

SEP 08 2015

Daniel & Val O'Connell
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PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

2015 SEP 4 PM 3 55

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

BY SMELLY 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

PLAINTIFFS RESPONSE TO DEFENDANTS' ANSWER TO PLAINTIFFS' [COUNTER]
MOTION FOR PROTECTIVE ORDER & SANCTIONS AGAINST GLA DEFENDANTS

COMES NOW the above named Plaintiffs Daniel and Valery O'Connell, and respond to Defendants' Answer To Plaintiffs' ...[Counter] Motion For Protective Order" & Sanctions Against GLA Defendants. Defendants answer to Plaintiffs' Counter-Motion For Protective Order is hypocritical for being a hodgepodge of false claims, excuses, tangents, and it's Defendant who attempt to muddy the waters when GLA disregarded substantial evidence as follows:

ARGUMENT

- 1) FACT: Defendants' answer (pp.2) correctly stated, "Plaintiffs admit they have conducted [numerous] discovery in this case" and "Plaintiffs do not need nor request any more discovery at this time." P.'s Br. At 19 (Aug. 7, 2015).
- 2) FACT: GLA Answer (pp.6) admits, "GLA has accommodated past [O'Connell] document requests.. as informal discovery" at the same time Plaintiffs conducted formal discovery. GLA's motion now asks this court to ban all O'Connell "member document requests"

“except through [formal] discovery” contrary to the 2012 settlement agreement (Exhibit 3.3) that requires GLA “provide O’Connells with all documents” allowed under Ch. 35 laws.

- 3) FACT: McSherry’s affidavit, being a GLA employee, is not clear and convincing evidence. O’Connell affidavit & witness–Donna Anderson said any of the 28 members “could have taken those loose pages of minutes” after GLA made them available and Val passed them around the meeting room.
- 4) FACT: Plaintiffs’ May 18, 2015 recording is absent any “discussion of lawsuits” (per Exhibit 1.1) & Plaintiffs affidavit (¶ g.) shows May 18th recording and recorder was always “in plain view,” showing GLA Defendants inadvertently allowed Plaintiffs to record, no matter what the recording contains; disproving any alleged violation of “client-attorney privilege.”
- 5) FACT: GLA motion seeks a protective order under rule 26(c) for “the destruction and surrender of member recordings” & “statement(s) published on..[www.mygla.org]” (contrary to §45-8-213(c) MCA and MT. Constitution Art. II, Sec. 7 free speech rights); & seeks a protective order under rule 26(c) for “the return of GLA [copies]” of “GLA meeting minute [copies]” without any proof of who removed them from the meeting room; & seeks to deny member document requests (except through discovery); contrary to GLA/O’Connell Settlement Agreement (Exhibit 2) & state laws §35-2-906, 907, & 201.

These facts above demonstrates the necessity of a Counter-Motion & Sanctions against GLA Defendants for their refusal to make any meaningful attempts to resolve the issues, and for Defendants motion having no authority to seize Plaintiffs property (recordings), or censor member website article(s) as unconstitutional having nothing to do with discovery, and violation of the 2012 settlement agreement by demanding the court create “a new obligation between parties” by requiring O’Connell “member document requests” be made only “through discovery.”

ARGUMENT

1. FACT: Defendants' answer (pp.2) correctly stated, "Plaintiffs admit they have conducted [numerous] discovery in this case" and "Plaintiffs do not need nor request any more discovery at this time." P.'s Br. At 19 (Aug. 7, 2015).

In bears repeating that(Exhibit 8) Carbon County May 2013 court order was granted against Michael Sullivan, because he refused to conduct any "formal discovery" whatsoever, and Plaintiff Sullivan (Reply Brief pp.3) admitted using member document requests **instead of** "formal discovery." This admission was the basis of Jones' orders granting Remington Ranch to compel Sullivan's "formal discovery." This present case (DV-11-114) is unlike *Sullivan v. Remington Ranch Assoc. Inc.* case because Sullivan's refused to conduct any "formal discovery" in that case, and in this case (114) Plaintiffs already conducted numerous discovery for hundreds of documents, written depositions, interrogatory requests, and admissions requests. And O'Connells do not need nor request any more discovery at this time.

Defendants Answer (pp.5) yet argue 'Plaintiffs response demonstrates the need for them using the rule 26 discovery procedure' and (pp.7) argue "Plaintiffs give no good reason why they should not be required to conduct [more] discovery..." Not true. Plaintiffs' counter-motion clearly argued GLA's rule 26 motion "governing discovery," offers no authority to force Plaintiffs to conduct more discovery. In fact this case has another thing Remington case lacks; this case cites the 2012 settlement agreement which contract (attached Exhibit 3.3) requires GLA "provide O'Connells with all [member] documents" allowed under CH. 35 laws. In fact, Defendants offered no proof otherwise and inappropriately try to apply another district court order to this case in violation of this 2012 settlement agreement contract as follows below:

2. FACT: GLA Answer (pp.6) admits, "GLA has accommodated past [O'Connell] document requests.. as informal discovery" at the same time Plaintiffs conducted formal discovery. GLA's motion now asks this court to ban all O'Connell "member document requests" "except through [formal] discovery" as contrary to the 2012 settlement agreement (Exhibit 3.3) that requires GLA "provide O'Connells with all documents" allowed under Ch. 35 laws.

GLA's rule 26 motion "governing discovery," offers no authority to force Plaintiffs to conduct more discovery already completed for this case. Defendants absurdly demand Plaintiffs conduct more discovery allegedly "to avoid repetitive [document] requests." (pp. 5 Defendant

Answer) The fact remains that “repetitive” document requests are not viable nor possible, since everyone agrees that discovery was completed for this case.

However, GLA’s motion demanding O’Connells document requests be made only through discovery violates the 2012 settlement agreement (attached Exhibit 3.3) signed by O’Connells and signed by GLA Board; which says, “2. The GLA will provide O’Connells with all documents to which they are entitled pursuant to the Montana Non-Profit Corporation Act [§35-2-906 & 907] and GLA By-Laws upon request.”

Since 2011, GLA granted most O’Connell “member document requests” at the same time discovery was conducted. GLA motion suddenly denies all O’Connell “member document requests” contrary to this 2012 settlement agreement requirement. In fact, GLA motion asks the court to create “a new obligation between parties” by requiring O’Connell “member document requests” be made only “through discovery” requests.

Citing Mt. Supreme Court Opinion regarding contract law §28-1-1502 MCA and Kenison v. Anderson, the court said: “novation...requires substitution of a new obligation between the same parties with intent to extinguish the old obligation” (Kenison v. Anderson (1928), 83 Mont. 430, 272 P.2d 679, (subpart 1)).

GLA’s motion fails under this Opinion, because GLA offered no evidence of any novation, & O’Connells obviously never agreed to any such novation. There is no authority for this court to “substitute a new obligation” for an old one by requiring O’Connells conduct MORE “discovery” which has the effect and “intent to extinguish GLA’s old obligation” under the 2012 settlement agreement. Thus GLA motion lacks authority to deny their contract obligation to provide “O’Connells with all documents..” under Ch. 35 law and bylaws.

These facts prove GLA’s motion seeking to require O’Connells conduct “discovery” is meritless, frivolous, and violates GLA’s contract obligation “to provide O’Connells with all documents...” under the 2012 settlement agreement; which warrant sanctions against the GLA and counter-motion for a protective order requiring GLA follow the 2012 settlement agreement.

Furthermore, GLA’s new “Privacy Policy” also sought to extinguish GLA’s old obligation under the 2012 settlement agreement. (See Plaintiffs’ counter-motion Exhibit 6 “Privacy Policy” & pp. 15) After 4 years GLA suddenly voted to adopt GLA’s “Privacy Policy” to deny

O'Connell "member document requests" now deemed "private documents" contrary to GLA's contract obligation "to provide O'Connells with all documents" per 2012 settlement agreement.

GLA's Answer falsely states (pp.6) that Plaintiffs claim other members in the GLA have made requests for corporate documents and received them. This is a lie never said by Plaintiffs. As proof, Exhibit 4.4 is a letter to the GLA Board showing GLA denied several members document requests several months now as published here: <https://glastonburylandownersforpositivechange.wordpress.com/letters-comments/glfpc-email-to-gla-board-7-2-2015/> GLA landowners NOT a party to this case report the GLA has so far denied all their document requests:

Exhibit 4.4 bottom of last page says: "Update: As of 7-23-2015 the GLA Board of Directors has chosen to ignore our questions and request for information. Update: As of 8-16-2015 the GLA Board of Directors still ignores our questions and requests."

These facts above prove GLA's motion claim demanding O'Connells conduct more "discovery" is meritless, frivolous, and has nothing to do with them being a party to this case since all members were also denied document requests. GLA's Answer (pp.7) makes another false allegation that Plaintiffs "counter motion is for a protective order to relieve them from conducting more discovery."

To the contrary, these facts above prove GLA's motion claim demanding O'Connells conduct more "discovery" is meritless, frivolous, and has nothing to do with them being a party to this case AND 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; which warrant sanctions against the GLA and counter-motion for a protective order requiring GLA follow the 2012 settlement agreement.

3. FACT: McSherry's affidavit, being a GLA employee, is not clear and convincing evidence. O'Connell affidavit & witness–Donna Anderson said any of the 28 members "could have taken those loose pages of minutes" after GLA made them available and Val passed them around the meeting room.

McSherry's affidavit being a GLA employee is not clear and convincing evidence. GLA employee–McSherry being a GLA employee raises a serious question of her affidavit not being

impartial but bias. For instance, perhaps McSherry is seeking a raise for being GLA's sole witness. Yet GLA motion claim relies solely on GLA employee--McSherry's affidavit; which affidavit does not say who removed these minutes from the meeting room. This is a key fact, because GLA made these minutes available for all members to view and copy by simply placing the minute binder on a table.

So it is only fair to agree, as O'Connells' sworn affidavit (§ h) AND witness Anderson both say, "anyone of those [members] at the meeting on May 18, 2015 could have taken those loose pages of minutes." (see Anderson witness Exhibit 9 from Counter-motion). O'Connells affidavit (§ h) cites their July 14th letter to the GLA that sought to resolve this dispute, but this following letter was ignored by the Defendants for not good cause:

"Regarding missing minutes ... it is possible anyone of 28 members present at the May meeting took the minutes accidentally...If you [GLA] 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."

This is a key fact, because 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. GLA omitted these important facts in their motion, and omitted O'Connell's offer of payment to resolve this dispute IF GLA provided them evidence.

Now GLA's Answer (pp 5 claims, O'Connells "offer to pay for the minutes after the fact does not make it right." Really? So Defendant GLA refusal to respond to this O'Connells offer, and GLA refusal to provide any proof of GLA's claim outside court (as O'Connell reasonably requested) is better? What a mockery the GLA makes of the legal system.

Since Defendant GLA never responded to O'Connells offer, and never provided any proof of GLA's claim outside court (as O'Connell reasonably requested); this shows GLA motion is fatally flawed for violating rule 26(c) requirement to "in good faith confer with [O'Connells] in an effort to resolve the dispute without court action."

Plaintiffs therefore requests sanctions against GLA Defendants for their failure to "in good faith confer with [O'Connells] in an effort to resolve the dispute without court action" (per rule

26(c); and request sanctions for motion costs, fines for GLA's meritless, frivolous and vexatious rule 26 motion claim having nothing to do with facts or discovery per rule 26.

4. FACT: Plaintiffs' May 18, 2015 recording is absent any "discussion of lawsuits" (per Exhibit 1.1) & Plaintiffs affidavit (¶ g.) shows May 18th recording and recorder was always "in plain view," showing GLA Defendants inadvertently allowed Plaintiffs to record, no matter what the recording contains; disproving any alleged violation of "client-attorney privilege."

GLA motion & Answer (pp.3) alleges that O'Connells "recording shows ...that this lawsuit was mentioned by the attorney [Seth Cunningham] ...the board was discussing privileged matters... [&] Plaintiffs attempt to deflect- they recorded an attorney-client privileged meeting."

Not true! Plaintiffs affidavit (¶ g.) says O'Connells' recorder was always "in plain view," showing GLA inadvertently allowed Plaintiffs to lawfully record the meeting, no matter what was said by anyone. CD-1 Exhibit & Exhibit 2 (counter motion) transcript recording yet contained NO "mention of any "lawsuit" by the attorney Seth:

O'Connell May 18th recording (in pertinent part):

"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...[indistinct]...

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

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

Obviously O'Connells' recording of Seth was NOT a discussion of any "lawsuit" or "litigation" So why did Kehoe falsify his sworn affidavit (July 7, 2015) to say it was(?):

Kehoe affidavit: "3. The GLA's attorney called in and was discussing this litigation with the board when Plaintiff Daniel O'Connell reentered the room and disrupted the meeting...[he] remarked..."I will not publish anything that I hear on this from your private meeting I promise you"...On May 26, 2015, Plaintiffs posted ... [on] www.mygla.org, an article about what was purportedly said during the closed session."

The only thing www.mygla.org website quotes regarding the May 18th meeting was this: "Karleen McSherry (new GLA "administrative assistant) asked the Board, "does anyone want some nuts?" President Daniel Kehoe replied, "No, I've had my fill of nuts tonight."

Yet Kehoe and Seth/Brown Law Firm improperly focused arguments and gave fake allegations anyway. Kehoe and Seth/Brown Law Firm falsely alleging the “lawsuit was mentioned by the attorney” and “discussed” in the recording & website as “privileged information.” Obviously no lawsuit was mentioned nor any privileged information was given in this recording or website, thus both Seth’s motion and Kehoe’s affidavit falsified their statements.

Per rule 11(c)(1) cited below “to deter repetition” of Kehoe and Brown Law Firm who falsifying the facts in both Kehoe affidavit and GLA motion; warrants Plaintiffs’ motion for monetary sanctions against both Daniel Kehoe and against attorney Seth Cunningham of Brown Law Firm.

M.R.Civ. P. RULE 11(b): “...By presenting to the court a pleading, written motion, or other paper ... an attorney or unrepresented party certifies to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

M.R.Civ. P. RULE 11(c)(1): “In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee. (4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct...”

5. FACT: GLA motion seeks a protective order under rule 26(c) for “the destruction and surrender of member recordings” & “statement(s)” allegedly on[www.mygla.org] (contrary to §45-8-213(c) MCA and MT. Constitution Art. II, Sec. 7 free speech rights); & seeks a protective order under rule 26(c) for “the return of GLA [copies]” of “GLA meeting minute [copies]” without any proof of who removed them from the meeting room; & seeks to deny member document requests (except through discovery) contrary to GLA/O’Connell Settlement Agreement (Exhibit 2) & state laws §35-2-906, 907, & 201.

Defendants motion seeks to “confiscate & destroy” Plaintiffs lawful recording of May 18th Board meeting, and censor members website(s), and deny all member document requests under the 2012 settlement agreement. There is simply no proof to allow these motion requests, because the recording was lawful, the website article ownership is unknown, and the 2012 settlement agreement allows members “all document requests.” Plus the motion regarding missing minutes lack definitive proof who took them.

GLA's Answer (pp 2-3) falsely allege Plaintiffs "try to argue they were confused by the GLA's letters requesting the recording and takedown of information from www.mygla.org." Plaintiffs never made this argument. Plaintiffs motion instead repeats O'Connells affidavit (§ e.) & Exhibit 2.2 request that GLA provide them specifics of "what if anything, therein published on the ... website (www.mygla.org) is a "breach" of the attorney-client privilege." Defendants refused to answer this reasonable request for proof, thus GLA failed to fairly resolve this dispute outside of court (contrary to rule 26 requirement).

GLA Answer & motion also falsely allege a website article somehow contained "a "breach" of the attorney-client privilege." The American Bar Association website shows this article cited below and O'Connells recording were NOT "privilege[d]:"

The American Bar Association website says, "privileged communications are usually [when] the communication was made in confidence for the primary purpose of obtaining legal advice....The attorney-client privilege is not to be construed more broadly than necessary to effectuate its purpose. *See Hopson v. Mayor of Baltimore*, 232 F.R.D. 228, 236 (D. Md. 2005). If the communication predominantly concerns business matters, the privilege does not apply. *De Espana v. American Bureau of Shipping*, 2005 WL 3455782 at *2 (S.D.N.Y. Dec. 14, 2005)." (<http://apps.americanbar.org/lpm/lpt/articles/mgt12062.shtml>)

This American Bar Association above quote shows the website article and the O'Connells recording were NOT "privilege[d]" information, because the recording and website contained NOTHING involving "legal advise."

Without proof, GLA falsely allege O'Connells wrote and published the article in question involving the May 18th meeting. GLA fabricated this allegation, because all website articles are anonymous publications having no names of any authors and contained NOTHING from the May 18th recording except Kehoe calling members "nuts."

Even so, GLA motion falsely claim to "need" this recording, yet GLA have their own recording of the meeting, plus BEFORE procuring Plaintiffs' copy, GLA/Kehoe July 7th affidavit swore to already know what was said on the recording, and GLA Board were present at this meeting. These facts prove GLA's motion was NOT "necessary to compel ... production," & GLA's motion was an unnecessary waste of time and costs to all; which facts warrant sanctions against the GLA for GLA refusal to "resolve the dispute without court action," and counter-

motion for a protective order preventing GLA from “confiscating and destroying” Plaintiffs’ property of this lawful recording.


Most importantly, no statute or rule allows a motion by GLA which seeks to “confiscate & destroy” Plaintiffs property of a lawful recording, much less force Plaintiffs to conduct more discovery, and no authority for this court to “substitute a new obligation” for an old one by requiring O’Connells conduct more “discovery” which has the effect and “intent to extinguish GLA’s old obligation” under the 2012 settlement agreement.

CONCLUSION

As warranted by facts above, “Montana district courts possess inherent power to sanction willful or reckless conduct, especially when combined with frivolousness, harassment, or improper purpose.” *Motta v. Granite Co. Commrs.*, 2013 MT 172, ¶ 17, 370 Mont. 469, 304 P.3d 720. For the same, GLA’s willful conduct based on Kehoe’s false affidavit, Seth/Brown’s false statements in a frivolous, vexatious motion, and questionable impartiality of employee—McSherry as witness, and GLA failure to “in good faith confer with [O’Connells] in an effort to resolve the dispute[s] without court action;” all show Plaintiffs counter-motion is warranted to grant sanctions and protection order against GLA and Brown Law Firm.

Respectfully submitted this 4th day of September, 2015,

By: 
Daniel O’Connell

By: 
Valery O’Connell

Certificate of Service

A true and correct copy of forgoing document(s) were sent to the following parties via email the same day & via first class mail on the following business day to:

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

Exhibit 1.1

Glastonbury Landowners Association, Inc.
Board of Directors Meeting Minutes – Final

May 18, 2015

CONFIDENTIAL – DO NOT COPY

5.8 Technology Committee Report – Ross – Tabled.

5.8.1 Timeframe for implementing Landowner E-mail Opt-In
Tabled also until the June meeting.

5.9 Governing Documents Committee Report – DK / CM

Dan reported that the Governing Documents Committee met at 7:00 p.m. on April 22nd at Spectec. Present at that meeting were co-chairs Dan and Charlotte as well as Donna Lash-Andersen, Sally Muto, Linda Ulrich, Ia Williams and Regina Wunsch. The committee revised a draft change to Section 11.06 following input from the board regarding the interest rate charged if an assessment remains unpaid for thirty day. The proposed rate would be set by the Prime Rate as posted in the Wall Street Journal plus 3% per year simple interest. The committee also reviewed the Covenants, Section 3, for clarifications to the Definitions. The suggestions are to delete 3.11 “development” and replace it in three areas (6.3, 7.3, and 9.06) with “community.”

Dan reported that the committee also met on May 13th at 7:00 p.m. at Spectec. Present at that meeting were co-chairs Dan and Charlotte, Alyssa, Donna Lash-Andersen, Jerry Ladewig, Sally Muto, Linda Ulrich, Ia Williams and Regina Wunsch. The committee reviewed the online comments on the proposed new Committees section to replace the Bylaws Article VI 1. Committees. The Committee section was edited to clarify the difference between the kinds of committees and to reflect the language of Montana law. The committee also edited Article VI, sections E regarding BoD Vacancies (to be able to fill a vacancy at a regular Board meeting), F and P, as well as Article H, all to remove confusion regarding the reason for special meetings, which are held for one purpose vs. regular meetings in which all areas are covered and discussed.

Dan explained the committee’s desire to edit as much as possible as soon as possible, preferably by July, so the board can review and approve the changes in a timely manner so the draft can be sent to landowners for comment and the final version can be reviewed in a special meeting before the November vote. Dan also noted that the change to the interest rate is to be fast-tracked and during the next committee meeting, May 27th at 7:00 p.m. at Spectec, a timeframe to propose it to the board will be decided upon.

Action Item: Dan will post suggested changes to Google Docs for the Board to review. E-mail Dan with thoughts so the committee can address them on the 27th.

5.10 Community Property Committee Report – CM – Tabled.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. Closed Session

8.1 Discussion of lawsuits – Board

9. Adjournment

Dan adjourned the meeting at 10:55 p.m.

10. Next Board Meeting: June 15, 2015

Exhibit 2.0

(from Counter-Motion
for Protective Order
and Sanctions..)

[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...[indistinct]...

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 2.2

From: Daniel O'Connell dko@mac.com
Subject: O'Connells' Partial Response to GLA/Brown letter dated July 1, 2015 and warning of insurance fraud
Date: July 5, 2015 at 8:38 PM
To: Robert Wallace robhw@wispwest.net, Charlette Mizzi mizzi@wispwest.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@wispwest.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 MHerlinger@brownfirm.com, Sandy Williams swilliams@brownfirm.com
Cc: mcarver@paynewest.com, klingscheit@paynewest.com, ccline@paynewest.com
Bcc: Clare Parker clare@rudyparker.com

Date: July 5, 2015
To: GLA Board & Brown Law Firm (Atten: Michael Heringer)
cc to: Payne West Insurance Company (GLA insurance company in Butte, MT.)
From: Dan and Val O'Connell
Re: GLA attorney letter dated July 1, 2015 threatening to sue O'Connells for recording GLA Board on May 18, 2015

Dear GLA Board & their attorney—M. P. Heringer (Brown Law Firm),

Insurance fraud warning: Your latest letter dated July 1, 2015 entitled "O'Connell v. Glastonbury Landowners Association" cites new legal claim(s) never made before against the O'Connells; which claim(s) have nothing to do with your claims in the pending case DV-11-114. Instead, 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. All GLA attorney costs and fees associated with this protective order are not covered by insurance under this lawsuit, and any attempts to make such insurance claim or to file motion claims under this existing lawsuit will be opposed and legally challenged as possible insurance fraud and more.

This email is also the O'Connells partial response to GLA/Brown letter dated July 1, 2015, about a nonspecific publication on www.mygla.org; demanding confiscating member recordings; and threatening a lawsuit against O'Connells regarding their recording of the GLA Board on May 18, 2015. Note that www.mygla.org is member owned and operated cite, 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.mygla.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.mygla.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.mygla.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."

Sincerely,

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

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@wispwest.net, **Charlette Mizzi** mizzi@wispwest.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@wispwest.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.mvqgla.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.mvqgla.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.mvqgla.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.mvqgla.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 3.3

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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,)

Cause No. DV-2011-193

Plaintiffs,)

**STIPULATED
SETTLEMENT AGREEMENT**

v.)

GLASTONBURY LANDOWNERS)
ASSOCIATION, INC. (the GLA)
Corporation),)

Defendant.)

The parties to the above-captioned matter met for mediation on the 20th 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.

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.

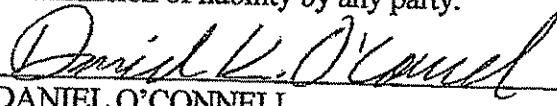
5 5. The parties will dismiss the above-captioned Complaint and Counter-claim with
6 prejudice.

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

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

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


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

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17 DANIEL O'CONNELL
18 Plaintiff

19 Date of Signature: 7/20/2012

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21 
22 VALERY O'CONNELL
23 Plaintiff

24 Date of Signature: July 20, 2012

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26 
27 RICHARD BOLEN
28 President, Glastonbury Landowners Association
Defendant

Date of Signature: 07/20/2012



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

Exhibit 4.4

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.
2. Does the POC monitor and prioritize the Admin Assistant's duties on a day-day or week-week basis? (Necessary to get the most important work done first within her designated hours). How is this done: through

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.

Update: As of 8-16-2015 the GLA Board of Directors still ignores our questions and requests.

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