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FILED

APR 18 2022

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MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	No. CDV-2020-307 Hon. Kathy Seeley  <b>JOINT STIPULATION AND [PROPOSED] PROTECTIVE ORDER</b>
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WHEREAS, this action concerns allegations against Defendants the State of Montana, the Governor of the State of Montana, the Montana Department of Environmental Quality, the

Montana Department of Natural Resources and Conservation, the Montana Department of Transportation, and the Montana Public Service Commission (collectively “Defendants”) brought by sixteen (16) youth Plaintiffs, several of whom are minors (collectively “Plaintiffs”);

WHEREAS, in the course of this action, Defendants may provide Plaintiffs’ attorneys, as well as Plaintiffs’ officers, employees, representatives, contractors, consultants, or experts (collectively “Plaintiffs’ Designees”) with copies of or access to documents, data, and/or other materials within the possession, custody, or control of Defendants in a mutually acceptable manner;

WHEREAS, in the course of this action, Plaintiffs may provide Defendants’ attorneys, as well as Defendants’ officers, employees, representatives, contractors, consultants, or experts (collectively “Defendants’ Designees”) with copies of, or access to documents, data, and/or other materials within the possession, custody, or control of Plaintiffs in a mutually acceptable manner;

WHEREAS, such documents, data, and/or other materials may contain confidential, private, or personal information, such as medical records, about Plaintiffs, employees or contractors of Defendants, or of individuals who are not parties to this case; and

WHEREAS, Plaintiffs and Defendants (collectively “the Parties”) have conferred, negotiated, and agreed upon this Joint Stipulation and [Proposed] Protective Order to protect, in a manner consistent with applicable laws and regulations, the confidentiality of certain documents, data, and/or other materials that are relevant or potentially relevant to the claims in this case and that are to be provided or otherwise made available in the course of this case.

THE PARTIES HEREBY JOINTLY STIPULATE AND AGREE TO THE FOLLOWING:

1. Documents, data, and/or other materials, as well as copies or images of such documents, data, and/or other materials that contain confidential, private, or personal information

and are designated as protected from disclosure, shall be deemed “Confidential Materials” for purposes of this Joint Stipulation and [Proposed] Protective Order. Information that is publicly available may not be designated as Confidential Materials.

2. This Joint Stipulation and [Proposed] Protective Order governs the use of Confidential Materials for all purposes related to this case, including but not limited to litigation, Alternative Dispute Resolution or other formal dispute resolution process, and informal settlement discussions.

3. With the exception of oral testimony, the portions of all documents, testimony, written responses, and other materials and information produced by the parties that contain Confidential Materials shall be labeled “CONFIDENTIAL” and shall specify, as far as reasonably practicable, the portion of the document that shall be treated as Confidential Materials. The party or non-party claiming confidentiality shall designate each page or reasonably segregable portion of the document, testimony, written responses, or other materials or information with a stamp identifying it as Confidential Materials, if practical to do so.

4. Any notes, dictation tapes, or media containing electronically stored information that are made as part of a review of the Confidential Materials and that contain information regarding the Confidential Materials shall include the endorsement “CONFIDENTIAL” and shall be subject to the same provisions as copies or images of the Confidential Materials.

5. Within thirty (30) days after receipt of the final transcript, video recording, or audio recording of any hearing, pre-trial or trial proceeding, or deposition of any party or witness in this case, a party or the witness may designate as Confidential Materials any portion of the transcript, video recording, or audio recording that discloses Confidential information. Unless otherwise

agreed, all transcripts, video recordings, and audio recordings of depositions of Plaintiffs shall be treated as Confidential until the expiration of the thirty-day period.

6. If a Party disputes the assertion and designation that a document, data, and/or other materials constitutes Confidential Material by a Party or a non-party, the Party that disputes the assertion of confidentiality shall notify counsel for the designating Party or non-party in writing and state therein the grounds for disputing the assertion and designation of confidentiality. Within fourteen (14) days of receiving such written notification (or a longer period of time, if the Parties agree), the Parties (and the non-party, if applicable) shall discuss and attempt to resolve the dispute. As part of these efforts, the designating Party must assess and the receiving Party must address whether redaction is a viable alternative to complete non-disclosure. If the Parties (and the non-party, if applicable) do not resolve the dispute within fourteen (14) days or an extension thereof, the disputing Party may file a motion to seek a ruling from the Court regarding the assertion and designation of confidentiality. The Party asserting the designation of confidentiality shall have the burden of establishing the designation of confidentiality.

7. Confidential Materials, or any of their contents, may not be used for any purpose other than solely for the litigation in this case and shall not be used by any party for any other purpose, including, without limitation, any media, business, commercial, or competitive purpose. Any information designated as Confidential Materials shall be kept strictly confidential by Plaintiffs' attorneys and Defendants' attorneys (collectively "Parties' Attorneys,") and Plaintiffs' Designees and Defendants' Designees (collectively "Parties' Designees,"). Such information shall not be disclosed, made public, or made available to anyone, except as specifically provided in this Joint Stipulation and [Proposed] Protective Order or in any further Order that a Court having jurisdiction over this case may enter.

8. Any images or copies of Confidential Materials that are provided to the Parties' Attorneys or the Parties' Designees shall include the endorsement "CONFIDENTIAL." All documents, data, and/or other materials so endorsed shall be deemed Confidential Materials and protected as such under this Joint Stipulation and [Proposed] Protective Order. If any Party intends to file documents, data, and/or other materials that have been endorsed as Confidential Materials with the Court as evidence or for any other purpose, the Party shall follow the procedures set forth in this Joint Stipulation and [Proposed] Protective Order.

9. Either Party may request that the Party claiming that documents, data, and/or other materials endorsed as "Confidential Materials" review certain endorsed documents, data, and/or other materials to determine if they contain confidential information; redact any confidential information; and produce a version of the documents, data, and/or other materials, after the necessary redactions, for filing with the Court without the Confidential Materials endorsement set forth in this Joint Stipulation and [Proposed] Protective Order. After the documents, data, and/or other materials have been redacted or otherwise determined not to contain Confidential Materials, the documents, data, and/or other materials shall no longer be considered confidential and subject to this Joint Stipulation and [Proposed] Protective Order.

10. Confidential Materials may be disclosed without Court approval only to the following persons: (a) the Court or any settlement judge or mediator appointed, designated, or selected to work with the Parties in this case, as well as their respective clerks, court reporters, and support staff; (b) the Parties' Attorneys, as well as the attorney(s), paralegal(s), and support staff who are involved or may be necessary in the ordinary course to represent Plaintiffs or Defendants; (c) the authors and the original recipients of the Confidential Materials; and (d) the Parties' expert witnesses and consultants in this case (including partners, associates, and employees of the firm

which employs such consultant or expert), as well as their support staff who are involved or may be necessary in the ordinary course to work on this case, or other Designees. Such persons may have access to the Confidential Materials, provided, however, that, before receiving access to any Confidential Materials, each person receiving such access shall: (a) execute an “Affidavit of Confidentiality,” in the form attached hereto as **Exhibit 1**; and (b) provide the executed Affidavit of Confidentiality to Plaintiffs’ attorneys or Defendants’ attorneys, depending on who provides the person with access to the Confidential Materials. Office support or administrative staffers who handle or file the Confidential Materials but do not review their contents or retain copies thereof in any form need not execute an Affidavit of Confidentiality. Plaintiffs’ attorneys and Defendants’ attorneys shall maintain the executed Affidavits of Confidentiality in his or her files for the duration of this litigation and any related appeal and in accordance with state law after the conclusion of this litigation.

11. The inadvertent failure to designate a document, testimony, written response, or other material or information as Confidential Materials prior to disclosure shall not operate as a waiver of the right of the Party or the non-party to later designate the document, testimony, written response, or other material or information as Confidential Materials. Promptly after receiving notice from the producing party (or non-party) of a claim of failure to designate a document, testimony, written response, or other material or information as Confidential Materials, the receiving party or its counsel shall make reasonable efforts to retrieve such materials and information and to prevent further disclosure. Nothing in this Joint Stipulation and [Proposed] Protective Order Protective Order shall be deemed to waive any claim of attorney-client privilege or of work product immunity. To expedite the production of information, the Parties agree as follows: If materials subject to a claim of privilege of any nature is inadvertently produced, such

production shall in no way prejudice or waive any claim of privilege to which the Party would otherwise be entitled. If a claim of inadvertent production is made pursuant to this paragraph, the receiving Party shall immediately return the same to the producing Party or destroy that material as to which the claim of inadvertent production has been made (including all copies) and no use shall be made of such materials for any purpose. The return or destruction of such materials shall not prevent or preclude the Party or Parties returning such material from later moving the Court for an order compelling production of the material on other grounds, but any such motion shall not assert the fact or circumstances of the inadvertent production; nor shall such motion include, as an attachment or exhibit or otherwise, the material (or any portion) which is the subject of such motion. The motion may describe the participants to any communication and the topic of discussion so long as it does not reveal the substance of the material claimed to be protected. The producing Party also agrees to submit a copy of the material to the Court for *in camera* review, if appropriate.

12. Any Party filing Confidential Materials with the Court shall request that the Clerk of Court file such Confidential Materials under seal. No Party shall file with the Court at any time any motion, application, memorandum or brief, or any other pleading or document that quotes from or paraphrases Confidential Materials or that contains information obtained solely from Confidential Materials, unless the portion of any such motion, application, memorandum or brief, pleading, or other document containing Confidential Materials has been filed under seal with the Clerk of the Court. All filings under seal shall be made in accordance with all applicable court rules, policies, procedures, and orders.

13. Whenever any documents, testimony, written responses, or other materials or information designated as Confidential Materials pursuant to this Joint Stipulation and [Proposed]

Protective Order are to be discussed by a Party or disclosed in a deposition, hearing, or pre-trial or trial proceeding, the designating Party may exclude from the room any person, other than persons designated in Paragraph 10, as appropriate, for that portion of the deposition, hearing, or pre-trial or trial proceeding.

14. Within ninety (90) days of the entry of a final judgment no longer subject to appeal, or the execution of any agreement between the Parties to resolve amicably and settle this case, all Confidential Materials, copies or images thereof, or extracts that constitute Confidential Materials under this Joint Stipulation and [Proposed] Protective Order shall be: (a) returned to the attorneys for the designating Party; (b) destroyed; or (c) deleted from, degaussed, or overwritten on any computer, hard drive, server, or other electronic storage media, through the use of reasonable measures, consistent with this Joint Stipulation and [Proposed] Protective Order. At that time, all individuals who have executed an Affidavit of Confidentiality and who still have access to such Confidential Materials shall certify in writing that, as to all such Confidential Materials, copies or images thereof, or extracts that constitute Confidential Materials, such individuals have returned to opposing counsel; destroyed; or employed reasonable measures, consistent with this Joint Stipulation and [Proposed] Protective Order, to delete from, degauss, or overwrite on any computer, hard drive, server, or other electronic storage media. Plaintiffs' attorneys and Defendants' attorneys shall maintain the written certifications in his or her files in accordance with state law and in accordance with the requirements of this Joint Stipulation and [Proposed] Protective Order. Further, all individuals who execute an Affidavit of Confidentiality pursuant to Paragraph 10 of this Joint Stipulation and [Proposed] Protective Order and who terminate their involvement in this litigation before the final termination of the litigation (including the resolution of any appeals) shall certify in writing that, as to all Confidential Materials to which they have



received access or of which they have received copies, such individuals have returned to opposing counsel; destroyed; or employed reasonable measures, consistent with this Joint Stipulation and [Proposed] Protective Order, to delete from, degauss, or overwrite on any computer, hard drive, server, or other electronic storage media. This paragraph shall not apply to pleadings or other Confidential Materials submitted to and maintained by the Court.

15. This Joint Stipulation and [Proposed] Protective Order does not restrict the disclosure or use of any materials or information lawfully obtained by the receiving Party through means or sources outside of this litigation, nor the disclosure or use of any materials or information designated by a Party as Confidential Materials that the Parties or the Court determine not to be Confidential Materials.

16. Nothing in this Joint Stipulation and [Proposed] Protective Order shall prejudice any party from seeking amendments to expand or restrict the rights of access to and use of Confidential Materials or information, or other modifications, subject to order by the Court.

17. The restrictions on disclosure and use of Confidential Materials or information shall survive the conclusion of this action and this Court shall retain jurisdiction of this action after its conclusion for the purpose of enforcing the terms of this Joint Stipulation and [Proposed] Protective Order.

Respectfully submitted this 18th day of April, 2022.

/s/ Barbara Chillcott  
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*Attorney for Plaintiffs*

/s/ Emily Jones

EMILY JONES

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*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered by electronic mail to the following on April 18, 2022:

AUSTIN KNUDSEN  
*Montana Attorney General*  
DAVID M.S. DEWHIRST  
*Solicitor General*  
ALWYN LANSING  
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*Attorneys for Defendants*

/s/ Barbara Chillcott  
Barbara Chillcott

**EXHIBIT 1**

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	No. CDV-2020-307 Hon. Kathy Seeley  <b>[PROPOSED] AFFADAVIT OF CONFIDENTIALITY</b>
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STATE OF \_\_\_\_\_,

1. My name is \_\_\_\_\_. My home or office address is \_\_\_\_\_  
\_\_\_\_\_. I am serving in the following role, \_\_\_\_\_,  
on behalf of \_\_\_\_\_ in the above-captioned case.

2. I certify that I have read and understood the entire Joint Stipulation and [Proposed] Protective Order, to which Exhibit 1 is attached. I agree to undertake and abide fully and completely by the terms of the Joint Stipulation and [Proposed] Protective Order.

3. In particular, and without limitation of the foregoing, I recognize that the Confidential Materials to which I have access as part of my work on this case may contain privileged proprietary information and other materials confidential in nature; I shall keep confidential the information contained in the Confidential Materials; I shall not disclose to, reveal to, or discuss with any person, in any way, any Confidential Materials, or the facts and information contained therein, other than as authorized by the attached Joint Stipulation and [Proposed] Protective Order; and I shall not use the Confidential Materials, or the facts and information

contained therein, for any purpose, except as authorized by the Joint Stipulation and [Proposed] Protective Order.

4. I agree that, upon (a) the final termination of the above-captioned litigation, or (b) the conclusion of my involvement with the above-captioned litigation, whichever occurs first, I shall certify in writing that I have returned, destroyed, or employed reasonable measures, consistent with the attached Joint Stipulation and [Proposed] Protective Order, to delete, degauss, or overwrite all such Confidential Materials, as set forth in the Joint Stipulation and [Proposed] Protective Order.

5. I understand that, if I disclose or reveal any Confidential Materials, or the facts and information contained therein, in violation of the attached Joint Stipulation and [Proposed] Protective Order, such disclosure or revelation will be a violation of a court order and I may be subject to all applicable sanctions, including the penalties imposed by the Court for contempt.

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[NAME OF AFFIANT]

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

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RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	No. CDV-2020-307 Hon. Kathy Seeley  <b>[PROPOSED] ORDER</b>
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The Court has reviewed the reasons offered in support of entry of this Joint Stipulation and [Proposed] Protective Order and finds that there is good cause to protect the confidential nature of certain information. Accordingly, the Court adopts the Joint Stipulation and [Proposed] Protective Order as an order in this action.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2022.

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KATHY SEELEY  
District Court Judge