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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.

Cause CDV-2020-307
Hon. Kathy Seeley

**SUPPLEMENTAL BRIEF
IN SUPPORT OF DEFENDANTS'
MOTION TO MODIFY SCHEDULING
ORDER**

The State of Montana, et al., ("the State") hereby notifies the Court that Plaintiffs' recent expert disclosures present additional good cause for modifying the current scheduling order. *See* Mont. Civ. P. 16(4) (scheduling order may be modified upon showing of good cause); (Doc. 61, ¶ 12) (requiring that requests to modify the current case schedule be in writing setting forth good cause).

On May 12, 2022, the State moved to modify the scheduling order in this case. (Doc. 87.) The State argued that good cause not only supports, but mandates, extending the scheduling order because, among other things, the parties have disclosed 59 lay witnesses (Doc. 88), Plaintiffs' Complaint is extensive in scope and complex in nature, and the parties don't even know which of Plaintiffs' claims are still viable. *Compare* (Doc. 86) (State's Motion arguing that the Court has dismissed all claims for injunctive relief) *with* (Doc. 96) (Plaintiffs' Response arguing that one claim for injunctive relief remains). Under the current case schedule, the State Defendants cannot present a full and fair defense. (*Id.*)

Then things got worse. On May 18, 2022, Plaintiffs disclosed *nine* expert witnesses. The current case schedule is now even more prejudicial to the State. The parties have now disclosed **59 lay witnesses** and **nine experts**. And that doesn't include Defendants' forthcoming expert witnesses and both parties' forthcoming rebuttal expert witnesses.

The State also had no advance notice that Plaintiffs planned to designate this many experts. When the parties met and conferred on May 9, 2022, to discuss scheduling issues, counsel for the State expressed the State's concerns about the parties' ability to depose the number of lay witnesses in this case. She also noted that her concerns included the parties' ability to depose the expert witnesses the parties had—as of May 9—not yet disclosed. But Plaintiffs downplayed the State's concerns and didn't inform the State that they planned to disclose nine expert witnesses. *See* (Aff. Emily Jones ¶¶ 4–7 (May 23, 2022).)

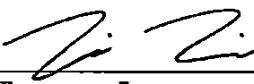
Finally, Plaintiffs' Expert Reports include two informal neuropsychological evaluations of the Youth Plaintiffs. *See* (Docs. 95.4 and 95.5.) Under the current scheduling order, the State will not have time to conduct a rebuttal independent medical examination of all 16 plaintiffs to respond to Plaintiffs' expert's psychological opinions. Plainly, the current schedule prejudices Defendants' case.

The current scheduling order makes it impossible for the State to present a full and fair defense. Plaintiffs' recent disclosure of nine expert witnesses makes it even less feasible for the State to conduct the necessary number of depositions before the close of discovery on July 15, 2022. The State respectfully urges this Court to quickly rule on its motion and adopt the State's proposed schedule.

DATED this 24th day of May, 2022.

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CERTIFICATE OF SERVICE

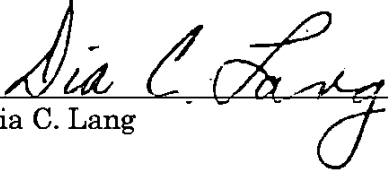
I certify a true and correct copy of the foregoing was delivered by email to the following:

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Dia C. Lang