

IN THE UNITED STATES DISTRICT COURT
NORTH DAKOTA

VANESSA DUNDON, ET AL.,

Plaintiffs,

v.

KYLE KIRCHMEIER, ET AL.

Defendants.

No. 1:16-cv-00406 DLH

**MOTION TO RECONSIDER ORDER
DENYING PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER
AND TO SET A DATE FOR HEARING;
DECLARATION IN SUPPORT.**

Plaintiffs respectfully request that the Court reconsider its denial of Plaintiffs' Motion for Temporary Restraining Order and set an immediate hearing date for the motion. Plaintiffs have promptly served the Summons and Complaint, Motion, Memorandum and Exhibits on all Defendants and were not seeking to have the order entered ex parte. There is an emergency need to hear this matter before further serious injuries occur. See within Declaration of Counsel, and the previously filed Memorandum and Exhibits.

Dated: Dec. 1, 2016

Respectfully submitted,

/s/ Rachel Lederman

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DECLARATION OF COUNSEL

I, Rachel Lederman, declare:

The Complaint and Motion for Temporary Restraining Order were filed in this matter on Monday November 28, 2016. Plaintiffs did not seek to have the TRO entered ex parte but promptly retained process server W.T. Butcher and Associates in Bismarck to serve all of the defendants as expeditiously as possible.

On Tuesday, November 29, 2016, there was a blizzard in Bismarck and Mandan and only emergency vehicles were allowed on portions of the road. Nevertheless, that day William Butcher was able to personally serve Defendants Stutsman County and Stutsman County Sheriff Chad Kaiser, Morton County, the City of Mandan, and Mandan Police Chief Jason Ziegler.

On November 30, 2016, Mr. Butcher went to the office of Sheriff Kyle Kirchmeier and waited on two occasions to serve him personally. Although he was present in his office, Sheriff

Kirchmeier did not make himself available for personal service. On the morning of December 1, the Morton County States Attorney accepted service on behalf of Sheriff Kirchmeier.

As of the morning of December 1, all Defendants were served and Notice of Service was filed on Dec. 1.

The need for emergency relief and threat of irreparable harm set forth in Plaintiffs' previous papers has only increased since this action was filed three days ago. In fact there are thousands more people at the Oceti Šakowij Camp, and the United States Army Corps of Engineers has given a deadline of December 5, 2016, for the water protectors to relocate off the United States Army Corps land where approximately 9,000 people are currently camped. (U.S. Army Corps of Engineers Omaha District Commander update regarding North Dakota Activities <http://www.nwo.usace.army.mil/Media/News-Releases/Article/1013187/omaha-district-commander-provides-update-regarding-north-dakota-activities/>; State of North Dakota Executive Order http://www.co.morton.nd.us/vertical/Sites/%7B90CBB59C-38EA-4D41-861A-81C9DEBD6022%7D/uploads/11-28-2016_executive_order_2016-08.pdf.) This has brought an increasing number of supporters to the camp making a further confrontation quite likely in the coming days. (See, e.g., *Veterans to Serve as Human Shields for Pipeline Protesters* <http://www.nytimes.com/2016/11/29/us/veterans-to-serve-as-human-shields-for-pipeline-protesters.html>; *North Dakota Pipeline: Protesters vow to stand ground* <http://www.wfmz.com/news/national/north-dakota-pipeline-protesters-vow-to-stay-despite-evacuation-order/190593492>.)

I declare under penalty of perjury that the foregoing is true and correct. Executed this Dec. 1, 2016, at San Francisco, California.

/S/
RACHEL LEDERMAN

DECLARATION OF SERVICE

I, Rachel Lederman, declare: I am an active member of the State Bar of California and the North Dakota federal district court and am not a party to this cause. My business address is 558 Capp Street, San Francisco, CA 94110.

On Dec. 1, 2016, I caused a true copy of the attached **Motion for Reconsideration and Declaration** to be hand delivered to the following by messenger by morning of December 2, 2016 to:

Sheriff Kyle Kitchmeier
Morton County
City of Mandan
Chief Jason Ziegler
Stutsman County
Sheriff Chad Kaiser

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on Dec. 1, 2016, at San Francisco, California.

/S/Rachel Lederman
RACHEL LEDERMAN