

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-25-0272

BRUCE DOERING, an individual and
KIM DOERING, an individual,

Defendants/Appellants,

v.

SPENCER MELBY, an individual and
COLLETTE MELBY, an individual,

Plaintiffs/Appellees,

and

DAWN MADDUX, an individual,
WESTERN FRONTIER, LLC d/b/a
ENGEL & VÖLKERS WESTERN
FRONTIER, a Montana Limited Liability
Company;

Co-Defendants/Appellees

APPELLANTS' MOTION STRIKE

On appeal from the Montana Fourth Judicial District Court, Missoula County
Cause No. DV-21-671; Honorable Judge Jason Marks

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COME NOW, Defendants–Appellants Bruce Doering and Kim Doering (“Doerings”), by and through their counsel of record, and pursuant to M. R. App. P. 8(6) (“Rule 8(6)”) and this Court’s inherent authority to regulate appellate proceedings, respectfully move this Court for an order striking or disregarding Supplemental Appendices 11, 12, 13 and 21 (pp. 53-54, 99) to Plaintiffs–Appellees’ (“Plaintiffs”) Answer Brief, (“Answer Brief”) and disregarding all argument that relies upon those materials.

This motion is necessary because the challenged appendices consist of

attorney-client communications the district court ruled privileged. (R@96¹) (“Order Denying Motion to Compel”). Plaintiffs’ continued reliance on those materials in summary-judgment briefing and on appeal improperly circumvents that order, and improperly includes in the appellate record evidence that has been excluded.

Rule 8(6) authorizes the Doerings to bring this motion because Plaintiffs’ inclusion of privileged documents creates a dispute over the proper content of the record, a question expressly reserved to this Court.

Plaintiffs’ Answer Brief was received on December 8, 2025. The concern was identified on Friday, December 12, 2025. Doerings’ counsel sent a letter to Plaintiffs’ counsel requesting Plaintiffs withdraw the privileged materials and refile with redactions. (Appendix “A”). On December 16, 2025, Plaintiffs asserted they disagree and object to this Motion.

I. MATERIALS AT ISSUE

Plaintiffs’ Answer Brief relies on the following supplemental appendices:

➤ Supplemental Appendices 11, 12, and 13

These appendices placed in the record documents dictated by the district court to be protected by the attorney client privilege and were inadvertently disclosed by Zane Sullivan in unredacted form. Doering and Maddux disclosed the documents in redacted form.

Supplemental Appendices 11 and 12 are the same as Exhibits I and J to the Motion to Compel (R@78), which the Doerings produced in redacted form. which The district court ruled these documents were

¹ Citations to the Record (R@##) refers to Register of Actions referencing the District Court’s Docket Numbers.

privileged communications, ordering redaction of Appendix 11 and withholding of Appendix 12 (the attachment to Appendix 11 correspondence). Supplemental Appendix 13 is the same as Exhibits L and K to the Motion to Compel (R@78), which were produced by the Maddux in redacted form. These communications were also ruled to be privileged. Plaintiffs have disregarded the district court's privilege ruling by placing the unredacted versions of these documents into the appellate record.

- Supplemental Appendix 21 – Deposition of J.R. Casillas, at 53-54 and 99.

This appendix contains testimony from the deposition of J.R. Casillas. Doerings' counsel expressly preserved a continuing objection based on attorney-client privilege, pending resolution of Plaintiffs' Motion to Compel. The testimony on pages 53–54 (and related testimony at page 99) directly concerns documents later ruled to be privileged attorney-client communications. Absent Plaintiffs' improper reliance on the materials contained in Supplemental Appendices 11 and 12, this line of questioning—and the resulting testimony—would not have occurred.

(collectively “Improper Appendices”).

Despite the district court's ruling that these materials are privileged, Plaintiffs nonetheless rely on the Improper Appendices to advance arguments that could not be made absent reference to the privileged documents. (Answer Br. at 6–7, 10 ¶¶ 19–20, 31; *id.* at 28).

II. THE DISTRICT COURT RULED THE DOCUMENTS ARE PRIVILEGED AND PROTECTED

The history below establishes the Improper Appendices are the same attorney-client communications the district court expressly ruled privileged in the Order Denying the Motion to Compel.

A. August 2021 – Doerings asserted privilege in discovery, producing in redacted form.

The disputed documents first arose in response to Plaintiffs’ First Set of Discovery Requests seeking communications between Doerings and their counsel, J.R. Casillas. (R@78, Ex. A, RFP No. 7.) On August 16, 2021 the Doerings objected on grounds of attorney-client privilege and work product producing redacted versions consistent with those objections. (R@79, Ex. B at 18–19.)

B. May 2022 – Prior to the Order stating this information was privileged Sullivan inadvertently produced privileged communications.

On May 6, 2022, in responding to Plaintiffs’ subpoena, non-party attorney Sullivan produced approximately 284 pages of documents. Although Sullivan asserted attorney-client and work-product objections, he inadvertently included privileged communications, including the Improper Appendices.

C. June 2022 – Plaintiffs filed a Motion to Compel seeking unredacted versions and arguing waiver; the Doerings reasserted privilege.

After receiving Sullivan’s inadvertent production, Plaintiffs sought to exploit those materials. On June 14, 2022, Plaintiffs filed their Motion to Compel Supplemental Discovery, requesting that the district court order the Doerings to produce “full and redaction-free” versions of the same communications. (R@78). Exhibits attached to the motion included the documents now attached as the

Improper Appendices, just in their redacted form. Plaintiffs argued the Doerings waived privilege by forwarding certain emails to two third parties, real estate agent Dawn Maddux and attorney Sullivan.

Doerings opposed Plaintiffs' request and fully reasserted their attorney-client and work-product objections.

D. October 2022 – Doerings continued privilege objections during depositions pending the court's ruling.

While the Motion to Compel remained pending, Plaintiffs took depositions of two parties, Maddux and Bruce Doering—about the Improper Appendices *in the unredacted form*. These documents were the subject to the Motion to Compel, which had not been ruled upon at that time. At both of these depositions, the Doerings' counsel repeatedly asserted continuing objections on grounds of attorney-client privilege, expressly preserving all privilege claims until the district court ruled.

E. May 30, 2023 – The district court ruled the disputed communications are privileged and protected.

On May 30, 2023, the district court entered its written Order Denying Plaintiffs' Motion to Compel, holding:

The e-mails attached . . . as Exhibits D through L are protected by the attorney-client privilege. . . Consequently, the Doerings do not need to provide unredacted copies to the Melbys, and the Melbys' Motion is hereby DENIED.

(R@96).

The ruling includes the Improper Appendices. This was a final, dispositive

ruling on privilege. It has not been modified, reconsidered, or vacated.

III. PLAINTIFFS CONTINUED IMPROPER USE OF DOCUMENTS.

The Improper Appendices contain attorney-client communications the district court expressly ruled privileged, yet Plaintiffs continue to submit them in unredacted form. On January 17, 2024, Plaintiffs filed a motion seeking to pre-admit these same documents at trial despite the Order Denying Plaintiffs’ Motion to Compel, which the Doerings opposed. (R@140, 177).

That same day, Plaintiffs also included the Improper Appendices in their Motion for Partial Summary Judgment. (R@139.A). Plaintiffs’ request for “clarification” confirms their awareness that the documents were privileged.

The district court never granted the motion or modified its privilege ruling. A pending motion does not suspend a binding order, and a later factual reference prompted by improper submission does not alter the ruling.

RELIEF REQUESTED

Supplemental Appendices 11, 12, 13, and 21 (pp. 53–54 and 99) contain attorney-client communications the district court expressly ruled as protected by the attorney-client privilege. Plaintiffs reintroducing these materials on appeal improperly circumvents that binding order and improperly expands the appellate record. The inclusion of these privileged documents ignores the privilege, ignores

the Court's ruling, and most importantly is an offer of material evidence that Plaintiffs know to be excluded. When Plaintiffs were advised of the inclusion of privileged materials, Plaintiffs chose not to take reasonable remedial measures, but to double down on its improper offer of evidence.

Accordingly, under Rule 10(6), the Doerings request that this Court strike Supplemental Appendices 11, 12, 13, and 21 to Plaintiffs' Answer Brief and disregard all argument relying on those materials. These arguments are set forth at pages 6–7, 10 (paragraphs 19–20, 31) and page 28 of the Answer Brief.

DATED this 22nd day of December 2025.

COTNER RYAN BLACKFORD, PLLC

/s/ David B. Cotner

David B. Cotner

Taylor E. Eisenzimer

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word is 1,246 words, excluding certificate of service and certificate of compliance.

COTNER RYAN BLACKFORD, PLLC

/s/ David B. Cotner

David B. Cotner

Taylor E. Eisenzimer

CERTIFICATE OF SERVICE

I, David Brian Cotner, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 12-22-2025:

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