Although the issue at bar does not involve unauthorized attorney communications with a  
17 represented opposing party, it does involve communications by an attorney's client directly to the  
18 represented opposing party for information relating to the opposing party's representation.  
19 Defendants have shown that Plaintiff Michael Sullivan contacted a represented defendant for  
20 access to Remington Ranch Association records on at least three occasions: by letter dated  
21 February 29, 2012 to the Defendant board members of the Remington Ranch; by letter dated May  
22 17, 2012 to Defendant Tom Cherewick; and again by letter dated June 7, 2012 to Defendant Tom  
23 Cherewick. (Defs.' Ex. B, E, and G.) At each instance, Defendants' counsel requested that  
24 Plaintiffs' counsel make the demands as formal discovery requests to avoid confusion and to  
25 create a record of what had and had not been produced.

26 It is improper for an attorney to circumvent the purposes of Rule 4.2 by encouraging his  
27 or her client to engage in conduct prohibited to the attorney. Although no evidence indicates that  
28 Plaintiff Michael Sullivan wrote the above listed letters at his attorney's direction, Defendants'



1 counsel had informed Plaintiffs' counsel of the situation and reasonably requested that  
2 Defendants cease such conduct and employ formal channels of discovery. Regardless of what  
3 Defendants believe they are entitled to obtain from Plaintiffs under law or contract, it is neither in  
4 the spirit of Rule 4.2 nor does it foster the collegiality the Court expects from counsel for  
5 Plaintiffs' counsel to encourage or allow a client to continue the contested behavior. It is  
6 incumbent upon Plaintiffs' counsel to exercise client control and ensure that clients understand  
7 both their rights as well as their obligations. The requests made by Defendants' counsel in this  
8 regard were wholly reasonable and should have been honored by Plaintiffs' counsel.

9 **B. Defendants' motion for attorney fees**


10 Rule 37(a)(5)(A), Mont. R. Civ. P. provides that if a motion for protective order is granted,  
11 "the court must, after giving an opportunity to be heard, require the party or deponent whose  
12 conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the  
13 movant's reasonable expenses incurred in making the motion, including attorney fees." Having  
14 determined that a protective order is warranted in this case, the Court will set a hearing to  
15 determine the movant's reasonable expenses incurred in bringing this motion under Rule  
16 37(a)(5)(A), Mont. R. Civ. P.

17 For the reasons stated above,

18 **IT IS ORDERED** that Defendants' *MOTION FOR PROTECTIVE ORDER* is **GRANTED**.

19 **IT IS FURTHER ORDERED** that a hearing on the issue of movant's reasonable expenses  
20 in bringing this motion is hereby set on Tuesday, the 18<sup>th</sup> day of June, 2013, at the hour of 1:30  
21 p.m. or as soon thereafter as counsel may be heard.

22 DATED this 7<sup>th</sup> day of May, 2013.

23   
24 \_\_\_\_\_  
25 **BLAIR JONES, District Judge**

26 cc: Kelly J. C. Gallinger      Joel Todd  
27 J. Michael Young          Michael B. Anderson  
28 Tammy Wyatt-Shaw        Brendon J. Rohan  
Randall G. Nelson        Calvin J. Stacey

**CERTIFICATE OF SERVICE**


This is to certify that the foregoing was duly served by mail or fax upon  
the parties or their attorneys of record at their last known address  
this 7<sup>th</sup> day of May, 2013  
By:   
Court Administrator to HON. BLAIR JONES

Exhibit 9

**From:** lash@wispwest.net  
**Subject:** Re: we are concerned and want to know more  
**Date:** July 28, 2015 at 4:03 PM  
**To:** Daniel O'Connell dko@mac.com

Hello again,

Yes I would agree that anyone of those at the meeting on May 18, 2015 could have taken the loose pages of minutes. In fact, when I first learned of this allegation, I thought how can it be proven.

Donna

PS I should be home from work at Chico about 6:45 this evening - things are getting quite busy as this day winds down, thus I am not sure when I can get back to the keyboard. I appreciate your time today. THANKS.

Hi Donna,  
Can you answer my question regarding the May 18, 2015 GLA Board meeting:  
Do you agree that anyone of the 28 landowners present at the GLA meeting could have  
accidentally picked up these loose pages of minutes?  
Sincerely,  
Val

*These*

*"Exhibit 9"*