

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 19-0037

NISSA ASCENCIO AND ALL
OTHERS SIMILARLY SITUATED,

Plaintiffs/Appellants and Cross-Appellants,

v.

ORION INTERNATIONAL CORP.,

Defendant/Appellee and Cross-Appellant.

PETITIONERS MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT
OF HER PETITION FOR WRIT OF SUPERVISORY CONTROL

On Appeal from the Fourth Judicial District Court,
Missoula County, Montana
Cause No. DV-15-1000
Hon. Leslie Halligan

APPEARANCES:

Christopher W. Froines, Esq.
FROINES LAW OFFICE, pc
Century Plaza Building
3819 Stephens Avenue
Missoula, Montana 59801
(406) 829-3303
Email: chris@froineslawoffice.com

Attorney for the Plaintiff/Petitioner

Bradley J. Luck, Esq.
Tessa Keller, Esq.
Garlington, Lohn & Robinson, PLLP
350 Ryman Street
POB 79009
Missoula, Montana 59807
(406) 523-2595
Email: bjluck@garlington.com
Email: takeller@garlington.com

Attorney for the Defendants

Hon. Leslie Halligan
Missoula County Courthouse
Department 1
200 West Broadway
Missoula, MT 59802
Tel: (406) 258-4771
Email: lhalligant@mt.gov

Respondent

COMES NOW the Petitioner through her Counsel of record, Christopher W. Froines and requests Leave of the Court to file a Brief in Reply to the Response Briefs of HON. LESLIE HALLIGAN and ORION INTERNATIONAL, INC.

BRIEF

Based on the response briefs from Judge Halligan and ORION, it is clear that both are operating under the misapprehension that Petitioner's attempt to certify this case as a "class action" has been denied with finality.

In this Court's ORDER of May 15, 2018 affirming the District Courts denial of class certification, this Court upheld the District Court's denial of certification based on the grounds that Plaintiff failed to satisfy the superiority requirement. While the original Motion to Certify the class was denied, there is nothing that prohibits Plaintiff from conducting additional Discovery to remedy the perceived deficiencies of class certification. Petitioner requests the opportunity to brief this issue to show that the District Court was operating under misapprehension of the law when it found the only issue remaining before the Court was whether the Defendant's actions were willful or negligent.

In the closing sentence of its opinion dated May 15, 2018, this Court stated, "based on the record as it is currently developed, we cannot conclude that the District Court erred by finding that Ascencio failed to meet the superiority requirement of M.R.Civ.P 26(b)(3)."

CONCLUSION

Based on the response of Hon. Judge Halligan and ORION, it is clear that the Court is operating under misapprehension of the law, or assuming that because the Motion to Certify Class was initially rejected, the Plaintiffs cannot file an additional second motion to certify after further developing the record through additional discovery. For this reason, Plaintiff requests leave to file a reply brief on the issue of recertifying the class by the making an additional motion to recertifying the class. The Courts discovery order has the effect of completely negating Plaintiffs ability to conduct additional discovery to remedy the District Court's perceived deficiencies in Plaintiffs Motion to Certify Class by refusing to order discovery and prohibiting Plaintiffs from contacting potential witnesses.

Respectfully submitted this 14 th day of February 2019



Christopher W. Froines
Attorney for the Plaintiff/Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing **PETITIONERS MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF HER PETITION FOR WRIT OF SUPERVISORY CONTROL** with the Clerk of the Montana Supreme Court and the following individuals by the means designated below on this 14~~th~~ day of February 2019:

Bradley J. Luck, Esq.
Tessa Keller, Esq.
Garlington, Lohn & Robinson, PLLP
350 Ryman Street
POB 79009
Missoula, Montana 59807
(406) 523-2595
Email: bjluck@garlington.com
Email: takeller@garlinton.com

Hon. Leslie Halligan
Missoula County Courthouse
Department 1
200 West Broadway
Missoula, MT 59802
Tel: (406) 258-4771
Email: lhalligant@mt.gov

Requested Service: eService

CERTIFICATE OF SERVICE

I, Christopher W. Froines, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 02-15-2019:

Bradley J. Luck (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: Orion International Corp.
Service Method: eService

Tessa Anne Keller (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: Orion International Corp.
Service Method: eService

Leslie Halligan (Respondent)
200 West Broadway
Missoula MT 59801
Service Method: Conventional

Bradley J. Luck (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Service Method: eService
E-mail Address: bjluck@garlington.com

Tessa Anne Keller (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Service Method: eService
E-mail Address: takeller@garlington.com

Electronically Signed By: Christopher W. Froines
Dated: 02-15-2019