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CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 18-0693

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MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>ROBERT DANNELS,</p> <p>Plaintiff,</p> <p>vs.</p> <p>BNSF RAILWAY COMPANY, NANCY AHERN, and JOHN DOES 1 THROUGH 10,</p> <p>Defendants.</p>	<p>Cause No. BDV-14-001</p> <p>Honorable Katherine Bidegaray</p> <p>PLAINTIFF'S MOTION FOR RULE 37(b) SANCTIONS AND ORDER TO SHOW CAUSE WHY CONTEMPT SANCTIONS SHOULD NOT BE GRANTED</p>
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COMES NOW the Plaintiff, Robert Dannels ("Dannels"), and moves the Court under Rule 37(b) of the Montana Rules of Civil Procedure for sanctions against Defendant BNSF Railway Company ("BNSF") because of its failure to comply with this Court's March 15, 2019, Order compelling it to produce to Dannels by March 22, 2019, the discovery owed under this Court's

February 26, 2017, February 22, 2018, and November 16, 2018, Orders. Dannels requests that as Rule 37(b) sanctions:

1. BNSF's pleadings be stricken in whole—Rule 37(b)(2)(A)(iii);
2. Default judgment be rendered and entered against BNSF on all of Dannels' claims—Rule 37(b)(2)(A)(vi);
3. BNSF be prohibited from supporting any of its claims and stricken defenses or opposing any of Dannels' claims and from participating in a default damages hearing before this Court to determine Dannels' reasonable general and punitive damages—Rule 37(b)(2)(A)(ii);
4. Plaintiff's Contentions in the parties' proposed Pre-trial Order should be taken as established for purposes of this action—Rule 37(b)(2)(A)(i); and
5. BNSF's failure to obey the Courts March 15, 2019, Order be treated as a contempt of court—Rule 37(b)(2)(A)(vii).

To vindicate the dignity of this Court's authority and to persuade BNSF and its attorneys to do what the law requires, Dannels moves the Court under §§ 3-1-501(1)(e) and 3-1-501(2), MCA, for an expedited hearing requiring Roger Nober, BNSF Executive Vice President, Law and Corporate Affairs [head of BNSF's legal department], and BNSF attorneys of record, Jeff Hedger, Michelle Friend, Robert Phillips, and Kathleen DeSoto, to appear and show cause why they and BNSF should not be held in contempt and sanctioned under § 3-1-501, MCA, for failure to obey the Court's March 15, 2019, Order. As one sanction, Dannels requests BNSF be fined \$25,000.00 a day from March 22, 2019, until the date of the damages hearing or until it fully complies with the Court's March 15, 2019, Order; and if BNSF fully complies with the Order, this monetary sanction be purged.


Dannels requests payment by BNSF of attorney fees and expenses in making the these motions and, if granted, the Court give BNSF the opportunity to be heard and contest, if it chooses, the fees and expenses claimed at the same time the Court conducts its hearing on other fees and expenses awarded in its November 16, 2018, Corrected Order on Sanctions.

The assessment and propriety of the sanctions sought (1) relate to the extent and nature of the actual discovery abuse; (2) relate to the extent of the prejudice to Dannels which resulted from the discovery abuse; (3) are consistent with Rule 37(b) and the consequences expressly warned of by the District Court; and (4) relate to BNSF's complete and persistent disregard of the District Court's orders and authority and Montana's Rules of Civil Procedure, resulting in impermissible prejudice to Dannels.

Counsel for Dannels, in good faith, tried to obtain the discovery ordered by conferring with Robert Phillips, counsel for BNSF. BNSF stands on its refusal to obey this Court's order, necessitating this motion which is opposed. Dannels' motions are supported by the Affidavit of Dennis Conner and a brief.

DATED this 28th day of March, 2019.

CONNER & MARR, PLLP

BY: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March, 2019, a true and correct copy of the foregoing was served upon the following:

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