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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O'Connell & Valery A. O'Connell)
& on behalf of themselves as members of)
Glastonbury Landowners Association.)

Plaintiff(s),)

Cause No. DV-11-114

v.)

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

Defendant(s))

**AFFIDAVIT IN SUPPORT OF DELAY OF ORDERS PENDING RULE 60 MOTION
OUTCOME & RESPONSE AGAINST ATTORNEY FEES & COSTS**

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 over the age of 18, of sound mind to lawfully file this affidavit having personal knowledge of such matters: including Plaintiffs first hand competent evidence attached to the pleading concluding Defendants' attorney fees and costs are NOT reasonable & contrary to Orders.
- (b) "Most Defendants' motion issues for Protective Orders had nothing to do with discovery. So Defendants' other motion issues can not invoke fees and costs associated with discovery per rule 26 & rule 37; which is why they should not and can not be applicable to any award of fees and cost. This makes Defendants award of attorney fees and costs for the entire motion unreasonable."
- (c) Not only is 34.9 hours total an unreasonable amount of hours taken for this one motion for protective orders. "Heringer & Cunningham affidavits do not specify what, if anything, generated the 34.9 hours and \$5112.50 motion costs and fees making it impossible for Plaintiffs to wholly confirm or deny if specific costs or fees are "reasonable" (For example they do not say which are costs and which are fees nor

specifically how these fees/costs were generated absent any description or absent anything like “review of documents, communication with clients, research, drafting, and revising.”)

- (d) Thus 34.9 hours and \$5112.5 amount total claimed is NOT reasonable for this one motion for protective orders, also because Plaintiffs affidavit shows several other attorneys find \$2K to be a reasonable amount for Defendants’ motion, not \$5k. Plaintiffs thus object to Defendants \$5,112.50 motion claim; which is unreasonable and well above \$2,000 max. amount identified in affidavit as “reasonable” for one motion costs and fees. Therefore, only about 20% of Defendants’ motion pleadings for protective order had to do with “Discovery” invoking rule 26 & 37 fees and cost; so only about 20% or \$400 is applicable and “reasonable” to any award of motion fees and cost.
- (e) Plaintiffs thus seek to revoke Orders granting “attorney fees and costs” as unreasonable for absence of any evidence or submission of reasonable fees/ costs; also for lack of any “conclusions of law,” also for absence of sanction findings; and Orders failing to “find the facts specially” for such costs and fees pursuant to these M.R.Civ.P. Rule 52 requirements.
- (f) Plaintiffs’ motion response or objection was justified as motion for Orders of “formal discovery” is an undue burden, since discovery was completed for this case, and Plaintiffs affidavit shows Orders “formal discovery” requirement is unnecessary to this case, thus Orders are an undue burden to require more discovery, and delays this case adjudication to fatally prejudice Plaintiffs rights & case.
- (g) Plaintiffs’ response or objection was justified as motion for Orders of “formal discovery” requirement is in err (as mistake, inadvertence, neglect) since Orders without any stated cause required formal discovery to obtain GLA member documents (cited below) in violation of several state laws (below) and violation of a prior contracts with the GLA called 2012 Settlement Agreement (attached); which prior contract allows Plaintiffs to have all GLA documents “upon request;”
- (h) GLA and O’Connell 2012 settlement agreement (attached) part 1 & 2 was violated (by Orders) that says, “the GLA will provide O’Connells” (Plaintiffs) with “ a current GLA membership list” and “provide O’Connells with all documents as follows to which they are entitled pursuant to the Montana Non-Profit Corporation Act and GLA By-Laws upon request” as follows:

*** All GLA receipts and expenditures for the last 2 years (including check details and cancelled checks) allowed per GLA Bylaw VII.**

*** Minutes of all GLA meetings since Jan. 2014 (including email meeting minutes as "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: authorized by 35-2-433(4)" and §35-2-906 & 907 & 2102 settlement agreement.**

*** The records of all actions approved by the members for the past 2 years; authorized by §35-2-906 & 907 & 2102 settlement agreement..**

- * Financial statements available to members for the past 3 years: per 35-2-911 & §35-2-906
- * List of the names and business or home addresses of GLAs current directors and officers; per §35-2-906 & 907
- * Yearly GLA membership list; including all available "authenticated electronic identification" authorized per §35-2-906 & 907 and per 2012 GLA/O'Connell settlement agreement.

- (i) Sept. 2015 Orders err (as mistake, inadvertence, neglect) and fatally prejudice Plaintiffs without cause for violating another state law ¶28-1-1502 MCA; because GLA offered no evidence of any novation, & since O'Connells obviously never agreed to any such novation, then Sept. 2015 Orders have no authority to "substitute a new obligation" for an old one by requiring O'Connells conduct "formal discovery" to obtain GLA member documents: which Orders have 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.
- (j) "Brown's unreasonable fees & costs submitted October 20, 2015 are contrary to local court rule 15 absent fees and costs being filed with the motion pleading; which fatally harmed Plaintiffs chances to defend against such fees & costs; especially since Orders are absent any finding of "undue burden." This is more proof the Orders granting fees and costs are unreasonable, such such fees and costs were submitted AFTER being granted in violation of local rule 15."
- (k) motion precludes Orders to quash both subpoenas.
- (l) If this court can not deny all claimed attorney fees & costs, then for all the reasons above and within Plaintiffs' rule 60 pleading show this motion is warranted to delay Orders (September 8th) until after the Rule 60 Motion has been fully adjudicated.

FURTHER AFFIANT SAYETH NAUGHT, Dated November 5th, 2014.

Signed Daniel K. O'Connell
Daniel O'Connell

Signed: Valery O'Connell
Valery O'Connell

State of Montana)

ss.

County of Park)

Signed and sworn to before me on 11/5, 2014¹⁵.

(SEAL)

Shelly Breeden

