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ATTORNEY FOR PLAINTIFFS

**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

Spencer Melby, an individual, and Colette Melby, an individual, Plaintiffs, vs. Bruce Doering, an individual; Kim Doering, an individual; Dawn Maddux, an individual; Western Frontier, LLC, d/b/a Engel & Völkers Western Frontier, a Montana Limited Liability Company; and John and Jane Does 1-10, Defendants.	Cause No. DV-21-671 Hon. Jason T. Marks SECOND AMENDED AND SUPPLEMENTAL COMPLAINT And JURY DEMAND
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Plaintiffs Spencer Melby and Colette Melby, through counsel, allege as follows for their Second Amended and Supplemental Complaint against defendants Bruce Doering and Kim Doering:

PARTIES AND JURISDICTION

1. Plaintiffs Spencer Melby and Colette Melby (“Melbys”) are individuals.

2. Defendants Bruce Doering and Kim Doering (“Doerings”) are individuals.

3. Defendant Western Frontier, LLC is a Montana limited liability company organized to act as a real estate brokerage. Western Frontier does business under the registered, assumed business name of Engel & Völkers Western Frontier. Western Frontier, LLC, dba Engel & Völkers Western Frontier is referred to hereafter as “Engel & Völkers.” Engel & Völkers’ principal place of business is located at 321 Higgins Street, Missoula, Montana. The conduct and liability of Dawn Maddux is imputed to Engel & Völkers.

4. Defendant Dawn Maddux (“Dawn Maddux”) is affiliated with Engel & Völkers as a member or manager, or both. Upon information and belief, Dawn Maddux is the managing member of Engel & Völkers. Additionally, Dawn Maddux acts as a real estate licensee on behalf of Engel & Völkers.

5. John Does 1 through 10 (hereafter, the “Doe Defendants”) are individuals, groups, or entities whose identities are currently unknown to the Melbys but who may be liable to the Melbys for the tortious and unlawful conduct alleged herein, either because the Doe Defendants participated in that conduct or because that conduct was in furtherance of a

conspiracy in which the Doe Defendants had joined.

6. This court may exercise personal jurisdiction over the Doerings.

7. This court may exercise personal jurisdiction over Engel and Völkers.

8. This court may exercise personal jurisdiction over Dawn Maddux.

9. This court has subject matter jurisdiction over this dispute.

10. Pursuant to §§ 25-2-121(2)(a) and -123, MCA, venue is appropriate in Missoula County because the contract at issue involves the sale of real property located in Missoula County.

SIGNIFICANT NON-PARTIES

11. J.R. Casillas, Esq. (“Casillas”) is an attorney in Missoula affiliated with the firm Datsopoulos, MacDonald & Lind, P.C.

12. Zane Sullivan, Esq. (“Sullivan”) is an attorney in Missoula, Montana, who is now affiliated with the same firm as Casillas. Sullivan is Engel & Völkers’ registered agent for service of process.

13. Matt Rosbarsky (“Rosbarsky”) is a real estate licensee who is affiliated with Clark Fork Realty in Missoula, Montana.

14. Del Post, Esq. (“Post”) is an attorney in Missoula affiliated with the firm Post & Lebsock.

15. The Providence International Heart Institute of Montana (“Heart Institute”) is an assumed business name registered by Providence Health & Services – Montana (“Providence Health”). The Heart Institute is a medical practice specializing in the care of patients with heart disease, including the specialties of cardiology and cardiothoracic surgery. Providence Health operates Providence St. Patrick Hospital in Missoula, Montana.

16. Dr. James Tolbert Maddux (“Dr. Maddux”) is an interventional cardiologist who works at the Heart Institute. Dr. Maddux is married to Dawn Maddux.

17. Dr. Daniel Bradley Spoon (“Dr. Spoon”) is an interventional cardiologist who works at the Heart Institute.

18. Dr. Michael C. Reed (“Dr. Reed”) is an interventional cardiologist who works at the Heart Institute.

19. Dr. Joseph Dean Schmoker is a cardiac surgeon who is the chief of cardiac surgery at the Heart Institute, with the official title of Medical Director, Cardiothoracic Surgery for Providence Health.

20. Shaun Radley (“Radley”) is a resident of Missoula, involved in the local cycling and racing community.

21. Rick Wishcamper is a businessman in Missoula.

22. Rika Wishcamper is a businesswoman in Missoula.

23. Izzy Dog, LLC is a Montana Limited Liability Company.

FACTS

24. As to any of the following factual allegations which plaintiffs state upon “information and belief,” plaintiffs believe those allegations will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

I. Providence Health recruited the Melbys to move to Missoula.

25. Spencer Melby (“Dr. Melby”) is a cardiac surgeon who had, for years prior to 2021, practiced in St. Louis, Missouri in a prestigious, stable, and personally, professionally, and financially rewarding position.

26. On October 31, 2020, Dr. Schmoker, acting on behalf of Providence Health, called Dr. Melby to recruit him to quit his job in St. Louis to come to work for Providence Health at the Heart Institute in Missoula, Montana.

27. Dr. Schmoker was and is an agent of Providence Health, authorized to make promises and statements regarding the terms of Dr. Melby’s employment.

28. All of the substantive negotiations for employment between Dr. Melby and Providence Health occurred through Dr. Schmoker.

29. On February 19, 2021, Dr. Melby and Providence Health

reached an agreement by which Dr. Melby would become an employee of Providence Health and would practice with Dr. Schmoker. Under the contract, Dr. Melby and Dr. Schmoker would perform cardiac surgery as employees of Providence Health and under the name of the Heart Institute.

30. Dr. Maddux, Dr. Spoon, and Dr. Reed also are employed by Providence Health. They practice interventional cardiology under the name of the Heart Institute.

31. Providence Health, Dr. Schmoker, and Dr. Melby anticipated that many of the patients whom Dr. Schmoker and Dr. Melby might treat would be referred by the Heart Institute's interventional cardiologists, i.e., Drs. Maddux, Spoon, and Reed.

32. In reliance upon his agreement with Providence Health, Dr. Melby resigned his position in St. Louis and the Melbys prepared to move to Missoula to begin employment with Providence Health. This entailed selling the family home and uprooting their minor children for the move to Montana.

II. The Melbys contracted to buy the Doerings' Property.

33. The Melbys' plan to move to Missoula also required them to find a home in Missoula. They retained Rosbarsky to act as their agent to help them locate a home to purchase.

34. The Doerings owned certain real property located at 5250 Marshall Canyon Road in Missoula County, Montana (the "Property").

35. Upon information and belief, the Doerings had attempted for years to sell the Property but had been unsuccessful.

36. As of the time that the Melbys were seeking a home, the Doerings' property was listed for sale with Dawn Maddux of Engel & Völkers.

37. The Melbys viewed the Property.

38. Ultimately, the Melbys and the Doerings entered into contract for the purchase and sale of the Property (the "Buy-Sell Agreement") Exhibit 1 hereto is a true and correct copy of the Buy-Sell Agreement.

39. The Buy-Sell Agreement identifies the Melbys as the Buyers and the Doerings as the Sellers.

40. Pursuant to the Buy-Sell Agreement, the Doerings agreed to sell, and the Melbys agreed to purchase, the Property for a purchase price of \$2,150,000.

41. The Melbys deposited the required earnest money.

42. The Buy-Sell Agreement provided that the balance of the purchase price would be conventionally financed.

43. The Buy-Sell Agreement contained an inspection contingency

pursuant to which the Buy-Sell Agreement was “contingent upon Buyer’s acceptance of any Property conditions that Buyer deems appropriate, including but not limited to any inspections or advice listed below.” The inspection contingency specifically referenced “Easements” as one of the enumerated inspections that the Melbys could perform. See Buy-Sell Agreement, p. 3, lines 132–145.

44. After inspecting the Property and being satisfied therewith, the Melbys waived the inspection contingency.

45. The Buy-Sell Agreement also contained a title contingency. See Buy-Sell Agreement, p. 4, lines 190–192. The title contingency provided that the Buy-Sell “Agreement is contingent upon Buyer’s receipt and approval (to Buyer’s satisfaction) of the preliminary title commitment . . . issued for the Property.” The release date for the title contingency was “14 days from Buyer’s or Buyer Broker’s/Salesperson’s receipt of the Commitment.” See *id.*

46. The Buy-Sell Agreement also contained a provision regarding “CONDITION OF TITLE” which stated, in part:

Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of the preliminary title commitment approved by the Buyer.

Buy-Sell Agreement, p. 6, lines 298–301.

47. The Melbys received the preliminary title commitment for the Property (“Commitment”) on or about March 12, 2021. The effective date of the Commitment is March 12, 2021. Exhibit 2 hereto is a true and correct copy of the Commitment.

48. The Commitment did not reflect any easement in favor of any of the following groups:

- a. Zootown Derailleurs;
- b. The National Interscholastic Cycling Association;
- c. MT Alpha Cycling;
- d. MTB Missoula; or
- e. MTCX.

49. The Commitment did not reflect any easement for any type of practice, races or other hosted events, whether for mountain biking, cycling, skiing, or otherwise.

50. The Commitment did not reflect any easement that applied to “any part of the 156 acres” comprising the Property.

51. After receiving and reviewing the Commitment, the Melbys released the title contingency. See Buy-Sell Agreement, p. 4, lines 190–192.

52. After the Melbys and the Doerings executed the Buy-Sell Agreement, certain individuals and groups started raising concerns about their ability to continue to use certain trails located on public land adjacent to the Property. The Melbys met with several representatives of these groups in a collaborative, good faith effort to address those concerns.

53. In April 2021, the Melbys encountered obstacles with obtaining conventional financing. At least one bank the Melbys had engaged concluded that the challenges posed by the Missoula ski and bike community's concerns over future recreational access to and/or through the Property caused concern about financing the Melbys' purchase of the Property.

54. The Melbys and the Doerings discussed possible seller financing with a contract for deed.

55. On May 6, 2021, the parties executed an Amendment to the Buy-Sell Agreement ("Amendment"). A true and correct copy of the Amendment is attached hereto as Exhibit 3.

56. In the Amendment, the Doerings agreed to provide seller financing with a contract for deed on the following material terms: (1) a 20% down payment; (2) the balance to accrue interest at 6%; (3) amortized over 25 years; and (4) a balloon payment/payoff due seven years from closing.

They further agreed there would be no prepayment penalty. See Amendment, p. 1, lines 22–29.

57. The Amendment provided as follows: “Final contract for deed to be mutually agreed upon by both parties.” Amendment, line 29.

58. The Amendment contained all of the material terms to be included in the contract for deed.

59. The Amendment contained no provisions affecting or modifying the contractual provisions regarding the condition of title of the Property.

III. Dawn Maddux retained Sullivan to draft the contract for deed.

60. After the Doerings and Melbys executed the Amendment, Dawn Maddux, the Doerings’ agent, retained Sullivan to draft the contract for deed contemplated by the Amendment.

61. According to Dawn Maddux—as she wrote to Bruce Doering via text message—the Melbys were paying Sullivan but “we are directing. :)”

62. Sullivan then drafted a standard form contract for deed containing the material terms set forth in the parties’ Buy-Sell Agreement, as amended by the Amendment.

63. Sullivan’s proposed initial draft contract for deed appropriately contained no provision to place any additional easement(s) on the Property.

64. Sullivan asked Bruce Doering for input on four things:

- a. Value of personal property;
- b. A diesel tractor;
- c. Provisions prohibiting the Melbys from selling; and
- d. Water rights.

65. Other than the input Sullivan requested, Bruce Doering's only initial feedback was as follows:

- a. Logging needed to be approved by the seller, excluding windfall and dead trees;
- b. Melbys needed to be prohibited from signing any easements with the City of Missoula or bike groups without written permission from seller; and
- c. Melbys should be required to restrict all fires as appropriate to FS/Co rules.

66. Upon information and belief, on May 8, 2021, Casillas reviewed and redlined the first draft of the contract for deed that Sullivan had prepared. Casillas's initial redline draft did not mention a public access easement. At this stage, the contract for deed contained ten substantive pages.

67. On May 10, 2021, Bruce Doering and Dawn Maddux discussed

third parties who might make an offer on the Property. Dawn Maddux asked Bruce Doering how committed he was to the Melbys. Bruce Doering stated that the Melbys had time and money in the project. Dawn Maddux responded that Sullivan said the Doerings were pretty much locked in unless there was a dispute so she thought they should stay on the path they were on. Bruce Doering responded that he was ok with that and that the Doerings did not feel good about kicking the Melbys out. Bruce Doering also forwarded to Dawn Maddux a message he previously sent to Radley: “We aren’t going to pressure the buyers out. They have acted in good faith. If your partner can make them whole and they agree (walk), than [sic] we can look at buyer #2. Good luck.” Dawn Maddux responded, “Ok. I think it’s best to stay in the current offer. Apparently Shaun [Radley] isn’t the buyer he would be the manager. I will let Rick know too!!”

68. On or about May 11, 2021, Radley, a Missoula resident and, apparently, a mountain biking enthusiast, called Dr. Melby about the Property. Radley informed Dr. Melby that Radley had a wealthy friend who was interested in the Property and planned to put in a backup offer to purchase the Property, just in case the Melbys’ deal to purchase the Property fell through.

69. Shortly thereafter, Dr. Melby had a conversation with Bruce

Doering regarding the alleged backup offer that Radley had mentioned. Dr. Melby sought assurances from Mr. Doering that any backup offer was indeed just that. Bruce Doering responded that he was aware of the backup offer, and while it was an attractive cash offer, Mr. Doering agreed that he had a binding agreement with the Melbys to sell the Property to them.

70. On May 11, 2021, Bruce Doering and Dawn Maddux discussed a solid backup offer from Rick Wishcamper. Bruce Doering asked Dawn Maddux to look into it and said “they finally feel urgency.” Dawn Maddux responded, “[t]hey’re just too late, I’m afraid. It will be a really strong back up though. So if anything goes funky w Melbys we have a quick solution :)” Dawn Maddux then texted Bruce Doering that the offer was \$10,000 over list, cash with a 45 day close, and two-weeks diligence and also told Bruce Doering that “Zane [Sullivan] said if [the Melbys] don’t agree to the terms of the contract for deed we can get out of it and move to the back up offer, which is a much stronger offer.”

71. On May 12, 2021, Bruce Doering told Dawn Maddux to tell Sullivan “to pause on our project till Ricks [sic] ink is dry. We have an idea that should keep us out of litigation land.” Dawn Maddux told Bruce Doering that she would call him. Later, Dawn Maddux texted Bruce Doering that “Zane [Sullivan] wants to have JR [Casillas] make the suggestions for

additions to the contract for deed, since technically, they're paying Zane. That way we have a paper trail that the changes came from JR, your independent counsel." Bruce Doering told Dawn Maddux "[g]reat idea."

72. Upon information and belief, these changes included the addition of a broad public access easement which the defendants knew was inconsistent with the Buy-Sell Agreement, the Doerings' own prior position (that the Melbys could not place easements on the Property), and the Melby's stated intent to use the Property as their personal residence. Upon information and belief, the purpose of adding such an easement was precisely to render it unacceptable to the Melby's to give the Doerings a pretext to terminate the Buy-Sell Agreement.

IV. Dawn Maddux secured the Wishcamper's backup offer for the Property.

73. Upon information and belief, the backup offer was for a higher price than the purchase price specified in the Buy-Sell Agreement between Melbys and Doerings.

74. That backup offer came from Rick and Rika Wishcamper.

75. Upon information and belief, Dawn Maddux acted as the buyer's agent with respect to the backup offer.

76. Upon information and belief, Dawn Maddux and Engel & Völkers acted as a dual agent with respect to the back-up offer, acting on

behalf of both the backup offeror (the buyer) and the Doerings (the seller).

77. Upon information and belief, as a dual agent, Dawn Maddux and/or Engel & Völkers did not have to split any commission with a buyer's agent, as they would have had to do if the sale to Melbys had closed.

78. Dawn Maddux repeatedly contacted the Melbys' agent, Rosbarsky, attempting to convince the Melbys to back out of their contract with the Doerings to purchase the Property.

79. On May 12, 2021, the Wishcampers signed their offer on the Property.

80. Dawn Maddux knew that Dr. Melby was quitting his job in St. Louis to accept employment in Missoula and that the Melbys were selling their home and moving to Montana.

81. Upon information and belief, Dawn Maddux engaged in efforts, to derail the deal between the Melbys and the Doerings so that her clients, the Wishcampers, could purchase the Property.

82. Upon information and belief, Dawn Maddux was in contact with Radley, who would potentially manage the Property for the Wishcampers, about the Wishcamper's offer prior to the Doerings' breach of the Buy-Sell Agreement.

83. Upon information and belief, Radley was in contact with the

Doerings prior to the Doering's breach of the Buy-Sell Agreement.

84. Upon information and belief, Dawn Maddux discussed with Sullivan how the Doerings could attempt to get out of the Buy-Sell Agreement.

85. Upon information and belief, Sullivan assisted Dawn Maddux in attempting to derail the closing of the transaction between Melbys and the Doerings.

86. Upon information and belief, the Doerings had no plans to breach the Buy-Sell Agreement with the Melbys until Dawn Maddux induced them to do so.

87. Upon information and belief, after Dawn Maddux convinced the Doerings that it was desirable to avoid honoring their contractual commitments with the Melbys, Dawn Maddux and Bruce Doering then concocted a plan to terminate the Buy-Sell Agreement.

88. Upon information and belief, Sullivan participated in concocting that plan or he joined a conspiracy to effectuate that plan to terminate the Buy-Sell Agreement.

89. Upon information and belief, Dawn Maddux has announced that she plans to donate part of her commission from the sale of the Property to the backup offerors' efforts to develop or use the Property.

V. The Doerings' efforts to provoke the Melbys to withdraw from the Buy-Sell Agreement.

90. After Sullivan prepared the initial draft contract for deed, the Doerings' counsel, Casillas, made extensive and onerous modifications to the draft contract for deed.

91. Upon information and belief, these changes were concocted or otherwise suggested by Dawn Maddux and/or Sullivan as part of a plan to prevent closing of the sale to Melbys.

92. On May 18, 2021, Sullivan sent Dawn Maddux an email concerning the contract for deed. Upon information and belief, in keeping with their plan to create a paper trail showing that changes to the contract for deed came from the Doerings' independent counsel (see ¶ 71), Sullivan stated the following: "Please note that although the attached document states that it is the 'fourth revised contract' this is the only version I have received. I presume that the prior version [sic] were discussed between Mr. Doering and his counsel only."

93. The Doerings' agent, Dawn Maddux, then forwarded the revised draft contract for deed to Rosbarsky for the Melbys' review.

94. The Melbys were taken aback by the revisions to the contract for deed proposed by the Doerings.

95. The Melbys engaged Post to review the revised contract for

deed. In a good-faith effort to keep the deal moving forward and finalize the contract for deed, the Melbys advised the Doerings, through counsel, that the Melbys would agree to the bulk of the onerous revisions to the contract for deed, with a few careful edits. Post called Casillas on May 21, 2021, to inform him of the same.

96. On May 20, 2021, Bruce Doering told Dawn Maddux that the Melbys “hired [a] new attorney to review [the] contract [for deed]” and that “Zane [Sullivan] is out.”

97. On May 21, 2021, Dawn Maddux told Bruce Doering that she had just sent him proposed changes to the contract for deed and asked him to call when he was free. Bruce Doering forwarded to Dawn Maddux a message from Dr. Melby asking to discuss the contract for deed. Bruce Doering told Dr. Melby that he preferred no calls at that time.

98. On May 21, 2021, while Post was in the process of finalizing his suggested edits to the contract for deed, Post received an email from Casillas which stated, in pertinent part:

Hi Del: I know you are working on a response to Doerings’ proposed changes. See attached that I just received from them. I figured it made sense to get you these for consideration in what you are doing and possible incorporation now; rather than me adding them in and going back and forth again perhaps unnecessarily.

99. By that communication, the Doerings requested additional provisions in the contract for deed, including an extremely broad public access easement stating:

Due to the historic use of the property by the public, sellers are granting the following listed groups, which includes but is not limited to, Zootown Derailleurs, the National Interscholastic Cycling Association, MT Alpha Cycling, MTB Missoula, and MTCX for practice, races and other hosted events, an easement for any part of the 156 acres. This easement may be rescinded by sellers at anytime during the life of this contract.

100. The Doerings made this proposal well after the effective date of the Commitment. Upon information and belief, at this point, the contract for deed contained over twenty substantive pages.

101. The Doerings' last-minute demand for a broad public access easement provision to be included within the contract for deed was designed to be unacceptable to the Melbys, in a transparent, pre-textual attempt to kill the deal for the Melbys' purchase of the Property so that the Doerings could proceed with another option, such as the backup offer.

102. Upon information and belief, the Doerings recognized that the broad public access easement on the Property that they attempted to impose upon the Melbys was unacceptable. Thus, prior to the scheme to force the Melbys out, Bruce Doering had initially told Sullivan to add to the

contract for deed a provision prohibiting the Melbys from signing any easements with the City of Missoula or bike groups without written permission from seller, i.e., the Doerings. For the same reasons, the last-minute broad public access easement that was designed to be unacceptable to the Melbys allowed the Doerings to rescind that easement in the event of a default by which they took the Property back.

103. The Buy-Sell Agreement expressly prohibited the Doerings from placing additional easements against the title to the Property after the date of the preliminary title commitment. That is precisely what the Doerings attempted to do via the amended contract for deed.

104. Upon information and belief, the Doerings wished to kill the deal with the Melbys so that the Doerings could accept the backup offer on the Property.

105. Upon information and belief, the backup offer was more favorable for Dawn Maddux than if the Doerings had honored their contract with Melbys. Accordingly, Dawn Maddux decided that it would benefit her to interfere with the Buy-Sell Agreement and she did in fact interfere with the Buy-Sell Agreement.

106. After receiving the proposal for a new, broad public access easement, Post emailed Casillas at 1:29 p.m. on May 21, 2021, attaching

the Melbys' proposed edits to the contract for deed and informing the Doerings that the proposed easement was "problematic" and unacceptable.

Post specifically explained:

Granting an easement to third party groups over virtually any and all parts of the property totally changes the nature and character of what my client contracted to buy. Also, I think the terms of the buy/sell preclude granting an easement. See Line 298 to 301 "*Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of the preliminary title commitment approved by the Buyer.*" Again, we have no problem with licenses/permits etc as set forth in the draft CFD, but not an easement.

At any rate, I look forward to speaking with you further to keep this transaction moving in the right direction.

Id. (emphasis in original).

107. On May 21, Dawn Maddux told Bruce Doering that she thought "we say no changes except for [the Doerings']. I think we send the termination very soon outlining that it's best for the community. YOU are a man of integrity."

108. Neither the Doerings nor Casillas immediately responded to Post's email rejecting the public access easement or to Post's proposed edits to the draft contract for deed.

VI. The Doerings breached their contract with Melbys.

109. Ultimately, pursuant to the agreement between the Doerings and Dawn Maddux, the Doerings improperly terminated their Buy-Sell Agreement with the Melbys.

110. Instead of responding to Post's communication, on Saturday, May 22, 2021, the Doerings unilaterally terminated their contract with the Melbys. Specifically, through Casillas, Doerings informed the Melbys that the Doerings:

...decided to reject the proposed revisions and not to make any counterproposals. The Doerings instructed me to instead provide you with this written notice of termination of the parties' Buy-Sell Agreement, any applicable Amendments and/or Addendums thereto, and the transaction as a whole.

In furtherance of this termination, your clients' earnest money will of course be returned to them. Additionally, the Doerings agree to cover the cost of the legal fees incurred for Mr. Sullivan's preparation of the initial draft of the Contract for Deed, as well as the costs incurred in connection with your clients having the property professionally inspected. The Doerings' agreement to cover these costs shall not be construed as any form of admission or acknowledgement regarding their legal rights to terminate the transaction, but instead as a professional courtesy for the [sic] your clients.

111. On May 23, 2021, at 2:07 p.m., Casillas texted Bruce Doering (forwarded to Dawn Maddux): "He only said in a message that Melby will

be at closing with all cash. That he supposedly decided financing as a backup in anticipation of this. I haven't called him back. He wants to talk tomorrow. Assuming you still don't wish to do that we will take the position that he cannot now force you back to a conventional finance structure since it was changed to owner by addendum which is now the controlling document. I think they see that coming but are doing this now to try to position it better for a specific performance argument in court[.]”

112. On May 23, 2021, at 4:51 p.m., Dawn Maddux emailed the Doerings stating: “Now that you’ve officially terminated the contract with Dr [sic] and Mrs [sic] Melby, there are some options we need to discuss as to the status of the the [sic] Multiple Listing Service. We can let the matter sit as is for a bit and see what Melby does, but this will leave Rick and Rika hanging. The other option is for me to notify the MLS that the transaction is terminated and that you have put the property back on the market, then move the backup offer into first position and show the property as under contract again. Please let me know if you would like me to show the Melby transaction as terminated and move the backup offer into first position or wait.”

113. Later that evening, Dawn Maddux texted Bruce Doering the following: “I emailed you asking for what you want me to do next. I have not

notified Rick [Wishcamper] until you tell me to do so. Zane [Sullivan] said JR [Casillas] is 100% right, coming in w all cash does not matter, as it does not adhere to the current contract.”

114. Bruce Doering responded, “I will ask JR if we should move on Monday or pause.” Dawn Maddux responded, “Sounds good. As soon as we move to the back up offer I believe it would be a good move to make a public statement from you and from Rick.”

115. On May 24, 2021, Dawn Maddux sent an email to the Melbys’ agent, Rosbarsky, representing that “the Doering’s have terminated the buy sell contract on Marshall Mountain with your clients[.]” Dawn Maddux further represented that the Doerings would “cover” the Melbys’ costs for the property inspection and for Sullivan’s time in drafting the contract for deed.

116. The Melbys had been ready, willing, and able to perform their contract with Doerings for purchase of the Property, and had fulfilled all contingencies for which they were responsible.

117. The Doerings’ “termination” of the contract with the Melbys was a total and material breach of their contract.

VII. Additional pressure on the Melby family.

118. The Melbys never agreed that the Doerings could or did validly

“terminate” the contract to sell the Property to the Melbys.

119. In reliance upon their contract with the Doerings by which they would acquire the Property, the Melbys had listed for sale their primary residence in Missouri, had contracted to sell it, and were set to close that sale on May 27, 2021.

120. Dr. Melby was under contract to start his new employment in Missoula, Montana on July 1.

121. When the Doerings attempted to terminate the contract, the Melbys were in the process of packing up their belongings and moving out of their home in Missouri. They were planning to move into their new residence on the Property shortly after closing, which was scheduled for June 4, 2021.

122. The Melbys had committed to the move to Missoula and needed a place to live. And they knew that the Doerings’ “termination” of the contract was a breach.

123. So, the Melbys filed this action in late-May 2021. In their original complaint, Melbys sought specific performance of their contract with Doerings, so that they could acquire title to the Property free and clear of the ridiculously broad recreational easement that Doerings had demanded at the last minute.

124. Subsequent events, however, have caused the Melbys to eschew the remedy of specific performance and to instead seek damages for the Doerings' breach of contract.

125. The Melbys had proceeded with their planned move. As of Saturday, May 29, 2021, the Melbys and their two children were en route from St. Louis, Missouri to Missoula, Montana, along with Dr. Melby's parents and a friend of the Melbys' younger son. The seven of them were traveling together in three cars.

126. Other than a few items they took with them on the trip, all of the Melbys' possessions were in the possession of a moving company, for delivery to Missoula, Montana.

127. On Saturday, May 29, 2021, while the Melbys were in Fargo, North Dakota, Dr. Melby got a call from Dr. Schmoker.

128. Dr. Schmoker informed Dr. Melby that he had been approached by Dr. Spoon, one of the interventional cardiologists who, along with Dawn Maddux's husband, Dr. Maddux, works for the Heart Institute. Dr. Schmoker informed Dr. Melby that Dr. Spoon said that, if Melbys filed suit to vindicate their rights, the interventional cardiologists (Drs. Maddux, Spoon, and Reed) would refuse to work with Dr. Melby, i.e., would refuse to refer patients.

129. Dr. Schmoker told Dr. Melby that, if the Melbys file suit, there was no sense in Dr. Melby coming to work for the Heart Institute.

130. It was not a term of Dr. Melby's employment that he suffer a breach of contract by the Doerings as a condition of his employment with Providence Health.

131. When Dr. Schmoker spoke to Dr. Melby, Dr. Melby had already quit his job in St. Louis and the Melbys had sold the family home in Missouri, had packed up all their belongings, had embarked for Missoula, and had already filed suit.

132. Thus, on May 29, 2021, the Melbys—including their children—were caught by surprise while in the midst of a cross-country move, without the ability to go back to the life they had left in Missouri or move forward and pursue the life they were set to establish in Montana.

133. Upon information and belief, once the Melbys filed this lawsuit, Dawn Maddux concocted an additional plan to make it impossible for Dr. Melby to work in Missoula and at Providence unless he and Mrs. Melby dropped this suit, essentially waiving their legal rights. This plan included making Dr. Melby look like the bad guy to the public by, among other things, publicly stating that she would donate part of her commission to promote public lands and enlisting her husband and other doctors at

Providence to tell Providence that they would refuse to work with Dr. Melby if he did not drop his lawsuit against the Doerings.

134. All of this was done despite the fact that the Melbys had contracted to purchase private land that the Doerings had previously refused to sell to the City of Missoula. The defendants used the Melbys to make other potential buyers “finally feel urgency.” See ¶ 70.

135. As a result of Dawn Maddux’s conduct, Dr. Melby did not go to work for Providence. Instead, he returned to his previous employer at a salary well below what he was guaranteed with Providence.

VIII. Current Status of the Property.

136. The Property sold some time in June of 2021. Upon information and belief, a group of investors stepped in for the Wishcampers as the buyer through their company Izzy Dog, LLC.

137. Upon information and belief, Izzy Dog, LLC includes Rick Wishcamper, Rika Wishcamper, Pam Volkmann, and Sandy Volkman.

138. Upon information and belief, Radley acted on behalf of Rick Wishcamper and/or Izzy Dog, LLC when he began speaking with Dr. Melby, Bruce Doering, and Dawn Maddux about the Wishcampers’ backup offer.

COUNT I – BREACH OF CONTRACT
(THE DOERINGS)

139. The Melbys incorporate by reference all prior paragraphs as if they were fully set forth herein.

140. The Buy-Sell Agreement provides that “if the Seller accepts the offer contained in this Agreement, but refuses ... to consummate the transaction anticipated by this Agreement the Buyer may ... Demand monetary damages” from the Doerings for their failure to perform. See Buy-Sell Agreement (Ex. 1), p. 7, lines 361–368.

141. The contract also contains an attorney fee provision. See Buy-Sell Agreement (Ex. 1), p. 8, lines 411–413.

142. The Melbys have been forced to hire counsel to enforce the terms of the parties’ contract and have incurred and continue to incur attorneys’ fees.

143. The Doerings agreed to and are bound by the terms of the Buy-Sell Agreement, as amended by the Amendment.

144. The Doerings have materially breached both the express terms of their contract with the Melbys and the implied covenant of good faith and fair dealing, by, without limitation, refusing to close the transaction and purporting to terminate the Agreement.

145. The Melbys have suffered damages as a result of the Doerings' breach of contract, including: the difference between the purchase price and the price at which the Property could have been sold; their expenses incurred in connection with the transaction; their earnest money deposit; and any other damages that directly or indirectly resulted, such as the loss of Dr. Melby's employment and emotional distress that the Melbys experienced.

146. The Melbys are entitled to recover compensatory damages from the Doerings for their breach of the contract in an amount to be proved at trial.

**COUNT II – INTENTIONAL or NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS**

(THE DOERINGS)

147. The Melbys incorporate by reference all prior paragraphs as if they were fully set forth herein.

148. It was reasonably foreseeable that a family in the Melbys' situation would suffer serious and severe emotional distress as a result of the Doerings' conduct, including terminating a contract for their purchase of a home.

149. The Doerings' intentional conduct caused the Melbys to suffer serious and severe emotional distress. Alternatively, the Doerings

negligently caused the Melbys to suffer serious and severe emotional distress.

150. The Melbys are entitled to recover compensatory damages from the Doerings for their intentional or negligent infliction of emotional distress, in an amount to be proved at trial.

COUNT III – TORTIOUS INTERFERENCE WITH CONTRACT BETWEEN DOERINGS AND MELBYS

(DAWN MADDUX and ENGEL & VÖLKERS)

151. The Melbys incorporate by reference all prior paragraphs as if they were fully set forth herein.

152. The Melbys had a valid and enforceable contract with the Doerings, i.e., the Buy-Sell Agreement, as amended by the Amendment.

153. Dawn Maddux intentionally interfered with that contract.

154. Specifically:

- a. Dawn Maddux intentionally and willfully induced the Doerings to breach the Buy-Sell Agreement;
- b. That conduct was calculated to cause damage to the Melbys' interest in the Buy-Sell Agreement and was done with the unlawful purpose of causing such loss and damage;
- c. Dawn Maddux had no right or justifiable cause for such conduct; and

d. That conduct resulted in the Melbys incurring damages and loss, as stated above.

155. Dawn Maddux's conduct is imputed to Engel and Völkers.

156. Dawn Maddux and Engel and Völkers are jointly and severally liable to the Melbys for all damages caused by their conduct, in an amount to be proved at trial.

COUNT IV – TORTIOUS INTERFERENCE WITH DR. MELBY'S:

(1) BUSINESS RELATIONS/PROSPECTIVE ECONOMIC ADVANTAGE WITH INTERVENTIONAL CARDIOLOGISTS; and

(2) EMPLOYMENT CONTRACT WITH PROVIDENCE

(DAWN MADDUX, ENGEL AND VÖLKERS, & DOE DEFENDANTS)

157. The Melbys incorporate by reference all prior paragraphs as if they were fully set forth herein.

158. Dr. Melby had a valid and enforceable contract with Providence.

159. Dr. Melby also reasonably expected to maintain a business relationship with the interventional cardiologists, Drs. Maddux, Spoon and Reed, by which those doctors would refer patients who needed the services of a cardiothoracic surgeon to Dr. Melby and Dr. Schmoker. Dr. Melby reasonably expected to receive prospective economic benefits from that relationship, extending far into the future.

160. Upon information and belief, Dawn Maddux and the Doe Defendants tortiously interfered with Dr. Melby's business relationship with the interventional cardiologists and contract with Providence. Specifically, upon information and belief, Dawn Maddux and/or the Doe Defendants intentionally and willfully induced one or more of the interventional cardiologists at Providence to make it known that they would refuse to refer patients to, or work with, Dr. Melby if he went through with his lawsuit against the Doerings.

161. That conduct was calculated to, and did, induce Providence to breach its contract with Dr. Melby, and was done with the unlawful purpose of causing such a loss and damage.

162. Dawn Maddux and the Doe Defendants had no right or justifiable cause for their conduct.

163. That conduct resulted in Dr. Melby incurring damages and loss, as stated above.

164. Dawn Maddux's conduct is imputed to Engel and Völkers.

165. Dawn Maddux, Engel and Völkers, and the Doe Defendants are jointly and severally liable to Dr. Melby for all damages caused by their conduct, in an amount to be proved at trial.

COUNT V – CIVIL CONSPIRACY
(DOERINGS, DAWN MADDUX, ENGEL & VÖLKERS, and DOE DEFENDANTS)

166. The Melbys incorporate by reference all prior paragraphs as if they were fully set forth herein.

167. Dawn Maddux, the Doerings, and the Doe Defendants conspired to usurp the Melbys' opportunity to acquire the Property while "keep[ing] us out of litigation land."

168. The objects of their conspiracy were: (1) to frustrate the Melby's ability to close on the sale of the Property, thereby realizing the benefits of their contract with the Doerings; and (2) do so in a manner that would not subject them (the conspirators) to liability, i.e., to "keep us out of litigation land."

169. Dawn Maddux, the Doerings, and the Doe Defendants reached a meeting of the mind on those objectives and the course of conduct to be pursued.

170. Several of the conspirators took one or more unlawful overt acts in furtherance of their conspiracy, including, without limitation:

- a. Attempting, with the assistance of Casillas and Sullivan, to manipulate the Melby's into rejecting the Doerings' proposed contract for deed by inserting into it a broad public access

easement that the conspirators knew was objectively unacceptable (even the Doerings found it unacceptable if they were to retain title to the Property) and in violation of the Buy-Sell Agreement; and

- b. Applying financial pressure upon the Melbys to coerce them into abandoning their legal rights under the Buy-Sell Agreement so that the conspirators could “stay out of litigation land” by, among other things, tortiously interfering with Dr. Melby’s:
 - i. Business relationship with the interventional cardiologists at Providence;
 - ii. Prospective economic advantage by virtue of that relationship; and
 - iii. Employment contract with Providence.

171. The Melbys have been damaged as a result of the unlawful overt acts taken in furtherance of the conspiracy.

172. Dawn Maddux’s conduct is imputed to Engel and Völkers.

173. Each and every defendant named in this count is liable for all actions of each and every other co-conspirator taken in furtherance of the conspiracy.

174. The Melbys are entitled to recover compensatory damages

from all of the conspirators in an amount to be proved at trial.

COUNT VI – PUNITIVE DAMAGES

(ALL DEFENDANTS)

175. The Melbys incorporate by reference all prior paragraphs as if they were fully set forth herein.

176. Each defendant acted with actual malice, as that term is defined in Montana Code Annotated § 27-1-221, in taking the actions of which the Melbys complain herein.

177. Specifically, they had knowledge of facts or intentionally disregarded facts that created a high probability of injury to the Melbys but deliberately proceeded to act either in conscious or intentional disregard of, or with indifference to, the high probability of injury to the Melbys.

178. Each defendant, including the Doe Defendants, are liable to the Melbys for punitive damages, in an amount to be determined by the jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Spencer Melby and Colette Melby respectfully request that this Court enter judgment in their favor and against the defendants as follows:

1. Awarding Melbys compensatory damages in an amount to be determined at trial;

2. Awarding Melbys punitive damages in an amount to be determined at trial;
3. Awarding Melbys their attorney fees (as appropriate), costs, and other suit-related expenses;
4. Awarding Melbys prejudgment and post-judgment interest; and
5. Awarding Melbys such further relief to which they may be entitled.

DATED this 15th day of December, 2021.

JURY DEMAND

Plaintiffs demand a jury trial of all issue presenting a jury question.

BALDWIN LAW, PLLC

By: 

Robert K. Baldwin
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Robert K. Baldwin, hereby certify that I have served true and accurate copies of the foregoing Complaint - Amended Complaint to the following on 12-15-2021:

Dennis E. Lind (Attorney)
201 W Main, Suite 201
Missoula, MT 59802
Missoula MT 59802
Representing: Kim A Doering, Bruce Doering
Service Method: eService

Peter Francis Lacny (Attorney)
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Representing: Kim A Doering, Bruce Doering
Service Method: eService

Electronically signed by Jamie Ross on behalf of Robert K. Baldwin
Dated: 12-15-2021