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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Christal V. O'Connell, Shannon M. O'Connell)	
& Vetsa C. O'Connell (the O'Connell Children).)	
)	
Third Party Plaintiff(s) &)	
& Counter-defendants,)	
)	
Daniel and Valery O'Connell.)	
)	
Plaintiff(s) & Counter-defendants,)	
)	Cause No. DV-11-114
v.)	Hon. Judge Cybulski
)	
Glastonbury Landowners Association, Inc.)	
& current GLA Board of Directors, Judge)	
Cybulski & GLA Attorney—Alannah Griffith)	
)	
Defendant(s) & Counter-claimant(s))	

O'CONNELL CHILDRENS' RULE 60 MOTION AGAINST ALL COUNTERCLAIM ORDERS: Jan. 24th-ExParte Order for hearing, Feb 7th (ExParte bench Order), March 13, 2017 Order, & May 8, 2017 (final Orders)

COMES NOW for the first appearance are Christal O'Connell (age19), Shannon O'Connell(age 17 3/4), & Vesta O'Connell (age14), the above named Third-Party Plaintiffs' & Counter-defendants (hereafter called O'Connell children); and as pursuant to M.R.Civ. P. Rule 60, O'Connell children bring this "Rule 60 Motion Against all Counterclaim Orders: Jan. 24th-ExParte Order for hearing, Feb 7th (ExParte bench Order), March 13, 2017 Order, & May 8, 2017 (final Orders)." This Rule 60 Motion is timely filed less than a year after the final Counterclaim Orders

May 8th 2017; which Counterclaim Order(s) without authority erroneously sanctioned and declared O'Connell parents and also their minor age children "vexatious litigants," simply because the "O'Connell children jointly "own property with their parents" and their parents "might use the children as a proxy." This is the first appearance by the O'Connell Children to this court regarding this case, counterclaim motion, and "vexatious litigant," judgment within the three Counterclaim Orders against the O'Connell children.

This motion is warranted pursuant to Rule 60 & MCA 45-7-401 (1)(a) to asks for relief against GLA "misconduct" and erroneous Counterclaim Orders that fatally harmed and violated O'Connell Childrens' constitutional right of "due process & equal protection" under the law: for GLA failing to gain personal jurisdiction and failing to gain legal authority over the O'Connell children; absent any summons or notice of the counterclaim pleadings to the O'Connell Children; & per M.R.Civ.P. Rule 19, Orders failed to require the O'Connell children (named in the GLA Counterclaim) be joined "as a party;" and Orders failed to ever enjoin O'Connell Children as parties to the counterclaim. As a result, Orders fatal harmed & declared O'Connell minor age children (Shannon & Vesta) & adult Christal O'Connell "vexatious litigants" without any legal representation and legal jurisdiction to do so. Also, O'Connell Children are "so situated that disposing of the action in the person's absence has as a practical matter obviously impaired or impeded [O'Connell Childrens'] ability to protect the interest."

In fact, before Counterclaim Orders against the O'Connell children were filed, the parents' affidavit says the Court denied their requests for a hearing with all parties; and denied requests to the Court to appoint a legal representative for their children (see parents affidavit attached to their rule 60 motion* cited below). Now almost a year later, and after thirty(30) plus

attorneys were contacted in Montana, none would accept representation for O'Connell children after the fact (after the Orders). Instead, Christal O'Connell, a Criminal Justice major in college has since sought RESEARCH & material for this pleading from attorneys in California where she is a student resident; which enabled Christal & Shannon to write this rule 60 motion pleading themselves.

This is the **first** appearance by O'Connell children to this court (regarding this case, and counterclaim motion, and judgment against them), because unlike their parents, O'Connell children were never made a party to this case or counterclaim pleadings. O'Connell children were also never noticed and served the counterclaim, even though Christal O'Connell was a legal adult the whole time. O'Connell children's Rule 60 Motion shares with the O'Connell Parents' a common question of law or fact involving the O'Connell family all deemed "vexatious litigants." Thus, O'Connell Parent's June 2017 Rule 60 Motion is hereby included as if fully stated herein this O'Connell children motion. The O'Connell Children, like their parents, were exposed to similar liability by GLA's "vexatious litigant" counterclaim, as summarized here:*

*For this counterclaim case, O'Connell parents' rule 60 affidavit pleading shows that, regarding the eight cases listed in the March 2017 Counterclaim Order, Valery O'Connell won claim(s) in four out of five prior lawsuits with other parties as she was a Defendant and/or Plaintiff, and the O'Connell parents settled claims in their favor in all three suits against the GLA. Contrary to this record, Judge Cybulski Counterclaim Orders erroneously said that O'Connell parents' three lawsuits against the GLA, and Valery O'Connell's five prior suits with other parties, that those eight cases total somehow amount to vexatious litigation **AFTER** those cases were already settled by other judges, as follow:

O'Connell's won all claims for relief in the 193 case by a 2012 settlement agreement; the 220-164 joinder case was settled by GLA removing the original litigious contract with Minnick Management, and the court dismissing all other claims as untimely; then the final 114 case was dismissed 2016 by summary judgement, but not before O'Connell's motion against dismissing the 114 suit on summary judgment shows some claims had been settled out of court in O'Connells' favor. The Montana Supreme Court in 2013 reversed and remanded the third case DV-11-114, as unjustly dismissed on summary

judgment. In 2017, the same District Court Judge Cybulski again dismissed this same complaint and claims on summary judgment "for failing to state a claim upon which relief can be granted;" which claims for relief were yet the same claims that the Supreme Court Opinion in 2013 said were "claims for which relief can be granted." Thus none of O'Connells cases were ever found to be vexatious, prior to this counterclaim. Also, the District Court failed to allow O'Connell Parents time for opposing pleadings against the Jan. 2017 counterclaim motion, and failed to give O'Connell Parents reasonable or timely notice of counterclaim hearing held just ten days after the Feb. 2017 Orders were mailed out that set the counterclaim hearing date in Feb. 2017. (Note: Note: in a prior case DV-16-188 filed by Christal O'Connell, that case was immediately dismissed when the Court found Christal "not a real party of interest per Mont. R. Civ. P. 17(a):")

Now O'Connell childrens' Rule 60 Motion is filed almost a year later that reveals GLA Counterclaim & all Counterclaim Orders purposely and/or negligently denied O'Connell Childrens' their constitutional due process rights; and the Counterclaim Motion and Orders are legally flawed for want of subject matter jurisdiction and want of personal jurisdiction over the O'Connell Children. This is because Counterclaim Motion and Orders in error failed to ever notice and service the O'Connell children; and Counterclaim Motion and Orders are fatally flawed that deny any legal representation to O'Connell children (as required by M.R.Civ.P. Rule 17) to defend against the Counterclaim Motion filed against them. All together, O'Connell children rule 60 motion is warranted that herein seeks relief to dispose of all erroneous Counterclaim Orders against the O'Connell children, as follows:

- 1) This Rule 60 relief allows reversal of all Counterclaim Orders (May 8, 2017, March 13, 2017, & February 7, 2017)) that without jurisdiction and authority and without a summons and notice to O'Connell Children, granted GLA's ex-Parte hearing and "Motion to Have Plaintiffs And Their Children Declared As Vexatious Litigants..." against O'Connell Childrens' constitutional rights cited herein, such as due process rights and rights under MT.R.Civ.P..

M.R.Civ.P. Rule 11 says in part, "In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated [by GLA & attorney Griffith's false "Representations to the Court" claiming O'Connell Children were "vexatious litigants" presented for an improper purpose to gain procurement of an order granting GLA's counterclaim], the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation..." & 11(c) ((2) If warranted, the court may award to the prevailing party the reasonable expenses, including attorney fees, incurred for the motion."

- 2) This Motion also asks for Sanction relief by the court per M.R.Civ.P. Rule 11 to recover O'-Connell children costs & future attorney fees against the GLA & GLA Attorney—Ms. Griffith. Sanctions are warranted because the GLA failed to enjoin and properly serve O'Connell children; & and denied or harmed O'Connell Children out of any due process when GLA & counsel failed to agree to allow a legal guardian for O'Connell minor age children (contrary to M.R.Civ.P. Rule 17 requirement); and GLA also failed to require O'Connell children be enjoined as parties; GLA also denied giving the O'Connell children any notice and service of the Counterclaim motion. Thus O'Connell children (one adult child and two minor age children) could not defend themselves against GLA Counterclaim containing false "Representations to the Court" that claimed O'Connell Children (who have never been a party to any case) were somehow "vexatious litigants." This GLA claim obviously was presented for an improper purpose to gain procurement of an order granting GLA's counterclaim against O'-Connell children. Since O'Connell children could not find representation for this pleading after the Orders, they are now forced to file this pleading themselves to meet the one year deadline for rule 60 pleadings. As Christal is an adult and Shannon will soon be an adult in a few weeks April 2018, this pleading is proper and necessary to file before the rule 60 one year deadline expires in April.
- 3) O'Connell children Motion, as pursuant to MCA 45-7-401 (1)(a), also asks for relief warranted against Griffith & GLA for their violation of O'Connell Childrens' constitutional right of

“due process & equal protection” under the law failed to gain personal jurisdiction and failed to gain legal authority over the O’Connell children absent any summons and notice to O’Connell Children; which resulted in a fatal finding to grant GLA’s ex-Parte hearing and “Motion to Have Plaintiffs And Their Children Declared As Vexatious Litigants....” GLA “Official Misconduct” includes GLA filing motion against O’Connell children to request “sanctions and declare O’Connell children vexatious litigants” as obviously false, since GLA and Griffith knew two O’Connell children were minor age and can not litigate; and sanctions against GLA Counterclaim absent proper jurisdiction and authority over the O’Connell children; and GLA Counterclaim & Orders lack of summons and notice to O’Connell Children ;especially since O’Connell children were never made parties to the case, as required under M.R.Civ.P, Rules 4,6, ect., nor allowed a guardian be appointed for O’Connell minor age children (as rule 17 required). Therefore justice so demands to sanction the GLA and reverse all these fatal errors in the Counterclaim Orders that “sanctioned and declare O’Connell children vexatious litigants.”

I. BACKGROUND

At the time of the Counter-claim Orders (May 8, 2017, March 13, 2017, & February 7, 2017), the O’Connell children WERE then (Christal—age 18, Shannon—age 15 and Vesta—age 13). Now almost a year later, O’Connell children ages have changed. Again Christal is a legal adult; Shannon will be 18 and an adult in April 2018. This pleading by all three O’Connell children was necessary to file now before the rule 60 one year deadline, since O’Connell children could not find representation for this pleading. So they were forced to file this pleading them-

“due process & equal protection” under the law failed to gain personal jurisdiction and failed to gain legal authority over the O’Connell children absent any summons and notice to O’Connell Children; which resulted in a fatal finding to grant GLA’s ex-Parte hearing and “Motion to Have Plaintiffs And Their Children Declared As Vexatious Litigants....” GLA “Official Misconduct” includes GLA filing motion against O’Connell children to request “sanctions and declare O’Connell children vexatious litigants” as obviously false, since GLA and Griffith knew two O’Connell children were minor age and can not litigate; and sanctions against GLA Counterclaim absent proper jurisdiction and authority over the O’Connell children; and GLA Counterclaim & Orders lack of summons and notice to O’Connell Children ;especially since O’Connell children were never made parties to the case, as required under M.R.Civ.P, Rules 4,6, ect., nor allowed a guardian be appointed for O’Connell minor age children (as rule 17 required). Therefore justice so demands to sanction the GLA and reverse all these fatal errors in the Counterclaim Orders that “sanctioned and declare O’Connell children vexatious litigants.”

I. BACKGROUND

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selves. Also, O'Connell children with their parents (Daniel and Valery O'Connell) are co-owners on a deed of property, lot 5C in the North Glastonbury subdivision in Emigrant, Montana. The O'Connell children, as part of the parents' living will, were added to their parent's property deed in 2012.

O'Connells' February 2017 motion pleading for extension of time was denied that requested to reschedule that counterclaim hearing held Feb. 7, 2017 held Ex-parte without any of O'Connells; and requested reversal of Feb. 7th 2017 bench Orders that Ex-parte also granted counterclaim motion made without any opposing pleadings or proper notice for opposing pleading. After it denied any extension of time to reschedule that counterclaim Ex-Parte hearing, March 13, 2017 Orders then granted GLA's counterclaim motion for actions against the entire O'Connell family including their minor age children. That March 2017 Order granted GLA's counterclaim motion (filed Jan. 2017) "Motion to Have Plaintiffs And Their Children Declared As Vexatious Litigants...". Then May 8, 2017 Orders awarded counterclaim sanction amount for GLA's Counterclaim Motion attorney costs and fees; which Orders denied O'Connells' April 2017 **PRIOR** motion and stated request for 'a hearing on those attorney fees and costs' (see O'Connells March 15, 2017 motion titled "PLAINTIFFS' MOTIONS REQUEST FOR EXTENSION OF TIME TO ANSWER [counterclaim] & DELAY HEARING [on sanctions] RE: DEFENDANTS' AFFIDAVIT OF ATTORNEY FEES & COSTS).

Thus all Counterclaim Orders (May 8, 2017, March 13, 2017, & Feb. 7th 2017 bench Orders) declared O'Connell parents and also their minor age children to be "vexatious litigants," simply because the "O'Connell children jointly "own property with their parents" and the parents "might use the children as a proxy."

O'Connells then filed a Rule 60 motion pleading against all Counterclaim Orders to argue the fact that GLA counterclaim and Counterclaim Orders are fatally flawed having numerous errors, like failing to establish subject matter jurisdiction over the O'Connells and their children for this counterclaim Order. GLAs' counterclaim motion & Counterclaim Orders also failed to establish personal jurisdiction over the O'Connell children; because O'Connell children were NEVER a legal party to this or any other case in Montana, or any other state; and there is no history of any O'Connell cases having any vexatious litigation ever. In fact, none of the eight cases, as listed in the March 2017 District Court Counterclaim Order, were ever found to be "vexatious" prior to this counterclaim Order. Thus, Counterclaim Motion & Orders should be dismissed that harms O'Connell Children, because the Counterclaim Motion & Orders arbitrarily & capriciously violated O'Connell Childrens' constitutional due process rights, and more for lacking any evidence of vexatiousness; and lacking subject matter jurisdiction and personal jurisdiction over the O'Connell Children; and failure to appoint O'Connell children a guardian as required by M.R.Civ.P. Rule 17(c); much less lack of any history of vexatious litigation.

II. Rule 60 Motion Claims & Argument

This Rule 60 Motion presents arguments that all three Counterclaim Orders (February, March & May 2017) all denied due process rights to O'Connell Children; and these Orders lack subject matter jurisdiction and personal jurisdiction over the O'Connell Children to sanction and declared the entire O'Connell family, even their minor age O'Connell children "vexatious litigants."

For instance, Judge Cybulski counterclaim Orders February 27, 2017 (pp. 7-8) claimed "most of the O'Connell's filings were filed erroneously or without any legal support" that he

calls “vexatious” pleadings. Judge Cybulski final Order May 2017 that list eight prior cases (all by Val O’Connell ONLY) fails to show which specific case filings (within eight prior settled cases) he is referring to as “vexatious” other than saying there were “several motions denied” “two quashed subpoenas” (GLA case 220), & “Bolen & Allen’s opinions” for another GLA case (114 case).

More importantly, Valery O’Connell was the only O’Connell member represented by those cases; and she won claims in five cited cases; or else Val was a defendant in two more cases, none of which prior cases were ever found to be erroneously filed or without legal support. Cybulski’s final Order is thus factually proven false by the record, since none of the judges in those eight cited cases (listed in the Order) made any findings of vexatious litigation at all.

All together, those prior eight cases listed in the Counterclaim Orders had nothing to do with any other O’Connell family members; and prior cases do NOT “illustrate the O’Connells’ vexatious nature” as the Judgment claims, because none of these prior legal cases were ever deemed “vexatious” for any reason; especially since Val was a defendant or else as a Plaintiff, she won claims in five out six cases listed in the Counterclaim final Order. Judge Cybulski counterclaim Order yet had the effect of overturning all prior judges settled rulings to retro-actively declare O’Connell’s prior settled cases “vexatious” evidence and “erroneous or without any legal support.” Cybulski Orders obviously ignored facts of case outcomes that favored O’Connell or that she was a defendant; especially three cases in which Valery O’Connell was represented by an attorney, or else defendant in two other cases, and won claims in all other cases.

Efforts by GLA attorney—Alannah Griffith and District Judge Cybulski amount to “Official Misconduct” for their deliberate and negligent failure to gain subject matter jurisdiction(no

vexatious history) & personal jurisdiction over the O'Connell children (whom Defendants failed to seek to enjoin the O'Connell children as parties). Simply stated, O'Connell family & children have never been afforded any due process in this Counterclaim and case Orders lacking proper hearing notice, lacking equal access to file court pleadings, or any other form; lacking any history of vexatiousness; & lacking legal and personal jurisdiction over O'Connell children & parents.

I. Personal Jurisdiction

§Title 25 Ch. 20, Part IV. of the M.R.Civ.P, Rule 17(c)(2) says, "Without a Representative. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem -- or issue another appropriate order -- to protect a minor or incompetent person who is unrepresented in an action."

As required by this M.R.Civ. P. Rule 17 (c) above, the District Court yet failed to appoint a guardian for the minor age O'Connell children (Vesta was age 13, Shannon was age 16 at the time of the first Order), before sanctioning them. The record shows (O'Connells Feb. 24th motion, & O'Connell's June 2017 Rule 60 appeal) and District Court were all told (by their parents Feb. 2017 Motion filing and again by the parents' June 2017 motion pleading) that this rule 17 required the court to appoint a guardian for their "minor age children." Yet the GLA, Attorney Griffith purposely or negligently denied O'Connell parents repeated requests to appoint a guardian for their O'Connell children (as required by Mont.R.Civ.P. rule 17(a)(3)). The Court failed to ever seek personal jurisdiction over the O'Connell children even after all these O'Connell pleadings (Feb. and June 2017) made them aware of these defects; which shows "intentional and very personal" actions to knowingly refuse to seek personal jurisdiction over the O'Connell Children. Since the O'Connell children were never real parties to this counterclaim, the court

should have also first required them be made parties before failing to appoint a guardian for the O'Connell children.

FEDERAL COURT OPINION VOIDS COUNTERCLAIM ORDERS:

“The court should be “powerless to proceed” on any matters if it is not satisfied that it has personal jurisdiction.” *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999).

This Federal Court Opinion above applies here in that all counterclaim orders involving the O'Connell children should be deemed null and void without authority and jurisdiction for failing to ever contact the O'Connell children; much less ever seeking personal jurisdiction over the O'Connell children since O'Connell children were never enjoined as real parties of interest in the GLA counterclaim motion . Therefore the Court has authority under Mont.R.Civ.P. rule 17(a)(3)), to now dismiss the counterclaim action against the O'Connell children for failure to enjoin the O'Connell children as real parties:

Mont.R.Civ.P. rule 17(a)(3)): “Joinder of the Real Party in Interest. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.”

Furthermore O'Connell Children argue that their parents, as PRO SE parties, can **not** legally represent their own children against motion & Orders that declared O'Connell Children “vexatious litigants.” Court Orders in error should thus be reversed and dismissed per this Rule 17(a)(3) for failing to seek personal jurisdiction over the O'Connell children; and for fatally

harming O'Connell children due process right to a "guardian ad litem...to protect a minor or incompetent person who is unrepresented in an action" per rule 17(c)(2) on page 10 above.

These authorities (Opinion and rules) repudiates and should legally nullify the Court Orders (Feb 7th, & Feb. 13, 2017) being absent any notice and summons to O'Connell Children; absent motion to add the O'Connell Children as parties; and absent any Montana court jurisdiction over the O'Connell Children (argued next). Therefore, this Rule 60 relief is warranted per M.R.C.P. Rules 4, 6, 12, and 17 to reverse and dismiss all Orders that declared O'Connell children "vexatious litigants;" absent due process of any personal jurisdiction or legal jurisdiction over the O'Connell children.

II. Due Process Claim

For this Rule 12 Motion to dismiss all counterclaim Orders, O'Connell Children argue that the counterclaim Orders denied them their constitutional due process rights above of personal and legal jurisdiction requirements under the law. O'Connell Children also rely on established court Opinions upholding federal and state constitutional "Due Process" rights. This is because District Court violated O'Connells' "due process" rights, because Orders lacked of due process, lacked proper notice of the hearing granted 10 days later while O'Connell family was out of state, lacked any evidence of "vexatious litigation;" lacked subject matter jurisdiction; and lacked lacked personal authority over the O'Connell children and parents:

- a) Counterclaim Orders failed to notice & serve O'Connell Children any counterclaim pleadings;
- b) Counterclaim Orders also failed to allow time for opposing pleadings on the counterclaim motion and hearing granted 10 days later;

c) Counterclaim Orders failed to allow any proper notice of the counterclaim hearing conducted ten days after notice of the hearing was mailed to O'Connell parents being out of state whose mail forwarded to them did not arrive until after that hearing (see). This due process claim is shown affidavit and evidence attached to O'Connells' Feb. 2017 rule 60 motion included herein as evidence for this motion;

Counterclaim Orders lack of due process, lacked proper notice of the hearing, lacked any evidence of "vexatious litigation," and lacked subject matter jurisdiction and lacked personal authority over the O'Connell children and parents makes all Counterclaim Orders fatally flawed for denial of O'Connell childrens due process rights under the law. As more proof, O'Connell Children argue that "[d]ue process requires a defendant be haled into court in a State forum based on his own affiliation with the State, not based on the random, fortuitous, or attenuated contacts he makes by interacting with other persons affiliated with the State," *Walden v. Fiore*, (Illinois) 134 S. Ct. 1115, 1123 (2014). Judge Cybuski March 2017 judgment that O'Connell Children were deemed "vexatious litigants" simply because they share property with their parents, is not sufficient to confer subject matter and personal jurisdiction over them in Montana. So the Court NEVER gained subject matter and personal jurisdiction over the O'Connell children.

US Supreme Court held the following "due process" criteria must be met by every state:

"in order for a state to assert personal jurisdiction over a defendant in accordance with the demands of due process, the defendant must have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Thus, "it is a violation of due process for any state to make binding a personal judgment against a...defendant with which the state has no "contacts, ties, or relations..."¹

¹ U.S. COMM'N ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUE-PINT FOR REFORM 5 (1992) [hereinafter SUPPORTING OUR CHILDREN].

US Supreme Court concluded, "If a biological parent is subject to jurisdiction in a state forum, it does not automatically subject their child to suit, even though the parent-child relationship is a legal as well as biological one...because no effort had been made to show minimum contacts between those parties and the forum state directly...[yet] minimum contacts with each of the defendants must be shown directly..."²

The only known contact the state court established was only with O'Connell parents, never the O'Connell Children. O'Connell Children are not ever listed as legal parties to the counter-claim March 2017 Judgement, nor any prior suits. District Court March 2017 counter-suit Order thus absent any jurisdiction, erroneously declares O'Connell children (NON-PARTIES TO THIS CLAIM) to be "vexatious litigants;" which violates the O'Connell childrens' due process constitutional rights and protections of "fair play and substantial justice." This is true also because GLAs—Griffith and the state court judge, Cybulski deliberately and negligently failed to seek any personal jurisdiction over the O'Connell children, much less any subject matter jurisdiction over the O'Connell family for having no prior vexatious claims against them. And the record shows NO prior history of any vexatious litigation by any member of O'Connell family; therefore the court had no jurisdiction and cause to sanction O'Connell Children as "vexatious litigants," much less their parents.

To summarize this due process argument, O'Connell children only now established contact with Montana court and made an appearance for the first time by this their motions against all counterclaim Orders. Other than owning property with their parents, there was no prior con-

² Citing Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174, 2186 n.22 (1985); Finance Co. of Am. v. Bankamerica Corp., 493 F. Supp. 895 (D. Md. 1980); Crow 18. See Finance Co. of Am. v. Bankamerica Corp., 493 F. Supp. 895 (D. Md. 1980); Crow Tribe of Indians v. Mohasco Indus. 406 F. Supp. 738 (D. Mont. 1975); Deere & Co. v. Walls, 148 So. Tribe of Indians v. Mohasco Indus. 406 F. Supp. 738 (D. Mont. 1975); Deere & Co. v. Watts, 148 So. 2d 529 (Fla. Dist. Ct. App. 1963); and Consolidated Textile v. Gregory, 289 U.S. 85 (1933), Peterson v. Chicago R.I. & P. Ry., 205 U.S. 364 (1907)). Chicago R.I. & P. Ry., 205 U.S. 364 (1907)).

tacts at any time between the O'Connell children with Montana court or the GLA; which shows the court, without notice and service in Montana, failed to confer subject matter and personal jurisdiction over the O'Connell Children. This Rule 12 Motion thus has merit to dismiss the GLA counterclaim judgement insufficient contact with O'Connell children; which counterclaim Orders all deny O'Connell Children's due process rights, thus Counterclaim Orders all fatally harmed O'Connell childrens' ability to fully defend against those three counterclaim judgments that sanctioned & declared them, O'Connell minor age children as "vexatious litigants."

III. Subject Matter Jurisdiction

For this Rule 60 motion, authority is also given by— the Mt. Supreme Court Opinion Stanley v. Lemire, 2006 MT 304, ¶¶ 29-32, 334 Mont. 489, 148 P.3d 643; which Opinion concluded that "subject matter jurisdiction may be raised at any time, even for the first time on appeal." This Opinion allows this rule 60 motion timely raises this subject matter jurisdiction claim for the first time. Subject matter jurisdiction claim authority also comes from Mt. Supreme Court Opinion *Motta*, as follows:

"To review pre-filing orders entered against vexatious litigants, we adopted the criteria used by the Ninth Circuit Court of Appeals: Whether the litigant was given notice and a chance to be heard before the order was entered; whether the trial court has compiled an adequate record for review; whether the trial court has made substantive findings about the frivolous or harassing nature of the plaintiff's litigation; and whether the vexatious litigant order is narrowly tailored to closely fit the specific vice encountered. See *Motta*, ¶ 20 (citing *Molski*, 500 F.3d at 1057).

Notice this *Motta* Opinion establishes criteria for subject matter jurisdiction regarding vexatious litigation claim against O'Connell children. Yet, none of these *Motta* criteria above were met in the counterclaims against the O'Connell children or parents, because O'Connell Children were never noticed and served the counterclaim and hearing conducted ten days later

Ex-parte without O'Connells; nor given any chance to be heard before the order was entered; and the Court failed to compile an adequate record for review since there is no history, no substantive findings, no frivolous or harassing pleadings since O'Connell children have never been a party to any case; plus the court failed to cite even one single frivolous or vexatious pleading against any O'Connell family member; and counterclaim order was broad and absolute. All of which facts show the Counterclaim Orders failed the Motta criteria failing to narrowly tailor or closely fit the specific vice encountered, and fail to cite any vexatious pleadings. Thus Orders lack any required criteria used by the the Motta case, or Ninth Circuit Court of Appeals. Therefore Rule 60 Motion is warranted by the authority in Motto to dismiss all counterclaim Orders for lack of subject matter jurisdiction over O'Connell children.

IV. Official Misconduct Claim

This Rule 60 motion hereby also claims official misconduct by the GLA attorney—Alanah Griffith and GLA. Authority for this claim comes from several state laws and statues, including MCA 45-7-401 (1)(a), that says when a public official commits the crime of Official Misconduct to purposely and negligently fail to perform any mandatory duty as required by law or by a court of competent jurisdiction. In the instant case, Attorney Griffith as an officer of the court, did negligently or knowingly violate court rules, laws and/or established court procedures, and refused to comply with the mandatory court rule requirements as follows:

- 1) As shown by GLA's Jan. 2017 counterclaim motion conclusion, proposed orders written by the GLA attorney Griffith purposely and negligently lied or fabricated facts about eight prior cases to claim "most of the O'Connell's filings were filed erroneously or without any legal support." There is no legal evidence presented to support this finding; and affidavit evidence attached to O'Connells' Feb. 2017 "Appeal" motion factually disprove this counterclaim mo-

tion and Order “lack subject matter jurisdiction” (per per M.R.Civ.P. Rule 12, and state statute §72-1-202 for the court failing to protect minor age children)

- 2) O’Connell children were NEVER real parties to any case, yet GLA & Attorney Griffith purposely and negligently continue to refuse to enjoin the O’Connell children as “real party[s] in interest” in the DV-11-114 counterclaim as required by Mont.R.Civ.P. rule 17(a)(3). O’Connell’s Feb. 2017 Motion and June 2017 Rule 60 Appeal shows lack personal jurisdiction over O’Connell children for failing to “summon” O’Connell children, and lack of “voluntary appearance” for this counterclaim, (per M.R.Civ.P. Rule 4).
- 3) As O’Connell’s Feb. 2017 Motion and June 2017 Rule 60 Appeal shows, GLA & Attorney Griffith purposely and negligently failed to seek appointment of a guardian or any representative for the O’Connell children as minor age children, as required by Mont. R.Civ.P. 17(d).
- 4) Attorney Griffith also purposely or negligently failed to seek “Permissive Joinder Of Parties” as required by M.R.C.P. Rule 20(b) and failed to take “Protective Measures” to protect the O’Connell children “against embarrassment, delay, expense, or other prejudice that arises from including [them] against whom the party asserts no claim and who asserts no claim against the party.”
- 5) As GLA counterclaim motion presented “matters outside the pleadings” involving exhibits, affidavits and prior cases; Attorney Griffith purposely or negligently failed to declare the GLA counterclaim “a motion for summary judgment” as required by Mont.R.Civ.P 12(d).
- 6) Attorney Griffith purposely or negligently “failed to allow due process” of “fair play and substantial justice;” to fail to give proper notice of counterclaim hearing (required by Mont.R.Civ.P. 7(3)); and failing to allow time for opposing pleadings against the counterclaim motion (required under M.R.Civ. P. rules 4 & 6, and more.

Based on these facts 1-6 above, probable cause exists to charge GLA Attorney Griffith with Official Misconduct whose actions cause increased court time and litigation expense/costs. The “personal nature” of these ‘agents’ actions 1-6 above (as officer of the court) now permits Griffith be held personally liable for actions seeking “vexatious litigant” judgment and sanctions against the O’Connell minor age children. Also, because Griffith falsely claim “most of the O’Connell’s filings were filed erroneously or without any legal support;” this is obviously false since O’Connell won or was a defeat in six out of eight of those cases. Again counterclaim motion and Counterclaim final Orders were both written by Griffith—the GLA attorney. Counterclaim Orders of February 27, 2017 (pp. 7-8) thus show Griffith’s “intentional and personal” actions deliberately violate court rules and statutes, and Griffith and refusal to seek subject matter

jurisdiction and personal jurisdiction over the O'Connell children. Therefore these are grounds for "official misconduct" by Griffith per §45-7-401 (1)(a). MCA; and/or sanctions & damages (per M.R.Civ.P. Rule 11) for Defendants' personal actions resulting in tortious interference and damages against O'Connell children for being declared "vexatious litigants;" which harassed O'Connell children, cause unnecessary delay of justice, and/or needlessly increased the cost of litigation to defend against the counterclaim Orders written by GLAs attorney.

V. Legal Jurisdiction

To summarize this motion, the Counterclaim Orders contain numerous errors especially for failing to ever achieve personal & legal jurisdiction over the O'Connell children, as follows:

- 1) Starting Feb. 2017, Christal O'Connell (then age 19), Shannon (then age 16), & Vesta O'Connell (then age 13) were declared "vexatious litigants" and sanctioned without the Court allowing time for any opposing pleadings or any fair hearing that parents requested after this Feb. 7th, 2017 ex-parte hearing and District Court bench order; BEFORE May 2017 final Orders. District Court Orders erroneously failed to ever allow O'Connell parents' motion for opposing pleadings and a fair hearing on the counterclaim motion. O'Connells were out of town, not allowed time to defend against the motion not have prior notice of the hearing held Ex-Parte without them on Feb. 7, 2017. To add insult to injury, the District Court also denied another requested hearing against sanction award that disputed attorney fees and costs; granted without a requested hearing (see O'Connell rule 60 attached Exhibit 1 showing GLA budget report total spent for Feb. 2017 counterclaim was actually \$4,816.50 not \$18,000 as GLA fraudulently reported to the District Court).
- 2) The O'Connell children appeal this erroneous findings of fact and conclusions of law entered by Judge Cybulski's Counterclaim Orders (listed above) for the Sixth District Court against O'Connell children—Christal, Shannon and Vesta O'Connell as minor age children and non-parties (collectively the O'Connell family) which orders declare the entire O'Connell family "vexatious litigants;" by Orders Feb 7th (bench Order), Feb. 13, 2017 & May 2017 Orders); which as plain error failed to first appoint a guardian or any representative for the O'Connell children, as Mont. R.Civ.P. 17(d) requires. Orders thus arbitrarily and capriciously denied O'Connell children to be represented by a guardian as rule 17 above required before and after sanctions declared O'Connell minor age children "vexatious" (Vesta age 13, Shannon age 16, not to mention Christal age 19); which sanctions harms O'Connell children constitutional

right to limit their “access to the courts.” Thus Defendants motion and all counterclaim Orders amount to malicious prosecution & sanctionable harassment against O’Connell minor children; and denies them a speedy access to the courts!

- 3) Orders also granted Rule 11 sanctions award of counterclaim attorney’s fees & costs GLA Defendant counterclaim filed in this 114 case’ for which the District Court on summary judgment, in err, deemed O’Connell parents case lacks claims deemed vexatious after that case was settled: this 114 case yet failed to allow O’Connell parents to file amendment after discovery, and failed to uphold a prior GLA 2012 settlement agreement by GLA admission of denial of O’Connell document requests (main claim in 114 case for breached the 2012 Settlement Agreement), and other claims.
- 4) The District Court also erred to order O’Connell children vexatious litigants by sanction and status for M. R. Civ. P. 11 (Rule 11) against non-parties—against O’Connell children. As everyone was aware, the Court and the GLA failed to request joinder of O’Connell children as required per state statute M.R.C.P. Rule 19& 20; which rule requires permissive joinder of party defendants. For GLA Defendants to include minor children and non-parties in their counterclaim Jan. 16, 2017 Motion and Orders to sanction & declaring O’Connell children non-parties to be found vexatious litigants contrary to law and constitutional due process, **is grounds for O’Connell Children to file suit for tortuous interference and damages including sanctions against GLA and Court!**
- 5) The District Court, just five (5) days after that 2017 Counterclaim Motion was filed (Jan. 19, 2017), the Court without any time for opposing pleadings ordered a counterclaim hearing and 15 days after the motion granted that counterclaim and sanctions ex-parte. Counterclaim Motion filed Jan. 19th (Motion pp. 17) was thus granted and held less than two weeks later on Feb. 7, 2017; which District Court Bench Order granted the same day as the Ex-Parte hearing. Counterclaim sanctions & hearing thus fatally harmed any chances to overcome that motion contrary to M.R.C.P. Rule 6 that denied time for opposing pleadings on the motion. In fact, O’Connell children were never summoned, never ordered to appear, never properly notified of any counterclaim hearing: thus O’Connell children and parents had **no prior** knowledge of the Jan. 16th Counterclaim Motion nor the Jan. 27th Order. Thus, O’Connell children had **no prior** knowledge of the counterclaim hearing held Feb. 7th, 2017, and could not possibly attend that counterclaim hearing date of February 7, 2017 ONLY 10 DAYS AFTER that Jan 27th Order (Order granting the counterclaim hearing was stamped and mailed by the clerk on Jan. 27, 2017); & time to forward that Order via US mail to O’Connell parents out of state (with their children) did not receive this Order till AFTER the counterclaim hearing date of February 7, 2017. As proof, see exhibits attached to Feb. 9, 2017 O’Connell parents motion showing the US mail stamp and forwarding label of GLA Defendants counterclaim and Court hearing date February 8, 2017 received AFTER the counterclaim hearing when US mail was delivered February 7-9, 2017 to Plaintiffs’ in Cayucos, CA post office box).

- 6) District Court Orders of February 7, 2017, and March 13, 2017, and May 8, 2017 also erred to grant the counterclaim motion and sanctions against O'Connell minor age children that also denied O'Connell parents' REQUESTED hearings on counterclaim and sanctions as shown by O'Connells motions (dated Feb. 9, 2017, Feb. 24, 2017, and March 15, 2017); and Orders also refused to grant O'Connell parents February 9, 2017 "PLAINTIFFS' MOTION FOR EXTENSION OF TIME" to allow O'Connell parents time to request the court appoint a guardian for their minor age children; which request the District Court ignored, and Court refused to allow the proper time to reply to the counterclaim motion and refused to allow proper notice of a counterclaim hearing; all contrary to rules of civil procedure for not allowing opposing pleadings and notice on motion and hearing.
- 7) Counterclaim Orders repeated errors falso ailed to declare GLA counterclaim a motion for summary judgment per Mont.R.Civ.P 12(d): because GLA counterclaim motions presented "matters outside the pleadings" involving exhibits, affidavits and prior O'Connell cases. Thus the counterclaim motion is really a summary judgment motion, but was never considered as such by the District Court as contrary to Mont.R.Civ.P 12(d); which GLA also improperly injected new dispositive claims into their original 2013 counterclaim motion action without amending, as contrary to rule 15 that required amendment to the motion!

three Counterclaim Orders are in error for failing to ever achieve personal & legal jurisdiction over the O'Connell children, as follows:

- 1) Starting Feb. 2017, Christal O'Connell (then age 19), Shannon (then age 16), & Vesta O'Connell (then age 13) were declared "vexatious litigants" and sanctioned without the Court allowing time for any opposing pleadings or any fair hearing that parents requested after this Feb. 7th, 2017 ex-parte hearing and District Court bench order; BEFORE May 2017 final Orders. District Court Orders erroneously failed to ever allow O'Connell parents' motion for opposing pleadings and a fair hearing on the counterclaim motion. O'Connells were out of town, not allowed time to defend against the motion not have prior notice of the hearing held Ex-Parte without them on Feb. 7, 2017. To add insult to injury, the District Court also denied another requested hearing against sanction award that disputed attorney fees and costs; granted without a requested hearing (see O'Connell rule 60 attached Exhibit 1 showing GLA budget report total spent for Feb. 2017 counterclaim was actually \$4,816.50 not \$18,000 as GLA fraudulently reported to the District Court).
- 2) The O'Connell children appeal this erroneous findings of fact and conclusions of law entered by Judge Cybulski's Counterclaim Orders (listed above) for the Sixth District Court against O'Connell children—Christal, Shannon and Vesta O'Connell as minor age children and non-parties (collectively the O'Connell family) which orders declare the entire O'Connell family "vexatious litigants;" by Orders Feb 7th (bench Order), Feb. 13, 2017 & May 2017 Orders); which as plain error failed to first appoint a guardian or any representative for the O'Connell children, as Mont. R.Civ.P. 17(d) requires. Orders thus arbitrarily and capriciously denied

O'Connell children to be represented by a guardian as rule 17 above required before and after sanctions declared O'Connell minor age children "vexatious" (Vesta age 13, Shannon age 16, not to mention Christal age 19); which sanctions harms O'Connell children constitutional right to limit their "access to the courts." Thus Defendants motion and all counterclaim Orders amount to malicious prosecution & sanctionable harassment against O'Connell minor children; and denies them a speedy access to the courts!

- 3) Orders also granted Rule 11 sanctions award of counterclaim attorney's fees & costs GLA Defendant counterclaim filed in this 114 case' for which the District Court on summary judgment, in err, deemed O'Connell parents case lacks claims deemed vexatious after that case was settled: this 114 case yet failed to allow O'Connell parents to file amendment after discovery, and failed to uphold a prior GLA 2012 settlement agreement by GLA admission of denial of O'Connell document requests (main claim in 114 case for breached the 2012 Settlement Agreement), and other claims.
- 4) The District Court also erred to order O'Connell children vexatious litigants by sanction and status for M. R. Civ. P. 11 (Rule 11) against non-parties—against O'Connell children. As everyone was aware, the Court and the GLA failed to request joinder of O'Connell children as required per state statute M.R.C.P. Rule 19& 20; which rule requires permissive joinder of party defendants. For GLA Defendants to include minor children and non-parties in their counterclaim Jan. 16, 2017 Motion and Orders to sanction & declaring O'Connell children non-parties to be found vexatious litigants contrary to law and constitutional due process, is **grounds for O'Connell Children to file suit for tortuous interference and damages including sanctions against GLA and Court!**
- 5) The District Court, just five (5) days after that 2017 Counterclaim Motion was filed (Jan. 19, 2017), the Court without any time for opposing pleadings ordered a counterclaim hearing and 15 days after the motion granted that counterclaim and sanctions ex-parte. Counterclaim Motion filed Jan. 19th (Motion pp. 17) was thus granted and held less than two weeks later on Feb. 7, 2017; which District Court Bench Order granted the same day as the Ex-Parte hearing. Counterclaim sanctions & hearing thus fatally harmed any chances to overcome that motion contrary to M.R.C.P. Rule 6 that denied time for opposing pleadings on the motion. In fact, O'Connell children were never summoned, never ordered to appear, never properly notified of any counterclaim hearing: thus O'Connell children and parents had **no prior** knowledge of the Jan. 16th Counterclaim Motion nor the Jan. 27th Order. Thus, O'Connell children had **no prior** knowledge of the counterclaim hearing held Feb. 7th, 2017, and could not possibly attend that counterclaim hearing date of February 7, 2017 **ONLY 10 DAYS AFTER** that Jan 27th Order (Order granting the counterclaim hearing was stamped and mailed by the clerk on Jan. 27, 2017); & time to forward that Order via US mail to O'Connell parents out of state (with their children) did not receive this Order till **AFTER** the counterclaim hearing date of February 7, 2017. As proof, see exhibits attached to Feb. 9, 2017 O'Connell parents motion showing the US mail stamp and forwarding label of GLA Defendants counterclaim and Court

hearing date February 8, 2017 received AFTER the counterclaim hearing when US mail was delivered February 7-9, 2017 to Plaintiffs' in Cayucos, CA post office box).

- 6) District Court Orders of February 7, 2017, and March 13, 2017, and May 8, 2017 also erred to grant the counterclaim motion and sanctions against O'Connell minor age children that also denied O'Connell parents' REQUESTED hearings on counterclaim and sanctions as shown by O'Connells motions (dated Feb. 9, 2017, Feb. 24, 2017, and March 15, 2017); and Orders also refused to grant O'Connell parents February 9, 2017 "PLAINTIFFS' MOTION FOR EXTENSION OF TIME" to allow O'Connell parents time to request the court appoint a guardian for their minor age children; which request the District Court ignored, and Court refused to allow the proper time to reply to the counterclaim motion and refused to allow proper notice of a counterclaim hearing; all contrary to rules of civil procedure for not allowing opposing pleadings and notice on motion and hearing.
- 7) Counterclaim Orders repeated errors falso ailed to declare GLA counterclaim a motion for summary judgment per Mont.R.Civ.P 12(d): because GLA counterclaim motions presented "matters outside the pleadings" involving exhibits, affidavits and prior O'Connell cases. Thus the counterclaim motion is really a summary judgment motion, but was never considered as such by the District Court as contrary to Mont.R.Civ.P 12(d); which GLA also improperly injected new dispositive claims into their original 2013 counterclaim motion action without amending, as contrary to rule 15 that required amendment to the motion!

VI. Conclusion

This Rule 60 is warranted for any and all relief sought and dispose of the Counterclaim Orders that denied O'Connell Childrens' constitutional due process rights; legally flawed for want of subject matter jurisdiction and want of personal jurisdiction over the O'Connell Children; which also caused unnecessary delay of justice, and/or needlessly increasing the courts time and cost of litigation; thus harmed O'Connell children as non-parties make their first appearance now having to defend against orders against them. Therefore this rule 60 Motion seeks the following relief:

- 1) Per Rule 60, Orders that dispose of of all Counterclaim Orders (including Feb.7th, & Feb.7th, 2017, and May 8th, 2017 Orders) that, without jurisdiction and authority and without a summons and notice to O'Connell Children, granted GLA's ex-Parte hearing and motion titled

"Motion to Have Plaintiffs And Their Children Declared As Vexatious Litigants And Request For Hearing."

- 2) This motion further asks for Orders (per M.R.Civ.P. Rule 11) against GLA attorney Griffith. This is because O'Connell Children were harmed by limiting their access to the court by this vexatious ruling denying their constitutional right of "due process & equal protection" under the law & having to defend against false "Representations to the Court" that claimed O'Connell Children (who have never been a party to any case) were somehow "vexatious litigants" as presented for an improper purpose to gain procurement of an order granting GLA's counterclaim.
- 3) Per Rule 60, this motion ask for Orders for sanctions and finding against GLA Attorney—Alannah Griffith; that her actions be sanctioned and found "Official Misconduct" pursuant to MCA 45-7-401 (1)(a) as contrary to O'Connell Childrens' constitutional right of "due process & equal protection" under the law; for failing to seek jurisdiction and authority over O'Connell children, and failing to summon and notice to O'Connell Children.

Submitted this 13th day of February, 2018,

By: Christal O'Connell
Christal O'Connell

By: Shannon O'Connell
Shannon O'Connell

By: Vesta O'Connell
Vesta O'Connell

Certificate of Service

A true and correct copy of forgoing document(s) were sent to the following parties by first class mail on the following day to:

Judge David Cybulski
573 Shippe Canyon Rd.
Plentywood, Mt. 59254

Alannah Griffith
PO Box 160748
Big Sky, Mt. 59716

By: Christal O'Connell
Christal O'Connell