

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO.: 3:15-cv-00111-RJC-DCK
DOCKET NO. 3:15-mc-00035-MOC-DCK

EDDIE BOLLMEIER, BILL TRACEY and,)
SIMON PARROTT,)
)
Plaintiffs,)
)
v.)
)
GARY HUMMEL, STEPHEN BRADFORD,)
ROB STREBLE, STEVE SMYSER, ROBERT)
FREAR, COURTNEY BORMAN, and JANE DOE)
BORMAN, RONALD NELSON, PAUL DIORIO,)
PAUL MUSIC, JOHN TAYLOR, JOE STEIN)
PETE DUGSTAD, JAY MILKEY,)
and STEPHEN NATHAN,)
)
Defendants, sued in their.)
individual capacity.)
)
_____)

**MOTION TO VACATE THE ORDER DATED MARCH 5, 2015, OR, IN THE
ALTERNATIVE, TO DISMISS THE VERIFIED COMPLAINT**

Pursuant to Rules 12(b)(1), 12(b)(6), and 60 of the Federal Rules of Civil Procedure and Local Rule 7.1, defendants GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, and STEPHEN NATHAN, hereby move for an order dismissing the verified complaint and vacating the *ex parte* order of the Court dated March 5, 2015.

As set forth in the accompanying Memorandum of Law dated April 15, 2015, the moving defendants seek an order (a) pursuant to Rule 60 of the Federal Rules of Civil Procedure that the Order of United States District Court Judge Cogburn dated March 5,

2015 was improvidently granted and should be vacated; (b) pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing the verified complaint on the grounds that the Court lacks subject matter jurisdiction over the claim and that the verified complaint also fails to state a claim upon which relief can be granted; and (c) such other and different relief as the Court deems proper and just.

Respectfully submitted this 15th day of April, 2015.

TIN FULTON WALKER & OWEN
s/ John Gresham

John Gresham
N.C. State Bar No. 6647
301 East Park Avenue
Charlotte, NC 28203
(704) 338-1220

Attorneys for Defendants
GARY HUMMEL, STEPHEN
BRADFORD, ROB STREBLE,
JOHN TAYLOR, JOE STEIN,
PETE DUGSTAD,
and STEPHEN NATHAN

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION TO VACATE THE ORDER DATED MARCH 5, 2015, OR, IN THE ALTERNATIVE, TO DISMISS THE VERIFIED COMPLAINT with the Clerk of the Court using the CM/ECF system, and that notification pursuant to the CM/ECF system will be sent to:

C. Grainger Pierce, Jr.
NEXSEN PRUET, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202
gpierce@nexsenpruet.com

Marty Harper
Kelly J. Flood
ASU ALUMNI LAW GROUP
Two North Central, Suite 600
Phoenix, AZ 85004
Marty.harper@asualumnilawgroup.org
Kelly.flood@asualumnilawgroup.org

Jeffrey Freund
Zachary Ista
BREDHOFF & KAISER, P.L.L.C.
805 15 Street, N.W.
jfreund@bredhoff.com
zista@bredhoff.com

This the 15th day of April, 2015.

s/ John W. Gresham
John W. Gresham, N.C. Bar No. 6647
301 East Park Avenue
Charlotte, NC 28203
(704) 338-1220