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## MEMORANDUM IN SUPPORT

The Court issued an Order on August 8, 2011 that was entered as a final judgment on August 9, 2011 ("Order"). The Court's Order was in response to two motions filed by Defendant Morningland of the Ozarks, LLC's ("the LLC"); the first a motion to reconsider contempt judgment and the second a motion for clarification of contempt order. In its Order, the Court requires, in part, the production of the LLC's sales records from February 23, 2011 to June 12, 2011 and requires that all such documents be unredacted, i.e., the names and addresses of the individuals who purchased the cheese must be revealed.

As the Court is aware, the Dixons are Trustees of a Private Member Association called Morningland Dairy Private Membership Association ("PMA"). See Affidavit of Denise Dixon, attached hereto as Exhibit A, par. 2. As the Trustees, the Dixons have been maintaining the records of the PMA since the PMA's creation on January 10, 2011. Dixon Affidavit, par. 4. Since January 10, 2011, the LLC has, except for operating a checking account, ceased to operate or engage in any business activity and thus has not generated any business records. Dixon Affidavit, par. 5. Consequently, the LLC does not have any business records to produce in compliance with the Court's Order because no such records exist. Dixon Affidavit, par. 6.

The PMA does not manufacture cheese; it purchases cheese from approved, licensed and inspected sources located in Wisconsin and Kansas. Dixon Affidavit, par. 7. Once the cheese is purchased from these approved sources the PMA cuts and re-wraps it and sells it only to its members. Dixon Affidavit, par. 8. The only sales records from February 23<sup>rd</sup> to June 12<sup>th</sup> that exist are those that pertain to sales of cheese by the PMA

to its members. Dixon Affidavit, par. 9. These documents are the PMA's own private documents and according to the Memorandum of Understanding signed by each member they shall be "strictly protected and **only** released upon written request of the member." (Emphasis in original). Dixon Affidavit, par. 10.

All of the cheese that has been sold by the PMA has been sold only to its members and to no other persons. Dixon Affidavit, par. 11. It is a violation of the PMA's bylaws for a member to re-sell any cheese other than to fellow members of the PMA. Dixon Affidavit, par. 12. All of the names and addresses on all of the PMA sales records from February 23<sup>rd</sup> to June 12<sup>th</sup> are names and addresses of PMA members. Dixon Affidavit, par. 13. The names and addresses on all of the PMA's sales records from February 23<sup>rd</sup> to June 12<sup>th</sup> do not contain the names of any persons other than PMA members. Dixon Affidavit, par. 14. The sales records that the Dixons have already produced to the Missouri Attorney General's office contain the names and addresses of PMA members, which have been redacted for privacy reasons pursuant to the Memorandum of Understanding quoted from above. Dixon Affidavit, par. 15.

In essence, ordering the Dixons as Trustees of the PMA to produce unredacted sales records constitutes the release of the PMA's private membership list. As explained below, the PMA has a First and Fourteenth Amendment right to keep its membership list private. In addition, the State has not demonstrated a compelling interest in requiring the disclosure of the names of the PMA members who have been purchasing the PMA's cheese. Therefore, redacted documents that have already been provided should prove sufficient for purposes of compliance with the Court's Order.

## ARGUMENT

Courts generally treat a motion to reconsider as a motion for new trial. *See Coffey v. Wasson-Hunt*, 281 S.W.3d 308, 311 (Mo. 2009). As long as a motion to reconsider is timely filed, it will be acted upon as a motion for a new trial. “The board's motion to reconsider was an authorized after-trial motion for purposes of Rule 81.05(a).” *Id.* at 311. *See also Hinton v. Proctor & Schwartz, Inc.*, 99 S.W.3d 454, 459 (Mo. App. E.D. 2003); *Koerber By and Through Ellegood v. Alendo Bldg Co.*, 846 S.W.2d 729, 730 (Mo. App. E.D. 1992); *In re Carl McDonald Revocable Trust Dated Oct 1, 1979*, 942 S.W.2d 926, 931, fn. 6, (Mo. App. S.D. 1997). Pursuant to Supreme Court Rule 78.04, therefore, a motion for reconsideration is timely if it is filed within 30 days of the entry of judgment.

Supreme Court Rule 78.05 provides, in part, that when any post-trial motion “is based on facts not appearing of record, affidavits may be filed which affidavits shall be served with the motion.” In addition, Rule 78.05 also provides, in part, that “[d]epositions and oral testimony may be presented in connection with after-trial motions.” Thus, a motion for reconsideration may be supported by affidavits and/or deposition transcripts.

Furthermore, a Court retains jurisdiction over its judgments for at least 30 days after entry. *See* Rule 75.01. During that time, the Court may “for good cause, vacate, reopen, correct, amend, or modify its judgment.” *Id.* In addition, Rule 74.06(b) provides, in part, that a party may be relieved from an “irregular” judgment or if the judgment contains a “mistake.”

Finally, this Court has already considered two motions to reconsider that have

been filed by the Defendant LLC in this matter. First, the LLC filed on a motion dated March 24, 2011 that asked this Court to reconsider its judgment and order of February 23, 2011 that was. Second, the LLC filed a motion dated July 29, 2011 that asked this Court to reconsider its judgment of contempt of June 29, 2011. In both instances, this Court issued rulings on both motions. Consequently, this motion asks this Court to reconsider that portion of its Order that requires the production of un-redacted sales records that requires the disclosure of the names and addresses of the purchasers of the PMA's cheese.

In this case, Defendant's motion to reconsider is timely because it is being filed within 30 days of entry of the Order. Moreover, Denise Dixon's Affidavit indicates that good cause exists for this Court to reconsider that portion of its Order that deals with the production of sales records, and that the Court should not order the Dixons as Trustees to disclose the names and addresses of the PMA's private members.

Therefore, good cause exists for this Court to reconsider its Order

**I. The First and Fourteenth Amendments protect the PMA from disclosing its member list.**

The United States Supreme Court has already held that a private membership association has a due process right under the First and Fourteenth Amendments to keep its membership list private. *See NAACP v Alabama*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). In that case, the State of Alabama had a statute that required an out-of-state corporation to "qualify" in the state before it could do any business in the state. To qualify, the NAACP had to submit its corporate charter and designate a place of business and designated agent in the state to accept process. *Id.* at 451. The NAACP refused to comply with the statute and argued it was exempt. *Id.* at 452.

The State of Alabama filed a civil suit against the NAACP and the NAACP moved to dismiss. *Id.* at 452-453. Before the motion to dismiss was heard, Alabama served a request for production of documents upon the NAACP seeking the production of the NAACP's records, including but not limited to a list of its members and their positions within the organization. *Id.* The NAACP refused and Alabama filed a motion to compel. The Court ordered the production of a slew of documents, the NAACP produced most of the documents, but the NAACP refused to produce its membership list. *Id.* at 453-454. The NAACP was eventually found in contempt of court for failing to produce its membership list and, under Alabama law, was foreclosed from defending itself on the complaint filed by the State. *Id.* at 453-454. Consequently, judgment was entered for Alabama and the NAACP appealed.

The United States Supreme Court took the appeal on certiorari and initially noted that the NAACP had standing to assert the constitutional rights of its members, stating:

If petitioner's rank-and-file members are constitutionally entitled to withhold their connection with the Association despite the production order, it is manifest that this right is properly assertable by the Association. To require that it be claimed by the members themselves would result in nullification of the right at the very moment of its assertion. Petitioner is the appropriate party to assert that rights (sic), because it and its members are in every practical sense identical.

*Id.* at 459. Thus, the Dixons are the proper persons to assert the rights of the PMA members because they are the Trustees of the PMA.

Getting to the heart of the matter, the Supreme Court held that the NAACP had a constitutional interest in protecting the identity of its members and that it was not required to disclose its membership list. "We hold that the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so

related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment.” *Id.* at 466. The Supreme Court also rejected Alabama’s argument that it had a justification for the private information. *Id.* Thus, the identity of the NAACP’s members remained confidential and private.

Consequently, the identity of the PMA’s members are protected by the First and Fourteenth Amendment of the United States Constitution

It is significant to note that the PMA is not claiming absolute immunity from state regulation. Indeed, at the June 13, 2011 contempt hearing held in this matter, the PMA offered as evidence its membership application form and bylaws and identified Denise and Joseph Dixon as its Trustees. In addition, Ms. Dixon testified to how the PMA was created, its purposes and mission statement, whether it advertises, and its membership criteria. Moreover, the PMA was ordered to produce documents and it did so. All of this was done to demonstrate that the PMA is a legitimate private member association that enjoys constitutional freedoms and protections.

However, the PMA is not at liberty to disclose the names and addresses of the persons on the PMA’s sale records because *those persons can only be members of the PMA*. That is because the Dixons have cut, re-wrapped and sold cheese *only* to PMA members and to no other persons.<sup>1</sup> Therefore, to obtain the names and addresses of the persons who purchased cheese from the PMA is to obtain the names and addresses of the PMA members themselves; in other words, a membership list.

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<sup>1</sup> Again, the Dixons purchase cheese from an approved, licensed and inspected source in Wisconsin and in Kansas; they do not manufacture any cheese.



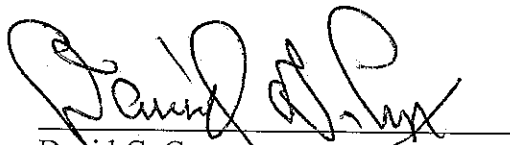
It is also significant to note that the State cannot describe a legitimate reason for obtaining the names and addresses of the PMA members. Denise Dixon's affidavit demonstrates that the only cheese that is sold by the PMA is cheese that is sold to its members. What those members choose to do with the cheese after they purchase it is beyond the control of the Dixons. Indeed, as Mr. Sean Foley testified to at the contempt hearing in this matter, he violated the PMA's bylaws when he purchased cheese from the PMA and then turned around and re-sold the cheese in his mother's retail store.

Consequently, if the State has any evidence that the PMA's members are re-selling their cheese to entities other than PMA members then the State should be required to come forth with that evidence before demanding that the PMA disclose the names and addresses of its members. The State's failure to present any evidence to this Court that the PMA is selling cheese to any entity other than PMA members means that no such evidence exists. Thus, the State has no legitimate reason for demanding the names and addresses of the PMA members.

For these reasons, the Court should reconsider its Order and not require the disclosure of the PMA members' names and addresses on its sale orders.

Dated: August 17, 2011

Respectfully submitted,



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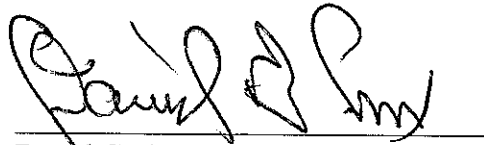
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2011, I served the foregoing by regular U.S.

mail, postage prepaid, to the following:

Jessica Blome  
Agriculture and Environment Division  
Office of the Attorney General of Missouri  
P.O. Box 899  
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[jessica.blome@ago.mo.gov](mailto:jessica.blome@ago.mo.gov)  
Counsel for Plaintiff

A handwritten signature in black ink, appearing to read "David G. Cox", is written over a horizontal line.

David G. Cox

# EXHIBIT A



7. The PMA does not manufacture cheese; it purchases cheese from approved, licensed and inspected sources located in Wisconsin and Kansas.
8. Once the cheese is purchased from these approved sources, the PMA cuts and re-wraps it and sells it only to its members.
9. The only sales records from February 23<sup>rd</sup> to June 12<sup>th</sup> that exist are those that pertain to sales of cheese by the PMA to its members.
10. These documents are the PMA's own private documents and according to the Memorandum of Understanding signed by each member they shall be "strictly protected and **only** released upon written request of the member." Emphasis in original.
11. All of the cheese that has been sold by the PMA has been only to its members and to no other persons.
12. It is a violation of the PMA's bylaws for a member to re-sell any cheese other than to a fellow member.
13. All of the names and addresses on all of the PMA sales records from February 23<sup>rd</sup> to June 12<sup>th</sup> are names and addresses of PMA members.
14. The names and addresses on all of the PMA's sales records from February 23<sup>rd</sup> to June 12<sup>th</sup> do not contain the names of any persons other than PMA members.
15. The sales records that I have already produced to the Missouri Attorney General's office contain the names and addresses of PMA members, which have been redacted for privacy reasons.

FURTHER AFFIANT SAYETH NAUGHT

Denise Dixon  
Denise Dixon

Sworn and subscribed before me in my presence this 16<sup>th</sup> day of August, 2011.

Amanda Eller  
Notary public



AMANDA ELLER  
Notary Public, State of Ohio  
My Commission Exp. 9-24-2013