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MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

<p>RIKKI HELD, et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>STATE OF MONTANA, et al.,</p> <p>Defendants.</p>	<p>No. CDV-2020-307</p> <p>Hon. Kathy Seeley</p> <p><b>PLAINTIFFS' MOTION FOR RULE 26(f) DISCOVERY CONFERENCE</b></p>
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**FILED**  
JUN 1 8 2022  
By: ANGIE SPARKS, Clerk of District Court  
Deputy Clerk

## **DISCOVERY CONFERENCE**

Plaintiffs respectfully move the Court for a telephonic discovery conference pursuant to Rule 26(f), Mont. R. Civ. P. Given the importance of the constitutional claims at issue in this case, and the challenges the parties have experienced with respect to scheduling a number of depositions in advance of the upcoming discovery deadline of July 15, 2022, Plaintiffs request that this Court set this matter for a telephonic Discovery Conference as soon as possible. Plaintiffs have made a reasonable good faith effort to resolve these scheduling issues with Defendants, but those efforts have not been fruitful. Plaintiffs believe the assistance of the Court would not only be useful, but is necessary to ensure Plaintiffs are not prejudiced in being able to gather the information needed, and to which they are entitled, to litigate this constitutional case. Plaintiffs have conferred with Defendants, and although Defendants already have a motion seeking an amendment of the Court's Scheduling Order pending before this Court, Defendants oppose this motion.

## **FACTUAL BACKGROUND**

On December 27, 2021, this Court issued a Scheduling Order, after a scheduling conference was held among the parties on December 17, 2021. On March 18, 2022, Defendants served their First Discovery Requests to Plaintiffs, to which the Plaintiffs responded on April 20, 2022 and supplemented on May 27, 2022 and June 10, 2022. Declaration of Nathan Bellinger ("Bellinger Decl.") ¶ 2. Also on April 20, 2022, Plaintiffs served their First Discovery Requests on Defendants, to which the Defendants responded on May 20, 2022, and then supplemented on June 8, 2022. *Id.* at ¶ 3. Plaintiffs have identified deficiencies in Defendants' responses and the parties are meeting and conferring in an attempt to resolve these issues. *Id.* at ¶¶ 6-7.

In the Scheduling Order, the Court set a deadline of April 18, 2022 as the date by which the parties shall exchange and file their lists of lay witnesses and exhibits, and the parties met this

deadline. On May 18, 2022, Plaintiffs filed and served on Defendants' their expert witness disclosures, and on June 1, 2022, Defendants filed and served their expert witness disclosures, in accordance with the Court's Scheduling Order.

On May 27, 2022, Plaintiffs served four 30(b)(6) deposition notices on four Defendant agencies, and on June 2, Plaintiffs served 17 deposition notices for the expert and "hybrid" fact/expert witnesses the state disclosed the previous day. Bellinger Decl. ¶ 4. As of the date of this filing, Defendants have only provided Plaintiffs with dates that are available for Plaintiffs to take deposition of two of Defendants' 30(b)(6) witnesses. Defendants have indicated that the dates Plaintiffs' proposed for the two other 30(b)(6) depositions will not work but have yet to provide alternative dates, even though the Plaintiffs noticed these depositions two weeks ago. *Id.* at ¶ 5.

On June 8, 2022, three weeks after Plaintiffs served their expert disclosures and nearly seven weeks after Plaintiffs filed their list of potential witnesses, Defendants served deposition notices for all of Plaintiffs' experts, all 16 Plaintiffs in the case, including those Plaintiffs who will not be testifying in the case such as 4-year-old Nathaniel and 8-year-old Jeffrey, and 12 plaintiff guardians, only one of whom were identified as potential witnesses in this case. Defendants noticed some of these depositions for the dates that they had previously said were "unavailable" for the depositions that Plaintiffs had previously noticed. As it stands today, the parties have noticed 61 depositions, all of which would need to occur within the next five weeks to comply with the Court's Scheduling Order, and only two have been confirmed. Bellinger Decl. ¶¶ 4, 8.

Over the last several weeks, Plaintiffs have been meeting and conferring with Defendants to try to negotiate a mutually agreeable deposition schedule that works for counsel, the parties, and

all proposed witnesses. Plaintiffs have made a reasonable attempt to reach agreement with Defendant, but those efforts have been unsuccessful, and the Court's assistance is now necessary.

#### DISCUSSION

District courts have "inherent discretionary power to control discovery" which is "based upon the District Court's authority to control trial administration." *State ex rel. Guar. Ins. Co. v. Dist. Ct. of Eighth Jud. Dist.*, 194 Mont. 64, 67-68, 634 P.2d 648 (Mont. 1981). The Montana Supreme Court has recognized that "[t]he objective of the District Court in controlling and regulating discovery is to insure a fair trial to all concerned, neither according one party an unfair advantage nor placing the other at a disadvantage." *Hobbs v. Pacific Hide & Fur Depot.*, 236 Mont. 503, 512, 771 P.2d 125 (Mont. 1989). Pursuant to Rule 26(f), Mont. R. Civ. P., "[a]t any time after commencement of an action, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party . . . ."

As a reasonable component of a solution to the problems described above Plaintiffs propose that the discovery deadline in the Court's Scheduling Order be pushed back forty-five days to August 29, 2022. This would enable the parties to negotiate a deposition schedule that is feasible and not prejudicial to either side, and would allow all other dates set forth in the Court's Scheduling Order to remain as-is, including most importantly the trial date in February 2023. Since moving back the date of the close of discovery would not require the alteration of any other deadlines, Defendants would not be prejudiced by any such modification and in fact, it would accommodate

their request for additional time to prepare for trial in accord with their motion that is pending before the Court.

In sum, Plaintiffs respectfully request that the Court set a discovery conference to resolve the parties' stalemate with respect to deposition scheduling and to discuss Plaintiffs' proposed plan of pushing the close of discovery back 45 days to August 29, 2022.

Respectfully submitted this 10th day of June, 2022.

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered by email to the following on June 10, 2022:

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